IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

TERESA MOLINA, AN ADULT INDIVIDUAL AND SURVIVING DAUGHTER OF ANTONIO MOLINA, DECEASED, FOR HERSELF AND ON BEHALF OF ALL THE STATUTORY BENEFICIARIES ENTITLED TO RECOVER FOR THE WRONGFUL DEATH OF ANTONIO MOLINA, DECEASED,
Plaintiff/Appellant,

v.

EAN TRUST & EAN HOLDINGS, LLC, DBA ENTERPRISE LEASING COMPANY OF PHOENIX, LLC, AN ARIZONA LIMITED LIABILITY CORPORATION, DBA ENTERPRISE COMMERCIAL TRUCK RENTAL,
Defendant/Appellee.

No. 2 CA-CV 2021-0031
Filed September 8, 2021

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Santa Cruz County
No. S1200CV201800265
The Honorable Thomas Fink, Judge

AFFIRMED

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vásquez concurred.

B R E A R C L I F F E, Judge:

¶1 Teresa Molina appeals from the trial court's entry of summary judgment in favor of appellee, Enterprise Leasing Company of Phoenix LLC ("Enterprise"). Molina's complaint, filed on behalf of herself and other statutory beneficiaries of her father, Antonio Molina, asserted claims against Enterprise for negligent entrustment and negligent training and supervision. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to the party opposing the motion for summary judgment. *Andrews v. Blake*, 205 Ariz. 236, ¶ 12 (2003). Produce Connection Inc. is a produce broker and shipper. In November 2017, Produce Connection hired David Rubio to work as a produce inspector and driver. On March 10, 2018, Rubio was driving a small commercial truck (also known as a "box truck" or "bobtail truck") that Produce Connection had leased from Enterprise and was picking up a produce shipment at a warehouse owned by SunFed Produce LLC. As Rubio was backing up the truck into a loading bay, the truck hit and fatally injured Antonio Molina. His daughter, Teresa Molina ("Molina"), filed a wrongful death action against Enterprise, Produce Connection, Rubio, and

SunFed Produce. In her initial complaint, as to Enterprise, Molina alleged one count of negligent entrustment.

¶3 Produce Connection and Enterprise entered an agreement in September 2014 (the "Master Agreement") in which Enterprise agreed to lease vehicles to Produce Connection for commercial use from time to time. The Master Agreement governed all rentals by Produce Connection from Enterprise. Under the Master Agreement, Produce Connection was the "Customer" and an "Eligible Renter" was defined as a Customer's employee. The Master Agreement required that an eligible renter be of a certain age (depending on the vehicle) "and meet the other normal renter qualifications of the applicable Affiliate at the applicable renting location." Notwithstanding the use of these trucks in commercial transportation, because of their size, drivers of such trucks were not required to have a Commercial Driver License.

¶4 The Master Agreement also permitted an Eligible Renter at Produce Connection to give "permission" to another Produce Connection employee to drive a leased vehicle so long as that employee met the requirements of an "Additional Authorized Driver":

> Unless applicable law requires otherwise, the Vehicle may NOT be driven by anyone except any Additional Authorized Driver or the Eligible Renter. An "Additional Authorized Driver" is an individual who (i) is a capable and validly licensed driver, (ii) is at least 21 years of age (a young renter fee may apply for drivers under age 25), (iii) has the Eligible Renter's prior permission to drive the Vehicle, and (iv) is either an immediate family member, business partner, employer, or fellow employee of the Eligible Renter who drives the rental vehicle for business purposes.

¶5 Enterprise and Produce Connection also entered into a separate agreement specific to each discrete leased truck that identified the truck, the date of the rental, and the employee designated as the Eligible Renter. Gabriel Urena, Produce Connection's warehouse foreman manager, was responsible for dealing with rentals from Enterprise. The rental agreement as to the truck involved here was effective in January 2018, and was signed by Urena ("Rental Agreement"). The Rental Agreement listed John Meena, the president of Produce Connection, as the "renter."

¶6 The Rental Agreement provided a blank space for any "ADDITIONAL AUTHORIZED DRIVERS," stating additionally, "NONE PERMITTED WITHOUT OWNER'S WRITTEN APPROVAL." Immediately below the blank lines thereafter provided for the names or other identifying information of specific additional authorized drivers, it stated:

> Who is under my control and direction to drive the rented vehicle (vehicle) for me and on my behalf. I am responsible for their acts while they are driving and for fulfilling terms and conditions of this rental agreement. Use of vehicle by an unauthorized driver will affect my liability and rights under this agreement.

Nonetheless, in those preceding spaces for additional authorized driver information was merely typed "SEE PARAGRAPH ONE ON REVERSE."

¶7 On the reverse side of the Rental Agreement's first page, it detailed "Additional Terms and Conditions." In paragraph one it provided that "Additional Authorized Driver(s)" for commercial renters includes "all properly licensed employees of Renter, 21 years of age or older, when using Vehicle for business purposes." Produce Connection renewed the Rental Agreement in February and March 2018. Produce Connection did not identify any specific Additional Authorized Drivers in either renewal.

¶8 As required by both the Master Agreement and Rental Agreement, Rubio was of sufficient age to drive the truck and had a valid driver license at the time of the incident. Beyond Enterprise's requirements of age and valid licensure, Federal and Arizona regulations required drivers of this type of truck to maintain a United States Department of Transportation Medical Examiner Certificate ("Medical Certificate"). *See* 49 C.F.R. § 391.41; A.A.C. R17-5-202. Rubio's Medical Certificate expired on January 13, 2018, was expired at the time of the incident, and was not renewed until April 11, 2018.

¶9 Following the parties' initial disclosures, Enterprise moved for summary judgment. In addition to responding to the motion, Molina filed a motion to amend her complaint to add a claim against Enterprise for negligent training and supervision. The trial court held a joint hearing, on both Enterprise's motion for summary judgment and Molina's motion to amend the complaint. The court granted Molina leave to amend and took Enterprise's motion for summary judgment under advisement. Molina

then filed her amended complaint, alleging that Enterprise had been negligent in training and supervising its employees "with regard to the applicable Arizona laws for motor vehicle rentals," "including the requirement that any drivers of Enterprise commercial trucks must maintain a valid US Department of Transportation Medical Certificate."

¶10 Before the trial court issued its summary judgment ruling, Enterprise filed a motion to dismiss Molina's claim of negligent supervision and training, asserting that, without a factual basis sufficient for negligent entrustment, there could be no claim for negligent supervision and training. The court granted Enterprise's motion for summary judgment on the negligent entrustment claim because, it reasoned, Produce Connection, not Enterprise, had given Rubio permission to drive the truck, and Enterprise did not have a duty to inquire into whether Rubio was a competent driver. The court also granted Enterprise's motion to dismiss, explaining that, because it held that Enterprise "owed no common law duty to further investigate Rubio's licensing qualifications in this case," Molina's claim for negligent training and supervision "must fail as well."

¶11 The trial court entered final judgment under Rule 54(b), Ariz. R. Civ. P., and Molina appealed from the judgment. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Analysis

Summary Judgment: Negligent Entrustment

¶12 On appeal, Molina argues the trial court erred in granting Enterprise summary judgment on her negligent entrustment claim. Molina claims that the court erred when it determined that Enterprise had not given Rubio permission to drive the truck and that she had failed to show Enterprise knew or should have known that Rubio was incompetent to drive the truck.

¶13 A court should grant summary judgment when "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). We review de novo whether the trial court correctly applied the law and whether there are any genuine issues of material fact, *Comerica Bank v. Mahmoodi*, 224 Ariz. 289, ¶ 13 (App. 2010), and we can affirm summary judgment on any basis supported by the record, *Leflet v. Redwood Fire & Cas. Ins. Co.*, 226 Ariz. 297, ¶ 12 (App. 2011).

¶14 "We generally follow the Restatement unless it is contrary to Arizona law." *Johnson v. Almida Land & Cattle Co., LLC*, 241 Ariz. 30, ¶ 5 (App. 2016). In a line of cases—most, but not all, involving the provision of either alcohol or motor vehicles—Arizona has recognized a cause of action for negligent entrustment as provided in Restatement (Second) of Torts § 390 (1965), which states:

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

See Verduzco v. Am. Valet, 240 Ariz. 221, ¶ 8 (App. 2016); *see also Brannigan v. Raybuck*, 136 Ariz. 513, 516 (1983). Consistent with § 390 of the Restatement, our common law, relevant to the entrustment of vehicles, recognizes the following elements of such a claim:

> (1) "that Defendant owned or controlled a vehicle"; (2) "Defendant gave the driver permission to operate a vehicle"; (3) "the driver, by virtue of his physical or mental condition, was incompetent to drive safely"; (4) "the Defendant knew or should have known that the driver, by virtue of his physical or mental condition, was incompetent to drive safely"; (5) "causation"; and (6) "damages."

Acuna v. Kroack, 212 Ariz. 104, ¶ 22 (App. 2006) (quoting *Powell v. Langford*, 58 Ariz. 281, 285 (1941)).[1]

[1]Molina claims that the standard in *Tellez v. Saban*, 188 Ariz. 165, 171 (App. 1996), discussed elsewhere in this decision, is applicable here. In *Tellez*, the court stated that the tort of negligent entrustment occurs when "the peculiar circumstances of the case are such as to give the actor good reason to believe that the third person may misuse [the instrumentality]." *Id.* (quoting Restatement (Second) of Torts § 308, cmt. b (1965)). Regardless

Entrustment

¶15 The trial court determined that Enterprise had not entrusted the truck to Rubio; Produce Connection had done so. Molina argues on appeal that "the terms of the rental agreements show that Enterprise gave permission to all of Produce Connection's properly licensed employees over the age of 21 operating the Truck for business purposes." The Master Agreement defines an "Additional Authorized Driver" as one who, among other things, is an employee of Produce Connection, who drives the vehicle for business purposes, and "[h]as the Eligible Renter's prior permission to drive the Vehicle." Consequently, Molina argues, Enterprise did give Rubio permission to drive the truck.

¶16 Although entrustment for purposes of the tort of negligent entrustment generally involves claims of direct supply of the instrument, (A gives B the hammer who then hits C with it), such entrustment need not be direct. As the Restatement tells us, entrustment may be either given "directly" or "through a third person." *See* Restatement § 390. Here, although Enterprise did not entrust the truck directly to Rubio, by its contract with Produce Connection, as the trial court determined, it contemplated that Produce Connection employees—those over the age of twenty-one and properly licensed—would drive the trucks in the course of Produce Connection's business. Consequently, Enterprise did entrust Rubio—as such an employee—with the truck, through Produce Connection, even while Produce Connection then directly entrusted Rubio with the truck.

¶17 Although the trial court was correct that Enterprise did not entrust the vehicle directly to Rubio, it erred in limiting the definition of entrustment as it did. It was sufficient that Enterprise entrusted the vehicle to Produce Connection in express contemplation of its entrustment of the vehicle to defined Produce Connection employees—licensed drivers of sufficient age—of whom Rubio was one. *See, e.g., Tellez v. Saban,* 188 Ariz. 165 (App. 1996) (company that rented car to customer, who then turned car over to another, could be liable).

Enterprise's Knowledge of Incompetence

¶18 Although Enterprise indirectly entrusted the truck to Rubio, that does not end the inquiry. In Arizona, a plaintiff claiming negligent

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of whether we apply the elements as recited in *Acuna* or in *Tellez*, the result is the same.

entrustment must also demonstrate that the entrustment was negligent—that is, that "the Defendant knew or should have known that the driver, by virtue of his physical or mental condition, was incompetent to drive safely." *Acuna*, 212 Ariz. 104, ¶ 22. The trial court here found that Enterprise did not know and had no reason to know that Rubio "by virtue of his physical or mental condition, was incompetent to drive safely." We agree.

¶19 On appeal, Molina does not point to anything in the record demonstrating that Enterprise knew or should have known that Rubio was an unsafe driver. It is undisputed that Enterprise had no contact or communication with Rubio, and the record did not reflect that Enterprise knew that Rubio (or any other particular driver) would drive the truck on the day of the incident. Instead, Molina cites to *Tellez v. Saban*, 188 Ariz. 165, 170, in claiming that Enterprise breached its duty to act reasonably by failing to independently ascertain whether Rubio was a competent driver.

¶20 In *Tellez*, customers Pitts and Fernandez drove Pitts' truck to Saban's Rent-A-Car and parked in front of two rental company employees. *Id.* at 168. Pitts rented a car from the company but told the employee that Fernandez would be the one driving the car. *Id.* 168. Because Arizona law required rental companies to "inspect[] the driver's license of the person to whom the vehicle is to be rented," *id.* at n.1,[2] the employee asked if Fernandez had a driver license and Fernandez said that she did not, *id.* at 168. In the employee's presence, Pitts told Fernandez to drive his truck off the lot. *Id.* Fernandez responded, "Okay, we'll go around the corner and we'll switch cars." *Id.* Neither of the rental company's employees prevented the exchange of vehicles. *Id.* Ultimately, Fernandez did not return the car when due, and, a week later, while drunk, she ran a red light and hit and killed the driver of another car, Tellez. *Id.* In the course of the resulting wrongful death action against the rental company, the trial court granted the company's motion for summary judgment on the negligent entrustment claim. *Id.*

¶21 On appeal, this court reversed the trial court. *Id.* at 168, 173. We explained that the duty as a rental company is "to act reasonably in the light of foreseeable and unreasonable risks." *Id.* at 170 (quoting *Rogers ex rel. Standley v. Retrum*, 170 Ariz. 399, 400 (App. 1991)). Thus, we held, "the

[2]*Tellez* cited former A.R.S. § 28-477, which has since been amended and renumbered as A.R.S. § 28-3472, but has not substantively changed in any way relevant to this decision. *See* 1995 Ariz. Sess. Laws, ch. 132, § 3; 1996 Ariz. Sess. Laws, ch. 76, § 8.

owner of a rental car agency owes a common law duty to other motorists to guard against unreasonable risks of harm created by persons to whom it rents vehicles." *Id.* This court stated:

> We acknowledge that the mere absence of a valid driver's license is not necessarily indicative of a person's driving skills. For example, one who has met the minimum licensing standards and has been licensed may have let his license expire. Thus, the possibility exists that an unlicensed driver is fully competent to operate a motor vehicle.
>
> Nevertheless, a reasonable person in Sabans' position should have known that it was equally possible that Fernandez was unlicensed because she lacked the minimum qualifications to obtain a license.

Id. at 171. We concluded that "reasonable minds could differ on whether Sabans' act of renting to an unlicensed driver without investigating the reason for the absence of a license created an unreasonable risk of harm to the public." *Id.*

¶22 But *Tellez* differs significantly from this case. There, the entrusting rental company was told that the "ultimate driver" did not have a driver license, but did not further investigate why she did not. Here, the record shows that Enterprise did not have *any* information bearing on Rubio's alleged incompetence. Indeed, Enterprise seemingly did not, at a corporate level or otherwise, know who Rubio was. Consequently, Enterprise had no reason at all to investigate Rubio's qualifications.

¶23 Because Enterprise lacked any information indicating that any of Produce Connection's employee drivers were incompetent or unqualified, Enterprise acted reasonably in entrusting the truck to Rubio with no further investigation. The trial court therefore correctly granted summary judgment to Enterprise.

Motion to Dismiss

¶24 We review the grant of a Rule 12(b)(6), Ariz. R. Civ. P., motion to dismiss de novo. *Conklin v. Medtronic, Inc.*, 245 Ariz. 501, ¶ 7 (2018). Dismissal is appropriate "only if as a matter of law plaintiffs would not be

entitled to relief under any interpretation of the facts susceptible of proof." *Id.* (quoting *Coleman v. City of Mesa*, 230 Ariz. 352, ¶ 8 (2012)).

¶25 For her negligent training and supervision claim, Molina asserted Enterprise "had an obligation to properly train and supervise its employees in the proper procedures and requirements for the rental of Enterprise commercial trucks . . . including the requirement that any drivers of Enterprise commercial trucks must maintain a valid [Medical Certificate]." Her sole argument that the trial court erred in dismissing this claim, however, is that the court erred in granting summary judgment on the negligent entrustment claim. Because we determine above that the court correctly granted summary judgment on the negligent entrustment claim, Molina's basis for challenging the dismissal fails as well. *See Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143 (App. 1987) ("It is not incumbent upon the court to develop an argument for a party."). Consequently, we conclude that the court did not err in dismissing Molina's negligent training and supervision claim.

Disposition

¶26 For the foregoing reasons, we affirm the trial court's entry of judgment.