IN THE COURT OF APPEALS OF IOWA

No. 9-045 / 08-0769
Filed May 29, 2009

PAUL LAIR,
Plaintiff-Appellant/Cross-Appellee,

vs.

MOTOR INN OF SPIRIT LAKE, INC.,
and DAVID FAHLSING,
Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Dickinson County, David A. Lester, Judge.

The plaintiff appeals from the district court's ruling denying him compensatory damages for repairs to his vehicle. **AFFIRMED.**

Michael Bovee, Spencer, for appellant.

Rene Lapierre, Sioux City, for appellee Motor Inn.

James Daane, Sioux City, for appellee Fahlsing.

Heard by Sackett, C.J., and Vogel, J. and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, J.

Paul Lair appeals a district court's ruling that dismissed his petition seeking compensatory damage for repairs to his car following an accident. We affirm.

I. Background Facts & Proceedings

Lair purchased a 1996 Dodge Viper, in pristine condition, in the spring of 2002 for $39,500. The model purchased was a sought-after collector's item, with an estimated value of $45,000-$55,000. After purchasing the vehicle, Lair brought it to Spirit Lake Motor Inn (Motor Inn) in order to show the manager and sales staff; he also invited them to take the Viper for a test drive. Lair returned to Motor Inn in late June 2002 when he heard a "clunking noise" and wanted it inspected. Approximately two weeks later, Lair returned to monitor the progress, and Motor Inn employee, David Fahlsing, informed him that they had not yet been able to determine the source of the clunking noise. Lair agreed to allow Fahlsing to drive the Viper to his home overnight in order to further test for the source of the noise. It was disputed as to whether Lair had knowledge that it was Fahlsing's birthday, and because of that, gave him permission to drive the Viper. After work, Fahlsing drove the Viper to his home in Lakefield, Minnesota, which is approximately twenty miles from Motor Inn. Lair assumed Fahlsing lived in Spirit Lake. Because he left his own car at Motor Inn, and Fahlsing needed transportation for the evening, he proceeded to drive the Viper to a nearby campground. There, he celebrated his birthday with friends for the next three to four hours. After consuming three beers and eating dinner, Fahlsing started driving back to his home around 10:30 p.m.

On his drive home, Fahlsing encountered two deer that darted into the road. He slammed on his brakes and turned the steering wheel to the right, causing the vehicle to spin, and hit the double posts of a road sign before sliding into the ditch. Fahlsing testified that he was driving approximately 40-45 miles per hour, well within the posted speed limit. The highway patrolman who investigated the accident administered a preliminary breath test, which indicated Fahlsing's blood alcohol was .04, which is below the legal limit. Fahlsing was not cited for any traffic violations. The next morning, Fahlsing returned to Motor Inn and telephoned Lair to report the incident.

Lair obtained two estimates for repair on the Viper, ranging from $18,000-$24,000, and received $14,654.34 from his insurance carrier.[1] Fahlsing also reported the accident to his insurance carrier, but was denied coverage for the damages. Motor Inn determined that the accident occurred under circumstances unrelated to employment, and denied Lair reimbursement. Lair filed a lawsuit against Motor Inn and Fahlsing for damages.

The district court found that there was insufficient evidence to prove, among other things, that Fahlsing: was driving at an excessive or unsafe speed; operating the Viper in a reckless or careless manner; or failing to maintain a proper lookout. It did find Fahlsing failed to have the Viper under control, as he was unable to stop the car when confronted with the deer bounding onto the roadway. However, the court found Fahlsing met his burden of proof that any alleged negligence was legally excused by the application of the sudden emergency doctrine. It then concluded that even if the sudden emergency

[1] Lair paid $500 for his deductible.

doctrine did not apply, Motor Inn was not liable because Fahlsing's actions of driving the Viper for his own personal use and enjoyment were outside the scope of his employment. In addition, the court determined Lair could not recover under his bailment claim against Motor Inn: discussions between Fahlsing and Lair as to Fahlsing's use of the Viper created a separate bailment or modified the original bailment such that Motor Inn was not contractually liable to Lair for the damages suffered. Lair appeals.[2]

II. Standard of Review

Findings of fact in jury-waived cases shall have the effect of a special verdict. Iowa R. App. P. 6.4. Our review is limited to correction of errors at law, and we are bound by the findings of the trial court if they are supported by substantial evidence in the record. Iowa R. App. P. 6.14(6)(a); *Osage Conservation Club v. Bd. of Supervisors*, 611 N.W.2d 294, 296 (Iowa 2000).

III. Negligence

Lair asserts that Fahlsing was negligent in his operation of the Viper, and the district court erred in finding that negligence was excused by application of the sudden emergency doctrine. The sudden emergency doctrine excuses a defendant's failure to obey statutory law when confronted with an emergency not of the defendant's own making. *Foster v. Ankrum*, 636 N.W.2d 104, 106 (Iowa 2001). Sudden emergency has been defined as: (1) an unforeseen combination of circumstances which calls for immediate action; (2) a perplexing contingency

[2] Fahlsing cross appeals the district court's finding that he was not acting within the scope of his employment or that he had a separate bailment agreement with Lair, in the event that we would reverse the district court. As we affirm, we need not address his cross appeal.

or complication of circumstances; (3) a sudden or unexpected occasion for action, exigency, or pressing necessity. *Id.* When the actor's own negligence is the cause of the emergency, the fact that he then behaved in a manner entirely reasonable in the light of the situation, does not insulate his liability for his prior conduct. *Bannon v. Pfiffner*, 333 N.W.2d 464, 470 (Iowa 1983) (citations omitted). It is negligence prior to the accident which makes a person liable for the emergency and its ramifications. *Id.* The standard of conduct that applies to an action for negligence is the care of a reasonable person under the circumstances. *Benham v. King*, 700 N.W.2d 314, 317 (Iowa 2005).

Lair claims the district court should have found Fahlsing was operating the Viper at an excessive or unsafe speed, or in a reckless or careless manner, and failed to maintain a proper lookout. No one except Fahlsing witnessed the accident and the investigating state trooper issued Fahlsing no citations. As the district court found in referencing Iowa Code section 321.285, there is no evidence that Fahlsing was driving faster than would allow him to stop the vehicle for "noticeable objects reasonably expected or anticipated to be on the highway." There is simply no evidence to support Lair's assertions. Further, while Fahlsing did register a blood alcohol content of .04, this was within the legal limit and there is no evidence this impaired his operation of the vehicle. The district court found that Fahlsing's conduct prior to the accident was not negligent, and the record supports this finding.

The district court did find that because Fahlsing was unable to stop when the deer ran out that he did not have control over the vehicle. However, it also found Fahlsing met his burden of proof that any such negligence was legally

excused under the sudden emergency doctrine. We agree with the district court that Fahlsing proved that the sudden emergency was not created by his own negligent conduct and was therefore available for his defense. Fahlsing was met with the unforeseen situation of two deer suddenly bolting out in front of him on the highway. He reacted by braking and turning the wheel in order to avoid hitting the deer. While Lair claims Fahlsing's reactions were not reasonable, as he caused the car to spin 180 degrees, hit a post, and slid into the ditch, there is no evidence in the record to support these assertions. The record does support the district court's conclusion that Fahlsing reacted in a manner that was reasonable and proper. We affirm.

IV. Scope of Employment

Lair next asserts the district court erred when it found that at the time of the accident, Fahlsing was acting outside the scope of his employment with Motor Inn. While we need not reach this issue, as we find no negligence that could be imputed to Motor Inn, we will briefly discuss this claim. For an act to be within the scope of employment, the conduct complained of "must be of the same general nature as that authorized or incidental to the conduct authorized." *Godar v. Edwards*, 588 N.W.2d 701, 705 (Iowa 1999). The question, therefore, is whether the employee's conduct "is so unlike that authorized that it is 'substantially different.'" *Id.* at 706 (citation omitted).

In his deposition, the general manager of Motor Inn, Nick Stamoulis, testified that at no time in the six years since he had worked at Motor Inn had an

employee ever been allowed to test drive a vehicle after work hours.[3] He stated that any agreement between Fahlsing and Lair to drive the vehicle was a separate agreement, outside of the knowledge or consent of Motor Inn. Dennis Quastad, the service manager of Motor Inn at the time of the incident, agreed testifying that while working on a customer's vehicle it would be unacceptable for an employee to take that vehicle to some place like a campground; and if an employee did so after hours, it was their responsibility.

The district court was correct in finding that Fahlsing's conduct was "substantially different" from the authorized standard. The agreement between Lair and Fahlsing, in which Fahlsing would drive the Viper to his home and keep it overnight, went outside the bounds of the protocol for "test driving" utilized by Motor Inn. Beyond that, for his own pleasure, Fahlsing then drove the Viper to a campground where he ate and drank with friends. Substantial evidence supports that this was not a practice authorized by Motor Inn. Therefore, we agree with the district court that Fahlsing was not operating within the scope of his employment with Motor Inn when he drove the Viper for his own purposes.

V. Bailment

Lair next contends that leaving his car in Motor Inn's overnight care created a bailment and the district court erred in finding Motor Inn was not liable under this theory. Where there exists a bailment for mutual benefit, if the bailment was damaged while in the bailee's possession, there is a presumption that the damage is due to the negligence of the bailee. *Naxera v. Wathan*, 159 N.W.2d 513, 518 (Iowa 1968). Motor Inn, as the bailee, has the burden of

[3] Depositions were made a part of the record in this case.

showing that the damage occurred despite exercising due care. *Id.* We agree with the district court that Motor Inn met this burden because Fahlsing's taking of Lair's Viper overnight, and for his own personal use, was outside his scope of employment. Two former Motor Inn employees testified to the side agreement between Fahlsing and Lair, in which Lair allowed Fahlsing to drive the Viper to his home and keep it overnight without any restrictions. In addition, the district court found the side agreement included Lair's knowledge that it was Fahlsing's birthday. This separate agreement was made without the knowledge or approval of Motor Inn. Substantial evidence supports the district court's finding that consequently Motor Inn was not bound by the original bailment agreement and therefore not liable for the damages to Lair's vehicle.

Having reviewed all of plaintiff's arguments on appeal, we affirm the district court.

AFFIRMED.