STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0898

Jamie Lee, et al.,
Appellants,

vs.

Ciara Meyers, defendant,
Cory Loeffler,
Respondent.

Filed March 25, 2008
Affirmed
Stoneburner, Judge

Pennington County District Court
File No. C30653

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Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and Peterson, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellants were injured when their motorcycle collided with a stolen car driven by an unlicensed, 16-year-old driver. They challenge summary judgment dismissing their negligence action against respondent, the primary user of the vehicle. The district court

concluded that, as a matter of law, respondent did not owe appellants a duty of care because he could not have foreseen that his car would be stolen and negligently driven. We affirm.

FACTS

In May 2003, respondent Corey Loeffler (Loeffler), the son of Timothy and Kristine Loeffler, was 18 years old and had the primary use of a 1987 Buick Century automobile (the Buick) owned by his parents.[1] The Loeffler family lived in Thief River Falls and made frequent fishing trips to Warroad. The family kept a motor home parked at a campground near the home of Timothy Loeffler's brother, Wayne Loeffler. Wayne Loeffler's wife, Mary Loeffler, is the mother of Ciara Meyers, who was 16 years old in May 2003. Meyers did not have a driver's license in May 2003, despite having had a learner's permit for about a year.

When he was in Warroad, Loeffler would sometimes "hang out" with Meyers, and they described themselves as step-cousins. Meyers had ridden in Loeffler's Buick but, before May 31, 2003, had never driven the Buick. Loeffler testified that before May 2003, Meyers once asked if she could drive the Buick, and that he told her no because she did not have a license. Loeffler knew that Meyers had driven her mother's car solo, but Loeffler never gave Meyers permission to drive his car. Loeffler was not aware that Meyers's mother had disabled a family car to keep Meyers from driving it around town.

[1] The Lees only sued Corey Loeffler. They did not sue his parents. Because Corey Loeffler's responsibility for the Buick is that of an owner, he will be referred to in this opinion as the sole owner of the Buick.

Loeffler sometimes left the Buick parked at Meyers's house while he was fishing. He parked the Buick in the backyard or on the street in front of the house. He always left the keys either in Meyers's house or in the Buick. It is common for people in Meyers's neighborhood to leave keys in their vehicles, and there is no known history of car theft in the area.

On May 31, 2003, the Buick had been parked in front of Meyers's house for two or three days while Loeffler was on a fishing trip. The keys were in the ashtray of the unlocked car. Meyers took the Buick without Loeffler's permission and caused an accident involving appellants Jamie and Jenny Lee, who were on a motorcycle. The Lees were injured. The Lees sued Meyers and Loeffler for negligence. Loeffler moved for summary judgment, arguing that he was not liable for injuries caused by a car thief. The district court granted summary judgment to Loeffler, and this appeal followed.[2]

D E C I S I O N

On appeal from summary judgment, this court examines the record to determine whether any genuine issues of material fact exist and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court "must view the evidence in the light most favorable to the party against whom judgment was granted" and accepts that party's factual allegations as true. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

[2] In order to facilitate this appeal, Meyers was dismissed from the action without prejudice, and final judgment was entered dismissing all of the Lees' claims against Loeffler.

Summary judgment is appropriate as a matter of law when the record is devoid of proof on an essential element of the plaintiff's claim. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). In order to establish a prima facie case of negligence, a plaintiff must show: (1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) the breach caused the harm; and (4) the plaintiff incurred an injury as a result of the breach. *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 364 (Minn. App. 2000). A party is entitled to summary judgment in a negligence action if the record reflects a complete lack of proof on any of the four elements of a prima facie case. *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001). Whether a duty exists is a question of law, which this court reviews de novo. *Id.*

The Lees' central claim is that Loeffler owed a duty to appellants to prevent the theft of his automobile. Traditionally, a vehicle owner was not held liable for a thief's negligent driving, because the thief's act was considered to interrupt causation between the initial negligent act[3] and the resulting injury. *Wannebo v. Gates*, 227 Minn. 194, 196, 34 N.W.2d 695, 696-97 (1948). But the supreme court subsequently expanded an owner's potential liability for injury to third parties in situations where a vehicle is stolen as a result of the owner's negligence and special circumstances exist that make the probability of a thief's negligent driving foreseeable. *State Farm Mut. Auto. Ins. Co. v.*

[3] *Wannebo* and similar cases either held or assumed that leaving keys in an automobile constituted negligence leading to the theft of the vehicle. *See State Farm Mut. Auto. Ins. Co. v. Grain Belt Breweries, Inc.*, 309 Minn. 376, 379, 245 N.W.2d 186, 188 (1976). Arguably, in this case, leaving keys in the car in this residential district of Warroad was not negligence. But Loeffler did not argue for, and the district court did not grant, summary judgment on such a determination.

