STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF SARAH NICOLE CAMPANELLI, Deceased, by FRANK CAMPANELLI, Personal Representative,

Plaintiff-Appellant,

v

KAYLA LEILANI KUIKAHI-LALONDE and DEBORAH HAYES,

Defendants-Appellees,

and

AMY KUIKAHI, Next Friend of KAYLA LEILANI KUIKAHI-LALONDE,[1]

Defendant.

UNPUBLISHED
September 27, 2011

No. 298014
Livingston Circuit Court
LC No. 08-023435-NI

Before: SERVITTO, P.J., and MARKEY and K.F. KELLY, JJ.

PER CURIAM.

Plaintiff Estate of Sarah Nicole Campanelli, deceased, by Frank Campanelli, the personal representative of the estate, appeals as of right the trial court's judgment of no cause of action following a bench trial. We affirm.

I. BACKGROUND

Sarah Nicole Campanelli died when the automobile in which she was riding was involved in an accident. Defendant-appellee Deborah Hayes was the owner of the vehicle. Deborah gave the vehicle to her daughter, Jessica Hayes, to drive. Defendant-appellee Kayla Leilani Kuikahi-

[1] Kayla Leilani Kuikahi-LaLonde was a minor when this case was filed in the trial court. However, when the trial court's order of no cause of action was entered, Kuikahi-LaLonde was no longer a minor. Thus, Amy Kuikahi, Kuikahi-LaLonde's mother, is not a party to this appeal.

LaLonde was Jessica's friend and the driver of the vehicle at the time of the accident. The pertinent issue in the trial court was whether Kuikahi-LaLonde had Deborah's express or implied consent or knowledge to drive the vehicle at the time of the accident, pursuant to MCL 257.401(1).

II. STANDARD OF REVIEW

We review a trial court's conclusions of law in a bench trial de novo and its findings of fact for clear error. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001); *Triple E Produce Corp v Mastronardi Produce*, 209 Mich App 165, 171; 530 NW2d 772 (1995). In addition, "[i]ssues of statutory construction present questions of law that are reviewed de novo." *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526-527; 672 NW2d 181 (2003). Moreover, because witness credibility issues present a question for the trier of fact, we defer to the trial court in a bench trial regarding credibility, given the trial court's special opportunity to personally view and hear witnesses who appear before it. *In re Clark Estate*, 237 Mich App 387, 395-396; 603 NW2d 290 (1999).

III. THE OWNER'S LIABILITY STATUTE

MCL 257.401(1) provides that "[t]he owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge." "The operation of a motor vehicle by one who is not a member of the family of the owner gives rise to a rebuttable common-law presumption that the operator was driving the vehicle with the express or implied consent of the owner." *Fout v Dietz*, 401 Mich 403, 405; 258 NW2d 53 (1977) (footnote omitted). "[T]he common-law presumption (or the statutory presumption) can be overcome only with 'positive, unequivocal, strong and credible evidence.'" *Bieszck v Avis Rent-A-Car Sys, Inc*, 459 Mich 9, 19; 583 NW2d 691 (1998).

Plaintiff first argues that the trial court erred by not determining whether the vehicle was being driven with Deborah's consent or knowledge, as opposed to Jessica's consent or knowledge. We disagree. The pertinent inquiry was whether Kuikahi-LaLonde was driving the vehicle with the permission of Jessica, who was Deborah's permittee. See *Caradonna v Arpino*, 177 Mich App 486, 490-491; 442 NW2d 702 (1989). Thus, the trial court made the correct inquiry in this case by deciding first whether Kuikahi-LaLonde had Jessica's permission to drive Deborah's vehicle, and then applying that conclusion to the ultimate inquiry of whether the vehicle was being driven with Deborah's permission, pursuant to MCL 257.401. *ISB Sales Co*, 258 Mich App at 526-527; *Caradonna*, 177 Mich App at 490-491.

Plaintiff next argues that the evidence offered to rebut the presumption of consent was not positive, unequivocal, strong, and credible. Plaintiff specifically argues that Deborah's act of giving the keys to Jessica to use without restriction and Jessica's giving the keys to the vehicle to Kuikahi-LaLonde support the conclusion that the evidence offered to rebut the presumption of consent was not positive, unequivocal, strong, and credible. We disagree. Although Deborah gave the keys to Jessica for Jessica to drive the vehicle without restriction, the critical inquiry here, as stated above, was whether Jessica gave the keys to Kuikahi-LaLonde with permission to drive the vehicle. *Caradonna*, 177 Mich App at 490-491. Jessica and Kuikahi-LaLonde both

testified that Jessica told Kuikahi-LaLonde not to drive the vehicle on the day of the accident. The evidence was positive, unequivocal, strong and credible.

Plaintiff argues that the trial court disregarded Kara Colley's testimony. Colley testified that Kuikahi-LaLonde told her that Jessica said that Kuikahi-LaLonde could borrow the vehicle. Although Colley initially stated this, when specifically questioned by both plaintiff and Deborah's counsel, Colley indicated that she did not know whether Kuikahi-LaLonde had permission to drive the vehicle. Thus, the trial court did not clearly error when it indicated that Colley did not know whether Kuikahi-LaLonde had permission to drive the vehicle. Where the evidence and reasonable inferences therefrom support the trial court's findings, they will not be disturbed on appeal. *Triple E Produce*, 209 Mich App at 172; see also *Byars v Sullivan*, 14 Mich App 217, 220; 165 NW2d 300 (1968).

Plaintiff next argues that the fact that three explanations were given as to why Jessica told Kuikahi-LaLonde not to use the vehicle raises questions as to whether Kuikahi-LaLonde was told not to drive the vehicle. Again, we disagree. When Jessica was specifically asked why she told Kuikahi-LaLonde not to drive the vehicle on the day at issue, Jessica indicated that it was the first time she gave Kuikahi-LaLonde the keys since allowing Kuikahi-LaLonde to drive the vehicle on one previous occasion. Thus, Jessica thought that she should make sure that Kuikahi-LaLonde knew that she was not allowed to drive the vehicle on this occasion. Contrary to plaintiff's assertion, this testimony does not articulate a reason why Jessica did not want Kuikahi-LaLonde driving the vehicle on the day of the accident. Rather, it was an explanation as to why on this day Jessica thought that it was necessary to articulate to Kuikahi-LaLonde that she could not drive the vehicle. In addition, although Jessica and Kuikahi-LaLonde remembered differing versions of why Kuikahi-LaLonde was not given permission to drive the vehicle, these differing versions do not detract from the fact that both Jessica and Kuikahi-LaLonde testified that Jessica told Kuikahi-LaLonde that she did not have permission to drive the vehicle.

Plaintiff's argument that Jessica's actions after she discovered that Kuikahi-LaLonde had her vehicle showed that Jessica consented to Kuikahi-LaLonde's driving the vehicle is without merit. When Jessica went out to the parking lot and discovered that her car was missing, she immediately tried contacting Kuikahi-LaLonde, but could not reach her. Jessica's failure to call the police was not tacit after-the-fact consent to Kuikahi-LaLonde's use of the car. Jessica's post-accident behavior was irrelevant to the issue of whether she gave Kuikahi-LaLonde permission to drive the car. Similarly, the fact that Deborah made a police report only after she learned that it was in her financial interest to do so did not demonstrate that Kuikahi-LaLonde had consent to use the vehicle. Deborah's initially not wanting to file a police report on her daughter's friend and neighbor does not lead us to conclude that there was consent to use the vehicle.

In addition, plaintiff argues that the trial court misread the record when it indicated that "[f]ollowing the accident, Jessica was surprised to hear that Kayla had taken her vehicle without permission." Although Jessica did not specifically indicate that she was "surprised," a reasonable fact-finder could find that because Jessica thought that her vehicle should be there and it was not. Consequently, she was frustrated and irritated by its not being there, and was, in fact, surprised to find that her vehicle was gone. Thus, this finding by the trial court was not clearly erroneous. *Triple E Produce*, 209 Mich App at 172; *Byars*, 14 Mich App at 220.

Plaintiff finally argues that the trial court improperly relied on Kuikahi-LaLonde's conviction for unlawful use of a motor vehicle. We disagree. At trial, plaintiff's counsel indicated that the parties had entered into stipulation whereby "the Defendants will not offer the juvenile conviction into evidence and Plaintiffs will allow Officer Sell to testify about the four statements that the Defendants – about the three statements the Defendants wish to offer into evidence made by Kayla and – Kayla, Jessica and Defendant Hayes, and the Plaintiffs will not raise the hearsay objection to those statements." The case was tried on the live testimony of Officer Sell as well as the previously admitted deposition testimonies of several witnesses, including Kuikahi-LaLonde. During Kuikahi-LaLond's deposition, *plaintiff's counsel* questioned her as follows:

> *Q.* And you pled guilty for the accident; right?
>
> *A.* Yes.
>
> *Q.* What did you plead guilty to?
>
> *A.* Negligent homicide and unlawful use of a car.
>
> *Q.* Wait a minute. Negligent homicide and what?
>
> *A.* Unlawful use of an automobile.

It is clear from the record that defendants did nothing to elicit evidence that Kuikahi-LaLonde was convicted of unlawful use of a motor vehicle; rather, it was plaintiff's questioning that placed the evidence on the record. "Under the doctrine of invited error, a party waives the right to seek appellate review when the party's own conduct directly causes the error." *People v Jones*, 468 Mich 345, 352; 662 NW2d 376 (2003)."

Affirmed. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly