IN THE COURT OF APPEALS OF IOWA

No. 7-826 / 06-1451
Filed January 16, 2008

KATHERINE HUFFMAN,
Plaintiff,

vs.

CASSANDRA STAMMER,
Defendant,

PENNY PYLE,
Defendant/Cross-Claim Defendant-Appellant,

MERASTAR INSURANCE CO.,
Defendant/Cross-Claim Plaintiff-Appellee.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson, Judge.

Defendant Penny Pyle appeals the district court's denial of her motion for summary judgment against defendant Merastar Insurance Company. **REVERSED.**

Mark J. Wiedenfeld of Wiedenfeld & McLaughlin, L.L.P., Des Moines, for appellant.

Jeffrey D. Ewoldt of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellee.

Peter W. Berger of Berger Law Firm, P.C., Urbandale, for plaintiff.

Cassandra Stammer, Des Moines, defendant pro se.

Considered by Vogel, P.J., and Zimmer, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.

I. Background Facts & Proceedings

On December 6, 2005, Katherine Huffman filed a lawsuit against Cassandra Stammer, Penny Pyle, and Merastar Insurance Co. Huffman alleged she had been injured when her vehicle was struck by a vehicle driven by Stammer on December 14, 2004. The vehicle Stammer was driving was owned by Pyle. Huffman claimed Stammer was operating the vehicle with Pyle's consent.[1] Huffman also included a claim against her insurance company, Merastar, under the underinsured motorist provisions.

Stammer filed a pro se answer generally denying the petition. Merastar filed a cross-claim against Pyle, asserting that if it was found to be liable it was entitled to contribution and indemnity from Pyle.

Pyle filed a motion for summary judgment, claiming Stammer was not driving the car with her consent. Pyle filed a supporting affidavit averring she had never given Stammer permission to drive her vehicle. In a deposition Pyle stated she provided the vehicle for the use of her son, Jacob Pyle. Jacob and Stammer were both students at Hoover High School and were close friends. In his deposition, Jacob stated Stammer asked if she could borrow the car keys because she wanted to sit in the car and smoke a cigarette. Jacob indicated this occurred "at least a couple times a week." He testified he told Stammer several times in the past not to drive the car. Jacob also testified that only after the accident had he heard from a friend that Stammer had driven the vehicle on earlier occasions.

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[1] This allegation was made in Huffman's amended petition.

Pyle provided documents showing Stammer was adjudicated delinquent in juvenile court after she admitted committing the public offense of operating a motor vehicle without the owner's consent, in violation of Iowa Code section 714.7 (2003). Pyle also submitted a copy of a videotape taken from an investigating police officer's vehicle at the time of the accident which corroborated Stammer's acknowledgement she did not have permission to drive the Pyle vehicle.

Merastar resisted the motion for summary judgment, noting that generally the issue of whether a vehicle has been driven with the owner's consent is one of fact. Merastar also noted that no testimony had been obtained yet from Stammer. Merastar claimed there was a genuine issue of material fact as to whether Stammer had implied consent to operate the motor vehicle.

The district court denied the motion for summary judgment. The court found there was a genuine issue of material fact as to whether Jacob knew Stammer had driven the vehicle on previous occasions. The court determined "[a] jury could find that Stammer had implied consent to operate the motor vehicle in question." The district court denied Pyle's motion to reconsider pursuant to Iowa Rule of Civil Procedure 1.904(2).

Pyle then filed an application with the Iowa Supreme Court to consider this case on interlocutory appeal. The supreme court granted the application and stayed the district court proceedings. The case was transferred to the Iowa Court of Appeals.

II. Standard of Review

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.4. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the nonmoving party. *Eggiman v. Self-Insured Servs. Co.*, 718 N.W.2d 754, 758 (Iowa 2006).

