[Cite as *Moody v. Marr*, 2011-Ohio-3494.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Keith D. Moody, et al.

Appellee

v.

Russell R. Marr

Appellant

Court of Appeals No. L-10-1244

Trial Court No. CVE-09-21870

DECISION AND JUDGMENT

Decided: July 15, 2011

* * * * *

Steven J. Zeehandelar and Christopher S. Bartkowski, for appellee State Farm Mutual Automobile Insurance Company.

Louis R. Moliterno and Ian R. Luschin, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, Russell R. Marr, appeals a September 9, 2010 judgment of the Toledo Municipal Court in a civil action for damages arising from property damage to a 2006 Pontiac G6 automobile. Keith D. Moody and his insurer, appellee State Farm Mutual Automobile Insurance Company ("State Farm"), brought the action. Pursuant to a jury verdict at trial, the trial court awarded State Farm judgment against appellant in the amount of $10,178.

{¶ 2} Appellant asserts one assignment of error on appeal:

{¶ 3} "Appellant's Assignment of Error

{¶ 4} "1. The trial court erred in failing to grant Appellant Marr's motion for directed verdict because Appellee State Farm's subrogor, Keith Moody, admitted he was not the owner of the vehicle that was the subject of State Farm's subrogation claim for property damage. State Farm also produced no evidence that Moody was responsible for damage to the vehicle pursuant to his lease agreement. Therefore, State Farm failed to produce evidence of its subrogor's right to recover against Marr for damage to the vehicle."

{¶ 5} The Pontiac was damaged in a motor vehicle collision that occurred on April 10, 2009. Liability for the collision was not in dispute at trial. The trial court granted Moody and State Farm summary judgment on the issue prior to trial. Appellant does not challenge that judgment on appeal.

{¶ 6} The evidence at trial was that Moody leased the Pontiac from G.M.A.C., who owned the vehicle. Moody leased the vehicle new. He had no plans to end the lease when the collision occurred. Rather, he testified that he was pleased with the vehicle and was considering buying it. The lease itself was not in evidence at trial.

{¶ 7} State Farm was Moody's insurer and provided collision and car rental insurance coverage for the Pontiac. Expert witness testimony at trial stated that the Pontiac was a total loss and that the estimated actual cash value of the Pontiac

immediately before the collision was $12,238. State Farm paid G.M.A.C. that amount. It also paid car rental expenses of $188.48 and sold the vehicle at salvage for $884.13.

{¶ 8} Moody testified that after the payment by State Farm to G.M.A.C., he was not required to make further payments to G.M.A.C. under his lease. Moody testified, however, that it was necessary for him to purchase another vehicle.

{¶ 9} At trial, the court granted appellant's motion for a directed verdict as to the claim of Keith Moody. It overruled the motion for a directed verdict as to State Farm's claim. This appeal concerns the award of damages to State Farm alone in the amount of $10,178 for payments it made on behalf of Moody arising from the collision.

{¶ 10} Appellant argues that no claim for damages may be maintained by the lessee of a leased vehicle without meeting the requirements of R.C. 4505.04(C)(2) and that State Farm failed to meet those requirements. The statute provides that the lessee is to attach a copy of the lease agreement to the complaint, that under the lease agreement the lessee must be legally responsible for repairs to the vehicle, and that a copy of the complaint for damages to the vehicle is to be served the owner of the vehicle. See R.C. 4505.04(C)(2)(a)-(c).

{¶ 11} Appellee argues that as a lessee, Keith Moody held the rights of a bailee to bring an action for damage to the leased vehicle while in his possession and that the requirements of R.C. 4505.04(C) apply only where there are competing claims to ownership of a leased vehicle.

{¶ 12} Ohio's Certificate of Title Act was enacted in 1937. *Kelley Kar Co. v. Finkler* (1951), 155 Ohio St. 541, 545. Prior to the enactment, title to a motor vehicle was evidenced by bill of sale. Id. General Code Section 6290-4 of the Act was the precursor to R.C. 4505.04(A). *Saturn of Kings Automall, Inc. v. Mike Albert Leasing, Inc.* (2001), 92 Ohio St. 3d 513, 516.

{¶ 13} R.C. 4505.04(A) provides:

{¶ 14} "A) No person acquiring a motor vehicle from its owner, whether the owner is a manufacturer, importer, dealer, or any other person, shall acquire any right, title, claim, or interest in or to the motor vehicle until there is issued to the person a certificate of title to the motor vehicle, or there is delivered to the person a manufacturer's or importer's certificate for it, or a certificate of title to it is assigned as authorized by section 4505.032 of the Revised Code; and no waiver or estoppel operates in favor of such person against a person having possession of the certificate of title to, or manufacturer's or importer's certificate for, the motor vehicle, for a valuable consideration."

{¶ 15} The statutory requirement to employ certificates of title to prove ownership of automobiles under R.C. 4505.04(A) historically has been recognized as not applying to actions brought to recover for property damage to automobiles unless the case presents a serious dispute as to ownership of the vehicle. *Despones v. Eaton* (Dec. 18, 1998), 6th Dist. No. OT-98-014; *Hardy v. Kreis* (June 26, 1998), 6th Dist. No. L-97-1352. The statute has been held to apply only in disputes involving competing claims of ownership

of a motor vehicle. *Saturn of Kings Automall*, 92 Ohio St.3d at 519; *Hughes v. Al Green, Inc.* (1981), 65 Ohio St.2d 110, 115-116, quoting with approval, *Grogan Chrysler-Plymouth, Inc. v. Gottfried* (1978), 59 Ohio App.2d 91, 94-95.

{¶ 16} At issue in this case are the requirements of R.C. 4505.04(C) regarding tort claims by lessees arising from property damage to leased vehicles. The provision is drawn as an exception to the requirements of R.C. 4505.04(A). In our view the requirements of R.C. 4505.04(C) are to be limited in the same manner as restrictions under R.C. 4505.04(A). They apply only in litigation involving a dispute as to ownership of the vehicle. We agree with the Third District Court of Appeals in *Piqua Transfer & Storage Co. v. Relocation Advisors, Inc.* (May 12, 1994), 3d Dist. No. 17-93-16, that R.C. 4505.04(C) is intended to protect the interests of owners of automobiles and not tortfeasors responsible for damaging them.

{¶ 17} Even assuming there remains life to the statutory restrictions under R.C. 4505.04(C) absent a dispute as to ownership of the leased vehicle, we find no error in the trial court's failure to follow R.C. 4505.04(C) here. In its complaint, State Farm sought damages of $11,542.35 against appellant based on a payment to the vehicle owner of $12,238 for damage to the Pontiac and additional sums for a car rental. The action presented no claim for which the vehicle owner had not already been fully compensated.

{¶ 18} To the extent appellant argues, outside of R.C. 4505.04(C) considerations, that the evidence at trial failed to support State Farm's subrogation claim, we find the argument is also without merit. We agree with the argument of appellee that under our

decision in *Despones v. Eaton*, Keith Moody, as a lessee, held at least the status of a bailee with respect to the leased Pontiac and was entitled to bring an action in his own right for damages to the vehicle.

{¶ 19} In *Despones v. Eaton*, supra, we considered a claim for damages brought by an employee of a car dealership. The employee was permitted by his employer to drive a demonstrator car. The car was damaged in a motor vehicle collision and the employee brought a claim for damages against the other driver in the collision. After determining that the restrictions of R.C. 4505.04 did not apply to the claim, we held the employee was at least a bailee of his employer and entitled to bring an action in his own right to recover for property damage to the bailed vehicle.

{¶ 20} Accordingly, we find appellant's assignment of error is not well-taken.

{¶ 21} We conclude that appellant was not denied a fair trial and affirm the judgment of the Toledo Municipal Court. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE