STATE OF MICHIGAN

COURT OF APPEALS

PERMELIA WILTFONG and ROGER WILTFONG, Individually and as Personal Representatives of the Estates of ROBERT LEE WILTFONG and WANDA LOMA EATON, Deceased,

Plaintiffs-Appellants,

v

KEVIN LEE GILKES,

Defendant-Appellee.

UNPUBLISHED
June 9, 1998

No. 201550
Genesee Circuit Court
LC No. 96-046390 NI

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the circuit court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Permelia Wiltfong was seriously injured, and Robert Wiltfong and Wanda Loma Eaton were killed when a vehicle in which defendant was a passenger crossed the center line of M-115 and struck their vehicle head on. Plaintiffs settled their claims against the driver and owner of the vehicle defendant was occupying. This action sought to hold defendant liable on a joint enterprise theory. The trial court granted defendant's motion for summary disposition, finding that plaintiffs failed to establish a common right of control and that the joint enterprise theory was inapplicable in the instant factual situation.

> To constitute a joint enterprise between a passenger and a driver of an automobile within the meaning of the law of negligence, there must be a community of interest in the use of the vehicle; there must be a finding of common responsibility for its negligent operation; and it must be found that the driver is acting as an agent of the other members of the enterprise. [*Boyd v McKeever,* 384 Mich 501, 508-509; 185 NW2d 344 (1971)].

This Court has found that the joint enterprise theory is still viable as applied to automobile negligence cases in Michigan. *Troutman v Ollis*, 164 Mich App 727, 732; 417 NW2d 589 (1987).

The trial court did not err in finding that plaintiffs failed to establish the three parts of a joint enterprise claim. There was some community of interest between the driver, the owner of the vehicle and defendant, as they were on a fishing trip together. However, there was no evidence that defendant shared common responsibility for the negligent operation of the vehicle, or that the driver was acting as his agent. *Sherman v Korff*, 353 Mich 387, 395; 91 NW2d 485 (1958). The three men did not share expenses, and there was no showing that defendant had any ability to exercise authority over who would drive the vehicle or how it would be driven. Under the circumstances, the trial court properly granted summary disposition to defendant.

Affirmed. The stay ordered by this Court is dissolved.

/s/ Myron H. Wahls
/s/ Kathleen Jansen
/s/ Hilda R. Gage