IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TAWNIE BEARWOOD,	)	No. 64164-6-I
	)	
Appellant,	)	DIVISION ONE
	)	
v.	)	
	)	
JANE THURIK,	)	UNPUBLISHED OPINION
	)	
Respondent.	)	FILED: June 14, 2010
	)	

Lau, J. — Under the family car doctrine, a parent may be liable for a family member's negligence if the parent provides or maintains a car for family purposes and expressly or impliedly consents to the family member's use of the car at the time of the accident. Because Tawnie Bearwood failed to make any showing that Jane Thurik maintained her adult child's car for family purposes or exercised any control over the child's use of that car, the trial court properly dismissed Bearwood's action against Thurik on summary judgment. We therefore affirm.

FACTS

Viewed in the light most favorable to Bearwood, the materials before the trial court support the following factual summary. On June 21, 2005, 24-year-old Arielle Thurik was driving her 1996 Toyota Camry in Kirkland when she collided with a car

driven by Tawnie Bearwood. Arielle's uncle had given her the Camry in 1999 as a high school graduation gift and as an incentive to remain in college. Jane Thurik, Arielle's mother, included her name on the Camry's title because Arielle was only 18.[1]

Arielle was living with her mother at the time of the accident and except for a few short periods, had lived with her mother since graduation. When Arielle was 19, she stopped attending college for a semester, and Jane did not allow her to use the car. During this period, Jane paid for some repairs to the transmission. She expected Arielle to reimburse her for this repair, but did not believe that Arielle ever did. Jane returned the Camry to Arielle after a few months. In March 2003, Jane removed her name from the Camry's title because "I just felt like it wasn't my car."

The evidence before the trial court includes few specific details about financial arrangements between Arielle and Jane regarding the Camry. When Arielle first received the Camry, Jane provided some money for gas. But as she became older and began working, Arielle paid for the gas. At her deposition in 2009, Jane believed that Arielle was "between jobs" at the time of the accident, but could not remember whether Arielle had made any specific requests for gas money around that time. Jane thought that Arielle might have been receiving unemployment compensation or some financial assistance from her father, who was living in Spokane.

Jane had no formal agreement with Arielle for the payment of rent or other household expenses.

> I don't recall Arielle specifically saying, "I need money for gas for the car." Ours was more of an informal relationship where when Arielle needed some money, I would help her out. And sometimes she was borrowing money. You know, I mean there was—she has repaid me over the years some substantial amounts

[1] For purposes of clarity, we use the Thuriks' first names.

> of money, so I can't—I can't say that there was specific requests for money for gas.

In her declaration, Arielle stated that Jane had helped her with "various living expenses since 1999," but as her income increased, "I reimbursed my mother for a substantial portion of the expenses she paid on my behalf."

At the time of the accident, Arielle was insured under Jane's policy, which listed Arielle as the primary driver of the Camry. Jane arranged to have Arielle added to the policy because it provided more favorable coverage and rates than Arielle had been able to find on her own. According to Jane, Arielle contributed to the cost of insurance coverage over the years by repaying amounts that her mother or father had paid and by making her own payments to the insurer. But the record does not indicate whether, or to what extent, Arielle paid for her insurance coverage at the time of the accident.

Over the years, Jane would occasionally use Arielle's car if, for example, her own car needed repair. In each case, Jane would inform Arielle or ask for permission. "When she was 24, I suppose you could look at it more like permission that I would say—I wouldn't just take her car without letting her know." According to Arielle, Jane used the Camry only on rare occasions, "but only after securing my permission in advance." Arielle never asked her mother for permission to use the Camry, and no other family members ever used the car. Jane never had her own key to the Camry, but both Jane and Arielle kept extra keys to their cars in a key box because they had previously lost their keys.

On April 8, 2008, Bearwood filed this action for personal injuries against Jane Thurik, eventually claiming that Jane was liable under the family car doctrine.[2] Jane moved for summary judgment, arguing that the family car doctrine did not apply

[2] Bearwood never named Arielle as a defendant.

because she did not provide or control the car that Arielle was driving at the time of the accident. The trial court granted Jane's motion and dismissed Bearwood's claims. The court also denied Bearwood's motion for reconsideration.

Standard of Review

When reviewing a grant of summary judgment, an appellate court undertakes the same inquiry as the trial court. Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). We consider the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

On appeal, Bearwood contends there are material factual issues as to Jane's liability for the accident under the family car doctrine. To establish a parent's liability for the negligent conduct of a family member under the family car doctrine, Bearwood had to prove each of the following elements:

> (1) the car is owned, provided or maintained by the parent (2) for the customary conveyance of family members and other family business (3) and at the time of the accident the car is being driven by a member of the family for whom the car is maintained, (4) with the express or implied consent of the parent.

Cameron v. Downs, 32 Wn. App. 875, 879–80, 650 P.2d 260 (1982); see also Coffman v. McFadden, 68 Wn.2d 954, 958, 416 P.2d 99 (1966). The family car doctrine is based on agency principles and "the members of the family who are permitted to drive the automobile are viewed as the agents of the owners if it is established that they were

using the vehicle in furtherance of a family purpose for which it was maintained." Kaynor v. Farline, 117 Wn. App. 575, 584, 72 P.3d 262 (2003).

