

RECEIVED  
SEP 21 2012

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

Court of Appeals No. 42840-7-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

---

JOSHUA L. FAW,  
Plaintiff/Appellant,

v.

KYLE S. PARKER, individually; and KYLE S. PARKER and "JANE  
DOE" PARKER, husband and wife, and the marital community composed  
thereof; and TARA MILLAM, individually; and TARA MILLAM and  
"JOHN DOE" MILLAM, wife and husband, and the marital community  
composed thereof,

Defendants/Respondents.

---

RESPONSE BRIEF OF TARA MILLAM AND "JOHN DOE" MILLAM

---

Appeal from the Superior Court of Pierce County,  
Cause No. 10-2-05533-4  
The Honorable Stephanie Arend, Presiding Judge

---

C. JOSEPH SINNITT, WSBA No. 6284  
Attorney for Respondents Millam  
2102 North Pearl St., #302  
Tacoma, Washington 98406  
(253) 759-7755

**TABLE OF CONTENTS**

	<u>Page</u>
<b>I. ASSIGNMENTS OF ERROR .....</b>	<b>1</b>
<b>II. ISSUE PRESENTED</b>	
<p>Whether the trial court’s decision granting summary judgment dismissing Mr. Faw’s negligence and negligent entrustment claims against the Millams should be affirmed where:</p> <ul style="list-style-type: none"><li>• the deposition testimony and documentary evidence presented to the trial court supports the trial court’s ruling that the law of Oklahoma governed the issue of ownership of the Toyota where Ms. Millam purchased, licensed, and insured the car in Oklahoma when she was a resident of Oklahoma and Ms. Millam completed the gift of the Toyota to Mr. Parker while they were both residents of Oklahoma;</li><li>• the deposition testimony and documentary evidence presented to the trial court established that Ms. Millam made a completed inter vivos gift of the Toyota automobile to Kyle Parker on July 13, 2009, overcoming the rebuttable presumption that Ms. Millam, as the registered owner, was still the legal owner of the vehicle on August 3, 2009, when Mr. Parker collided with Mr. Faw in Tacoma, Washington;</li><li>• the deposition testimony and documentary evidence presented to the trial court establishes that Ms. Millam had no reason to believe that Kyle Parker was reckless, heedless, or incompetent in the operation of automobiles; and</li><li>• the facts before the trial court established that the Millams owed no duty to Mr. Faw to protect him from the intentional or reckless acts of Kyle Parker.....</li></ul>	
<b>III. RESTATEMENT OF THE CASE .....</b>	<b>1</b>
<b>A. Factual Background .....</b>	<b>3</b>

B. Procedural Background.....6

**IV. ARGUMENT**

A. The trial court correctly applied the standards for summary judgment. ....7

B. Ms. Millam did not merely “entrust” her vehicle to Mr. Parker on July 13, 2009.....9

C. Compliance with vehicle transfer laws is not dispositive on ownership of a vehicle, either in Washington or in Oklahoma .....10

D. The trial court correctly determined that Oklahoma law governed the issue of ownership of the Toyota .....13

1. Oklahoma law was plead, argued, and applied by the trial court on the sole issue of ownership of the Toyota .....13

2. Washington state had no “contacts” whatsoever with the parties regarding ownership of the Toyota .....14

E. Under Oklahoma law, Mr. Parker was the owner of the Toyota on August 3, 2009.....16

1. Being the “registered owner” of a vehicle is not dispositive of legal ownership in Oklahoma .....16

2. Being named on a vehicle certificate of title is not dispositive of legal ownership in Oklahoma.....16

3. Ms. Millam made a fully executed gift of the Toyota to Mr. Parker on July 13, 2009, and thus was not the legal owner of the Toyota on August 3, 2009, the

	date of the subject collision, under Oklahoma law .....	18
F.	Mr. Faw failed to raise any issue of fact requiring trial on his negligent entrustment claim.....	21
1.	Ms. Millam presented sufficient evidence to overcome the presumption of ownership.....	22
	(a) <i>The original Bill of Sale is not required to prove that the transfer of ownership occurred because the content of the document is not at issue.....</i>	24
	(b) <i>The copy of the Bill of Sale was admissible .....</i>	25
	(c) <i>The un rebutted evidence establishes that a valid transfer of ownership of the Toyota was made from Ms. Millam to Mr. Parker on July 13, 2009.....</i>	26
2.	The facts upon which Mr. Faw based his negligent entrustment claim do not support that cause of action.....	27
	(a) <i>Mr. Parker’s Washington license was suspended <b>after</b> he had surrendered it for an Oklahoma driver’s license, and Ms. Millam had no knowledge that the Washington license was suspended when she gifted the Toyota to him....</i>	28
	(b) <i>Mr. Parker’s criminal history is unrelated to his operation of vehicles.....</i>	29

3.	The complete failure of proof on two essential elements of negligent entrust render all other facts immaterial .....	30
	(a) <i>Mr. Faw presented no evidence that Mr. Parker was a “reckless, heedless, or incompetent” driver .....</i>	30
	(b) <i>Mr. Faw presented no evidence that Ms. Millam knew that Mr. Parker was a “reckless, heedless, and incompetent” driver at the time she gifted the Toyota to him .....</i>	32
G.	Mr. Faw failed to establish the existence of a duty owed by the Millams to Mr. Faw to protect him from the intentional and/or criminal acts of Mr. Parker .....	33
H.	The Millam’s marriage was defunct as of the date of their separation in February 2009 .....	37
I.	Ms. Millam did not make a “decision” to maintain automobile coverage on the Toyota after gifting it to Mr. Parker .....	40
J.	Mr. Faw’s argument regarding the statutory incompetence of Mr. Parker is full of false statements, unsupported assertions of fact and law, and is generally irrelevant .....	42
VI.	<b>CONCLUSION .....</b>	46

**TABLE OF AUTHORITIES**

Page

**Table of Cases**

**Federal Cases**

*In re R&R Contracting, Inc.*, 4. B.R. 626 (1980).....17

**Washington Cases**

*Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127,  
769 P.2d 298 (1989).....8

*Beggs v. State, Dept. of Social & Health Services*, 171 Wn.2d 69,  
247 P.3d 421 (2011).....7

*Braut v. Tarabochia*, 104 Wn. App. 728, 17 P.3d 1248 (2001) .....26

*Cameron v. Downs*, 32 Wn. App. 875, 650 P.2d 260 (1982).....9, 31, 47

*Cent. Wash. Bank v. Mendelson-Zeller, Inc.*, 113 Wn.2d 346, 779  
P.2d 697 (1989).....8, 26

*Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 753  
P.2d 517 (1988).....8, 26

*Heinrich v. Titus-Will Sales, Inc.*, 73 Wn. App. 147, 868 P.2d  
169 (1994)..... 10-11, 11

*Hines v. Data Line Ss., Inc.*, 114 Wn.2d 127, 787 P.2d 8 (1990) ...8-9

*Hipple v. McFadden*, 161 Wn. App. 550, 255 P.3d 730, *review  
denied*, 172 Wn.2d 1009, 259 P.3d 1108 (2011) .....27

*Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d  
619, 818 P.2d 1056 (1991).....8

*In re Marriage of Short*, 125 Wn.2d 865, 890 P.2d 12 (1995).....39

<i>Jackson v. City of Seattle</i> , 158 Wn. App. 647, 244 P.3d 425 (2010).....	37
<i>Johnson v. Spider Staging Corp.</i> , 87 Wn.2d 577, 555 P.2d 997 (1976).....	14
<i>Jones v. Harris</i> , 122 Wn. 69, 74-75, 210 P.22 (1922).....	21, 31, 32
<i>Jones v. State, Dept. of Health</i> , 170 Wn.2d 338, 242 P.3d 825 (2010).....	23-24
<i>Kaye v. Lowe's HIW</i> , 158 Wn. App. 320, 242 P.3d 27 (2010)...	30, 31-32, 47
<i>Mejia v. Erwin</i> , 45 Wn. App. 700, 726 P.2d 1032 (1986).....	21, 31, 47
<i>Meyer v. Univ. of Washington</i> , 105 Wn.2d 847, 719 P.2d 98 (1986).....	8
<i>Nivens v. 7-11 Hoagy's Corner</i> , 133 Wn.2d 192, 943 P.2d 286 (1997).....	36
<i>Parrilla v. King County</i> , 138 Wn. App. 427, 157 P.3d 879 (2007).....	33, 34
<i>Robb v. City of Seattle</i> , 159 Wn. App. 133, 245 P.3d 242 (2010), <i>review granted</i> , 171 Wn.2d 1024, 257 P.3d 664 (2010).....	34, 35, 37
<i>Seizer v. Sessions</i> , 132 Wn.2d 642, 659, 940 P.2d 261 (1997).....	38
<i>Vallandigham v. Clover Park Sch. Dist. No. 400</i> , 154 Wn.2d 16, 109 P.3d 805 (2005).....	8
<i>Vikelis v. Jaundalderis</i> , 55 Wn.2d 565, 348 P.2d 649 (1960) .....	47
<i>Weber v. Budget Truck Rental, LLC</i> , 162 Wn. App. 5, 254 P.3d 196, <i>review denied sub nom.</i> , 172 Wn.2d 1015, 262 P.3d 64 (2011).....	46
<i>Young v. Key Pharmaceuticals, Inc.</i> , 112 Wn.2d 216, 770 P.2d 182 (1989).....	33

*Zenaida-Garcia v. Recovery Systems Technology, Inc.*, 128 Wn. App. 256, 115 P.3d 1017 (2005), *review denied*, 156 Wn.2d 1026, 132 P.3d 1094 (2006).....14

**Cases from Other Jurisdictions**

*Brashears v. State ex rel. Oklahoma Public Welfare Com'n.*, 154 P.2d 101 (Okla., 1944).....20

*City Nat'l Bank & Trust Co. v. Finch*, 237 P.2d 869 (Okla., 1951).....16

*Cuesta v. Ford Motor Co.*, 209 P.3d 278 (Okla., 2009), *cert. denied*, 130 S.Ct. 258, 175 L.Ed.2d 131 (2009) .....16

*Green v. Harris*, 70 P.3d 866 (Okla., 2003) .....17

*Hardware Mutual Casualty Co. v. Baker*, 445 P.2d 800 (Okla., 1968).....17

*Imaging Services, Inc. v. Oklahoma Tax Com'n, Excise Tax Division*, 866 P.2d 1204 (Okla.,1993) .....19

*In re Fullerton's Estate*, 375 P.2d 933 (Okla.,1962) .....18

*Kolb v. Wagner*, 252 P. 34 (Okla., 1926)..... 19-20

*Larman v. Larman*, 991 P.2d 536 (Okla., 1999).....19

*Medico Leasing Co. v. Smith*, 457 P.2d 548 (Okla.1969)..... 17-18

*Richards v. Stanley*, 43 Cal.2d 60, 271 P.2d 23 (1954) .....36

*Starr v. Welch*, 323 P.2d 349 (Okla., 1958).....17

//

*State ex rel. Dept. of Public Safety v. 1988 Chevrolet Pickup VIN 1GCDC14K8JZ323, et al.*, 852 P.2d 786 (Okla.App.,1993),  
*abrogated in part on other issues*, 924 P.2d 792 (Okla.App.,  
1996) .....18

*York v. Trigg*, 209 P. 417 (Okla.,1922).....20

**Washington Statutes**

RCW 9A.56.075 .....31

RCW 26.15.140 .....38

RCW 46.12.102 .....10

**Oklahoma Statutes**

47 Okl.St.Ann. § 1107.4 ..... 11-12

**Rules and Regulations**

ER 1002 .....24

ER 1003 .....25

CR 56 .....8

**Other Authorities**

Black's Law Dictionary (7<sup>th</sup> ed., 1999).....9

Karl B. Tegland, 5D WASHINGTON PRACTICE, *Courtroom Handbook on Washington Evidence* (2010-2011 ed.).....24, 25

WPIC 74.02.....31

Restatement (Second) of Torts § 302 B .....35

Restatement (Second) of Torts § 390.....45

## **I. ASSIGNMENTS OF ERROR**

Respondents Millam assign no errors to the trial court's decisions.

## **II. ISSUE PRESENTED**

Whether the trial court's decision granting summary judgment dismissing Mr. Parker's negligence and negligent entrustment claims against the Millams should be affirmed where:

- the deposition testimony and documentary evidence presented to the trial court supports the trial court's ruling that the law of Oklahoma governed the issue of ownership of the Toyota where Ms. Millam purchased, licensed, and insured the car in Oklahoma when she was a resident of Oklahoma and Ms. Millam completed the gift of the Toyota to Mr. Parker while they were both residents of Oklahoma;

- the deposition testimony and documentary evidence presented to the trial court established that Ms. Millam made a completed inter vivos gift of the Toyota automobile to Kyle Parker on July 13, 2009, overcoming the rebuttable presumption that Ms. Millam, as the registered owner, was still the legal owner of the vehicle on August 3, 2009, when Mr. Parker collided with Mr. Faw in Tacoma, Washington;

- the deposition testimony and documentary evidence presented to the trial court establishes that Ms. Millam had no reason to believe that Kyle Parker was reckless, heedless, or incompetent in the operation of automobiles; and

- the facts before the trial court established that the Millams owed no duty to Mr. Faw to protect him from the intentional or reckless acts of Kyle Parker.

## **III. RESTATEMENT OF THE CASE**

The Millams present here a restatement of the facts because Appellant's Statement of the Case cites his attorney's argument during the summary judgment hearing as a source for several "factual" statements. In

addition, contrary to RAP 10.3(a)(5), Mr. Faw's Statement of the Case includes argument.

Finally, there are repeated assertions throughout Mr. Faw's Statement of the Case as well as throughout the entire Opening Brief that are simply false, as established by the record below. Throughout the Brief, Mr. Faw repeats the allegation that Ms. Millam knew at the time she conveyed the Toyota to Mr. Parker that his Washington driver's license was suspended. This statement is simply not true.

Mr. Parker surrendered his valid Washington driver's license to Oklahoma on April 3, 2009, at which time his Washington license was **not** suspended. CP 323-324. Mr. Parker was issued a valid Oklahoma driver's license on that same day. CP 325. Ms. Millam was present with Mr. Parker when these events took place. CP 170, lines 2-18; CP 171, lines 1-9. Ms. Millam testified that she knew Mr. Parker had a valid Oklahoma driver's license and was **not** aware that "Kyle Parker did not have a license to drive in Washington." CP 159, lines 22-24. Mr. Faw's claims of "general negligence" and negligent entrustment are based, in large part, upon the false allegation that Ms. Millam knew that Mr. Parker's Washington driver's license was suspended at the time she gifted the Toyota to him.

**A. Factual Background**

Tara and Jeffrey Millam were husband and wife in the State of Washington, but Ms. Millam decided that the marriage was “finished” (CP 176, lines 24-25), and she sought and obtained a transfer away from Tacoma by her employer, Netflix. CP 291. The Millams permanently separated on February 12, 2009, when Ms. Millam packed all of her belongings and left Tacoma to travel to Bethany, Oklahoma, where her new job with Netflix was waiting for her. *Id.* It was clear to both Tara and Jeffrey Millam on February 12, 2009 that their marriage was over. CP 291; CP 327. The Millams filed for divorce in September of 2009. CP 177, lines 3-6; CP 327.

Ms. Millam’s friends, Kyle and Michael Parker, assisted her with the move from Tacoma to Oklahoma. CP 164, lines 23-25. Ms. Millam rented a U-Haul truck, the Parker brothers put their van on a trailer behind the truck, and Ms. Millam and Kyle Parker drove the U-Haul and Ms. Millam’s own vehicle to Oklahoma. CP 33, lines 23-25; CP 34, lines 1-11; CP 165, lines 1-10.

Ms. Millam rented an apartment in Bethany, which she shared with Kyle and Michael Parker until July of 2009. CP 167, lines 20-21; CP 168, lines 1-4. The Parker brothers found various temporary jobs and contributed to the household expenses by use of their “food cards,” an

Oklahoma equivalent of food stamps. CP 168, lines 7-13.

Ms. Millam and Kyle Parker both surrendered their valid Washington drivers' licenses to obtain Oklahoma drivers' licenses on April 3, 2009. CP 170, lines 2-16; CP 171, lines 6-9; CP 37, lines 12-15. Mr. Parker's official driving record indicates that while his Washington driver's license had been suspended for lack of insurance on December 8, 2007, it had been reinstated on December 31, 2008. CP 324. His record further reveals that his license was going to be suspended on April 11, 2009 for "cancelled insurance." *Id.* However, Mr. Parker surrendered his then-valid Washington State driver's license and obtained a valid Oklahoma Driver's license on April 3, 2009. CP 325.

When the motor in the Parkers' van stopped working, Ms. Millam purchased a Toyota Paseo for \$2600 for the Parkers to use because "they needed a vehicle." CP 169, lines 2-11; CP 171, lines 10-12 and lines 15-16. In July, the Parkers told Ms. Millam they were going back to Washington, where Kyle would start attending Bates College that fall. CP 176, lines 13-16.

On July 13, 2009, about one-half hour before the Parkers left Bethany to drive to Washington, in the presence of Michael and Kyle Parker, Ms. Millam wrote out a "Bill of Sale" stating, "I, Tara A. Millam do hereby give to Kyle S. Parker my 1992 Toyota Paseo License #

713AVU VIN # JT2EL45F7N0085520 as a gift for the sum of \$0.00.” CP 89; CP 175, lines 4-16. Ms. Millam made a copy of the Bill of Sale, which copy she kept, and gave the original to Kyle Parker. CP 174, lines 20-25; CP 175, lines 1-7; CP 48, lines 1-4.

On July 30, 2009, Ms. Millam contacted Shonna Estes with the Mark Muse Allstate Insurance Agency in Bethany, Oklahoma, where she had previously added the Toyota to her Allstate insurance policy, and cancelled the coverage on the Toyota because she no longer owned the car. CP 214. Ms. Estes confirmed these facts by Declaration signed on November 1, 2010:

I am an Allstate agent with the Mark Muse Agency in Bethany, Oklahoma.

We had written a policy for Tara Millam. Tara had added a Toyota Paseo, VIN No. JT2EL45F7N0085520.

