IN THE COURT OF APPEALS OF IOWA

No. 3-945 / 13-0191
Filed November 6, 2013

H. RANDALL LANCASTER,
Plaintiff-Appellant,

vs.

BRIAN CRAVEN,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge.

H. Randall Lancaster appeals from the district court's ruling granting summary judgment in favor of Craven. **REVERSED AND REMANDED.**

Channing L. Dutton of Lawyer, Lawyer, Dutton & Drake, L.L.P., West Des Moines, for appellant.

Michael B. Oliver of Oliver Law Firm, P.C., Windsor Heights, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

H. Randall Lancaster appeals from the district court's grant of summary judgment in favor of defendant vehicle owner Brian Craven, asserting there was a factual dispute as to whether the driver of Craven's vehicle had Craven's permission and consent to operate the vehicle. For the reasons that follow, we reverse the court's summary judgment ruling and remand for further proceedings.

***I. Background Facts and Proceedings*.**

Brian Craven loaned his son a vehicle after his son's car broke down. Craven's son later allowed his friend, Megan Kinsley-Hargin, to drive the vehicle. While driving Craven's vehicle, Kingsley-Hargin struck the vehicle Lancaster was driving, and Lancaster was injured. The collision was Kingsley-Hargin's fault.

Lancaster filed suit to recover damages for his personal injuries against Craven, alleging Kingsley-Hargin had operated Craven's vehicle with the owner's permission and consent. Craven admitted he owned the vehicle, but he denied he had authorized anyone, other than his son, to drive the vehicle, and he subsequently filed a motion for summary judgment on this basis. Lancaster resisted, asserting a question of material fact existed as to the consent issue, and thus summary judgment was improper.

After hearing, the district court found:

> Although [Craven] did not explicitly tell [his son] not to let anyone else drive the car when he loaned it to [his son], there was a long standing rule of the household while [his children] were growing up that they were not to allow anyone else to drive the family cars. [His son] knew and understood this rule and considered it applicable when [Craven] loaned him the car on this occasion.

The court concluded there was no genuine issue of material fact that Craven did not consent to Kinsley-Hargin's operation of the car. The court granted summary judgment in favor of Craven and dismissed Lancaster's petition as to Craven.

Lancaster now appeals.

II. Scope and Standards of Review.

We review the district court's summary judgment ruling for the correction of errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *see also Mueller*, 818 N.W.2d at 253. We review the record in the light most favorable to the party opposing the motion. *Mueller*, 818 N.W.2d at 253.

III. Discussion.

Under Iowa law, the owner of a vehicle is liable for damages caused by operation of the vehicle by one with the owner's permission. *See* Iowa Code § 321.493(2)(a) (2011). When ownership of a vehicle is admitted, as here, "a rebuttable presumption is created that the vehicle was operated with consent of the owner." *State Farm Mut. Auto. Ins. Co. v. Employers Mut. Cas. Co.*, 500 N.W.2d 80, 82 (Iowa Ct. App. 1993). It is a "weak" inference of consent, which accompanies the admission of ownership. *Moritz v. Maack*, 437 N.W.2d 898, 900 (Iowa 1989). "The owner may oppose the inference by such admissible testimony as may be available to him." *McKirchy v. Ness*, 128 N.W.2d 910, 912 (Iowa 1964).

> As applied to a second permittee (or third party), this inference may be overcome by the owner's showing that the first permittee was not given express or implied authority to delegate permission for the vehicle's use. Generally, a factual determination must be made as to whether the initial grant of authority was broad enough to include an implied grant to give the second permittee authority to use the vehicle.

State Farm, 500 N.W.2d at 82 (internal citations omitted). Furthermore, although the owner's testimony may be positive and direct, it is not necessarily conclusive. *McKirchy*, 128 N.W.2d at 912. "The weight of the testimony and credibility of the witnesses depend upon facts and conditions as shown by the record in each case." *Id.*

Here, Craven sought to overcome the inference of consent through two affidavits that accompanied his motion for summary judgment. Craven's affidavit asserted, "I granted my son permission to drive the vehicle *and told him* not to allow others to drive it." (Emphasis added.) Craven's son's affidavit mirrored his father's, stating, "My father told me not to allow others to drive his vehicle and this has been a longstanding policy in our household." However, Craven testified at his deposition, "I didn't tell [my son] not to let [Kinsley-Hargin] drive [the vehicle]." And, contrary to his affidavit, Craven admitted that he did not expressly tell his son that he should not allow others to drive the car when he loaned him the vehicle. Though Craven testified, "It's always been a policy in our family, we do not loan our vehicles out to no one," he agreed the "don't let other people drive our cars" policy was a general rule in the family that all his children had been told. He further testified that his son was twenty-three years old, employed and living in his own home, and that he had not lived in the family home for about three years prior to the collision.

In view of the discrepancy between Craven's affidavit and his deposition testimony, resolution of the consent issue hinges to a significant extent on determinations of witnesses' credibility. The district court concluded Craven "has adequately overcome the weak presumption that he consented to Kingsley-Hargin's operation of the vehicle because he owns it." This conclusion was founded upon the district court's assessment of the credibility of Craven and his son. Specifically, the court found, "There is no reason to disbelieve either [Craven's or his son's] testimony that it was a long standing family rule that others were not allowed to operate family cars."

"In granting summary judgment, the district court is not to make credibility assessments, as such assessments are 'peculiarly the responsibility of the fact finder.'" *Frontier Leasing Corp. v. Links Eng'g, L.L.C.*, 781 N.W.2d 772, 776 (Iowa 2010) (citation omitted). Normally it is for a jury to resolve discrepancies in deposition testimony and affidavits, and this province of the jury should not be invaded by a court on summary judgment. *See Smidt v. Porter*, 695 N.W.2d 9, 22 (Iowa 2005). Because it assessed credibility in reaching its conclusion, we find the district court erred in granting summary judgment. We therefore reverse the district court's grant of summary judgment, reinstate the petition as to Craven, and remand for further proceedings.

REVERSED AND REMANDED.