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MAGEE V. G & H TOWING CO.

In a recent decision, the Texas First Court of Appeals upheld a lower court's decision and refused to impose a legal duty on an employee to independently investigate a co-worker's competency as a driver before entrusting that person with a vehicle.

The Court stated that that an employee who owns or has control over a motor vehicle does not have an affirmative duty to investigate a co-worker's competency to drive, so long as the prospective driver possesses a valid, unrestricted driver license. *Magee v. G & H Towing Co., No. 01-07-00837-CV (Tex. App.—Houston [1st District], December 2, 2009.* However, the Court did not address whether an employer is vicariously liable for an employee's failure to investigate a co-worker's competency to drive.

FACTS OF THE CASE

Douglas and Lois Magee died from injuries resulting from a collision between their car and a truck driven by Joseph Violante. At the time of the collision, Violante was leaving a bar where he had been drinking.

William Colson owned the truck Violante was driving. Both Colson and Violante were employed by G & H Towing as tugboat quartermasters. The tugboats did not have a regular route that allowed each man to disembark at the end of his shift or at the same place that he started. Thus if Colson was relieving Violante, Colson would allow Violante to use his vehicle to drive home, and vice versa.

Violante's prior driving record included a February 2002 injury accident, a February 2003 ticket for speeding and no liability insurance, a May 2003 ticket for an excessively wide turn, and a November 2003 injury accident. In addition, Violante had a 1994 conviction for driving while his license was suspended and a 1997 arrest for reckless driving.

Cory Magee and Tracey Mayo, the children of the deceased, and Plaintiffs, who sued Violante, G & H, Colson, and others under theories of negligence, negligent hiring, and negligent entrustment. Magee and Mayo asserted claims against G & H both directly and vicariously through Colson, G & H's employee. G & H Towing and Colson each filed motions for summary judgment, which the trial court granted, rendering two interlocutory take-nothing summary judgments.

THE COURT OF APPEALS' DECISION

The Plaintiff's negligent-entrustment claim against Colson required them to show the following:

- Colson entrusted the vehicle to Violante;
- Violante was an unlicensed, incompetent, or reckless driver;
- At the time of the entrustment, Colson knew or should have known that Violante was an unlicensed, incompetent, or reckless driver;
- Violante was negligent on the occasion in question; and
- Violante's negligence proximately caused the accident.

The core of Colson's summary judgment argument was that the Plaintiffs had not presented any evidence that at the time of the entrustment, Colson knew or should have known that Violante was an unlicensed, incompetent, or reckless driver. Citing and interpreting applicable parts of the Texas Transportation Code, the Court determined that Texas law does not generally place an affirmative duty on a person who owns or has control over a motor vehicle to investigate another person's competency to drive, so long as the prospective driver possesses a valid, unrestricted driver license.

The Court held that the Plaintiffs had not presented any evidence of the third element of their negligent-entrustment claim, and further found that the trial court correctly rendered a no-evidence summary judgment.

In their appeal against G & H, the Plaintiffs argued that while G & H's motion for summary judgment contained a specific ground concerning the claim of G & H's negligent entrustment, the motion did not specifically address the claim that G & H was vicariously liable for Colson's alleged negligent entrustment.

At trial, G & H argued that because it was not the owner of the truck, it could not entrust the truck to Violante. Furthermore G&H asserted it had no duty to inquire further into Violante's driving history, as his job duties did not involve operation of a land-based vehicle while in the course and scope of his employment.

The Court reversed the trial Court's decision to grant G & H's motion of summary judgment, holding that while the motion addressed the claim of G & H's negligent entrustment, it did not address the claim that G & H was vicariously liable for its employee's alleged negligent entrustment.

WHAT EFFECT WILL THIS DECISION HAVE?

Under this decision, an employee who owns or has control over a motor vehicle does not have an affirmative duty to investigate a co-worker's competency to drive. However, the Court did not address whether an employer is vicariously liable for an employee's failure to investigate a co-worker's competency to drive while in the course and scope of his employment.

Arguably, an employer should not be held liable for an act or omission that its employee would not otherwise be held liable for. It stands to reason, therefore, that an employer should not be held vicariously liable for an employee's failure to investigate a co-worker's competency to drive. However, the Court did not specifically rule on this issue.



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