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COMMENT

MCINTOSH V. WATKINS: OKLAHOMA'S TREBLE WITH STATUTORY INTERPRETATION

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I. INTRODUCTION

What civil liability should a driver who flees the scene of an accident incur? Your guess is as good as that of the Supreme Court of Oklahoma. Oklahomans generally believe that, on top of making a victim whole through tort remedy, hit-and-run perpetrators should be punished in some way. We know this because the Oklahoma Legislature has enacted portions of the Uniform Vehicle Code (UVC) penalizing such conduct. But the history of Oklahoma's implementation of the UVC is complicated and has led to some confusion in its application. The criminal implications are relatively straightforward, but the civil implications are not so easily distinguished. And though Oklahoma now has some precedent for these

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violations thanks to *McIntosh v. Watkins*, the path the Court has taken is somewhat confusing. The difficult issue left now is: Was this the legislature's intent? This Comment seeks to address the policy rationale, history, and current application of title 47's accident reporting statute.

The Comment begins with a discussion of the liability awaiting those who flee the scene of an accident, then briefly explains the Supreme Court of Oklahoma's standards for statutory interpretation. Next, it discusses *McIntosh v. Watkins*, including the facts and procedural history, as well as the surprisingly contentious opinions of an ideologically divided Court. The Comment then addresses the ambiguity and absurdity doctrines of statutory interpretation and the difficulties both the majority and dissent had in implementing these traditional tools of construction. Finally, it concludes with a discussion about the future of the newly expanded civil liability provisions, which is somehow more uncertain than the future of statutory interpretation in Oklahoma.

II. BACKGROUND: THE AWARD OF TREBLE DAMAGES IS CERTAINLY ALLOWED WHERE NO BODILY INJURY OCCURS, BUT WHETHER THIS IS THE ONLY PROPER APPLICATION IS AT ISSUE

In Oklahoma, when an automobile accident results in injury of a person or damage to a vehicle, the drivers of each respective vehicle must provide their "name, address and registration number of the vehicle [they are] driving, and . . . upon request exhibit [their] driver license[s] and [their] security verification form[s] . . . ."[1] If a nonfatal injury occurs, any driver who fails to remain at the scene until the required information is provided will be guilty of a felony.[2] And where there is no injury to any person and damage is only inflicted upon a vehicle, failure to remain at the scene will result in a misdemeanor.[3] But failure to stop in the latter instance will also subject the wrongdoer to civil liability in the amount of "three times the value of the damage caused by the accident."[4] A remedy often referred to as treble damages.[5]

The earliest form of this statutory scheme was codified in 1949 as a singular statute, and the current version—now called the Highway Safety

1. OKLA. STAT. tit. 47, § 10-104 (2011 & Supp. 2020).
2. § 10-102.
3. § 10-103.
4. *Id.*
5. *Treble Damages*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Code for the State of Oklahoma—was created in 1961 by re-codifying the existing statute into several smaller statutes.[6] The treble damage provision was added in 1987, but it was only added to section 10-103, which specifically applies to accidents "resulting *only* in damage to a vehicle"; the Code has remained unchanged since then.[7] This raises the question central to *McIntosh*: Can treble damages be applied to accidents that result in both damage to a vehicle *and* nonfatal injury to a person?

As with all issues of statutory interpretation, this question is subject to de novo review.[8] First, a court must determine the intent of the Legislature.[9] In this step, a court will only consider the language of the statute. If doing so leads to ambiguity—that is, the language is susceptible to more than one reasonable interpretation—then a court will turn to the rules of statutory construction.[10]

Where ambiguity is present, a reasonable and sensible construction that honors the legislature's intent will be applied in a manner that avoids absurd consequences.[11] In doing so, the language of the entire act will be considered in light of its general purpose and objective by considering each relevant provision together.[12] Finally, a court may also use the language of the enactment, as well as other statutes of the same subject matter, to ascertain the legislature's intent if it furthers the application of a "reasonable and sensible construction."[13]

III. THE CASE*: MCINTOSH V. WATKINS*

A. Facts

On October 29, 2017, Jake Watkins rear-ended Lee McIntosh while driving under the influence of alcohol.[14] Mr. McIntosh and his passenger both sustained bodily injuries and damage was dealt to Mr. McIntosh's vehicle, but the two drivers were able to pull over onto the shoulder of the

6. McIntosh v. Watkins, 2019 OK 6, ¶¶ 10-11, 441 P.3d 1094, 1099.
7. *Id.* (citing 1987 Okla. Sess. Laws, c. 224, § 15 (emphasis added).
8. *Id.* ¶ 4, 441 P.3d at 1096 (citing Fulsom v. Fulsom, 2003 OK 96, ¶2, 81 P.3d 652).
9. *Id.* (citing Samman v. Multiple Injury Trust Fund, 2001 OK 71, ¶13, 33 P.3d 302).
10. *Id.* (citing YDF, Inc. v. Schlumar, Inc., 2006 OK 32, ¶ 6, 136 P.3d 656).
11. *Id.* (citing Wylie v. Chesser, 2007 OK 81, ¶ 19, 173 P.3d 64).
12. *Id.* (citing Keating v. Edmondson, 2001 OK 110, ¶ 8, 37 P.3d 882).
13. *Id.* (first citing Udall v. Udall, 1980 OK 99, ¶ 11, 613 P.2d 742, 745; then citing Naylor v. Petuskey, 1992 OK 88, ¶ 4, 834 P.2d 439).
14. *Id.* ¶ 1, 441 P.3d at 1095.

road and inspect the damage.[15] When Mr. McIntosh informed Mr. Watkins that he would be calling the police so an officer could file a report on the accident, Mr. Watkins immediately left the scene.[16] Mr. Watkins fled before the authorities could arrive on the scene and before Mr. McIntosh could obtain Mr. Watkins's information.[17]

B. Procedural History

Mr. Watkins was found soon after the accident and was charged and convicted of both driving under the influence and leaving the scene of an accident which involved damage to a vehicle.[18] Mr. Watkins pled no contest to both charges, and on March 9, 2018, received a deferred sentence.[19] In an effort to recover for damages, Mr. McIntosh filed his civil action against Mr. Watkins; this ultimately led to Mr. Watkins agreeing to settle both of Mr. McIntosh's bodily injury claims for the amount of $25,000.00, as well as agreeing to pay $24,545.66 to cover repairs for and diminution in value of Mr. McIntosh's vehicle.[20] However, the parties disagreed on whether Mr. McIntosh was entitled to treble damages to compensate for his property damage even though he had also sustained a nonfatal injury.[21]

To combat the application of treble damages, Mr. Watkins filed a motion for summary judgment.[22] On August 16, 2018, the trial court ruled in favor of Mr. Watkins, finding that the treble damages provision only applies to drivers who *exclusively* incur property damage.[23] Because Mr. McIntosh had sustained bodily injury, he was barred from seeking the heightened damage entitlement. Soon after, Mr. McIntosh appealed the trial court's ruling.[24]

15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* ¶ 2, 441 P.3d at 1095.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*

C. The Majority's Opinion

A majority of the Oklahoma Supreme Court held that the provision awarding treble damages applies to all violations of title 47, section 10-104 where damage to an attended vehicle occurs, regardless of whether bodily injury was sustained.[25] First, the Court discussed the arguments asserted by Mr. Watkins and Mr. McIntosh, which centered around the level of ambiguity arising from the word "only" in the first sentence of section 10-103.[26] The relevant language of the statute provides:

> The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of section 10-104 of this title . . . . In addition to the criminal penalties imposed by this section, any person violating the provisions of this section shall be subject to liability for damages in an amount equal to three times the value of the damage caused by the accident. Said damages shall be recoverable in a civil action.[27]

Mr. McIntosh argued that the word "only" was not included to limit the application of who may claim treble damages, but instead limit *how* such damages could be applied.[28] That is, the statute only permitted recovery for three times the amount of damage dealt to a vehicle, rather than for all types of damages, which would bar the application of treble damages to bodily injury.

Mr. Watkins argued that, because the provision only exists in section 10-103, the word "only" should be used to bar treble damages in cases where bodily injury arose from a vehicle accident.[29] Ultimately, the Court found both arguments persuasive enough to consider the word "only" as

25. *Id.* ¶ 16, 441 P.3d at 1100-01.
26. *Id.* ¶¶ 7-8, 441 P.3d at 1097-98.
27. OKLA. STAT. tit. 47 § 10-103 (2011 & Supp. 2020).
28. *McIntosh*, ¶ 8, 441 P.3d at 1097.
29. *Id.* ¶ 7, 441 P.3d at 1097.

being "susceptible to more than one reasonable interpretation."[30] Finding that such an ambiguity exists allowed the Court to move to the next phase of statutory interpretation—using the rules of statutory construction to assist the Court in determining what the Legislature intended.[31]

The Court began by discussing the history and evolution of the statute. Before the relevant statutes existed separately in chapter 10 of the Oklahoma statutory scheme, they coexisted as subsections in title 47, section 121.2.[32] The predecessor statute's title directed that section 121.2 was codified to "[establish] the requirements for drivers involved in an accident[,]" so the *McIntosh* Court interpreted the title as the purpose of the original statute.[33] Later, each provision relevant to accidents involving vehicles was recodified into their own statutes; however, the Court determined that all the statutes remained "relatively intact."[34] The Court also explained that the original statute created no mechanism for allocating civil liability to the wrongdoer because it only provided for criminal liability.[35] Therefore, the Legislature's amendments and its inclusion of the language "accident resulting only in damage to a vehicle" were used to limit criminal charges to misdemeanors where there was no bodily injury inflicted.[36]

The Court next looked at the treble damage provision in the context of chapter 10 and distinguished each of the relevant provisions of the statutes as they exist today, holding that: section 10-102 applies to nonfatal accidents; section 10-102.1 applies to fatal accidents; and section 10-105 applies to accidents where a vehicle is unattended.[37] The Court further explained that neither section 10-102 nor section 10-102.1 require there to be another vehicle, but section 10-105 does.[38] And the Court finally stated that section 10-105 does not provide for civil or criminal liability, but both section 10-102 and section 10-102.1 do.[39] Taking all this into account, the Court held that the purpose of chapter 10 is to give a framework that expands liability to those who do not comply with section

30. *Id.* ¶ 9, 441 P.3d at 1098.
31. *Id.*
32. *Id.* ¶¶ 10-11, 441 P.3d at 1098-99.
33. *Id.* ¶ 10, 441 P.3d at 1099.
34. *Id.* ¶ 11, 441 P.3d at 1099.
35. *Id.* ¶ 10, 441 P.3d at 1099.
36. *Id.* ¶ 11, 441 P.3d at 1099.
37. *Id.* ¶ 13, 441 P.3d at 1099-1100.
38. *Id.* ¶ 13, 441 P.3d at 1100.
39. *Id.*

10-104.[40] The Court said this purpose is achieved by assigning (1) misdemeanor liability to accidents where no driver is present, (2) felony liability where a person is injured, and (3) civil liability where there is vehicle damage and a person is injured.[41]

With a purpose divined, the Court began its policy argument. Here, the Court attempted to bolster its conclusion by explaining that "the obvious public policy" of chapter 10 is "to provide an added level of deterrence against hit-and-run drivers who damage attended vehicles."[42] The Court proclaimed that absurdity would follow if the deterrence only applied to areas where there was no injury because there would still be a violation of the statute, and there would still be vehicle damage.[43] This conclusion on the superior policy rationale ultimately led the Court to hold that the Legislature intended to apply treble damage to each variation of the hit-and-run statutes where an accident results in damage to an attended vehicle.[44]

D. The Dissent

Writing for the dissenting members of the Court, then-Vice-Chief Justice Patrick Wyrick strongly criticized the majority's conclusions that there was ambiguity in the statute and that Mr. Watkins's interpretation would lead to absurd results. The dissent opened with a discussion on the ambiguity of the relevant sections, agreeing with the majority that the threshold of ambiguity is crossed where a statute has multiple reasonable interpretations.[45] However, the dissent quickly said that Mr. McIntosh's (and, necessarily, the majority's) interpretation was not reasonable for two reasons: First, there are different liabilities conferred on each type of accident in the relevant statutes—with section 10-103 being the only statute imposing not only treble damages, but any form of civil liability—and second, the existence of limiting language which exclusively limits the application of treble damages to actions arising under section 10-103.[46]

Sections 10-102, 10-102.1, and 10-103 apply to accidents that involve a nonfatal injury, death, or where only vehicular damage occurs,

40. *Id.* ¶ 14, 441 P.3d at 1100.
41. *Id.*
42. *Id.* ¶ 15, 441 P.3d at 1100.
43. *Id.*
44. *Id.* ¶ 16, 441 P.3d at 1100-01.
45. *Id.* ¶ 5, 441 P.3d at 1102 (Wyrick, J., dissenting).
46. *Id.* ¶¶ 7-9, 441 P.3d at 1102-03.

respectively.[47] Because Mr. McIntosh was inside of his vehicle and sustained a nonfatal injury, Mr. Watkins had only violated section 10-102, and because Mr. Watkins did not violate section 10-104's command to remain at the scene of the accident.[48] However, section 10-103 is the only statute that provides for civil liability, and is also the only statute that contains the limiting language: "In addition to the criminal penalties imposed by *this section*, any person violating the provisions of *this section* shall be subject to liability for [treble damages] . . . ."[49] Because of this, the dissent believed that the plain meaning—applying only treble damages to accidents resulting exclusively in damage to an attended vehicle—was the only reasonable interpretation and would preclude Mr. McIntosh from seeking treble damages; the dissent reasoned this because Mr. Watkins violated section 10-102 specifically by injuring Mr. McIntosh and his passenger.[50] The dissent further argued that Mr. McIntosh's interpretation was not reasonable because it relied on the belief that, even though the Legislature assigned different liabilities to the different categories of hit-and-run violations, it intended for treble damages to be recoverable in all instances where there is vehicle damage, despite the language of section 10-103 expressly limiting treble damages to where there is no injury.[51]

Next, the dissent began its discussion over the absurdity doctrine. This portion of the opinion relied on the argument that where ambiguity is present, absurdity cannot apply.[52] The dissent said the majority had misused the absurdity doctrine because the doctrine requires the plain meaning of the statute to be an impossible expression of the Legislature's intent, and therefore unreasonable, which according to the dissent is not the case for section 10-103.[53] The dissent then reminded the majority that the test for absurdity adopted by the Tenth Circuit is met where the plain language of a statute would create an "error . . . so unthinkable that any reasonable reader would know immediately both (1) that it contains a 'technical or ministerial' mistake, and (2) the correct meaning of the text."[54] The dissent further noted that the Tenth Circuit asserts that "the

47. *Id.* ¶ 9, 441 P.3d at 1103.
48. *Id.*
49. *Id.* ¶ 8, 441 P.3d at 1102.
50. *See id.* ¶ 1, 441 P.3d at 1101.
51. *Id.* ¶¶ 9-10, 441 P.3d at 1102-03.
52. *Id.* ¶ 11, 441 P.3d at 1103.
53. *Id.* ¶ 12, 441 P.3d at 1103.
54. *Id.* ¶ 13, 441 P.3d at 1104 (quoting Lexington Ins. Co. v. Precision Drilling Co., 830 F.3d 1219, 1223 (10th Cir. 2016)).

absurdity doctrine seeks to serve a 'linguistic rather than substantive' function."[55] This is a test the dissent believed the majority failed because it "merely conclude[d] that it makes sense to have treble damages available in all cases."[56]

In its application of the absurdity doctrine, the dissent attacked the argument made by the majority that treble damages would serve as a "hollow" deterrence if it were not applied to all hit-and-run accidents resulting in damage to a vehicle. The dissent disagreed with the majority for the following reasons: First, the dissent stated that the assignment of criminal and civil liability already serves as a deterrent that is not diminished by the absence of treble damages, and second, that "hit and run drivers cannot know for certain whether anyone was injured."[57]

The remainder of the dissent deviated from the facts of the case in an attempt to warn against the use of judicial activism, and to reprimand the majority's use of the ambiguity and absurdity doctrines. In doing so, it accused the majority of acting as legislators instead of judges—a trend that the dissent believes is becoming all too common.[58]

IV. ANALYSIS: THE COURT CORRECTLY DETERMINED THE LEGISLATIVE INTENT BEHIND THE STATUTES, BUT IT SHOULD NOT HAVE MENTIONED ABSURDITY

A. The Cases Used

Unfortunately, there's no authoritative precedent on whether treble damages can be applied to any case resulting in damage to a vehicle. This is demonstrated by the majority's lack of reference to any similar case and the cases the dissent included in the footnotes of its opinion. However, the dissent's cases are worth mentioning, even if their persuasiveness is debatable. The precedent used includes two cases from Hawaii and Florida, which have adopted the Uniform Vehicle Code, and one from the Oklahoma Court of Criminal Appeals.[59]

In both *Hawaii v. Sakoda* and *Peterson v. Florida*, each appellate court reversed the convictions of defendant drivers that left the scenes of

55. *Id.*
56. *Id.* ¶ 14, 441 P.3d at 1103.
57. *Id.* ¶ 14, 441 P.3d at 1105.
58. *See id.* ¶ 17, 441 P.3d at 1105.
59. *Id.* ¶ 2 n. 2, 441 P.3d at 1101 n.2.

accidents where vehicle damage and personal injury were sustained.[60] In *Sakoda*, the Intermediate Court of Appeals of Hawaii focused on whether the section providing for only property damage was a lesser included offense to the section providing for damage and injury.[61] But in *Peterson*, the Florida district court focused on whether conviction for both offenses resulted in an inconsistent jury verdict.[62] Both courts held in favor of the defendants.[63] In *Palmer v. State*, the defendant was also convicted of violating both statutes, but the Oklahoma Court of Criminal Appeals reversed the conviction by holding that the subsections of section 121.2 (the predecessor statute) were "separate and distinct offense[s]."[64]

The first issue with applying these cases is that they only apply to the *criminal* liability of the provisions, but not the civil liability imposed. This means that they are not authoritative in cases like *McIntosh*, where the challenger's argument is based on the language of each provision being used to limit criminal liability exclusively. Second, none of the cases discuss statutory interpretation in any appreciable length; instead, they swiftly hold that each provision is distinct and move on. The most discussion on interpretation is in *Sakoda*, where the Hawaii court found there was no ambiguity in the language of the statute; however, it does not explain why the statute is not ambiguous.[65] Finally, even if statutory interpretation was implemented by the different courts, none of the cases would have used Oklahoma's current statutory framework. Hawaii and Florida may have both adopted the Uniform Vehicle Code, but they do not have the same statutes as Oklahoma because Oklahoma's statutes have been amended significantly since their enactment. Even *Palmer* cannot escape this pitfall because it relied on the first version of the Code, which at the time (1) had not been divided into separate statutes, and (2) did not even provide for civil liability, much less treble damages.[66]

Even if the cases used by the dissent were binding, the Supreme Court of Oklahoma agrees with the other courts that the criminal liability is limited by each section. But this limitation does not have to be imputed to civil liability. First, the Court explicitly states that the language of the

60. *See* State v. Sakoda, 618 P.2d 1148 (Haw. Ct. App. 1980); Peterson v. State, 775 So. 2d 376 (Fla. Dist. Ct. App. 2000).
61. *Sakoda*, 618 P.2d at 1148.
62. *Peterson*, 775 So. 2d at 377.
63. *See Sakoda*, 618 P.2d 1148; *Peterson*, 775 So. 2d 376.
64. Palmer v. State, 1958 OK CR 70, 372 P.2d 722, 725 (Okla. Crim. App. 1958).
65. *Sakoda*, 618 P.2d at 1149-50.
66. *See Palmer*, ¶ 5, 327 P.2d at 724-25.

statutes was meant to limit criminal liability.[67] But if that is insufficient, another reason the majority would not extend criminal liability across chapter 10 was because including violations of each lesser included offense (*i.e.*, where a violation of the statute providing for accidents resulting in both personal injury and property damages would also constitute a violation of both the exclusive personal injury statute and the exclusive vehicle damage statute) would allow a considerable stacking of criminal liability where both personal injury and damage to an attended vehicle are present, whereas allowing the civil remedy to apply across the sister statutes would only allow for treble vehicle damages to be awarded just once. For these reasons, the majority would agree that the statutes are distinct when viewed in the criminal context; however, that distinction would not automatically preclude any civil action from being extended to the other statutes.

B. The Issue with the Majority's Opinion

i. The Absurdity Doctrine

Critics should be mostly concerned with the majority's use of the absurdity doctrine. It seems to have slipped the majority's mind that the word "absurdity" is a legal term of art with a meaning that expands far past its common use and that it has a significant impact on the practice of statutory interpretation. But despite name-dropping the absurdity doctrine, the majority never actually used it. Looking closer, the majority used its concept of absurdity to show that one outcome—allowing treble property damage to all violations involving vehicle damage—was more suited to the Legislature's intent to punish or deter a particularly reckless set of tortfeasors. So, it is no surprise that textualists are so critical of the opinion. Though most textualist judges rely on the absurdity doctrine to some extent, they are wary of its application.[68] But seeing absurdity used in such an atypical fashion is even more concerning.

As textualism has become more commonly implemented in statutory interpretation, the use of the absurdity doctrine has declined.[69] This is at

67. McIntosh v. Watkins, 2019 OK 6, ¶ 10, 441 P.3d 1094, 1099.

68. *See* Veronica M. Dougherty, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 AM. U. L. REV. 127 (1994).

69. *See* Laura R. Dove, *Absurdity in Disguise: How Courts Create Statutory Ambiguity to Conceal Their Application of the Absurdity Doctrine*, 19 NEV. L.J. 741, 744-45 (2019).

least partly because the concept of what is considered absurd is entirely subjective. After all, what is absurd to one person may be completely reasonable to another. But Professor William Eskridge, a prominent figure in the practice of statutory interpretation in the United States, claims that some form of the absurdity doctrine has been used throughout American jurisprudence and in most other English-speaking jurisdictions.[70] This "golden rule" against absurdity requires interpreters to "adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that . . . leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further."[71] This version of the rule has remained relatively the same since its inception. As the dissent in *McIntosh* mentioned, the test in the Tenth Circuit is whether the plain language of the statute creates an "error. . . so unthinkable that any reasonable reader would know immediately both (1) that it contains a 'technical or ministerial' mistake, and (2) the correct meaning of the text."[72] This version is more explicit in its assertion that absurdity is only to be used where there is an error, and not simply where the text is difficult to understand. Moreover, it allows the doctrine to serve "a linguistic rather than substantive function," which most advocates of judicial restraint would prefer.[73] But whether using the older "golden rule" or the narrower version adopted by the Tenth Circuit, both require the plain meaning of the statute to be unreasonable. Contrast this with ambiguity, which exists where the language used in a statute is reasonably susceptible to more than one reasonable interpretation.

As the dissent noted, these conflicting concepts cannot coexist in the same issue.[74] But as previously stated, the majority did not use the absurdity doctrine. The doctrine is only to be used when interpreting the plain meaning of the text, which itself is only used in the first step of statutory interpretation. So, the majority chose not to rely on the absurdity doctrine once it held that there was more than one reasonable interpretation. It only argued "absurdity" to pick between one of the alternative interpretations, which is the final step in its analysis. But is this

70. WILLIAM N. ESKRIDGE, JR., ET. AL., CASES AND MATERIALS ON LEGISLATION AND REGULATION: STATUTES AND THE CREATION OF PUBLIC POLICY 610 (6th ed. 2020).

71. *Id.* (internal quotation marks omitted).

72. *McIntosh*, ¶ 13, 441 P.3d at 1104 (Wyrick, J., dissenting).

73. *Id.* (internal quotation marks omitted).

74. *Id.* ¶ 11, 441 P.3d at 1103.

confusing application the majority's fault? The majority relied on *Wylie v. Chesser*, which stated that where ambiguity is present, a reasonable construction that honors the Legislature's intent will be applied in a manner that avoids absurd consequences.[75] Moreover, *Wylie* relied on *TRW/Reda Pump v. Brewington* in stating its rule, so it seems there is a long history of the Supreme Court of Oklahoma using "absurdity" to justify what meaning ambiguous statutes should have.[76] If it really is improper to use "absurdity" this way, the Court should address it soon. Otherwise, mistaken application in statutory interpretation cases will not only continue, but could potentially foster a misunderstanding of the absurdity doctrine in future generations of legal professionals.

ii. Resolving Ambiguity

Assuming the majority does rely exclusively on the presence of ambiguity, for the dissent to be correct in its conclusion of what the proper outcome is, it cannot rest its case on the absurdity doctrine. Instead, its conclusion must turn on whether there is ambiguity within the statute. But the dissent's claim that the statute is not susceptible to more than one reasonable interpretation is incorrect. Does the limiting language in section 10-103 really make it unreasonable to believe that a remedy for vehicle damages should not apply in all cases where there is vehicle damage? And is it unreasonable to believe that such language was only meant to limit criminal liability rather than civil?

Mr. Watkins and the dissent certainly use a reasonable interpretation. First, the treble damages provision only exists in section 10-103. Next, and what is perhaps more persuasive, the provision itself says it applies to violations of "this section."[77] It would be difficult to say that Mr. Watkins's interpretation is an unreasonable one. But the same could be said for Mr. McIntosh's interpretation. First, all of the accidents involve a hit-and-run, and second, it seems odd that only one provision involving vehicle damage would receive the heightened remedy.

So, if there is ambiguity, how should the Legislature's intent be determined? The dissent believes that because the treble damages

75. *Id.* ¶ 4, 441 P.3d at 1096 (citing Wylie v. Chesser, 2007 OK 81, ¶ 19, 173 P.3d 64, 71).

76. Wylie v. Chesser, 2007 OK 81, ¶ 25, 173 P.3d 64, 74 (citing TRW/Reda Pump v. Brewington, 1992 OK 31, 829 P.2d 15).

77. OKLA. STAT. tit. 47, § 10-103 (2011 & Supp. 2020).

provision was added to the statute *after* the predecessor statute was converted into several different statutes, the Legislature clearly intended to apply the remedy only to section 10-103 since it was the only violation to receive it.[78] However, the majority rejects construing this history as a limitation on the applicability of treble damage.

Though the dissent's argument is compelling, does it really make sense? Why should treble damages only apply in accidents resulting in both personal injury and damage to a vehicle? Such a violation may be one of the most morally concerning in the framework, but the specific application of treble damages to property damages is an interesting decision. If the presence of an injury is the Legislature's concern, then all statutes where injury is provided for should receive a heightened remedy. But, that's not the case. One explanation for this could be that imposing damages on personal injury already has the potential of reaching astronomical heights, which would be made even more concerning when tripled. But the Legislature did not have to triple the property damage; it could have used a wide array of remedies if it wanted to deter against hit-and-runs where there is an injury. Also, section 10-102 and section 10-102.1 provide for instances where only injury is sustained, but neither received a heightened remedy. The reason for this appears to be that they did not receive the remedy because they do not involve vehicle damage. The obvious counter to this is that vehicle damages could not apply where no vehicle is damaged. But, nonetheless, the choice to only impose a heightened remedy on a case involving injury does not make sense if (1) the other injury cases did not receive a heightened remedy, and (2) the remedy provided awards vehicle damages specifically.

