IN THE SUPREME COURT OF MISSISSIPPI
NO. 2007-IA-02275-SCT

ENTERPRISE LEASING COMPANY – SOUTH CENTRAL, INC. — APPELLANT

v.

WILLIAM H. BARDIN — APPELLEE

APPEAL FROM THE CIRCUIT COURT
OF HINDS COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

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Oral Argument Not Requested

STATEMENT REGARDING ORAL ARGUMENT

The Brief of Appellant ("Enterprise Brief") establishes that the courts have uniformly held that a rental car company has no duty to ensure that those who drive its cars have their own personal liability insurance. See Enterprise Brief at 7-9.

The Brief of Appellee does not cite any contrary authority. Nor does it quarrel with the way the Enterprise Brief describes that authority. Similarly, the brief also does not contain any citations to the record of this case.

This Court should reverse the circuit court and enter summary judgment in favor of Enterprise here. See e.g., *Collette v. Ladet*, 640 So.2d 757, 760 (La. Ct. App. 3d Cir. 1994); *Osborne v. Hertz Corp.*, 252 Cal. Rptr. 613, 617 (Cal. Ct. App. 3d Dist. 1988) (refusing to impose such a duty and finding no authority to the contrary).

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INTRODUCTION

The points established in the Enterprise Brief are not directly disputed by the Bardin brief, except for its ultimate conclusion. To reach its contrary conclusion, the Bardin Brief invents two new statutory arguments, both of which are defeated by statutory language the Bardin brief overlooks.

For the convenience of the court, this brief will present the Enterprise Brief argument in summary form and , in that context, address the two news statutory arguments and explain why they have no merit.

A statutory appendix is attached to this brief for ease of reference.

STATEMENT OF FACTS

Bardin does not dispute any of the facts stated by Enterprise. See Brief of Appellant pp. 3-4.

ARGUMENT

I. A rental car company has no duty to refuse to rent a car to a driver who has not purchased his own liability insurance.

Whether Enterprise owed a legal duty to Bardin not to rent a car to Singleton when Singleton did not have his own insurance is question of law for this Court to decide *de novo* on these undisputed facts. *Brown, ex rel Ford v. J.J. Ferguson Sand & Gravel Co.*, 858 So.2d 129, 131 (Miss. 2003)(existence of legal duty an issue for the court to decide).

Generally the negligence of a lessee in exclusive control of a rented automobile cannot be imputed to the company who rented him an automobile. An

exception exists if the rental company negligently entrusts the car to a renter whom the company knows or should know is reckless or incompetent. See *Dixie Drive It Yourself System Jackson Co., Inc. v. Matthews*, 212 Miss. 190, 201-03, 54 So.2d 263, 266-67 (Miss. 1951). But in this case there is no claim that Enterprise knew anything about Singleton other than he was a duly licensed driver as required by MISS. CODE ANN. § 63-1-67. So the exception does not apply here.

The courts that have considered the question have rejected the claim Bardin makes here for two reasons: there is no logical connection between the purchase of insurance and driving ability, and the legislature regulates who can drive and its statutes contemplate such a rental.

A. There is no connection between the purchase of insurance and driver competence.

There is no necessary connection between the possession of personal liability insurance and driver competence. The driver may have insurance, but it may not cover the use of a rental car. The driver may be an employee, or family member, or other person who does not own the car and only drives cars insured by others. See *Scurleck v. Wells Fargo Bank*, 96 Cal. Rptr. 434, 437 (Cal. Ct. App. 1st Dist. 1971); *see also Osborne, supra*, 252 Cal. Rptr. at 618.

Because there is no connection between driver competence and the individual purchase of insurance, entrusting a car to a driver who does not have his own personal insurance breaches no legal duty and is not negligent.

B. The legislature allows "owner" to meet an "operator's" financial responsibility requirements.

Courts have reasoned that, if a legislature allows licensed drivers to drive without purchasing insurance, it is not for the courts to impose such a requirement. See e.g., *Collette v. Ladet,* 640 So.2d 757, 760 (La. Ct. App. 3d Cir. 1994); *Osborne v. Hertz Corp.*, 252 Cal. Rptr. 613, 617 (Cal. Ct. App. 3d Dist. 1988) (refusing to impose such a duty and finding no authority to the contrary). Cf. *Anthony v. DeGrate*, 45 Fed. Appx. 323 (5th Cir. 2002) (Enterprise has no duty under Louisiana law).

All Mississippi requires is that a driver have a license. A driver does not have to purchase liability insurance to drive, unless and until the driver has an accident. MISS. CODE ANN. § 63-15-11 (Supp. 2007). Even then it is sufficient for the owner to provide the insurance or otherwise demonstrate financial responsibility. This is shown by both § 63-15-11 (4) which refers to the "owner" providing insurance for an "operator," and § 63-15-43(1) which says the relevant policy of liability insurance is either an owner's or an operator's policy. See Statutory Appendix.

Because the Mississippi legislature allows driving without insurance, this Court should not prohibit rental car owners from renting cars to drivers, or "operators," who do not have their own personal insurance. This is particularly

true where, as here, the rental car owner provides coverage that is sufficient to satisfy the state financial responsibility laws.

C. Bardin's statutory arguments overlook controlling statutory language.

Bardin makes two statutory arguments, He contends that statutes were violated and that therefore there is "negligence per se" liability. But no statutes have been violated. Neither of his statutory arguments have any merit. Also, even if they did have merit, this is not a case for "negligence per se" liability both because the statutes in question are enforced by the Department of Insurance, not by the public,[1] and because, as discussed in p. 8, *infra*, there can be no causal connection between any such violation and the accident.

1. When the vehicle is self-insured, there is no requirement that the driver carry an insurance card.

First, Bardin mistakenly says that, because car owners must carry insurance cards with them, the failure of a driver to have a personal card violates a statute, § 63-15-4. Bardin Brief at 8.

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[1] The cases on which Bardin relies all *reject* negligence per se claims. *Snapp v. Harrison*, 699 So.2d 567 (Miss. 1997), found a negligence per se instruction should not have been given to the jury in an arson action where the defendant contended the plaintiff's violation of the fire code constituted comparative negligence. The defendant, the court reasoned, had not shown he was among the class sought to be protected under the code provisions and had not suffered any losses from the violation. *Snapp* at 571-572. A second case Bardin cites, *Gallagher Bassett Services v. Jeffcoat*, 887 So.2d 777 (Miss. 2004), involved claims against an insurance adjuster for failure to promptly pay an uninsured motorist claim. The court held that the adjuster's alleged violation of an insurance licensing requirement could not support a negligence per se claim. *See also* p. 8, *infra*.

But in making that argument Bardin overlooks the exempting language within the insurance card statute. It makes an exception where, as here, the owner is self-insured under § 63-15-53. Section 63-15-4 requires the insurance card but contains this exception:

> (1) The following vehicles are exempted from the requirements of this section:
>
> . . .
>
> (a) Vehicles that are self-insured under Section 63-15-53.

Put differently, § 63-15-4 has no bearing on this dispute because here the vehicle was "self-insured."

2. Self insurance does not require the self-insurer to pay more than the amount required by the statutory minimum coverage.

On appeal, Bardin seeks to justify his case by making another misplaced argument, this one based on MISS. CODE ANN. § 63-15-53. That statute says the Department of Insurance can revoke the self-insurance right if the self-insurer fails to pay a "judgment." That, he reasons, requires self-insurers to pay all judgments in whatever amount they might be. Bardin Brief at 3, 4 ("total amount of the loss"), 6.

Again, however, Bardin has overlooked crucial statutory language. In particular, he has overlooked § 63-15-31 which says that "[j]udgments referred to in this chapter shall, for the purpose of this chapter only, be deemed satisfied" by

payment of the minimum limits, i.e., liability coverage up to $10,000 per person and $20,000 per accident for personal injuries plus $5,000 in property damage.[2] See also § 63-15-11(4) (stating limits). Moreover, the Department enforces § 63-15-53, and, under § 63-15-19, the Department cannot require security "in excess of" the minimum limits.

But that is not all. In addition, Bardin has overlooked § 63-15-37, which also says the self-insurer's financial responsibility is the same as that which a minimum insurance policy would provide. It reads, in material part:

> Proof of financial responsibility when required under this chapter with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:
>
> ....
>
> 4. a certificate of self-insurance as provided in section 63-15-53, supplemented by an agreement by the self-insurer that, with respect to accidents ..., he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

Two statutory provisions confirm that this refers to the minimum statutory limits.

[2] Those are the pre-2006 limits relevant to this case. See Brief of Appellant 4 n.6.

First, the quoted statute is addressed to "proof of financial responsibility" and that is a term defined by the statute as meaning responsibility for those limits. See. § 63-15-3(j).

Second, the "amounts that an insurer would have been obligated to pay" are the minimum amounts. That is what § 63-15-11(4) provides.

For each of these reasons the bottom line on the statutory scheme is that it does not condition the ability to drive on proof of financial responsibility, and, even if it did, Enterprise's self-insurance program meets the statutory standards for financial responsibility.

II. If the point is reached, this Court should also hold that a driver's insurance status cannot be the proximate cause of an accident.

Bardin wholly fails to address this issue. It is perhaps because it is obvious that whether or not the driver of the car has insurance cannot cause an accident. See *Scott v. Joe Thompson Auto Rental and Leasing, Inc.*, 571 S.E.2d 475 (Ga. Ct. App. 2002); *Orose v. Hodge Drive It Yourself Co.*, 9 N.E.2d 671, 674 (Ohio 1937).

For this reason, even if there were a violation of the financial responsibility statutes, the negligence per se doctrine would not apply because a violation of those statutes cannot cause an accident. *See Palmer v. Anderson Infirmary Benevolent Ass'n*, 656 So.2d 790, 796 (Miss. 1995) (causation is a critical element of negligence per se action).

CONCLUSION

For each of these reasons this Court should reverse the judgment entered below and enter judgment here in favor of Enterprise.

This the 23rd day of December, 2008.

Respectfully submitted,

BY: _____

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the Brief of Appellant has been served via U.S. Mail, postage prepaid, on the following:

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This the 23rd day of December, 2008.

LUTHER T. MUNFORD