IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PETER A. DEFILLIPO,	)	
	)	C.A. No. 08C-02-009 JTV
v.	)	
	)	
RONALD A. QUARLES, JR. and	)	
FRED AND SON TOWING, a	)	
foreign business entity and	)	
PATRICIA QUARLES,	)	
	)	
Defendants	)	

Submitted: June 29, 2011
Decided: October 31, 2011

I. Barry Guerke, Esq., Parkowski, Guerke & Swayze, Dover, Delaware. Attorney for Plaintiff.

William J. Cattie, III, Esq., Rawle & Henderson, Wilmington, Delaware. Attorney for Defendant.

Upon Consideration of Defendants'
Motion for Summary Judgment
GRANTED

VAUGHN, President Judge

DeFillipo v. Quarles, et al.
C.A. No. 08C-02-009 (JTV)
October 31, 2011

ORDER

Upon consideration of the Motion For Summary Judgment filed by defendants Fred and Son Towing and Patricia Quarles, the plaintiff's opposition thereto, and the record of the case, it appears that:

1. This personal injury action arises from a March 30, 2007 car accident that occurred in New Castle County, Delaware.[1] At the time of the accident, the plaintiff, Peter DeFillipo, was changing a tire on the shoulder of I-495. He was seriously injured when defendant Ronald Quarles veered onto the shoulder and struck him. The defendant was operating a Volkswagen Golf automobile at the time of the accident.

2. Defendant Patricia Quarles is the mother of Ronald Quarles and the sole proprietor of defendant Fred and Son Towing. The claim which the plaintiff asserts against Ms. Quarles and Fred and Son Towing is negligent entrustment. Defendants Patricia Quarles and Fred and Son Towing have moved for summary judgment on this claim.

3. After working for Fred and Son Towing for approximately two years, defendant Ronald Quarles started his own towing business. In a transaction which has been a subject of dispute, defendant Patricia Quarles sold, gave, or otherwise transferred to defendant Ronald Quarles a tow truck for use in his own business.[2] The

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[1] The facts of the case are set forth in a previous opinion, *Defillipo v. Quarles*, 2010 WL 702310 (Del. Super. Feb. 26, 2010).

[2] While the parties have disputed the nature and validity of the transaction, it is undisputed that defendant Patricia Quarles gave defendant Ronald Quarles physical possession of

truck was a 2003 International truck with a Jerr-Dan rollback flatbed.

4. As part of his towing business, Ronald Quarles would occasionally transport vehicles donated by their owners to a charity, Kars-4-Kids. On March 25, 2007, Ronald Quarles used his tow truck to pick up a recently donated Volkswagen Golf. The vehicle was owned by Ignace Goethals. Instead of promptly delivering Mr. Goethals' vehicle to an auction site utilized by Kars-4-Kids, defendant Ronald Quarles put a false license plate on the Golf and converted it to his own possession. After five days of unlawfully driving the vehicle, Ronald Quarles struck the plaintiff while he changed his tire on the shoulder of I-495. When the police arrived at the scene, Ronald Quarles was charged with Driving Under the Influence, along with other traffic infractions. As a result of the serious nature of the plaintiff's injuries, defendant Ronald Quarles was charged with Vehicular Assault First Degree.

5. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[3] The moving party bears the burden of establishing the non-existence of material issues of fact.[4] If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.[5] In considering the motion, the facts

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the vehicle for his use in his towing business.

[3] Super. Ct. Civ. R. 56(c).

[4] *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super. May 2, 2007).

[5] *Id.*

must be viewed in the light most favorable to the non-moving party.[6] Thus, the court must accept all undisputed factual assertions and accept the non-movant's version of any disputed facts.[7] Summary judgment is inappropriate "when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more throughly into the facts in order to clarify the application of law to the circumstances."[8]

5. In their Motion For Summary Judgment, the defendants contend that they did not supply the chattel, the Volkswagen automobile, that was involved in the accident. It is not necessary to address this contention as the plaintiff's theory of liability is based on alleged negligent entrustment of the towing truck, not the Volkswagen. They also contend that the plaintiff has no evidence that defendant Ronald Quarles was an unsafe driver such as to show that his driving made him an unreasonable risk to others. They also contend that Patricia Quarles had no knowledge of risk factors possessed by her son: no prior accidents, no traffic citations, no ongoing physical condition, no medical issues, no history of alcohol or drug use/abuse; and a lack of prior engagement in reckless behavior.

6. The plaintiff contends that there is evidence in Ronald Quarles's past that shows that he could not be entrusted with a tow truck. The plaintiff's claim of

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[6] *Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

[7] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

[8] *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *4 (Del. Super. Jan. 31, 2007).

negligent entrustment is based upon two known risk factors: (1) that Patricia Quarles was aware that her son drank; and (2) that he was incarcerated for eighteen months as a result of a conviction for conspiracy to commit credit card fraud while working at a credit card company in the mid-1990s. The plaintiff contends that it was foreseeable that Ronald Quarles would cause harm to others if given the tow truck for his use.

