

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE CO., as subrogee of Thomas)
McDonald, and THOMAS MCDONALD)

Plaintiffs,)

v.)

MARIO TOLLIS, parent of VINCENT)
TOLLIS,)

Defendant.)

C.A. No.: 2006-06-397

Date Submitted: February 27, 2007

Date Decided: March 2, 2007

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DECISION AFTER TRIAL

Plaintiffs, State Farm Mutual Automobile Insurance Company (“State Farm”) and Thomas McDonald bring this subrogation action against defendant, Mario Tollis (“Mario”) for the alleged negligent conduct of his son, Vincent Tollis (“Vincent”). Plaintiff’s complaint seeks \$1,010.43 in damages, pre- and post-judgment interest, and costs.

The trial took place on February 27, 2007. After receipt of the evidence and conclusion of testimony, the Court reserved decision.

FACTS

The following facts were presented to the Court. On June 24, 2004, Maggie McDonald (“Maggie”) had stopped her 2002 Mitsubishi Galant at a red light behind a black SUV. When the light turned green, she followed the SUV through the intersection when a scooter driven by Vincent Tollis struck her vehicle on the left front side. Maggie testified at trial that both she and the scooter were moving at approximately five (5) miles per hour when the collision occurred, and that she never saw the scooter before it struck her vehicle. Vincent, who was fourteen years old at the time, acknowledged fault and was later charged with inattentive driving and driving without a valid license.¹ The police report stated that he was looking behind when he struck the car.² Maggie was not charged by the police.

The accident caused \$930.43 worth of damage to the car.³ The 2002 Galant was insured by State Farm through a policy with Thomas McDonald. After Mr. McDonald

¹ Plaintiff’s Exhibit No.: 3.

² *Id.*

³ Plaintiff’s Exhibit No.: 1.

paid the \$100 deductible, State Farm paid him \$830.43 to cover repairs plus \$80 to cover the cost of a rental car.⁴

At the time of the accident, Vincent was legally residing with his father Mario, although Mario testified that he was largely unaware of Vincent's whereabouts and that Vincent would come to the house on an irregular basis. Mario did not own the scooter in question and had no prior knowledge that Vincent was operating it without a license.

ANALYSIS

It is crucial to note that Plaintiffs have cited 10 *Del. C.* § 3922 as their sole basis for recovery against Defendant Mario Tollis. The language of the statute provides, in pertinent part:

Any . . . person, partnership, corporation or association . . . shall be entitled to recover damages in an appropriate civil action in an amount not to exceed \$5,000 in a court of competent jurisdiction from the parents or guardians of any minor under the age of 18 years, living with the parents, who shall *intentionally or recklessly* destroy or damage property, real, personal or mixed, belonging to such . . . person, partnership, corporation or association.⁵

Where statutory language is clear and unambiguous, the Court must hold the statute to mean that which it clearly states.⁶ The literal, clear meaning of this statute is that a parent or guardian will be strictly liable in a civil action for up to \$5,000 if the damaged party can prove that: (1) the perpetrator was 18 years old or younger, (2) was living with the parent or guardian, and (3) the minor recklessly or intentionally damaged real or personal property or a mix thereof.”⁷ Since statutes in derogation of the common law are strictly

⁴ Plaintiff's Exhibit No.: 4.

⁵ 10 *Del. C.* § 3922 (emphasis added).

⁶ *Matter of Estate of Smith*, 467 A.2d 1274, at *1 (Del. Ch. 1983).

⁷ *Id.*

construed, no common law tests or standards may be applied towards recovery under 10 *Del. C. § 3922*.⁸

Plaintiffs have succeeded in proving that Vincent Tollis was a minor living with his father at the time of the accident, but they have not proven that he recklessly or intentionally caused the accident. Both in the pleadings and at trial, Plaintiffs seem to have operated under the assumption that negligence was sufficient to trigger liability under the statute. However, it clearly requires a more culpable mental state on the part of a minor before a parent can be held strictly liable.

There is ample evidence proving that Vincent was negligent, both in operating the scooter without a license and in driving inattentively, but nowhere either in the pleadings or in the evidence have Plaintiffs argued or shown that he damaged the car either recklessly or intentionally. As such, his mental state was insufficient to trigger any statutorily-imposed strict liability on his father. Since Plaintiffs have not pled or argued any alternative theories of liability, there are no legal grounds for holding Mario Tollis liable for the negligent actions of his son.

CONCLUSION AND ORDER

For the above-stated reasons, this Court hereby enters judgment in favor of Defendant Mario Tollis.

IT IS SO ORDERED.

Jay Paul James, Judge

⁸ *Id.* at *2.