Grain Belt Breweries, Inc., 309 Minn. 376, 381-82, 245 N.W.2d 186, 189-90 (1976); *Ill. Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 635-36 (Minn. 1978). Specifically, if a car owner is aware of circumstances that "increase the probability that the car will be stolen, that the thief is likely to operate the car negligently, and that consequently injury or damage to a third party will result, the [owner] is under a duty to act so as to prevent the theft and such injury or damage." *Tapemark*, 273 N.W.2d at 635-36 (stating that "liability will be imposed only if special circumstances creating a greater potential of foreseeable risk . . . are present").

Although the Lees acknowledge that whether a defendant owes a plaintiff a legal duty is generally a question for the court to determine as a matter of law, they argue that the district court's conclusion as to Loeffler's duty in this case was improper because the existence of special circumstances and foreseeability of the theft are fact questions for a jury to decide. But not every case involving a car owner's liability for a car thief's negligent driving must be submitted to the jury. *Grain Belt*, 309 Minn. at 381-82, 245 N.W.2d at 189. Rather, the district court "must consider the facts of each case and determine whether, in its judgment, those facts constitute such special circumstances that a jury could reasonably find that the negligent act of leaving keys in the vehicle directly caused the injury." *Id.* at 382, 245 N.W.2d at 190.

The Lees argue that there is a question of material fact about whether Loeffler should have foreseen that Meyers would take his car and drive negligently. Their argument is based on the following facts: (1) Loeffler knew Meyers was an unlicensed, inexperienced driver; (2) Loeffler and Meyers are step cousins, close in age, and had a

friendly relationship; (3) Loeffler had allowed licensed drivers to use his car and knew that Meyers had driven the family car solo at least once; (4) Loeffler acknowledged that Meyers had once asked to use his car and he denied permission because she was unlicensed; and (5) Loeffler left his car unlocked in front of Meyers's home on several different occasions, and on each occasion, the keys were readily accessible to Meyers. But the district court found that summary judgment was proper based on these facts, and the additional fact that Loeffler did not know that Meyers had taken her mother's car without permission.

We agree with the district court. The circumstances of this case differ significantly from the circumstances of *Grain Belt* and *Tapemark*, both of which involved mature drivers operating company-owned vehicles left unlocked with keys accessible in public places in the Twin Cities. In *Grain Belt*, the court concluded that a jury could reasonably find that the plaintiff's injuries were caused by Grain Belt's employees because:

> (a) the keys were left in a large beer truck on a Minneapolis street in an area of bars and an off-sale liquor store while the driver and his helper were having lunch, (b) the truck could not be seen by the employees from the place where they were lunching, (c) the driver knew the area was "proportionately" high in hard drinking, (d) the thieves were two heavily intoxicated individuals, (e) the area is one recognized by the police as having a "rather high crime rate," and (f) the accident happened shortly after the theft while, so far as can be determined from the evidence, the thieves were in flight.

309 Minn. at 381, 245 N.W.2d at 189. Similarly, in *Tapemark*, a salesman left his company car unlocked in a public-golf-course parking lot with the keys in the trunk, which could be opened by a pressing a button inside the car. 273 N.W.2d at 632-33. It was disputed whether the salesman observed young people in the parking lot when he put the keys in the trunk or knew that young people had committed thefts and vandalism in the area. *Id*. at 634.

By contrast, the facts of this case lead only to the reasonable conclusion that Loeffler could not have foreseen that Meyers would steal his car. Even Meyers's mother, who knew that Meyers had taken the family car without permission, testified that it never occurred to her that Meyers would take Loeffler's car. Nothing about the character of the neighborhood, Meyers's family, or Loeffler's prior experiences of leaving his car with Meyers's family, could have led 18-year-old Loeffler to foresee that Meyers would steal his car. Because the theft was unforeseeable, the district court did not err in concluding that, as a matter of law, no special circumstances existed that would lead a fact-finder to conclude that Loeffler owed the Lees a duty to protect them from Meyers's theft of his car. Summary judgment was appropriate in this case.

Affirmed.