STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0640

Michael P. Jeche,
Appellant,

vs.

Jacob John Knutson,
Respondent,

Kandyce Kristen Keeler,
Respondent.

Filed December 30, 2008
Affirmed
Hudson, Judge

Olmsted County District Court
File No. 55-CV-07-2176

Peter C. Sandberg, Sandberg & Sandberg, 4057 28th Street, Suite 300, Rochester, Minnesota 55901 (for appellant)

Jacob John Knutson, 1618 Marion Road Southeast, Trailer 62, Rochester, Minnesota 55904 (pro se respondent)

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Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art VI, § 10.

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

HUDSON, Judge

Appellant Michael Jeche argues that it was error for the district court to grant summary judgment in favor of respondent Kandyce Keeler. Because there is no genuine issue of material fact for trial, we affirm.

FACTS

On December 11, 2006, appellant Michael Jeche was involved in a car accident when the car he was driving was struck by a 2000 Chevrolet Blazer owned by respondent Kandyce Keeler. The Blazer was driven by respondent Jacob Knutson, Keeler's boyfriend. Keeler was not involved in the accident. Appellant brought an action for damages against Knutson and Keeler, claiming that Keeler, as the owner of the Blazer, was vicariously liable for Knutson's conduct.

At the time of the accident, Keeler and Knutson had been living together for more than two years. From the time the couple met, including the day of the accident, Knutson's driver's license was revoked. He relied entirely upon Keeler, his mother, and coworkers to drive him back and forth between work and home. At no point during Keeler and Knutson's relationship, until the morning of the accident, did Knutson ever drive himself anywhere. Keeler told Knutson more than once that he was not permitted to drive the Blazer, and Knutson was not an authorized driver on the insurance policy for the vehicle. Although Keeler had two sets of keys for the Blazer, Knutson did not have his own keys to the vehicle.

On the morning of the accident, Keeler was supposed to drive Knutson to work, but Keeler was up all night with their infant daughter and was too tired to get up. When Knutson attempted to wake Keeler, Keeler said something incoherent and remained asleep. Unable to wake Keeler, Knutson drove himself to work in the Blazer. During his deposition, Knutson acknowledged that he took the Blazer without Keeler's permission, knowing that Keeler did not want him to drive the vehicle. Keeler could not recall Knutson's attempts to wake her.

Keeler moved the district court for summary judgment, arguing that she could not be held vicariously liable for the accident because there was no evidence that Knutson had express or implied permission to use the Blazer. Appellant opposed Keeler's motion, asserting that Knutson's conduct in taking the car after trying to wake Keeler was evidence of implied consent to use the vehicle. The district court granted Keeler's motion, finding no evidence that Keeler gave Knutson express or implied permission to use the vehicle. Appellant's case against Keeler was dismissed. This appeal follows.

D E C I S I O N

Appellant challenges the district court's grant of summary judgment. On appeal from summary judgment, we review the record to determine whether there is any genuine issue of material fact for trial and whether, in granting summary judgment, the district court committed an error of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Id.* There is no genuine issue of material fact when the evidence does not "permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

The moving party has the burden of showing the absence of a genuine issue of material fact. *Anderson v. State Dep't of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005). To defeat a summary-judgment motion, the non-moving party cannot rely on denials or general averments, but must offer specific facts to show that there is a genuine issue of material fact for trial. *DLH, Inc.*, 566 N.W.2d at 69. No genuine issue of material fact exists when "the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *Id.* at 71; *see also Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006) (stating that "[a] party need not show *substantial evidence* to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions").

Minn. Stat. § 169.09, subd. 5(a) (2006), provides that "[w]henever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be

deemed the agent of the owner of such motor vehicle in the operation thereof." Appellant argues that a genuine issue of material fact exists concerning whether Keeler gave Knutson express or implied consent to drive the Blazer. We disagree.

Keeler has established that she did not give Knutson express consent to use the Blazer. The burden of proving lack of consent requires a strong showing that the automobile was being used without the owner's knowledge and contrary to his or her explicit instructions. *Mut. Serv. Cas. Ins. Co. v. Lumbermens Mut. Cas. Co.*, 287 N.W.2d 385, 386 (Minn. 1979). The record indicates that on at least two occasions, Keeler explicitly told Knutson that he was not permitted to use the Blazer. Knutson knew that he was not permitted to use the Blazer and admitted that, on the morning of the accident, he used the Blazer without Keeler's permission. Appellant contends that the Blazer was used with Keeler's knowledge, but this contention is contrary to the record. Keeler was asleep when Knutson took the Blazer, and she could not recall Knutson's attempt to wake her.

Similarly, Keeler has shown that she did not impliedly consent to Knutson's use of the vehicle. Knutson is not an authorized driver on the vehicle's insurance policy, and he does not have his own keys to the vehicle. Moreover, "[t]he strongest evidence of implied permission [is] a series of prior uses without express permission and yet without objection by the owner." *Stewart v. Anderson*, 310 Minn. 495, 498, 246 N.W.2d 576, 578 (Minn. 1976). Knutson has no prior history of using the Blazer, authorized or unauthorized. Additionally, as noted above, Knutson used the Blazer without Keeler's knowledge. Implied permission is inappropriate where the owner is unaware of

unauthorized use. *See Shelby Mut. Ins. Co. v. Kleman*, 255 N.W.2d 231, 235 (Minn. 1977) (holding that a finding of no implied permission was not clearly erroneous where the owner had no reason to believe his car was being driven).

Appellant, on the other hand, has not come forth with specific facts that show a genuine issue of material fact concerning whether Keeler, as the owner of the Blazer, gave Knutson express or implied consent to drive vehicle. He asserts that neither Knutson nor Keeler recalls Keeler's exact words on the morning of the accident, and that Knutson's conduct in taking the Blazer is consistent with Keeler telling Knutson to drive himself to work. Appellant argues that because Keeler's words were ambiguous, the question of consent should be presented to a jury.

But whatever it was that Keeler said to Knutson, it could not have been consistent with telling Knutson to drive himself to work because Knutson admitted that he used the Blazer on the morning of the accident without Keeler's permission, knowing that Keeler did not want him to drive the vehicle. In light of Knutson's admission and the remaining evidence on the record, appellant's argument is too speculative and raises no more than a metaphysical doubt as to the issue of consent, which is insufficient to constitute a genuine issue of material fact. *See DLH, Inc.*, 566 N.W.2d at 71.

As a result, there is no genuine issue of material fact for trial and the district court did not err in granting summary judgment.

Affirmed.