[Cite as *Hoff v. Minder*, 2014-Ohio-3491.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

JUSTIN HOFF, et al.,	:	
Plaintiffs-Appellants,	:	Case No. 13CA31
vs.	:	
JACOB MINDER, et al.,	:	DECISION AND JUDGMENT ENTRY
Defendants-Appellees.	:	

APPEARANCES:

COUNSEL FOR APPELLANTS: Ethan Vessels, 309 Second Street, Marietta, Ohio 45750

COUNSEL FOR APPELLEES: Matthew Mullen, KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., L.P.A., 158 North Broadway, New Philadelphia, Ohio 44663

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 8-6-14
ABELE, P.J.

{¶ 1} This is an appeal from a Washington County Common Pleas Court summary judgment in favor of Louella Minder, defendant below and appellee herein. Justin and Brandi Hoff, plaintiffs below and appellants herein, assign the following error for review:

> "THE TRIAL COURT ERRED IN GRANTING THE APPELLEE'S RENEWED MOTION FOR SUMMARY JUDGMENT."

{¶ 2} On April 28, 2012, eighteen-year-old Jacob Minder, while driving appellee's (his grandmother's) vehicle, smashed head-on into a vehicle driven by Laura Hoff. Tragically, the accident resulted in Laura's death and seriously injured her young child.

{¶ 3} Appellants filed a complaint against Jacob Minder and Louella Minder and asserted that Jacob was negligent and that appellee negligently entrusted the vehicle to him.[1]

{¶ 4} Appellee subsequently requested summary judgment and asserted that no genuine issues of material fact remained regarding appellants' negligent entrustment claim. She argued that the facts fail to show that she knew, or should have known, that Jacob was incompetent or unqualified to operate the vehicle or that he was in fact an incompetent driver. Appellee asserted that she did not ever observe Jacob drive a vehicle negligently, recklessly, or in a careless manner. She stated that she had ridden in vehicles that Jacob drove, and he always operated the vehicle safely.

{¶ 5} In their opposition memorandum, appellants asserted that genuine issues of material fact remained. Appellants contended that the speeding ticket Jacob received four weeks before the accident and the traffic citation he received approximately seven months before the accident for failing to stop at a stop sign established his incompetence or inexperience to operate appellee's vehicle. Appellants pointed out that Jacob received the speeding ticket for driving 82 mph in a 55 mph zone.

{¶ 6} The trial court granted appellee summary judgment and determined that appellants could not show that Jacob was, in fact, an incompetent driver and that appellee knew or should have known that he was incompetent or inexperienced. The court determined that simply

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[1] Appellants later filed an amended complaint that added Highmark Blue Cross Blue Shield West Virginia as a defendant. Appellants asserted that Highmark may have a subrogated interest in the matter. Although the trial court did not explicitly resolve appellants' claim against Highmark, we observe that its decision entering summary judgment in appellee's favor rendered moot any subrogation interest Highmark held. Wise v. Gursky, 66 Ohio St.2d 241, 421 N.E.2d 150 (1981). Thus, the court's decision is a final appealable order. Id.

Additionally, appellants dismissed their claims against Jacob.

because Jacob was eighteen years old and had two prior traffic citations did not render him an incompetent driver. This appeal followed.

{¶ 7} In their sole assignment of error, appellants assert that the trial court improperly awarded the appellee summary judgment. They contend that the trial court wrongly concluded that the facts are legally insufficient to create a genuine issue of material fact as to whether the appellee negligently entrusted her vehicle to Jacob. Rather, appellants assert that the following facts create genuine issues of material fact regarding whether Jacob was an incompetent, inexperienced, or reckless driver: (1) Jacob received a speeding ticket for driving 82 mph in a 55 mph zone four weeks before the accident; (2) Jacob received a traffic citation for running a stop sign approximately seven months before the accident; and (3) Jacob was eighteen-years-old at the time of the accident. Appellants further argue that appellee knew, or should have known, that Jacob was an incompetent, inexperienced, or reckless driver when she entrusted the vehicle to him.

A

STANDARD OF REVIEW

{¶ 8} Appellate courts "review cases involving a grant of summary judgment using a de novo standard of review." Esber Beverage Co. v. Labatt USA Operating Co., L.L.C., 138 Ohio St.3d 71, 2013-Ohio-4544, 3 N.E.2d 1173, ¶9, citing Bonacorsi v. Wheeling & Lake Erie Ry. Co., 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, ¶24. Accordingly, appellate courts need not defer to a trial court's summary judgment decision, but instead, must independently review the record to determine if summary judgment is appropriate. E.g., Will Repair, Inc. v. Grange Ins. Co., — Ohio App.3d —, 2014-Ohio-2775, — N.E.3d— (8th Dist.), ¶16; Mustard v.