On its face, the dissent's interpretation seems to be the appropriate one. But, taking the statutes in context and looking at the harm the Legislature sought to deter, one can infer that the majority's interpretation is the more convincing justification. It may appear to be a convoluted road to take for a less-than-clear outcome, but the Court was forced to go through a deeper analysis because there is little legislative history for these statutes other than the enactment and amendments to them. And since there is no other way to divine the Legislature's intent, at a minimum, the majority's interpretation should be considered just as plausible and compelling as the dissent's.

78. *McIntosh*, ¶ 8, 441 P.3d at 1102-03.

V. THE FUTURE OF TREBLE DAMAGES

Even after lengthy deliberation on the appropriate outcome of this case, the interpretation's validity may be short lived. Currently, there is a bill in the Oklahoma Legislature that could affect the remedies provided by section 10-103 and render *McIntosh v. Watkins* inapplicable. In response to the majority's conclusion in *McIntosh*, members of the Oklahoma Senate, Julie Daniels and Mary Boren, alongside Anthony Moore of the House of Representatives, introduced Senate Bill 26 in an effort to clarify that the Legislature intended to only apply treble damages to non-injury accidents.[79] But in doing so, Senator Daniels chose to remove the remedy of treble damages from section 10-103 entirely. When Senator Kay Floyd, in a Senate Judiciary Committee meeting, asked about Senator Daniels's justification for the complete removal of the provision, Senator Daniels admitted the solution was too complicated to apply, so she chose to remove treble damages altogether.[80] Senator Floyd later shared that she was concerned by the removal of the words "said damages shall be recoverable in a civil action" because she believes that doing so would prevent all civil liability from being imposed on those who flee the scene of an accident in violation of section 10-104.[81] That is a discussion for a different Comment, but this is likely not the case because the plaintiff can still be made whole through tort liability. It is worth mentioning, however, that the *McIntosh* majority found that the civil liability provision was inserted into the original statute *because* plaintiffs were unable to seek civil damages in such cases, so there is no guarantee as to whether a civil action will remain.[82]

Notwithstanding Senator Floyd's objections, the bill passed the Senate Judiciary Committee in a vote of seven to two on February 2, 2021, and then passed the Senate as a whole on February 11, 2021, in a vote of thirty-nine to eight.[83] After being engrossed to the House, the bill was expected to be referred to the House Judiciary Committee on Civil Matters on March 3, 2021, but the Committee did not act on it. Even though the 2021 legislative session closed without a final decision on the bill, in Oklahoma,

79. S. Judiciary Comm. Deb. 58th Leg., 1st Sess. (Okla. 2021) (February 2, 2021) (statement of Sen. Daniels), https://oksenate.gov/live-chamber (last visited Apr. 16, 2021).

80. *Id.*

81. *Id.* (statement of Sen. Floyd).

82. *McIntosh*, ¶ 12, 441 P.3d at 1099.

83. *See* S. Judiciary Comm. Deb., *supra* note 79.

bills that do not complete the legislative process before the Legislature adjourned *sine die* are still considered viable legislation and can be picked up where they were left off. So, should the bill make it out of committee, survive the House without amendment, and avoid a veto from Governor Stitt, it may still become enacted. This would mean that regardless of whether a driver sustains injury to their person, the defendant will only be liable in civil action for an amount equal to the plaintiff's property damage.

VI. CONCLUSION

In *McIntosh*, the majority followed the Oklahoma Supreme Court's trend of misusing the word "absurdity" in statutory interpretation that turns on the presence of ambiguity. Doing so has resulted in considerable criticism, not only from the case's dissent, but also the Oklahoma Legislature, and has resulted in a call to revisit the absurdity doctrine in Oklahoma. However, this confusion may not have prevented the Court from correctly divining the Legislature's intent. Due to the lack of legislative history over the statutes, neither side may conclusively claim they have the more appropriate interpretation. Though the majority made a more compelling argument as to the presence of ambiguity and the intent of the Legislature, both sides implemented interpretations that the Legislature could have reasonably intended, so now it is up to the state's current Legislature to decide how much "treble" the extraordinary remedy is in.