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THE FAMILY PURPOSE DOCTRINE IS STILL VALID IN ARIZONA

Young v. Beck (Ariz. Supreme Court, April 5, 2011)

The Becks provided their seventeen-year-old son Jason with a vehicle to travel to and from school, church, and work. If he obtained permission, he could also use the vehicle for social and recreational purposes. After Jason got into an accident, his parents specifically instructed him not to "taxi" his friends or drive their girlfriends home. About a month later, Jason's mother gave him permission to drive the vehicle to his friend's house, spend the night there, and drive home the next day. She did not give him permission to use the vehicle for any other purpose. That night, Jason drove around with several friends as they threw eggs at houses and parked cars. On the way to drop off one of his friends, Jason's vehicle collided with a vehicle driven by Young, who was seriously injured. Young sued the Becks under the family purpose doctrine. On cross-motions for partial summary judgment regarding the doctrine's applicability, the superior court ruled in favor of Young. The court of appeals affirmed.

The Supreme Court also affirmed, rejecting the Becks' arguments against the Family Purpose Doctrine. That doctrine states that the owner of an automobile is responsible for damages to anyone injured when the auto is driven by a member of the family, with or without the owner's permission. The court first rejected the Becks' argument that the Legislature abrogated the Family Purpose Doctrine when it abolished joint and several liability in most cases. The family purpose doctrine expressly rests on agency principles, and the Legislature carved out an agency exception to the abolishment of joint and several liability. Second, it rejected the argument that the Financial Responsibility Act (which requires vehicle owners to carry liability insurance and insurance policies to cover all permissive drivers), preempted the Family Purpose Doctrine. Requiring all Arizona vehicle owners to carry minimum limits of liability coverage is not inconsistent with imposing vicarious liability under the Family Purpose Doctrine. Furthermore, a law requiring minimum liability coverage of only $15,000 per person and $30,000 per occurrence does not guarantee that victims of serious accidents caused by young, inexperienced, and financially insecure drivers will be fully compensated. Finally, the policy goals underlying the Family Purpose Doctrine still exist today, and numerous states continue to follow the doctrine. Although policy arguments exist for and against the Doctrine, the court found no compelling reason to abolish it.

COURT REJECTS THE "EMPLOYEE'S OWN CONVEYANCE RULE" AS AN EXCEPTION TO THE "GOING AND COMING RULE" IN TORT CASES

Carnes v. Phoenix Newspapers, Inc. (Ct. Appeals, Div. One, April 7, 2011)

Carnes sued Phoenix Newspaper, Inc. for the wrongful death of her husband. A PNI employee driving her own personal vehicle home from her shift delivering newspapers hit Mr. Carnes while he was riding his bicycle. PNI requires its employees to use their own personal vehicles to deliver newspapers. Carnes claimed that PNI was vicariously liable for its employee's negligence because the employee was an agent of PNI, acting within the course and scope of employment at the time of the accident.

PNI moved for summary judgment arguing that under the "going and coming rule," an employer is not liable for the tortious acts of its employees while their employees are going to or returning from work. The policy for this rule stems from the fact that during these times, an employer does not have control, or the right to control, its employees. Carnes argued that the Court should adopt the "employee's own conveyance rule" as an exception to the "going and coming rule" in tort cases. This rule originated in workers' compensation cases and provides that if an employee, as part of their job, is required to drive his own vehicle for use during the working day, then the trip to and from work falls within the course and scope of employment.

The court of appeals rejected Carnes' argument. The purposes behind workers' compensation statutes and tort cases are fundamentally different. Workers' compensation rules are broad in scope because they compensate for losses attributed to the work place, and focus on placing the burden of injury on the industry as a whole. The respondeat superior standard in tort cases is more narrow, based on the employer's control over the employee, and is intended to encourage employers to supervise their employees to discourage negligent conduct toward victims. But an employer does not have the right to control an employee on his way home from work while driving his personal vehicle.

