

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ERIC PITTMAN, a minor, by his next)
friend, TERESA PITTMAN,) C.A. No. 00C-01-029 JTV
)
Plaintiffs,)
)
5.)
)
MALDANIA, INC., t/a ACTION WATER-)
CRAFT RENTALS, a Delaware)
corporation; and TED WERNER,)
)
Defendants.)

TED WERNER,)
)
Third-party Plaintiff,)
)
5.)
)
PRUDENTIAL PROPERTY AND)
CASUALTY INSURANCE CO.,)
)
Third-party Defendant.)

Submitted: April 27, 2001

Decided: July 31, 2001

William D. Fletcher, Jr., Esq., Dover, Delaware. Attorney for Plaintiffs.

Michael Tighe, Esq., Wilmington, Delaware. Attorney for Defendants.

David P. Cline, Esq., Wilmington, Delaware. Attorney for Third-party Plaintiff.

Sean Dolan, Esq., Wilmington, Delaware. Attorney for Third-party Defendant.

OPINION

*Upon Consideration of Plaintiff's
Motion to Apply Delaware Law*
GRANTED

VAUGHN, Resident Judge

The plaintiff, Eric Pittman, a minor, by his next friend, Teresa Pittman, has filed a motion asking the Court to determine that Delaware law applies to these proceedings. The defendant, Maldania, Inc. (“Maldania”), has filed a response opposing the plaintiff’s motion and asking the Court to determine that Maryland law applies. The case arises from a jet ski collision that occurred in or near Assawoman Bay, in Maryland, a short distance south of the Delaware-Maryland state line. The plaintiff, age 14, and his friend, Mark Werner, age 15, had rented the jet skis from Maldania with the assistance of Mark’s father. The two boys and the father had all, allegedly, lied to Maldania about the boys’ ages by stating that both boys were at least sixteen years of age, which is the minimum age that a person must be in order to lawfully operate a jet ski without direct parental supervision in either Delaware or Maryland. Maldania’s rental office is in Delaware. Near the end of the hour rental, the two jet skis collided when Eric allegedly turned in front of Mark. Eric suffered a broken leg. The difference between Delaware and Maryland which creates the choice of law issue is that Delaware law provides that “[n]o person shall rent a personal watercraft to any person who does not have a valid automobile driver’s license.”¹ Maryland has no such comparable requirement. In other words, in Maryland one must be sixteen to rent a jet ski, but apparently there is no requirement

¹ 22 *Del. C.* § 2213(a). This section is part of Delaware’s Boating Safety Act.

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that one have a valid driver's license. Therefore, Delaware law imposes some obligation on the owner-lessor, in this case Maldania, to verify that the customer has a valid driver's license, which could also serve as an age verification. In Maryland, by contrast, the renter is apparently under no obligation to make any inquiry as to whether the customer has a valid driver's license. In this case, obviously neither boy had a driver's license. For the reasons which follow, I conclude that the Delaware law just quoted does apply in this case, but this ruling is limited to this single issue. If any other choice of law issue presents itself, it will have to be separately examined to determine whether the law of Maryland or Delaware will apply.

FACTS

Maldania is in the business of renting jet skis at its business premises at 142nd Street Marina, Fenwick Island. The business office is in Delaware. The Maryland-Delaware state line runs across the front of the business office. In other words, the business office is in Delaware, but when a person exits the business office he enters Maryland as he crosses the doorstep. The part of the business site where the jet skis are docked is in Maryland. The typical routine is that a person interested in renting a jet ski goes into the business office, completes the rental agreement and any other necessary paperwork, takes a State of Maryland boating exam (still in the business office), then goes across the lot to where the jet skis are docked, follows a Maldania guide a short distance down a narrow course of water known as "The Ditch" to Assawoman Bay, and begins riding the jet ski around in an area of the bay under the watchful eye of the guide. Mark's family resides in Pennsylvania and was vacationing in Bethany Beach. The plaintiff was invited to come along to be part of the vacation.

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On the day that they went to the defendant's to rent the jet skis, the events followed the pattern outlined above to the point where the collision occurred and the plaintiff broke his leg. As noted, however, it is alleged that both boys and Mark's father lied to Maldania about the boys' ages. From the paperwork it appears that Eric gave his name as "Eric Werner", thus misrepresenting his name and posing as Mark's brother.

Maldania operates its business under a Delaware business license. It pays Delaware gross receipts taxes, including gross receipts taxes on the rental of the jet skis. It does not pay Maryland taxes on these transactions. The jet skis are marked as rental boats apparently in order to comply with a Delaware requirement that that be done. They are registered in Delaware as personal watercraft. Delaware rules and regulations are posted on the premises. The property is regularly inspected by the Delaware Department of Natural Resources and Environmental Control.

Each renter is given a boater's safety exam required by the Maryland Department of Natural Resources. A member of Maldania's management regularly attends safety meetings held by the Maryland Department of Natural Resources and Environmental Control. The defendant also posts Maryland's rules and regulations. The Maryland Department of Natural Resources and Environmental Control investigated the accident in this case. It did not issue any citation to the defendant but it did cite Mark's father for permitting an individual under 16 to operate a jet ski, and it cited Mark for failing to obey Maryland's "rules of the road" for use of jet skis. The Delaware Department of Natural Resources and Environmental Control did not involve itself in the matter.

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DISCUSSION

It is well established that Delaware decides choice of law questions based upon the “most significant relationship test” set forth in the *Restatement (Second) of Conflict* (“*Restatement*”).² The pertinent sections are §§ 6, 145 and 146.

The most “significant relationship test” is a flexible doctrine which “requires each case to be decided on its own facts.”³ *Restatement* § 6 lists a number of relevant factors which should be considered in the absence of a statutory directive on choice of law. They are as follows:

- (a) the needs of the interstate and international systems;
- (b) the relevant policies of the forum;
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue;

² *Turner v. Lipschultz*, Del. Supr., 619 A.2d 912 (1992); *Travelers Indem. Co. v. Lake*, Del. Supr., 594 A.2d 38 (1991).

³ *Lake* 594 A.2d at 48.

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- (d) the protection of justified expectations;
- (e) the basic policies underlying the particular field of law;
- (f) certainty, predictability, and uniformity of result; and
- (g) ease in the determination and application of the law to be applied.

Restatement § 145(2) sets forth certain contacts which should be taken into consideration in applying the principles of § 6. They are as follows:

- (a) the place where the injury occurred;
- (b) the place where the conduct causing the injury occurred;
- (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and
- (d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

The contacts and factors set forth above are not to be applied by simply counting up the interests on each side, but rather “evaluated according to their relative importance with respect to the particular issue.”⁴

⁴ *Lake*, 594 A.2d at 48 n. 6 (quoting *Restatement* § 145).

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Restatement § 146 provides that in a personal injury action the law of the state where the injury occurred should be applied “unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.” Therefore, since the injury occurred in Maryland, the law of that state should apply unless Delaware has a more significant relationship with respect to the “particular issue” involved. The “particular” conflict of law issue involved here focuses on the rental transaction itself. Was the transaction subject to the Delaware statute which requires that no jet ski be rented to any person who does not have a valid driver’s license, or was the transaction subject to Maryland law which has no such requirement?

Before analyzing this specific issue, it is appropriate to take notice of the doctrine known as depeceage. Depeceage is the process of deciding choice of law on an issue by issue basis, with the result that the law of one state may be determined to apply to one issue and the law of a different state to another issue in the same case. Although this doctrine has apparently not been recognized by name in any prior Delaware case, the Federal District Court for Delaware has noted that it has been “tacitly embraced” by Delaware trial courts.⁵ And in the *Restatement*, the text of §§ 145 and 146 implicitly recognize that choice of law may be determined on an issue by

⁵ *Naghiu v. Inter-Continental Hotels Group, Inc.*, D. Del., 165 F.R.D. 413 (Feb. 23, 1996) (citing *Sequa Corp. v. Aetna Casualty and Surety Co.*, Del. Super., C.A. No. 89C-AP-1, Herlihy, J. (May 21, 1992) (Mem. Op.); and *International Business Mach. Corp. v. Comdisco, Inc.*, C.A. No. 91C-07-199, Goldstein, J. (Dec. 4, 1991) (Opinion and Order).

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issue basis. For example, it has been previously noted that § 146 provides that the law of the place of the injury should apply, unless with respect to the “particular issue” another state has a more significant relationship. Section 145 also refers to the law “applicable to an issue.” It seems particularly appropriate to be mindful of this doctrine in a case where the elements of a cause of action – here, duty, negligence, causation, injury – appear to have occurred in part in one state and in part in another. If any other choice of law issue should arise in this case, application of the “most significant relationship test” to that issue may involve different policies of the respective states involved and may lead to a different result. This decision, therefore, is limited to the issue at hand.

The first of the four contacts set forth in the *Restatement* § 145 is the place where the injury occurred. The plaintiff argues that the fact that the injury occurred in Maryland is fortuitous. However, the fact that the accident happened there is not fortuitous. The Maryland waters were the normal jet skiing area used by Maldania. On the other hand, the place where the conduct complained of occurred was Delaware. The rental transaction took place inside the business offices. The defendant’s rental transactions were clearly taking place within this state’s borders. The domicile and residence of the plaintiffs is Pennsylvania. Therefore, that factor has no bearing on the issue, but it is noted that for their vacation they were staying in Delaware. The final § 145 contact is not particularly helpful because the relationship between the parties is not clearly centered in one state over the other.

Factors (b) and (c) of the *Restatement*, § 6 call for a balancing of the pertinent policy interests of the states involved. The Delaware statute expresses a clear policy against renting jet skis to people who are unable to produce a valid driver’s license.

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This policy is part of a comprehensive statute on boating safety. In the absence of statutory language to the contrary or some other unusual circumstances, a state statute regulating conduct should be enforced throughout the state. Maryland has no conflicting policy, and Delaware's law does not interfere in any way with Maryland's regulation of water safety in its state. Application of Delaware law is also consistent with justified expectations. Page two of the rental agreement used by the defendant in this case expressly provides that the jet ski operator must possess a valid driver's license. The defendant, therefore, is in no position to complain about the application of Delaware law, since its own paperwork contained the same requirement; and people are entitled to expect that transactions occurring in Delaware will be done in conformity with Delaware law. The result reached here also promotes certainty, predictability and uniformity of result in that it emphasizes that a jet ski rental transaction which takes place within this state's borders is subject to Delaware law regardless of whether the driving area is in Delaware, or just across the border in Maryland, or in both states. These factors lead to the conclusion that Delaware has a more significant relationship to the rental of the jet skis than does Maryland.

Therefore, the plaintiff's motion that Delaware law applies to the plaintiff's rental of the jet ski is ***granted***.

Resident Judge

oc: Prothonotary
cc: Order Distribution