Auto Owners, — Ohio App.3d —, 2014-Ohio-865, 6 N.E.3d 1235 (4th Dist.), ¶7. To determine whether a trial court properly granted a summary judgment motion, an appellate court must review the Civ.R. 56 summary judgment standard, as well as the applicable law. Civ. R. 56(C) provides in relevant part:

> * * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶ 9} Thus, a trial court may grant summary judgment when "'(1) [n]o genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.'" Esber Beverage at ¶9, quoting M.H. v. Cuyahoga Falls, 134 Ohio St.3d 65, 2012-Ohio-5336, 979 N.E.2d 1261, ¶12, quoting Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977), citing Civ.R. 56(C).

{¶ 10} Under Civ.R. 56, the moving party bears the initial burden to inform the trial court of the basis for the motion and to identify those portions of the record that demonstrate the absence of a material fact. Todd Dev. Co., Inc. v. Morgan, 116 Ohio St.3d 461, 2008-Ohio-87, 880 N.E.2d 88, ¶12, citing Dresher v. Burt, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996).

Once the moving party satisfies its burden, the nonmoving party bears a corresponding duty to set forth specific facts to show that a genuine issue exists. Civ.R. 56(E); Dresher, supra. "Whether a genuine issue exists is answered by the following inquiry: Does the evidence present 'a sufficient disagreement to require submission to a jury' or is it 'so one-sided that one party must prevail as a matter of law[?]'" Turner v. Turner, 67 Ohio St.3d 337, 340, 617 N.E.2d 1123, 1126 (1993), quoting Anderson v. Liberty Lobby, 477 U.S. 242, 251–252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

{¶ 11} In the case at bar, the parties do not dispute the basic facts, but instead dispute whether the facts present a sufficient disagreement to require submission to a jury or whether the evidence is so one-sided that appellee must prevail as a matter of law.

B

NEGLIGENT ENTRUSTMENT

{¶ 12} As a general rule, a vehicle owner bears no liability for entrusting a vehicle to another who negligently injures a third party. Williamson v. Eclipse Motor Lines, 145 Ohio St. 467, 472, 62 N.E.2d 339 (1945). An owner may be liable, however, if the owner "permits the operation of his motor vehicle by one whom he knows, or should have known, to be so incompetent, inexperienced or so reckless as to render the motor vehicle a dangerous instrumentality when operated by such person." Id.; accord Gulla, 154 Ohio St. at 198. Ordinarily, an owner will not be liable unless the owner "entrusts his motor vehicle to one whose appearance or conduct is such as to indicate his incompetency or inability to operate the vehicle with due care." Gulla, 154 Ohio St. at 199. When a driver's incompetency is not readily apparent, "it must be affirmatively shown that the entruster had at that time knowledge of such

facts and circumstances relating to the incompetency of the entrustee to operate the motor vehicle as would charge the entruster with knowledge of such incompetency." Id. at 199-200.

{¶ 13} Thus, a vehicle owner may not be held liable for negligently entrusting a vehicle to another unless the plaintiff establishes that: (1) the vehicle owner permitted and authorized the entrustee to drive the vehicle; (2) "the entrustee was in fact an incompetent driver"; and (3) "the owner knew at the time of the entrustment that the entrustee was incompetent or unqualified to operate the vehicle, or had knowledge of such facts and circumstances as would imply knowledge on the part of the owner of such incompetency." Id. at 201; accord Elliot v. Harding, 107 Ohio St. 501, 507, 140 N.E. 338 (1923) (stating that owner may be liable under negligent entrustment theory for entrusting vehicle "to a person alleged to be so young, unskillful, and inexperienced as to render him incompetent to operate it"); Jarvis v. Staley, 4th Dist. Washington No. 12CA46, 2014-Ohio-271, ¶8; Evans v. Sayers, 4th Dist. Ross No. 04CA2783, 2005-Ohio-2135, ¶26. To prove an owner's liability under a negligent entrustment theory, a plaintiff must show "that the owner had knowledge of the driver's incompetency or inexperience or his reckless tendency as an operator of a motor vehicle, or that such owner in the exercise of ordinary care should have known thereof from facts and circumstances with which he was acquainted." Williamson, 145 Ohio St. at 472. To prove a driver's incompetence, a plaintiff must show that the driver was "wholly incompetent by reason of mental or physical disability to operate a vehicle, such as being of tender age, mentally deficient, physically deformed or intoxicated, or * * * any cause * * * known to the owner." Gulla, paragraph four of the syllabus; Bowlander v. Ballard, 6th Dist. Sandusky No. S-02-029, 2003-Ohio-2907, ¶28. Prior instances of the entrustee's negligent or reckless operation of a motor vehicle may support a

finding of incompetence or recklessness. Williamson, 145 Ohio St. at 473. Isolated incidents of failing to obey traffic laws, however, generally will not establish incompetence. See Marcum v. White, 4th Dist. Lawrence No. 1928 (Aug. 22, 1990); Cincinnati Insurance Co. v. Watson, 10th Dist. Franklin No. 88AP-898 (Mar. 2, 1989); Adkins v. Wright, 11th Dist. Ashtabula No. 1285 (Sept. 30, 1987). Instead, the incompetence must be "pervasive" to establish a triable issue. Bowlander at ¶28 (concluding that allegation that driver improperly attempted to pass a vehicle is insufficient to demonstrate incompetence so as to sustain a negligent entrustment claim).

{¶ 14} For example, in Ayad v. Gereby, 8th Dist. Cuyahoga No. 92541, 2010-Ohio-1415, the court determined that the evidence supported a finding that the twenty-year-old driver was incompetent when the driver (1) had been driving under a suspended license at the time of the accident, (2) previously had his license suspended, (3) had multiple speeding tickets and other driving infractions, and (4) had been convicted of operating a motor vehicle while intoxicated.

{¶ 15} In Keeley v. Hough, 11th Dist. Trumbull No. 2004-T-0038, 2005-Ohio-3771, the court concluded that genuine issues of material fact existed as to whether the driver was incompetent when the driver (1) had not held a valid driver's license for over ten years, (2) had three or four convictions for operating a motor vehicle while intoxicated, and (3) had been involved in an automobile accident five years before the accident at issue.

{¶ 16} Conversely, in Adkins, supra, the court determined that the driver's prior traffic violations were legally insufficient to create a triable issue as to whether the driver was incompetent. In Adkins, the driver had been involved in an automobile accident four years before the accident at issue and had previously received four traffic citations. The court explained: "The thought that [the driver] had been involved in an automobile accident almost

four years prior to [the accident at issue] is legally insufficient to support a [negligent entrustment] claim." The court further concluded that even though the driver had four prior traffic citations, "th[o]se citations did not render him an incompetent driver."

{¶ 17} In Watson, supra, the court determined that the seventeen-year-old's prior driving record was insufficient to create a genuine issue of material fact as to whether he was incompetent. In that case, when the driver was a fifteen-year-old he received a traffic citation for driving without an operator's license. Six months later, he received a speeding citation. Four to five months before the accident at issue, the driver received a citation for driving while under the influence. The appellate court noted that "[a]lthough this driving record might be extensive for a seventeen-year-old boy, it does not in and of itself rise to the level of incompetence, inexperience, or reckless tendencies that would require the [vehicle owner] to be put on notice that to permit the [driver] to operate the motor vehicle would be, in effect, negligently entrusting the vehicle to him."

{¶ 18} In Marcum, supra, this court determined that no genuine issues of material fact existed regarding the driver's competency to operate a vehicle. In that case, the driver had one prior driving infraction–he admitted to driving a vehicle while under the influence when he was a minor. We concluded that this evidence did not prove that the driver "was so incompetent or inexperienced as a driver to convert an automobile under his control into a dangerous instrumentality or that he tended to drive recklessly."

{¶ 19} In the case sub judice, we do not believe that the facts demonstrate pervasive incompetence, that Jacob was an inexperienced driver, or that Jacob tended to drive recklessly. Unlike the drivers in Ayad and Keeley who lacked valid driver's licenses at the time of the

entrustment, at the time appellee entrusted the vehicle to Jacob, Jacob was a licensed driver. By driving without a valid license, the drivers in Ayad and Keeley exhibited a disregard for the law. Moreover, both drivers in Ayad and Keeley had multiple driving infractions, including driving while under the influence convictions. In the case sub judice, Jacob had two prior traffic citations: one for running a stop sign, and one for speeding. The record does not shed light on the circumstances underlying the stop sign citation, but Jacob explained the circumstances underlying the speeding citation. He stated that approximately four weeks before the accident, he had a baseball game and had forgotten his cleats at home. Jacob went to retrieve his cleats from home, and before he left, the coach told him that if he missed the bus, it would leave without him. Jacob stated that he received the speeding ticket as he was rushed back to school, trying to catch the bus before it departed. He asserted that other than this one incident, he never drove over the speed limit. We do not believe that the two traffic citations equate to incompetency, inexperience, or recklessness sufficient to sustain a negligent entrustment action against appellee. Under the circumstances present in the case at bar, we cannot conclude that a traffic citation for speeding and a traffic citation for failing to stop at a stop sign makes Jacob an incompetent, inexperienced, or reckless driver.

{¶ 20} Additionally, simply because Jacob was eighteen years old at the time of the accident does not render him incompetent or inexperienced. Hundemer v. Partin, 12th Dist. Clermont No. CA2007-01-006, 2007-Ohio-5631, ¶8 (stating that simply because driver is eighteen years old does not make driver incompetent); Vouvoudakis v. Papalios, 11th Dist. Trumbull No. 95-T-5311 (May 3, 1996) (stating that inference of incompetence does not arise when vehicle owner entrusts a "high-performance sports car to an eighteen-year-old male driver"

and observing that driver had not appeared visibly impaired, had a reputation for being responsible, and had driven other cars without incident); Pfund v. Ciesielczyk, 84 Ohio App.3d 159, 164, 616 N.E.2d 560 (6th Dist. 1992) ("The tender age of a driver alone is not enough to demonstrate that the driver is incompetent.").

{¶ 21} Appellants nevertheless assert that the facts in the case at bar are similar to those involved in Rice v. Kanoza, 1st Dist. Hamilton No. C-110595, 2012-Ohio-2581. We do not agree. In Rice, a fifteen-year-old girl had been drinking beer while playing "beer pong" at a party. Id. at ¶16. The court determined that genuine issues of material fact remained as to whether the fifteen-year-old driver's beer drinking rendered her incompetent to operate the defendant's vehicle.

{¶ 22} We do not dispute the Rice court's decision that intoxication may indicate incompetency to operate a vehicle. Gulla at paragraph four of the syllabus (recognizing that intoxication may render driver incompetent); Williamson, 145 Ohio St. at 472 (stating that "owner assumes the risk of recklessness" when entrusting vehicle to intoxicated driver); Highnett v. Schwarz, 9th Dist. No. 10CA009762, 2011-Ohio-3252 (concluding genuine issue of material fact remained regarding driver's competency when vehicle owner observed driver consuming alcohol). However, in the case sub judice absolutely no evidence exists that Jacob had been drinking before appellee entrusted the vehicle to him. Thus, we do not find Rice dispositive.

{¶ 23} Appellants further rely upon Committee v. Rudolchick, 9th Dist. Lorain No. 12CA010186, 2013-Ohio-2373, to support their argument that genuine issues of material fact remain. In that case, however, the court did not consider the substantive merits of the defendant's summary judgment motion. Instead, the court reversed the trial court's judgment on

a procedural matter. The appellate court determined that the trial court improperly entered summary judgment when the defendant failed to support his summary judgment motion with proper Civ.R. 56(C) evidence. Thus, Committee does not support appellants' argument that the trial court in the case at bar improperly entered summary judgment in appellee's favor.

{¶ 24} Appellants also assert that whether a driver was incompetent, inexperienced, or reckless at the time of the entrustment is a factual question that a jury must resolve. However, this court previously reviewed as a matter of law whether a driver was incompetent. Marcum. In Marcum, we determined as a matter of law that the facts were legally insufficient to establish incompetency. Additionally, the courts in Adkins and Watkins reviewed the evidence to determine whether the facts were legally sufficient to demonstrate the driver's incompetency. We do not believe it violates summary judgment principles when a court determines whether a given set of facts minimally satisfies the applicable legal standard so as to require submission to a jury, or whether the facts are insufficient as a matter of law to create a triable issue. Indeed, this court has previously recognized that summary judgment may be appropriate even when an issue involves a question of fact. In Stibley v. Zimmerman, 4th Dist. No. 97 CA 51 (Aug. 26, 1998), we observed that although proximate cause in a negligence action ordinarily is a question of fact that precludes summary judgment, a court may nevertheless enter summary judgment when "the facts are clear and undisputed and the relation to cause and effect is so apparent that only one conclusion may be fairly drawn." Accord Fowler v. Williams Cty. Commrs., 113 Ohio App.3d 760, 776, 682 N.E.2d 20 (6th Dist. 1996) ("Although the issue of proximate cause is generally a question of fact, it becomes a question of law where the undisputed facts are such that no reasonable person could infer that a defendant's acts were the cause of a plaintiff's injuries.").

{¶ 25} In the case sub judice, we conclude that the facts are not sufficient as a matter of law to create a genuine issue regarding Jacob's incompetence, inexperience, or recklessness. At the time of the entrustment, Jacob had a four-week-old speeding ticket and a seven-month-old stop sign violation. Neither violation leads to a reasonable conclusion that Jacob was incompetent to operate a vehicle at the time of the entrustment. Moreover, neither violation leads to a reasonable conclusion that Jacob was a reckless or inexperienced driver at the time of the entrustment. We do not believe that the evidence presents a sufficient disagreement regarding Jacob's competence, experience, or behavior to justify submitting the case to a jury. While we are certainly not insensitive to the tragedy involved in the case at bar, we are unable to conclude that the facts lead to a reasonable belief that appellee negligently entrusted her vehicle to Jacob. Consequently, we believe that the trial court properly entered summary judgment in appellee's favor.

{¶ 26} Accordingly, based upon the foregoing reasons, we hereby overrule appellants' sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellees recover of appellants the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.