ERRONEOUS GRANTING OF SUMMARY JUDGMENT FOR INSURER DOES NOT GIVE REASONABLE BASIS TO DENY COVERAGE AS A MATTER OF LAW

Lennar Homes of Ariz., Inc. v. Transamerica Ins. Co. (Ct. Appeals, Div. One, April 14, 2011)

Lennar oversaw the development of 105 homes called Pinnacle Hill. Soon after homeowners moved in, they began to complain about construction problems. Several homeowners filed suit and others threatened litigation. Lennar tendered the claims to its commercial general liability insurers. Insurers filed a declaratory judgment action on coverage and Lennar counterclaimed. The insurers won summary judgment on the ground that the defects in the homes did not constitute an "occurrence" within the meaning of the policies. The court of appeals reversed, however, holding that the claims were sufficient to allege an "occurrence" under the policies.

About a year after the opinion was issued, the insurers again moved for summary judgment on Lennar's bad-faith claim. Their motion rested solely on the proposition that, as a matter of law, the superior court's initial ruling in their favor on the occurrence issue established that the insurers had a reasonable basis for denying coverage. The court rejected the proposition that the prior (erroneous) ruling in the insurer's favor meant the claim was "fairly debatable" as a matter of law. Whether the reasonableness of an insurer's coverage position may be determined as a matter of law depends on the nature of the dispute and other factors, including whether extraneous evidence bears on the meaning of the contested policy language. Here, whether the insurers acted reasonably in challenging Lennar's claims based on the meaning of the word "occurrence" in the policies was a question for the jury to resolve. The trial court's initial ruling might be relevant to that question, but the insurers' subjective beliefs about the coverage positions they took was a question of fact to be determined by the jury.

The court also held that an insurer that objects to coverage may not disregard its normal claims-handling responsibilities while the coverage issue remains unresolved.

HOMEOWNERS OWE NO DUTY TO LICENSEE FOR INJURIES SUSTAINED AFTER LEAVING THE PROPERTY

Wickham v. Hopkins (Ct. Appeals, Div. One, April 19, 2011)

The Hopkins went on vacation, leaving an adult co-worker to watch their home and their fourteen-year-old daughter, Tricia. One night while the co-worker was out of the house at dinner, Tricia invited friends over and wound up hosting a party of seventy "young people drinking beer, listening to music, and talking." One young person, Wickham, was seriously injured in an altercation in the street with other party goers. The court found that the Hopkins owed no duty to Wickham "after he left their premises." First, Wickham was not on the Hopkins' property when the injury occurred, and therefore they owed Wickham no duty of care pursuant to premises liability law. Second, even if Wickham had been on the Hopkins' property when injured, the Hopkins did not breach the limited duty owed to him as a licensee because

Wickham's injury did not result from a hidden peril or harm that the Hopkins willfully caused Wickham. Furthermore, the relationship between the parties did not create a duty on the part of the Hopkins' to protect Wickham, and no public policy or statute created such a duty either. Finally, although Wickham argued that the court should abolish the distinction between invitees and licensees, the court stated it had no authority to do so.

COURT DISCUSSES STANDARD FOR APPLYING REMITTITUR AND ADDITUR

Hanscome v. Evergreen at Foothills (Ct. Appeals, Div. One, April 21, 2011)

Plaintiff Hanscome, as the wife of decedent and on behalf of decedent's estate and minor child, sued Evergreen at Foothills Rehabilitation Center for elder abuse, negligence and wrongful death. Following a trial, the jury declined to award punitive damages, but awarded the minor child $1.2 million and the estate $200,000 in compensatory damages. The jury awarded nothing to the wife. Defendants moved for a remittitur or new trial, arguing that the award to the minor child was outrageously excessive. The court remitted the minor child's award of $1.2 million to $500,000, and held that an additur of $200,000 for the wife was appropriate. The court did not specify whether its analysis was based on what the court thought was reasonable, or what the evidence supported. The court ruled that if both parties rejected the proposed remittitur and additur, a new trial would take place.

Both parties rejected the remittitur/additur and appealed. The court of appeals stated that the proper standard in determining whether an adjustment to a jury award is appropriate is whether there is sufficient evidence to support the award, not whether the trial court believes the award is reasonable. As to the award to the minor son, the court held that because the trial court was not clear on the standard it applied, remand for further analysis was appropriate. The court then held that the additur for the wife was inappropriate because additur is not available when a jury award is zero. Finally, because Plaintiff failed to file a motion for new trial within fifteen days as required by Rule 59(g), Ariz.R.Civ.P., the trial court improperly granted Plaintiff a new trial on damages. The court held that the Defendants' timely filed motion did not authorize the court to grant relief to Plaintiff absent a timely motion.

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