

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

**SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947**

August 24, 2007

Benjamin C. Wetzel, III, Esquire
Wetzel & Associates, P.A.
The Carriage House, Suite 201
1100 North Grant Avenue
Wilmington, Delaware 19805

Arthur D. Kuhl, Esquire
Reger Rizzo Kavulich & Darnall, LLP
1001 Jefferson Street Plaza, Suite 202
Wilmington, Delaware 19801

Clayton E. Bunting, Esquire
Wilson, Halbrook & Bayard
P.O. Box 690
Georgetown, Delaware 19947

**Re: Ansbach v. Passwaters;
 C.A. No. 06C-04-014**

Date Submitted: July 25, 2007

Dear Counsel:

Before the Court are Defendant Samuel Passwaters' Motion for Summary Judgment and Defendant Mary Ann Hearne's Motion for Summary Judgment. Trial is scheduled to begin on October 1, 2007, with a pretrial conference scheduled for August 30, 2007. For the reasons set forth herein, Defendant Samuel Passwaters' Motion for Summary Judgment is granted and Defendant Mary Ann Hearne's Motion for Summary Judgment is denied.

Factual and Procedural Background

This case arose out of a motor vehicle accident that took place on or about May 18, 2004, in Milford, Kent County, Delaware. Plaintiff Samuel Ansbach ("Mr. Ansbach") was operating a 1998 Isuzu pickup westbound on State Road 14 when he entered into State Road 14's intersection with

U.S. Route 113. Mr. Ansbach asserts he entered the intersection as the traffic light controlling his direction of travel turned yellow. Defendant Heidi Passwaters (“Ms. Passwaters”) was operating a 1989 BMW 325 southbound on U.S. 113 when she entered into the left turn lane and began making a left hand turn, across the northbound lanes of U.S. Route 113, to proceed eastbound on State Road 14. In doing so, Ms. Passwaters’ vehicle and Mr. Ansbach’s vehicle collided.

At the time of the accident, Ms. Passwaters was a minor under age 18. Pursuant to Title 21 of the Delaware Code, the Division of Motor Vehicles will not grant an application of a minor for an operator’s license or learner’s permit unless the application is signed by the applicant and a sponsor. 21 *Del. C.* § 2710(e). On August 19, 2002, Ms. Passwaters’ father, Samuel Passwaters (“Mr. Passwaters”), signed his daughter’s initial graduated driver’s license application pursuant to Section 2710(e).

On November 21, 2002, Mary Ann Hearne (“Ms. Heame”), Ms. Passwaters’ maternal grandmother, became Ms. Passwaters’ guardian pursuant to a court order issued by Family Court. Because Mr. Passwaters physically retained his daughter’s graduated license, she was unable to drive. When Ms. Hearn became Ms. Passwaters’ legal guardian, she pursued and obtained another graduated license for the minor driver. This application was signed by Ms. Passwaters and Ms. Hearne on June 16, 2003.

Mr. Ansbach and his wife (collectively, “the Ansbachs”) filed suit against Ms. Passwaters in this Court alleging negligence. The Ansbachs also joined Mr. Passwaters, Ms. Hearne, and Jesse Webb, the registered owner of the vehicle Ms. Passwaters was driving, as defendants. Mr. Passwaters and Ms. Hearne each filed a Motion for Summary Judgment. The Ansbachs have not replied to the motions.

Discussion

Standard of Review

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact. *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979). Once the moving party has met its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact. *Id.* at 681. Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial. Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of his or her case, summary judgment must be granted. *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. denied*, 504 U.S. 912 (1992); *Celotex Corp.*, *supra*. If, however, material issues of fact exist, or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, summary judgment is inappropriate. *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

Merits

Mr. Passwater's Motion for Summary Judgment

Mr. Passwaters's Motion for Summary Judgment is premised upon the argument that Ms. Passwaters' graduated license application signed by Ms. Hearne superceded Ms. Passwaters' original graduated license application signed by Mr. Passwaters. I find this argument persuasive and grant Mr. Passwaters' Motion for Summary Judgment.

Pursuant to Title 21,

Any negligence of a minor under age 18 driving a motor vehicle upon a highway of this State, who has been licensed under § 2710 of this title, shall be imputed to any person who signed the license application on behalf of the minor, and that person shall be jointly and severally liable with the minor for any damages resulting from the minor's negligence.

21 *Del. C.* § 6104(a). Section 6104 also provides that the liability “shall apply to the original license or permit granted to the minor *or any renewal thereof*, without the necessity of such person signing the minor's renewal application....” 21 *Del. C.* § 6104(b) (emphasis added). Section 2710 provides that a sponsor can withdraw his endorsement of a minor “at any time until the minor reaches age 18”. 21 *Del. C.* § 2710(e)(4).

Mr. Passwaters asserts that he did, in fact, withdraw his endorsement of Ms. Passwaters' application by physically retaining her license. Moreover, Mr. Passwaters notes that another application, to be distinguished from a renewal application, was signed by Ms. Hearne. Mr. Passwaters argues this act served to terminate his liability under Section 6104.

I find Mr. Passwaters' position that he withdrew his endorsement of Ms. Passwaters' application as intended by the statute unpersuasive because the statute clearly contemplates, and the license application itself clearly states, that such a withdrawal be in writing and be directed to the Division of Motor Vehicles. However, I conclude that Ms. Hearne's signature on Ms. Passwaters' subsequent license application served to terminate any liability on Mr. Passwaters' part. At the time Ms. Hearne approved Ms. Passwaters' license application, she was Ms. Passwaters' legal guardian. There has been no contention that the execution of this application was improper. The purpose of the legislation – “to extend broad protection to the public by making a [sponsor], who has signed a license application ..., financially responsible for any accident which results from the negligence of

the minor while operating the car”, *Tatlock v. Nathanson*, 169 F. Supp. 151, 155 (D. Del. 1959) – is adequately served by holding the minor’s *current* sponsor liable.

When Ms. Passwaters drove after her license was issued on June 16, 2003, she did so under the authority of a license obtained for her and signed on her behalf by Ms. Hearne. I conclude that, under the facts presented, there is no logical rationale for extending liability to Mr. Passwaters, who *previously* sponsored his minor daughter’s license application but who did not sponsor the most recently issued license. Accordingly, Mr. Passwaters’ Motion for Summary Judgment is granted.

Ms. Hearne’s Motion for Summary Judgment

Ms. Hearne submits she is entitled to summary judgment because to assess liability against Ms. Passwaters’ sponsor now that Ms. Passwaters is an adult is counter to the purpose and legislative intent of Section 6104. I find this argument to be without merit.

As noted above, the purpose of Section 6104 is to “protect a plaintiff injured by a negligent and financially irresponsible minor.” *Hess v. Carmine*, 396 A.2d 173, 175 (Del. Super. 1978). Ms. Hearne asserts the lawsuit against her does not serve this purpose as Ms. Passwaters was no longer a minor at the time the lawsuit was filed. This specific question has not been previously addressed by any Delaware court.

The language of Section 6104 declares that any negligence of a minor driving a motor vehicle upon a Delaware highway shall be imputed to the minor’s sponsor, as defined by Section 2710. The plain language of the statute indicates that this strict liability arises at the time of the minor commits the negligent act. Moreover, Ms. Hearne signed Ms. Passwater’s graduate driver license application and her signature immediately followed this language:

“I approve and sponsor the application of the above minor. I realize that I may cancel

the applicant's permit or license at anytime [sic] until they reach age 18 by notifying the Division in writing. I certify, under penalty of perjury, that the statements on this application are true and correct to the best of my knowledge, and that my relationship to the applicant is as indicated below. *I agree to be jointly and severally liable with the applicant for any damage caused by his or her negligence while driving a motor vehicle.*"

(emphasis added). As the Delaware Supreme Court observed in *McGeehan v. Schiavello*:

Counsel have not discussed the significance of this [language on the application form] in their arguments before us. It is possible that it alone would create a liability on the [sponsor's] part, even if [§ 6104] did not exist. Whether or not that be true, the existence of this additional fact nevertheless indicates at least that the [sponsor] knew, or is charged with knowledge of, liability she was assuming when she signed the application.

265 A.2d 25, 26 (Del. 1970).

I conclude that the language of the statute imputing liability clearly indicates liability is premised upon the actor's status as a minor at the time of the negligence, that the purpose of the statute is properly served by holding the sponsor liable for negligence based upon the actor's age at the time of the accident, and, further, that the language contained in the certification signed by Ms. Hearne also justifies holding Ms. Hearne potentially liable under Section 6104. Ms. Hearne's Motion for Summary Judgment is denied.

Conclusion

For the reasons set forth herein, Defendant Samuel Passwaters' Motion for Summary Judgment is granted and Defendant Mary Anne Hearne's Motion for Summary Judgment is denied.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary