

STATE OF MICHIGAN
COURT OF APPEALS

MARK HADDAD,

Plaintiff-Appellant,

v

GEORGE TSOUKALAS,

Defendant-Appellee,

and

ALEXANDER HARLAMBOS SAKELLARIS and
ALEXANDRA SAKELLARIS,

Defendants.

UNPUBLISHED

January 12, 2006

No. 256659

Wayne Circuit Court

LC No. 02-243629-NO

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right the February 10, 2004, order dismissing his cause of action against defendant, George Tsoukalas. Specifically, plaintiff challenges the grant of summary disposition on his claim of negligent entrustment. Because plaintiff has plead and created a justiciable question of fact on his theory of defendant's negligent entrustment of his registered Smith and Wesson .357 Magnum revolver to Alexander Sakellaris, we reverse and remand to the trial court.¹

During the evening of January 11, 2002, plaintiff and friends visited with Sakellaris in the basement of his home. After a short while, Sakellaris produced the revolver to, "handle it and show it off." He opened the chamber, removed one of the bullets and announced that it was a hollow point, replaced the bullet, and then spun the cylinder "like a toy." The gun did not have a trigger lock in place. As Sakellaris ascended the basement stairs with the gun in his left hand he tripped, fell, and dislodged the banister, all of which resulted in an accidental discharge of the firearm. Plaintiff was shot in the knee.

¹ Plaintiff's claims against the other named defendants were dismissed without prejudice.

The revolver was registered to defendant. Sakellaris reported to the police that he was keeping the handgun for his defendant cousin whose parents would not permit him to maintain the gun in their home. When the police investigated, they found the handgun in the trunk of Sakellaris' vehicle in a case, unloaded, and secured with a trigger lock. When defendant was interviewed by the police he reported he had purchased the handgun along with a holster. Police questioned defendant further when they noted the holster purchased for use with the handgun was for a left-handed individual and defendant is right-handed and Sakellaris is left-handed. When questioned regarding this observation, defendant acknowledged that he and Sakellaris had gone to purchase the handgun and that it was Sakellaris who provided the monies for the purchase. Defendant stated that it was their intent, at some point in the future, to turn ownership of the handgun over to Sakellaris.

When Sakellaris was reinterviewed he acknowledged that he had accompanied defendant to purchase the gun and that he had requested defendant purchase the handgun, with the intent that when Sakellaris turned eighteen, the gun would be transferred and registered in his name. Sakellaris reported that defendant purchased the gun for him, but that defendant registered the handgun in his own name and took it home. Defendant's father discovered a bullet for the handgun in their home and instructed defendant to remove the gun from the home. Defendant took it with a trigger lock in place to Sakellaris to retain. Defendant reported to police that he did not give Sakellaris any ammunition with the handgun. Sakellaris and defendant took the gun to a shooting range on two or three occasions. After shooting, Sakellaris would clean the gun and replace the trigger lock. Defendant asserted that he permitted Sakellaris to store the handgun based on his "superior knowledge" of weapons and his experience with guns.

Prior to this incident, Sakellaris was reported to have had several contacts with police as a juvenile, including incurring speeding tickets, breaking and entering and probation violations. Defendant contended that he was unaware of any criminal history or police involvement with Sakellaris before this event.

Below, plaintiff contended defendant's assertion that Sakellaris had been trained and was knowledgeable in the use of firearms was uncorroborated. Plaintiff also asserted Sakellaris' history of juvenile problems, at school and with police, verified his immaturity and his incompetence to possess a handgun. Further, that Sakellaris' possession of the handgun was illegal due to his age, and that the handgun could not have been legally transferred from defendant to Sakellaris until he turned eighteen. The handgun purchase was described as an illegal "strawman" purchase, involving the legitimate purchase of the handgun by defendant with the illegal transfer of the weapon to Sakellaris, without proper registration or transfer paperwork.

On appeal, plaintiff argues the trial court erred in granting summary disposition in favor of defendant on his claim of negligent entrustment. The tort of negligent entrustment is comprised of two elements:

First, the entrustor is negligent in entrusting the instrumentality to the entrustee.
Second, the entrustee must negligently or recklessly misuse the instrumentality.
[*Allstate Ins Co v Freeman*, 160 Mich App 349, 357; 408 NW2d 153 (1987).]

The doctrine of negligent entrustment essentially comprises a determination of whether an individual's conduct was reasonable in view of the apparent risk involved. *Bragan v Symanzik*, 263 Mich App 324, 341; 687 NW2d 881 (2004) (*Murphy, J., concurring.*)

Originally, this Court, in *Muscat v Khalil*, 150 Mich App 114, 121; 388 NW2d 267 (1986), discussed the law of negligent entrustment, indicating:

Michigan courts have adopted the following definition of the theory from 2 Restatement Torts, 2d, § 392:

‘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.’ *Moning v Alfono*, 400 Mich 425, 443-444; 254 NW2d 759 (1977).

Subsequently, the Michigan Supreme Court, in *Fredericks v General Motors*, 411 Mich 712, 719; 311 NW2d 725 (1981), clarified the applicable standard of care determining that:

To sustain a cause of action for negligent entrustment a plaintiff must prove that defendant knew or should have known of the unreasonable risk propensities of the entrustee.

* * *

To prove an entrustor should have known an entrustee was likely to use the entrusted chattel in an unsafe manner, peculiarities of the entrustee sufficient to put the entrustor on notice of that likelihood must be demonstrated.

This was further refined in *Buschlen v Ford Motor Co (On Remand)*, 121 Mich App 113, 117; 328 NW2d 592 (1982), where this Court indicated that to prove negligent entrustment:

[P]laintiffs must show either that defendant knew the entrustee was not to be entrusted or that defendant ‘had special knowledge of (the entrustee) which would put defendant on notice.’

The *Fredericks* Court did not recognize a duty to inquire, on the part of the entrustor, to ensure that the chattel being entrusted was being used in a safe manner. Instead:

[T]he entrustor must first have special notice of the peculiarities of the entrustee sufficient to put the entrustor on notice before the entrustor is under any further duty to ensure an entrusted chattel's safe use. [*Buschlen, supra*, p 118.]

Additionally, an essential element of negligent entrustment involving “inherently dangerous materials” involves “the failure of the principal to see that all appropriate precautions are taken to insure that the inherently dangerous activity will be properly performed.” *Beck v Westphal*, 141 Mich App 136, 145; 366 NW2d 217 (1984).

Contrary to plaintiff's assertion in the lower court, Sakellaris' youth was not sufficient, in and of itself, to impose liability for negligent entrustment. However, age did function as a "peculiarity" sufficient to place defendant on notice that the handgun could be misused or handled in an unsafe manner. As noted previously by this Court, the entrustment of a potentially dangerous article to an underage or young individual:

[M]ay pose an unreasonable risk of harm not only because the child may not appreciate the risk or may not have the skill to use the article safely but—even if he does appreciate the risk and does have the requisite skill—because he may recklessly ignore the risk and use the article frivolously due to immaturity of judgment, exuberance of spirit, or sheer bravado. [*Bragan, supra*, p 341 (*Murphy, J., concurring*) (citations omitted).]

Thus, based on Sakellaris' youth, defendant was placed on notice requiring either the taking of sufficient precautions before entrusting the handgun or the necessity of further investigation regarding Sakellaris' competency to possess the weapon. This is especially true given defendant's knowledge that the handgun was required to be registered and that Sakellaris, based on age, was ineligible to possess the weapon. While defendant claimed that he provided a trigger lock for the handgun, the question of access to the key is conspicuously absent. When police recovered the handgun from Sakellaris the trigger lock was in place.

The trial court erred in granting summary disposition because questions of fact existed regarding defendant's knowledge of factors pertaining to Sakellaris' history with police, in addition to his age, which put defendant on notice of the potential for Sakellaris to mishandle the firearm. Questions of fact also existed regarding whether defendant had exercised sufficient and reasonable precautions prior to entrusting the weapon to Sakellaris. As such, it was in the province of the jury to determine whether defendant's entrustment of the weapon to Sakellaris was negligent.

We reverse the grant of summary disposition and remand to the trial court for submission of the issue of negligent entrustment to a jury. We do not retain jurisdiction.

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello

/s/ Alton T. Davis