Bearwood first contends there was a genuine factual issue as to whether Jane "maintained" Arielle's Camry. She points to evidence that Jane did not charge Arielle for rent, occasionally gave Arielle gas money, paid for repairs on at least one occasion, and indirectly subsidized Arielle and the car by giving her money and paying for various unspecified expenses.

Bearwood maintains that the facts here are similar to those in Kaynor, in which the court found a factual issue as to whether the parents of a 17-year-old boy maintained his car for purposes of the family car doctrine. In reaching this conclusion as to the mother, who had not contributed to the cost of the vehicle, the court relied on evidence that the mother allowed the car to be titled in her name, permitted her son to keep the vehicle at her house, purchased a set of snow tires, and provided insurance for her son for two months. Kaynor, 117 Wn. App. at 585.

Although superficially similar, the facts here differ significantly from those in Kaynor. In analyzing the issue of maintenance, the court in Kaynor considered the relatively short period of about nine months between the minor's purchase of the car and the accident. The record before the court on summary judgment clearly included specific evidence of maintenance costs and other vehicle-related expenses during this period. See Kaynor, 117 Wn. App. at 580.

Here, however, Bearwood does not identify any specific maintenance expenses that Arielle incurred during several years leading up to the accident. Nor is there any evidence of Arielle's employment, income, or general expenses during this period. Jane acknowledged that she had paid for a transmission repair, but that occurred five

years before the accident and before Jane removed her name from the title. Both Jane and Arielle acknowledged that Jane had contributed to Arielle's expenses over the years, including insurance, but there was no evidence or even estimate of the amounts involved or of the "significant" amounts that Arielle had paid back. Under the circumstances, Bearwood's claim that Jane indirectly subsidized and maintained Arielle's car was highly speculative. See Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992) (nonmoving party cannot rely on speculative statements to prevent summary judgment).

But even if we assume the evidence was sufficient to create a factual issue as Jane's maintenance of the Camry, Bearwood failed to identify any evidence supporting an inference that the car was for the customary conveyance of family members or family business. This element requires proof that the car was for the "general use, pleasure, and convenience of the family." Coffmann, 68 Wn.2d at 95. Nor did Bearwood make any showing that Arielle was using the car at the time of the accident with Jane's express or implied consent.

In order to show a family purpose, a party need not demonstrate that the car was provided for the use of multiple family members. Kaynor, 117 Wn. App. at 587. Nor does the driver's exclusive use preclude application of the family car doctrine. Kaynor, 117 Wn. App. at 588. But a vehicle "cannot be maintained for a family purpose if the parent has no control over the use of the vehicle or the activities of the driver." Kaynor, 117 Wn. App. at 589.

In Kaynor, the court concluded there was a factual issue as to family purpose even though the minor was the exclusive driver.

Here, the evidence indicates that while Nicholas may have been the exclusive

> driver of the Jeep, he did not exercise exclusive control over the use of vehicle. Instead, the evidence indicates that the Jeep was provided for Nicholas so that he could assist his parents by transporting himself to his daily activities and visitations with his father in Idaho. More importantly, the evidence indicates that Nicholas was required to obtain permission to take the vehicle on longer trips. By controlling Nicholas, his parents arguably controlled and defined the use of the Jeep as a vehicle for the general use, pleasure, and convenience of both parents. In sum, Ms. Kaynor has provided sufficient evidence to raise a question of fact as to whether Nicholas's parents provided the Jeep for the general use, pleasure, and convenience of the family.

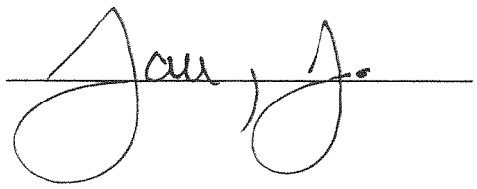
Kaynor, 117 Wn. App. at 589–90.

Here, unlike Kaynor, there was no evidence that at the time of the accident, Jane maintained the Camry to satisfy an obligation to transport her adult daughter or to otherwise alleviate family transportation problems. Jane acknowledged that she had driven the Camry on rare occasions, including once when her own car needed repairs, but always with Arielle's knowledge or permission. Such occasional use does not support an inference of family purpose. See Hulse v. Driver, 11 Wn. App. 509, 517, 524 P.2d 255 (1974); Kaynor, 117 Wn. App. at 589. Nor is there evidence, with the one exception five years before the accident, suggesting that Jane ever exerted or attempted to exert any control, express or implicit, over her adult daughter's use of the Camry. Arielle never sought permission to use her own car and nothing in the record supports an inference that she was using the car with her mother's express or implied permission at the time of the accident.

Bearwood asserts that Arielle's "total dependence" on Jane supports an inference that Jane impliedly consented to Arielle's use of the car. In support of this claim, Bearwood suggests various ways that Jane "could have" denied Arielle access to the car. But such speculation, unsupported by any admissible evidence, is insufficient to defeat summary judgment. Because Bearwood failed to make any showing that Jane

maintained Arielle's car for a family purpose or that Arielle was using the car with Jane's express or implied permission at the time of the accident, the trial court properly dismissed Bearwood's action on summary judgment. See Young v. Key Pharm., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (on summary judgment, complete failure of proof concerning an essential element necessarily renders all other facts immaterial).

Affirmed.



WE CONCUR: