

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justice of this Court may evaluate possible disqualification or recusal.

William H. Bardin, plaintiff/appellee.

C. Eiland Harris, counsel for William H. Bardin.

Osie Singleton, co-defendant.

Enterprise Leasing Company-South Central, Inc., defendant/appellant.

James G. Wyly and Thear J. Lemoine, Phelps Dunbar LLP, Gulfport, Mississippi, counsel for Enterprise.

Fred L. Banks, Jr. and Luther T. Munford, Phelps Dunbar LLP, Jackson, Mississippi, counsel for Enterprise.

SO CERTIFIED, THIS THE 3rd day of December, 2008.



C. EILAND HARRIS

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-IA-02276-SCT

ENTERPRISE LEASING, COMPANY – SOUTH
CENTRAL, INC.

APPELLANT

v.

WILLIAM H. BARDIN

APPELLEE

INTRODUCTION

In this case Enterprise Leasing Company – South Central, Inc. (hereinafter Enterprise) rented to Osie Singleton a Buick Automobile on which it neglected to require Mr. Singleton to have insurance as required by Mississippi Law. Shortly after taking possession of the Buick Automobile Mr. Singleton while driving from Vicksburg to Jackson ran off I-20 and struck Mr. William H. Bardin, causing sever and permanent injuries to his spine and back that has cost thousands of dollars and that could cost Mr. Bardin in the millions of dollars. Mr. Bardin brought suit against Mr. Singleton (the uninsured driver) and Enterprise for damages and injuries suffer because of the negligence of Mr. Singleton and the negligent entrustment or negligence per se of Enterprise.

Enterprise filed for summary judgment asking to be dismissed from the suit since as a self insurer it provided the minimum insurance coverage for Mr. Singleton and could not be considered liable for the negligence of Mr. Singleton. The lower Court denied Enterprise's Summary Judgment Motion finding that material fact existed mandating this case go to trial before a jury. Being aggrieved of the Lower Court's denial of its summary judgment motion Enterprise filed this interlocutory appeal.

There is no argument that Mr. Singleton, the operator of the vehicle, did not have insurance coverage on the automobile as required by Mississippi Law, and he was liable for

the accident, and that Enterprise rented the Buick Automobile to Mr. Singleton without requiring he obtain insurance coverage for the aforesaid vehicle. Now Enterprise, as owner of the vehicle, asserts itself as a self insured with limit insurance coverage.

Mr. Bardin asserts that Enterprise is guilty of negligent entrustment and/or negligence per se in this matter making it liable for his injuries and damages.

STATEMENT OF THE ISSUES

1. Did Enterprise negligently entrusted the Buick Automobile to Mr. Osie Singleton, vehicle operator, by failing to require Mr. Singleton to obtain mandatory automobile insurance coverage, and is Enterprise negligent per se in allowing Mr. Singleton to operate its vehicle without requiring that he obtain insurance coverage prior to operating the vehicle.
2. Can Enterprise assert itself as a self-insurer and hide behind the minimum amounts for coverage or under the theory of entrustment or negligence per se be responsible for the total amount of damage caused to Mr. Bardin.

STATEMENT OF THE CASE

After being severely injured by Osie Singleton, who was driving a car owned and rented by Enterprise, Mr. William H. Bardin, filed suit in the First Judicial District of Hinds County, Mississippi, alleging negligence on the part of Mr. Singleton and negligent entrustment on behalf of Enterprise. Enterprise filed for summary judgment. The lower Court found that an issue of material fact existed and denied Enterprise's motion for summary judgment, and the lower Court also denied the rehearing on the motion for summary judgment of Enterprise for the same reason. Being aggrieved with the decision of the lower Court Enterprise was granted interlocutor appeal.

Statement of the facts:

Suit was filed by Mr. William H. Bardin against Mr. Osie Singleton and Enterprise because of injuries suffered in an accident in which Mr. Singleton was at fault. Mr. Singleton did not have insurance coverage as required by Mississippi Law, and Mr. Bardin alleged that Enterprise negligently entrusted the Buick Automobile to Mr. Singleton and/or committed negligence per se in allowing the Buick to be operated without the required insurance, and that both Singleton and Enterprise were responsible for injuries and damages that Mr. Bardin had incurred.

Enterprise asserts itself as a self-insured in its motion for summary judgment alleging that it met the insurance requirements on behalf of Mr. Singleton and that as a self-insurer it could provide the minimum amounts of insurance of \$10,000.00 per person, \$20,000.00 per accident, with property damage of \$5,000.00. The amounts set forth by statute at the time of the accident.

The negligence of Mr. Singleton in causing the accident and damages has not been denied, and Enterprises has not denied that it allowed Mr. Singleton to rent its Buick Automobile without requiring Mr. Singleton to obtain insurance. Enterprise argues that it is not negligent and cannot be responsible for Mr. Singleton's negligence. Only provide the minimum amounts of insurance coverage on behalf of Mr. Singleton. Mr. Bardin asserts that if Enterprise takes on the role of self insured that the limits, as requested by Enterprise, should not be the minimum amounts but the actual damages incurred by Mr. Bardin. Enterprise states that Mr. Singleton using its vehicle is the same as a family member using a family car. However, Enterprise is a corporation in the business of renting vehicles to the public and does not stand it the position of a "family member" or someone who uses a family car.

Mr. Singleton did not have the required insurance to operate a vehicle in Mississippi, and under the definition of Miss Code of 1972, amended, §63-15-3 Mr. Singleton was the operator and Enterprise was the owner of the Buick Automobile.

SUMMARY OF THE ARGUMENT

The lower Court was correct in denying the summary judgment motion of Enterprise. Enterprise is guilty of negligent entrustment and/or negligence per se: Enterprise had sole control of its Buick Automobile and has as its policy the requirement those individuals renting vehicles from Enterprise to have insurance in place prior to operating its vehicles. Enterprise failed to require insurance coverage in this case and asked that it be dismissed from this suit, since Mr. Singleton is covered by Enterprise's self insured status and Enterprise, under its self insurer status, could only be liable for the bare minimum self insurance coverage.

The limitation of liability relied upon by Enterprise is unfounded and if it proceeds to rely upon a self-insured status then should be required to pay the total amount of the loss suffer by Mr. Bardin for his personal injuries, pain and suffering, and medical expenses.

Tort liability may arise under the theory of negligent entrustment against one who makes a dangerous instrumentality available to another person under circumstances that create an unreasonable risk of injury to third persons and such injury, in fact, occurs.

The theory of negligence per se in essence provides that breach of a statute or ordinance renders the offender liable in tort without proof of a lack of due care." *Palmer v. Anderson Infirmary Benevolent Ass'n*, 656 So. 2d 790, 796 (Miss. 1995). "To prevail in an action for negligence per se, a party must prove that he [or she] was a member of the class sought to be protected under the statute, that his [or her] injuries were of a type sought to be avoided, and that violation of the statute proximately

caused his [or her] injuries." *Snapp v. Harrison*, 699 So. 2d 567, 571 (Miss. 1997) (citing *Thomas v. McDonald*, 667 So. 2d 594, 597 (Miss. 1995)). "When a statute is violated, the injured party is entitled to an instruction that the party violating is guilty of negligence, and if that negligence proximately caused or contributed to the injury, then the injured party is entitled to recover." *Gallagher Bassett Servs. v. Jeffcoat*, 887 So. 2d 777, 787 (Miss. 2004). Mr. Bardin is certainly within the class of persons sought to be protected by the requirement that persons operating a vehicle upon the roads of the State of Mississippi must have insurance coverage since individuals driving upon the road with people who rent cars and might suffer injury due to the careless driving of an uninsured person.

Mr. Bardin is a prime example of an individual sought to be protected by Miss. Code Ann. Section 63-15-43. This statute sections require that only an insured driver is allowed to operate cars upon the roads of this State. In any event the question of whether Enterprise was negligence per se which caused or contributed to the injuries suffered by Mr. Bardin is for a jury to decide. is a question

ARGUMENT

Enterprise states that the summary judgment denial was in error, but the lower Court found that their existed material facts in issue. "All that is required of a nonmoving party to survive a motion for summary judgment is to establish a genuine issue of material fact by the means available under . . . Miss. R. Civ. P. 56(c), *Spartan Foods Systems, Inc. v. American Nat'l Ins Co.*, 582 So. 2d 399, 402 (Miss.1991) That this Court should sustain the summary judgment denial entered by the lower Court and remand this case to the lower Court for trial.

Mr. Singleton did not have the required insurance to operate a vehicle in Mississippi, and under the definition of Miss Code of 1972, amended, §63-15-3 Mr. Singleton was the

operator and Enterprise was the owner of the Buick Automobile and controlled who could and could not operated its vehicles.

Enterprise has sought to impose itself as the self insured in this case saying that its coverage was sufficient to satisfy Section Miss. Code of 1972, amended, Section 63-15-63.

Under the self insured provisions of **§63-15-53 Self Insurance**, it provides (1) Any person in whose name more than 25 motor vehicles are licensed may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in subsection (2) of this section. (2) The department may, in its discretion, upon the application of a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of **ability to pay judgments obtained against such person.** (3) Upon not less than five days notice and a hearing pursuant to such notice, the department may upon reasonable grounds cancel a certificate of self-insurance. **Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.** (Emphasis added)

Enterprise is responsible for the damages caused by Osie Singleton under the theory of negligent entrustment and/or negligence per se, and under said liability cannot be held to the minimum amounts of coverage required of a self insurer, but shall be irresponsible for the total damages suffered by Mr. Bardin.

Mr. Bardin has charged Enterprise with negligent entrustment and/or negligence per se: Enterprise had sole control of its Buick Automobile and has as its policy the requirement that an individual renting vehicles from Enterprise to have insurance in place prior to operating its vehicles. Enterprise failed to require insurance coverage in this case and have asked that they be dismissed from this suit, since Mr. Singleton is covered by Enterprise's

self insured status and that Enterprise, under its self insurer status, only be liable for the bare minimum self insurance coverage in place at that time as sufficient coverage for the accident that severely crippled and injured Mr. Bardin.

Mississippi recognizes that tort liability may arise under the theory of negligent entrustment against one who makes a dangerous instrumentality available to another person under circumstances that create an unreasonable risk of injury to third persons and such injury, in fact, occurs. The Mississippi Supreme Court, in defining the circumstances under which such liability will be imposed, has subscribed to the negligent entrustment definition set out in the Restatement of Torts, Second. (*Slight v. First Nat'l Bank of Holmes County*, 735 So. 2d 963, 969 (¶32) (Miss. 1999). The Restatement defines negligent entrustment as: One who supplies directly or through a third person a chattel for use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them. (Emphasis added) Restatement (Second) of Torts § 390 (1965). Case law in Mississippi has further indicated that the most critical consideration in a claim negligent entrustment is the issue of right of control. *Slight*, 735 So. 2d at 969. Enterprise in this case owned and had title to the vehicle, and had complete control of who had use of the vehicle. Enterprise allowed Mr. Osie Singleton to rent said vehicle without requiring Mr. Singleton to have the mandatory insurance as required by law.

To determine the question of negligent entrustment you must determine whether the arrangement regarding the vehicle driven by Osie Singleton was such that Enterprise could be said to have the right of control over that vehicle. The Mr. Bardin suggest that Enterprise had sufficient ownership interest in the vehicle to be deemed in control and that its decision to permit Osie Singleton to rent said vehicle and to enjoy possession and operation was an

act of entrustment. Once the vehicle was entrusted to Mr. Singleton he exercised the operation on the roads of Mississippi in violation of requirement that he have his own insurance coverage. Failure of the owner or the operator of a motor vehicle to have the insurance card in the motor vehicle is a misdemeanor and, upon conviction, is punishable by a fine of One Thousand Dollars (\$1,000.00) and a suspension of driving privilege for a period of one (1) year or until the owner of the motor vehicle shows proof of liability insurance that is in compliance with the liability limits required by Section 63-15-3 (j) Miss. Code Ann. Section 63-15-4(4) (Rev. 2004).

The theory of negligence per se in essence provides that breach of a statute or ordinance renders the offender liable in tort without proof of a lack of due care." *Palmer v. Anderson Infirmary Benevolent Ass'n*, 656 So. 2d 790, 796 (Miss. 1995). "To prevail in an action for negligence per se, a party must prove that he [or she] was a member of the class sought to be protected under the statute, that his [or her] injuries were of a type sought to be avoided, and that violation of the statute proximately caused his [or her] injuries." *Snapp v. Harrison*, 699 So. 2d 567, 571 (Miss. 1997) (citing *Thomas v. McDonald*, 667 So. 2d 594, 597 (Miss. 1995)). "When a statute is violated, the injured party is entitled to an instruction that the party violating is guilty of negligence, and if that negligence proximately caused or contributed to the injury, then the injured party is entitled to recover." *Gallagher Bassett Servs. v. Jeffcoat*, 887 So. 2d 777, 787 (Miss. 2004). Mr. Bardin is certainly within the class of persons sought to be protected by the requirement that persons operating a vehicle upon the roads of the State of Mississippi must have insurance coverage since individuals driving upon the road with people who rent cars and might suffer injury due to the careless driving of an uninsured person.

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Mr. Bardin is a prime example of an individual sought to be protected by Section 63-15-43. This statute sections require that only an insured driver is allowed to operate cars upon the roads of this State. In any event the question of whether Enterprise was negligence per se which caused or contributed to the injuries suffered by Mr. Bardin is for a jury to decide.

CONCLUSION

The lower Court was correct in its denial of the summary judgment motion of Enterprise. In this case there exist issues of material fact to be decided by a jury, whether the issue arises under the theory of negligence per se, negligent entrustment, or the question of insurance and the amount of liability of each appellant. The case should be remanded to the lower Court to proceed with the trial on its merits.

This the 3rd day of December, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing document was served via U. S. Mail, postage prepaid, to the following counsel of record:

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This the 3rd day of December, 2008.


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