7. A person who supplies a chattel to another whom the supplier has reason to know is likely, because of youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of harm to himself and others whom the supplier should expect to be endangered by its use, is subject to liability.[9] The elements of a negligent entrustment cause of action are (1) entrustment of a chattel, (2) to a reckless or incompetent person, (3) where the entrustor has reason to know that the person is reckless or incompetent, and (4) resulting damages.[10] A prerequisite to liability is that the supplier should have known "that the particular chattel, in the hands of the person to whom it was given, represented an unreasonable risk of harm to that person or to others because of that person's incompetence to handle it safely."[11]

8. The critical analysis of negligent entrustment liability does not involve a question of law, but a question of fact; plainly stated, negligent entrustment is

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[9] Restatement (Second) of Torts § 390; *see Perez-Melchor v. Balakhani*, 2005 WL 2338665, at *2 (Del. Super. Oct. 26, 2006).

[10] *Harris v. Harris*, 1997 WL 366855, at *1 (Del. Super. April 4, 1997); (citing *Fisher v. Novak*, 1990 WL 82153, at *3 (Del. Super. June 6, 1990)).

[11] *Zellers v. Devaney*, 589 N.Y.S 2d 134, 135 (N.Y. 1992).

primarily a fact-based determination.[12] The key issue in most negligent entrustment cases is whether the plaintiff's harm was foreseeable in light of the defendant's knowledge of any unreasonable risk posed by the entrustment of the vehicle.[13] However, an "unusually high test of foreseeability must be met before an owner will be found liable for negligent entrustment."[14] This Court has held that a single speeding ticket incurred by a driver two years before an accident "will not as a matter of law, support a conclusion that [the driver] was so likely to cause harm to others that entrusting a motor vehicle to him amounted to negligent entrustment."[15]

9. The plaintiff contends that "it is entirely foreseeable that when furnished the instrumentality of the tow truck, he would be picking up vehicles owned by another and would unlawfully convert them to his own use." I disagree. I conclude that Ronald Quarles' conviction of a crime of dishonesty approximately ten years before the accident involved here is too remote in time and nature, as a matter of law, to have put Patricia Quarles and Fred and Son's Towing on notice that Ronald Quarles would use the tow truck to convert a vehicle owned by another to his own use, or use it in a manner involving unreasonable risk of harm to himself or others.

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[12] *Niemann v. Rogers*, 802 F.Supp. 1154 (Del. 1992); *see Perez-Melchor*, 2005 WL 265463, at *2; *Sanchez-Caza v. Estate of Whetstone*, 2005 WL 1953179, at *2 (Del. Super. July 27, 2005).

[13] *Perez-Melchor*, 2005 WL at 265463, *2.

[14] *Eberl v. Jackson*, 2005 WL 2660052, at *2 (Del. Super. Sept. 19, 2005); *see Shonts v. McDowell*, 2003 WL 22853659, at *2 (Del. Super. Aug. 5, 2003).

[15] *Shonts*, 2003 WL 22853659 at *3 (citing *Tart v. Martin*, 540 S.E.2d 332, 334 (N.C. 2000)).

In addition, while Ms. Quarles was aware that her son consumed alcohol, there is no evidence in the record before me of any events in his life that might have put her on notice that he was an abuser of alcohol. I find that the evidence relied upon by the plaintiff is insufficient, as a matter of law, to give Patricia Quarles or Fred and Son Towing reason to know that Ronald Quarles would use the tow truck to convert to his own use a vehicle owned by another, drink to excess, negligently drive the vehicle, and thereby injure another person.

10. The plaintiff cites a line of cases in which parents were found to be subject to liability based on negligent entrustment. In part, the plaintiff relies on *Zellers v. Devaney*, in which a motion for summary judgment by parents was denied in a situation where they gave their son a BB gun and ammunition. The court found that "[i]t is not unforeseeable that the use of a BB gun, and the ammunition, by a 14-year old infant could create a reasonable risk of injury to a third party."[16] The ultimate injury in that case was another child being shot with a BB in the left eye. The court further noted that "it is well settled that a BB gun is a dangerous instrumentality whose negligent use by an infant will cast his parents in liability."[17] The court concluded that the purchase of two BB guns and ammunition by the defendant's parents, for use by their young child, could not be divorced from the ultimate injury – a person being shot in the eye. I find such cases to be distinguishable on their facts from this one.

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[16] *Zellers*, 589 N.Y.S.2d at *136.

[17] *Id.*

12. For the aforementioned reasons, the defendant's Motion For Summary Judgment is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File