III. Merits

Iowa Code section 321.493(1)(a) (2005) provides, "in all cases when damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage." There is a rebuttable presumption that a vehicle is driven with the consent of the owner. *Moritz v. Maack*, 437 N.W.2d 898, 900 (Iowa 1989). The presumption is not a strong one, and does not change the burden of proof. *Id.* "The inference of consent may be negated by proof that there was no consent." *Van Zwol v. Branon*, 440 N.W.2d 589, 592 (Iowa 1989).

An owner's consent may be express or implied. *Moritz*, 437 N.W.2d at 900. Generally, if an owner gives broad, unrestricted authority to a first permittee to use the vehicle, this raises a factual issue as to whether the consent includes an implied grant of authority to allow a second permittee to use the vehicle. *Farm & City Ins. Co. v. Gilmore*, 539 N.W.2d 154, 159 (Iowa 1995). The supreme court has stated:

> The owner's consent to the use of an automobile by a second permittee, if not expressly provided, may be shown by the circumstances surrounding the original grant of permission, or by a course of conduct on the part of the owner consistent with the first permittee's grant of authority. If the owner denies that the second permittee operated the vehicle with his or her consent, consent may still be established by the owner's course of conduct inconsistent with this denial. Ultimately, the issue of consent turns on the particular facts and circumstances of each case.

Moritz, 437 N.W.2d at 901 (citations omitted); *see also Grinnell Mut. Reins. Co. v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 176, 179 (Iowa 1997) (noting that on the issue of implied consent "whether delegation by the first permittee was expressly authorized or prohibited, the relationship and conduct of the parties, and the attending circumstances generally" are factors to be considered).

With these principles in mind, we examine the allegations in the present case. Pyle sought summary judgment on the grounds that there was no material issue of fact that Stammer lacked express or implied consent to operate the vehicle. Merastar resisted on the grounds that there were genuine issues of fact on the question of implied consent.

Pyle's affidavit, which accompanied the motion for summary judgment, did not address the circumstances of the initial grant of permission to Jacob. In her deposition, Pyle stated she had been routinely letting Jacob drive the vehicle. She stated she did not give Stammer permission to drive the vehicle. Even though there is no information in Pyle's deposition as to whether she had given Jacob authority to permit others to drive the vehicle, Jacob testified his mother had told him earlier that he was not allowed to let anyone else drive the car. He

stated he told Stammer at least five times not to drive the vehicle, and he did this because he had some concerns she might drive the vehicle.

Even when facts are not in dispute, summary judgment is not appropriate if reasonable minds could draw different inferences from them. *Shaw v. Soo Line R.R.*, 463 N.W.2d 51, 53 (Iowa 1990). However, an inference based only on speculation or conjecture does not generate a material fact dispute. *Butler v. Hoover Nature Trail, Inc*., 530 N.W.2d 85, 88 (Iowa Ct. App. 1994). The court's responsibility is to weigh inferences against the standard of reasonableness, not each other. *Id.*

The undisputed facts in this case are: (1) Pyle gave express consent to her son Jacob to drive her car; (2) Pyle did not give express or implied consent to Stammer to drive her car; (3) Pyle expressly told her son Jacob that no one else was permitted to drive her car; (4) Jacob expressly told Stammer she was not to drive the Pyle car; (5) Jacob had permitted Stammer to sit in the car by herself while it was in the Hoover High School parking lot; (6) Jacob was not aware of any non-permitted use of the Pyle vehicle by Stammer; and (7) Stammer acknowledged she did not have consent to drive the car both at the scene of the accident and later in juvenile court (admitting guilt to the crime of operating without the owner's consent).

Merastar argues that the fact Jacob had given Stammer the keys to his mother's car so she could smoke in the high school parking lot on the date of the accident (and several prior occasions) gives rise to an inference Stammer had the implied consent to drive the Pyle car. Such an assertion does not rise above

speculation and conjecture and does not meet the reasonableness standard. *See Phifer v. Progressive Ins. Co.*, 547 So. 2d 875, 876 (Ala. 1989).

The motion for summary judgment should have been sustained. We reverse the decision of the district court denying Pyle's motion for summary judgment.

REVERSED.