July 30, 2009 Tara indicated that she no longer owned the Toyota Paseo and had us cancel it from her policy. She also had us remove Kyle Parker from her policy on August 1, 2009.

CP 216.

Kyle Parker drove the Toyota to Washington. CP 17. On August 3, 2009, Mr. Parker was driving the Toyota in Tacoma when he was involved in the subject automobile accident with Mr. Faw. *Id.* Mr. Parker testified by declaration that he had intended to register the Toyota

and transfer the title on that same day. *Id.* Mr. Parker testified that the Bill of Sale written by Ms. Millam was in the glove box of the Toyota, which was seized by the police (Verbatim Report of Proceedings, page 10, lines 18-23) and subsequently crushed by Special Interest Auto Wrecking in December of 2010. CP 403. The original of the Bill of Sale no longer exists, as Mr. Faw correctly noted in the proceedings below and on this appeal. CP 331; Appellant's Opening Brief, page 9.

***B. Procedural Background***

On January 19, 2010, Mr. Faw filed a Complaint for Personal Injury and Tort. CP 1-3. The Millams filed a Motion for Summary Judgment Dismissal based on ownership of the Toyota on November 12, 2010. CP 273. Mr. Faw filed a Motion to continue the hearing on the Millam's Motion for Summary Judgment in order to "allow additional discovery" on January 20, 2011. CP 20. On February 4, 2011, the Court granted Mr. Faw's motion for a continuance to allow additional discovery and denied the Millam's Motion for Summary Judgment re: ownership of vehicle. CP 269-272.

On September 16, 2011, the Millams filed a second Motion for Summary Judgment Dismissal. CP 273-327. On October 28, 2011, the hearing on the Motion took place before Hon. Stephanie Arend. Having considered all of the evidence presented and hearing argument of counsel,

Judge Arend ruled:

There's no evidence or reasonable inference that's before the Court that anybody owned the vehicle on the date of the accident, August 3, 2009, but Kyle Parker. I would agree that Oklahoma law applies, and I would also agree that there's no evidence that Tara Millam knew or had any reason to know that Kyle Parker was reckless, heedless or incompetent in the operation of an automobile, and I'm going to grant Mr. Sinnitt's motion on behalf of Defendants Millam.

Verbatim Report of Proceedings, page 25, lines 16-25; page 26, line 1.

On October 28, 2011, the Court entered the Order of Summary Judgment Dismissing All Claims as Against Defendants Tara Millam and "John Doe" Millam, Wife and Husband and the Marital Community Composed Thereof. CP 416-418.

Notice of Appeal was timely filed on November 22, 2011, although Mr. Faw did not include a copy thereof in his Clerk's Papers.

#### **IV. ARGUMENT**

##### **A. The trial court correctly applied the standards for summary judgment.**

"The standard of review of an order of summary judgment is de novo." *Beggs v. State, Dept. of Social & Health Services*, 171 Wn.2d 69, 75, 247 P.3d 421 (2011) (citing *Aba Sheikh v. Choe*, 156 Wn.2d 441, 447,

128 P.3d 574 (2006). Summary judgment is affirmed when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005); CR 56(c).

As the nonmoving party, Mr. Faw was required to set forth specific evidentiary facts establishing the existence of a genuine issue for trial. *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). A nonmoving party cannot rely on bare assertions of fact, conclusory statements, or speculation to raise an issue of fact and prevent summary judgment. *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 359-360, 753 P.2d 517 (1988); *Meyer v. Univ. of Washington*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986). Rather, all assertions must be supported by evidence. *Grimwood*, 110 Wn.2d at 359, 753 P.2d 98. “When a nonmoving party fails to controvert relevant facts supporting a summary judgment motion, those facts are considered to have been established.” *Cent. Wash. Bank v. Mendelson-Zeller, Inc.*, 113 Wn.2d 346, 354, 779 P.2d 697 (1989).

Because Mr. Faw failed to establish the existence of a factual dispute essential to his case, summary judgment was properly granted by the trial court. *Hines v. Data Line Ss., Inc.*, 114 Wn.2d 127, 787 P.2d 8 (1990); see also *Howell v. Spokane & Inland Empire Blood Bank*, 117

Wn.2d 619, 818 P.2d 1056 (1991) (applying *Celotex* standard, “burden shifts to the party with the burden of proof at trial” to establish the existence of each essential element of his case).

**B. Ms. Millam did not merely “entrust” her vehicle to Mr. Parker on July 13, 2009.**

“Negligent entrustment” is an act of lending. Black’s Law Dictionary (7<sup>th</sup> ed., 1999), page 1058. In *Cameron v. Downs*, 32 Wn. App. 875, 878, 650 P.2d 260 (1982), the Court explained the theory of liability for negligent entrustment:

It is the general rule that an owner or other person in control of a vehicle and responsible for its use, who **entrusts** the vehicle to another, may be held liable for damages resulting from the use of the vehicle, under the theory of negligent entrustment, where he knew, or should have known in the exercise of ordinary care, that the person to whom the vehicle was entrusted was intoxicated at the time of the entrustment.

. . . This theory . . . applies despite the fact that Brenda was not the registered owner of the van.

Mr. Faw had to establish either that Tara Millam was the “owner” of the Toyota or that she was the “person in control of [the Toyota] and responsible for its use” on August 3, 2009 in order to establish that she could be liable to him for negligent entrustment of the Toyota to Mr. Parker on July 13, 2009.

The testimony of both Ms. Millam and Mr. Parker clearly

established that Ms. Millam did not merely “entrust,” or lend, the Toyota to Mr. Parker, but rather, made a completed inter vivos gift of the automobile to Kyle Parker on July 13, 2009.

**C. Compliance with vehicle transfer laws is not dispositive on ownership of a vehicle, either in Washington or in Oklahoma.**

At pages 12-17 of Mr. Faw’s Opening Brief, he provides a dissertation on vehicle licensing statutes in general and a more specific discussion of several Washington and Oklahoma licensing statutes. One argument raised by Mr. Faw, without any legal authority to support it, is that “RCW 46.12.102 requires strict compliance in order for a record Title owner to avoid liability to injured third parties.” Appellant’s Opening Brief, page 14 fn 55.

Mr. Faw cites no legal authority for this proposition because there is none. RCW 46.12.102 merely states that an owner who has complied with the statutory procedures to transfer a vehicle “shall not by reason of any of the provisions of this title be deemed the owner of the vehicle so as to be subject to civil liability . . . for the operation of the vehicle thereafter by another person.” RCW 46.12.102(1).

This Court has written that, in Washington,

the transfer of a vehicle may be valid despite the failure to transfer the certificate properly. *Beatty*, 74 Wn.2d at 542-43, 445 P.2d 325; *Junkin v. Anderson*, 12 Wn.2d 58, 74,

120 P.2d 548, 123 P.2d 759 (1941); *Baydo's*, 32 Wn. App. at 336, 647 P.2d 55. **Title and registration certificates are only rebuttable prima facie evidence of automobile ownership.** *Wildman v. Taylor*, 46 Wn. App. 546, 556-57, 731 P.2d 541 (1987); *Baydo's*, 32 Wn. App. at 336, 647 P.2d 55; *Crawford v. Welch*, 8 Wn. App. 663, 664, 508 P.2d 1039, review denied, 82 Wn.2d 1009 (1973); see *Gams v. Oberholtzer*, 50 Wn.2d 174, 177, 179, 310 P.2d 240 (1957); *Junkin*, 12 Wn.2d at 75-76, 120 P.2d 548. In this State, the UCC provisions, not the certificate of title statutes, govern who holds title to a vehicle.

*Heinrich v. Titus-Will Sales, Inc.*, 73 Wn. App. 147, 162, 868 P.2d 169 (1994) (emphasis added).

This Court further noted that, “When a determination of title is “material,” the provisions of RCW 62A.2-401 govern: “title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.” *Id.* The evidence presented to the trial court established that Ms. Millam passed the title to the Toyota with no restrictions or conditions and as a gift and that Mr. Parker accepted the gift.

In Oklahoma, the applicable statute is 47 Okl.St. Ann. § 1107.4,

Which provides:

A. Upon the transfer of a vehicle, the transferor **may** file a written notice of transfer with the Tax Commission or a motor license agent. On receipt of a written notice of transfer, the Commission shall indicate the transfer on the vehicle records maintained by the Commission. The written notice of transfer shall contain the following information:

1. The vehicle identification number of the vehicle;
2. The number of the license plate issued to the vehicle, if any;
3. The full name and address of the transferor;
4. The full name and address of the transferee;
5. The date the transferor delivered possession of the vehicle to the transferee; and
6. The signature of the transferor.

B. There shall be assessed a fee of Ten Dollars (\$10.00) when filing the notice of transfer. Seven Dollars (\$7.00) of the fee shall be retained by the motor license agent. Three Dollars (\$3.00) of the fee shall be apportioned to the Oklahoma Tax Commission Reimbursement Fund.

C. After the date of the transfer of the vehicle as shown on the records of the Commission, the transferee of the vehicle shown on the records is rebuttably presumed to be:

1. The owner of the vehicle; and
2. Subject to civil and criminal liability arising out of the use, operation, or abandonment of a vehicle, to the extent that ownership of the vehicle subjects the owner of the vehicle to civil or criminal liability pursuant to law.

**D. This section does not impose or establish any civil or criminal liability on the owner of a vehicle who transfers ownership of the vehicle but does not file a written notice of transfer with the Commission.**

Emphasis added.

Because Ms. Millam did not give notice of transfer to the Oklahoma Tax Commission, there was a rebuttable presumption that she, rather than Kyle Parker, was the owner of the Toyota at the time of the

accident. However, the trial court correctly found that Ms. Millam provided sufficient un rebutted evidence to overcome that presumption.

**D. The trial court correctly determined that Oklahoma law governed the issue of ownership of the Toyota.**

1. Oklahoma law was plead, argued, and applied by the trial court on the sole issue of ownership of the Toyota.

Mr. Faw comments at page 19 of his Opening Brief:

The choice of law issue was resolved without elaboration by the trial court in favor of Oklahoma. The trial court did not explain whether Oklahoma law was to be applied to the issue of ownership of the vehicle or the issue of negligent entrustment, or both. Having solely referenced Oklahoma in her brief remarks in the record, it is assumed that the trial court applied Oklahoma law in resolving both issues.

The record below is crystal clear that the Millams argued that the issue of ownership of the Toyota on the day of the accident -- and **only** that issue -- was governed by Oklahoma law. CP 4-13; CP 277-283; CP 398-401; Verbatim Report of Proceedings, page 5, lines 14-25; page 6, lines 1-23 (Millam's attorney identifying "two primary issues"; "No 1, who owned the Toyota on August 3<sup>rd</sup>, 2009? Well, in this case, Your Honor, Oklahoma law applies. . . . The second issue, Your Honor, is negligent entrustment," citing Washington cases only in the argument thereafter.). *See also* Verbatim Report of Proceedings, page 25, lines 17-24. Mr. Faw's suggestion that the Court applied Oklahoma law to any

issue in this case other than ownership of the Toyota on the date of the accident is baseless and incorrect.

2. Washington state had no “contacts” whatsoever with the parties regarding ownership of the Toyota.

At page 22 of Appellant’s Opening Brief, Mr. Faw contends that “Washington law controls this case.” However, choice of law is determined issue by issue, not case by case. *Zenaida-Garcia v. Recovery Systems Technology, Inc.*, 128 Wn. App. 256, 260, 115 P.3d 1017 (2005), *review denied*, 156 Wn.2d 1026, 132 P.3d 1094 (2006) (citing *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 580, 555 P.2d 997 (1976) (in tort cases, “the rights and liabilities of the parties are determined by the local law of the state which, **with respect to that issue**, has the most significant relationship to the occurrence and the parties.”). Emphasis added.

However, the issue of ownership of the Toyota on the day of the accident is **not** governed by tort law, and the location of the automobile accident or presence of an injured third party is not involved in this issue. Mr. Faw’s discussion at pages 22-25 of his Opening Brief regarding Restatement (Second) Conflict of Laws §§ 145 and 146, which relate to torts in general and personal injury actions in particular, is simply irrelevant on the issue of ownership of the Toyota.

On the issue of ownership of the Toyota on August 3, 2009, the

evidence before the trial court was that while a resident of Oklahoma, Ms. Millam purchased and licensed the Toyota Paseo in Oklahoma and added it to her existing Allstate insurance policy, written by the Mark Muse Agency in Bethany, Oklahoma. CP 289; CP 293. On July 13, 2009, while both of them were Oklahoma residents, Ms. Millam gifted the Toyota to Mr. Parker, signing a document identifying the vehicle by VIN and license number and stating it was “a gift for the sum of \$0.00.” *Id.*; CP 175, lines 4-11; CP 292. Mr. Parker stated by declaration:

July 13, 2009 Tara gave me a 1992 Toyota Paseo. There were no conditions or restrictions on her gift. I took possession of the car and had exclusive use and control of the Toyota after that.

CP 294.

Shonna Estes, Ms. Millam’s insurance agent in Bethany, Oklahoma, affirmed Ms. Millam’s statements, adding that on “July 30, 2009 Tara indicated that she no longer owned the Toyota Paseo and had us cancel it from her policy. She also had us remove Kyle Parker from her policy on August 1, 2009.” CP 293.

All of the acts that created ownership of the Toyota on August 3, 2009 took place in Oklahoma. Washington state had no “contacts” whatsoever with the parties regarding this issue and no interest whatsoever in the licensing or transferring of ownership of an automobile located in

Oklahoma between two Oklahoma residents. The trial court correctly determined that Oklahoma law governed the issue of ownership of the Toyota.

**E. Under Oklahoma law, Mr. Parker was the owner of the Toyota on August 3, 2009.**

1. Being the “registered owner” of a vehicle is not dispositive of legal ownership in Oklahoma.

“‘Owner’ under the Oklahoma Vehicle License and Registration Act, 47 O.S. 1102 (23) is defined as “any person owning, operating or possessing any vehicle herein defined.” *Cuesta v. Ford Motor Co.*, 209 P.3d 278, 286 (Okla., 2009), *cert. denied*, 130 S.Ct. 258, 175 L.Ed.2d 131 (2009). In the original Oklahoma Motor Vehicle Act, enacted in 1937, “owner was defined as “any person owning or possessing any vehicle as herein defined.” *Lepley v. State*, 103 P.2d 568 (Okla.Crim.App., 1940) (quoting former 47 Okl.St. Ann. § 19(a)(2)(11)). The *Lepley* Court wrote that the Vehicle License and Registration Act was not enacted “for the purpose of determining the ownership of the vehicle.” *Lepley*, 103 P.2d at 572.

2. Being named on a vehicle certificate of title is not dispositive of legal ownership in Oklahoma.

“Motor vehicle certificates of title in Oklahoma are documents of convenience and are not necessarily controlling of ownership of an

automobile.”<sup>1</sup> *Green v. Harris*, 70 P.3d 866, 871 (Okla., 2003) (citing *In re Foster*, 611 P.2d 232 (Okla., 1980); *Hardware Mutual Casualty Co. v. Baker*, 445 P.2d 800 (Okla., 1968); *Starr v. Welch*, 323 P.2d 349. (Okla., 1958). See also *City Nat'l Bank & Trust Co. v. Finch*, 237 P.2d 869 (Okla., 1951) [certificate of title is not a muniment of title which establishes ownership, but is merely intended to protect against theft and facilitate recovery and aid in enforcement of motor vehicle regulation.]).

On this point, Oklahoma law is quite similar to Washington law. In fact, in *In re R&R Contracting, Inc.*, 4 B.R. 626 (1980), the Eastern District of Washington Bankruptcy Court cited an Oklahoma case to support the proposition that Washington’s licensing statute (RCW 46.01 et. seq.) “is not intended to conclusively determine ownership of vehicles as between two parties each claiming an ownership interest in them.” *R & R Contracting*, 4 B.R. at 628. (citing *Medico Leasing Co. v. Smith*, 457 P.2d 548 (Okla.1969)). In *Medico Leasing*, the Court wrote:

It has long been held by this court that a certificate of title to an automobile issued under the motor vehicle act is not a muniment of title which establishes ownership, but is merely intended to protect the public against theft and to facilitate recovery of stolen automobiles and otherwise aid the state in enforcement of its regulation of motor vehicles. (Citations omitted.) This rule was not changed with the passage of the Uniform Commercial Code. **Under Section 1-201(15) the certificate of title of an automobile is not listed as a ‘document of title’. It was not necessary for the defendant Smith to deliver the certificate of title**

---

<sup>1</sup> A certificate of title is “proof” of legal ownership under 47 O.S. § 1102 (3), but as explained by the Oklahoma Supreme Court, a certificate of title is “not necessarily controlling of ownership of an automobile.” *Green*, 70 P.3d at 871.

**before he conveyed ownership of the Buick Automobile, and the absence of a certificate does not invalidate the sale or prevent title from passing.**

*Medico Leasing*, 457 P.2d at 551 (emphasis added).

Thus, the rule that “[a] transaction involving an automobile may constitute an effective gift, even though title to the vehicle is not transferred to the donee, where the donor transfers possession of the vehicle to the donee” (38 Am.Jur.2d Gifts § 35) would apply in Oklahoma.

3. Ms. Millam made a fully executed gift of the Toyota to Mr. Parker on July 13, 2009, and thus was not the legal owner of the Toyota on August 3, 2009, the date of the subject collision, under Oklahoma law.

A finding of an “outright gift” of an automobile supports a finding of lack of ownership in the donor. *State ex rel. Dept. of Public Safety v. 1988 Chevrolet Pickup VIN 1GCDK14K8JZ323, et al.*, 852 P.2d 786, 788 (Okla.App., 1993), *abrogated in part on other issues*, 924 P.2d 792 (Okla.App., 1996) (“State nonetheless elicited other testimony (and by offer of proof) tending to support a conclusion of outright gift of the automobiles to Vincent's children, and hence, Vincent's lack of dominion, control and ownership.”). *See also In re Fullerton's Estate*, 375 P.2d 933 (Okla., 1962) (where automobile was found to be a gift to an individual, the car was “stricken as an asset” of the estate of the deceased donor).

Under Oklahoma's Vehicle Excise Tax, “legal ownership . . . is defined at 68 O.S.1981 § 2101(l) as “**the right to possession**, whether

**acquired by purchase, barter, exchange, assignment, gift, operation of law or in any other manner.”** *Imaging Services, Inc. v. Oklahoma Tax Com’n, Excise Tax Division*, 866 P.2d 1204 (Okl.,1993) (emphasis added).

The elements necessary to establish an inter vivos gift are: (1) a competent donor, (2) freedom of will on the part of the donor, (3) donative intent to make the gift, (4) a donee capable of accepting the gift, and (5) delivery by the donor and acceptance by the donee. Additionally, the gift must be gratuitous and irrevocable and go into immediate and absolute effect with the donor relinquishing all control. In short, gifts require an immediately effective, unqualified and gratuitous transfer of ownership to the donee.

*Larman v. Larman*, 991 P.2d 536, 540 fn7 (Okl., 1999) (citations omitted).

In this case, the evidence before the trial court was that Ms. Millam was the owner of the Toyota before July 13, 2009; she had the intent to make a gift of the Toyota to Mr. Parker; she made the gift of her free will; Mr. Parker was capable of accepting the Toyota; the car was delivered by Ms. Millam and accepted by Mr. Parker; the gift was gratuitous and went into immediate and absolute effect, with Ms. Millam relinquishing all control. Ms. Millam made “an immediately effective, unqualified and gratuitous transfer of ownership” of the Toyota to Mr. Parker on July 13, 2009.

In *Kolb v. Wagner*, 252 P.34 (Okla., 1926), the Court set out various rules regarding inter vivos gifts, including the following:

“A gift inter vivos (among the living) as the name implies is a gift between the living. It is a contract which takes place by mutual consent of the giver, who divests himself of the thing given **in order to transmit the title of it** to the donee gratuitously; and the donee, who accepts and

**acquires the legal title to it.** It operates, if at all, in the donor's lifetime, immediately, and irrevocably. It is a gift executed; no further act of parties, no contingency of death or otherwise is needed to give it effect.”

*Kolb*, 252 P. at 36 (quoting 28 C.J. 622) (emphasis added).

In *Brashears v. State ex rel. Oklahoma Public Welfare Com'n.*, 154 P.2d 101, 103 (Okla., 1944), the Court wrote:

As applied specially to personal property a gift has been defined as a voluntary act of **transferring the right to and possession of a chattel whereby one person renounces and another immediately acquires all right and title thereto.** 24 Am.Jur., Gifts, sec. 2. (Emphasis added.)

In *York v. Trigg*, 209 P. 417, 423 (Okla., 1922), the Court wrote:

A gift inter vivos is complete upon a delivery by the donor of the property to the donee during the life of the donor, and **the property passes absolutely to the donee.** It is unnecessary to the validity of a gift that it be made under the same formalities that are required under the statutes for the execution of a valid will. **A valid gift may be by parol and a delivery of the property, and the title of the same thereby passes to the donee irrevocably.** (Emphasis added.)

Neither registration of a vehicle nor certificate of title to a vehicle establishes legal ownership of the vehicle in Oklahoma. Under Oklahoma law, a valid gift transfers legal title to a chattel, including a vehicle, from the donor to the donee. On August 3, 2009, the day of the subject accident, Ms. Millam was not the legal owner of the Toyota driven by Mr. Parker. Rather, as a result of the gift made on July 13, 2009, Mr. Parker was the legal owner of the Toyota under Oklahoma law, regardless of the name on the certificate of title or registration document of the vehicle.

**F. Mr. Faw failed to raise any issue of fact requiring trial on his negligent entrustment claim.**

The Washington Supreme Court recognized the cause of action for negligent entrustment of an automobile and set out the elements of that tort in *Jones v. Harris*:

If the owner **loans or intrusts his automobile to another person**, even for that person's purposes, who is so reckless, heedless, or incompetent **in his operation of automobiles as to render the machine while in his hands a dangerous instrumentality, he is liable if he knows, at the time he so intrusts it, of the person's character and habits in that regard.** The liability in such instances rests upon the combined negligence of the owner and of the operator; negligence of the one in intrusting the automobile to an incompetent person, and of the other in its negligent operation. Since, therefore, the respondent's cause of action was based upon the exception to the general rule, it was incumbent upon him to prove by substantial evidence, in order to justify a verdict in his favor: (1) That the appellants **loaned or intrusted** their automobile to Steffer; (2) that Steffer was so far reckless, heedless, and incompetent **in the operation of automobiles** as to render an automobile in his hands a dangerous instrumentality; (3) that the appellants **knew of the incompetency of Steffer at time they intrusted him with the automobile**; and (4) that the respondent was injured by reason of the negligent operation of the automobile by Steffer.

*Jones v. Harris*, 122 Wn. 69, 74-75, 210 P.22 (1922) (emphasis added).

Since 1922, Washington courts have added the requirement that the reckless, heedless, and incompetent operation of automobiles “must be so repetitive as to make its occurrence foreseeable.” *Mejia v. Erwin*, 45 Wn. App. 700, 705-706, 726 P.2d 1032 (1986) (quoting *Curley v. General Valet Serv., Inc.*, 270 Md. 248, 311 A.2d 231, 241 (1973)). Thus, the

elements of negligent entrustment are (1) the owner loans or entrusts his automobile to another person for that person's purposes (2) who is known at the time of entrustment by the owner (3) to be so reckless, heedless, or incompetent in his operation of automobiles as to render the automobile a dangerous instrumentality, and (4) injury occurs as a result of the driver's negligent operation of the automobile.

1. Ms. Millam presented sufficient evidence to overcome the presumption of ownership.

Because Ms. Millam was not in possession and control of the Toyota on July 13, 2009, Mr. Faw needed to prove that she was the owner of the Toyota on the day of the accident in order to satisfy the first element of negligent entrustment. The trial court received the sworn Declarations of Tara Millam and Kyle Parker, a copy of the Bill of Sale between them, excerpts from their depositions, and the Sworn Declaration of Shonna Estes, Ms. Millam's Oklahoma insurance agent, all of which establish that a valid transfer of the Toyota from Tara Millam to Kyle Parker took place on July 13, 2009.

Both the donor and the donee have testified under oath that the gift of the Toyota was completed on July 13, 2009. There is no evidence to the contrary, nor could there be. Mr. Faw presented **no factual evidence whatsoever** that the transfer did not take place.

Instead, Mr. Faw argued that Ms. Millam could not overcome the presumption that she was the owner of the Toyota at the time of the subject accident because (1) the copy of the Bill of Sale from Ms. Millam to Kyle Parker is “inadmissible” under ER 1002 “as the original no longer exists”; (2) Ms. Millam is trying to avoid liability “based on her own self-serving statement<sup>2</sup> and, quite possibly, the use of a manufactured document, which has no indicia of reliability”; and (3) both Mr. Parker and Ms. Millam “have a strong motivation to lie” and “it is the plaintiff’s position that the defendants are lying about the purported transfer of the vehicle.” CP 336; CP 339.

Ownership of the Toyota was not transferred by a sale, but by a gift. Whether or not a bill of sale was given in conjunction with the gift is irrelevant on the question of whether a completed inter vivos gift was made. The copy of the Bill of Sale was presented to the trial court as evidence that a transfer of ownership did, in fact, occur. Mr. Faw failed to present even a single evidentiary fact to show that transfer of the vehicle did not take place exactly as Ms. Millam, Mr. Parker, and Ms. Estes testified. Argumentative assertions and accusations of lying do not raise

---

<sup>2</sup> “[A] court must not weigh the veracity of a declaration simply because it is “self-serving.” ... plaintiffs whose claims depend on their own version of events would no longer be able to rely on their own declarations. Plaintiffs would be unable to withstand motions for summary judgment, because their declarations would be disregarded as “self-

an issue of fact. Ms. Millam did not “entrust” her vehicle to Mr. Parker: she conveyed it to him by a completed inter vivos gift.

(a) *The original Bill of Sale is not required to prove that the transfer of ownership occurred because the content of the document is not at issue.*

ER 1002 provides that the original writing is required “to prove the content of a writing.” Professor Tegland comments:

By its terms, the general rule applies only when a party seeks to prove the content of a writing, recording, or photograph. **The rule does not apply, and does not require production of an original, when a party seeks to prove an act, condition, or event, even though the act, condition, or event may have been memorialized in some form of record.**

Karl B. Tegland, 5D WASHINGTON PRACTICE, *Courtroom Handbook on Washington Evidence* (2010-2011 ed.), page 512 (emphasis added).

The content of the Bill of Sale is not what is at issue in this case. Rather, the document was offered as proof that an act or event took place, i.e., the gift of the Toyota from Ms. Millam to Mr. Parker. The original is not required.

Mr. Faw argued below that because the original of the Bill of Sale does not exist, there is an implication “that the original was never given to Kyle Parker as the defendants claim.” CP 331. This is not an “implication,” but sheer speculation. Mr. Parker testified that the original of the Bill of Sale was in the glove compartment of the vehicle; that the

vehicle was seized as evidence by the police; and that he never saw the vehicle after the accident. The Toyota was crushed in December 2010. That is the reason that the original Bill of sale does not exist.

(b) *The copy of the Bill of Sale was admissible.*

ER 1003 provides that a copy is admissible “to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.”

Mr. Faw did not raise a “genuine question” as to the authenticity of the original Bill of Sale. Raising a “genuine question” would require evidentiary facts showing that the original Bill of Sale was not authentic, which Mr. Faw did not and cannot present.

Further, whether a document is “authentic” is a question of whether it is “what it purports to be,” rather than “a fake or a forgery.” Karl B. Tegland, 5D WASHINGTON PRACTICE, *Courtroom Handbook of Washington Evidence* (2010-2011), page 490. Authenticity of a document is a preliminary determination, and “the court considers only the evidence of authenticity offered by the **proponent** and disregards any contrary evidence offered by the opponent.” *Id.* at page 491 (citing *State v. Tatum*, 58 Wn.2d 73, 360 P.2d 754 (1961) (emphasis added)). In this case, Ms. Millam, who wrote the Bill of Sale, authenticated the copy of the Bill of

Sale that was presented to the trial court. CP 186, lines 3-8.

In *Braut v. Tarabochia*, 104 Wn. App. 728, 17 P.3d 1248 (2001), the defendant claimed the original of a Collateral Agreement was a forgery, or a cut-and-paste job. The plaintiff's handwriting expert testified that the document was not a cut-and-paste job, and other circumstantial evidence suggested that the document was authentic. Here, Ms. Millam is certainly qualified to testify that the copy of the Bill of Sale is a true and correct copy of a document that she wrote herself. In addition, the Declaration of Shonna Estes, states that on July 30, 2009, Tara Millam contacted her and indicated that she no longer owned the Toyota and cancelled it from her insurance policy, which is circumstantial evidence that the Bill of Sale was authentic.

Under *Grimwood*, every assertion must be supported by evidence. Mr. Faw has offered no evidence whatsoever that Ms. Millam did not write the original Bill of Sale. Under *Grimwood*, Plaintiff's bare assertions of fact, conclusory statements, and speculation about lying defendants were insufficient to raise an issue of fact. Plaintiff has failed to controvert the testimony of Ms. Millam and Mr. Parker that the Bill of Sale was written by Ms. Millam to memorialize the gift of the Toyota to Mr. Parker. Thus, "those facts are considered to have been established." *Mendelson-Zeller, Inc.*, 113 Wn.2d at 354, 779 P.2d 697.

(c) *The un rebutted evidence establishes that a valid transfer of ownership of the Toyota was made from Ms. Millam to Mr.*

*Parker on July 13, 2009.*

Ms. Millam and Mr. Parker have **both** testified that Ms. Millam made and Mr. Parker accepted the inter vivos gift of the Toyota on July 13, 2009. This evidence is un rebutted. There is no issue of credibility or veracity, in spite of Mr. Faw's assertion that he believes the defendants are "lying." Mr. Faw's belief does not constitute factual evidence. Mr. Faw failed to raise an issue of fact regarding the gift of the Toyota from Ms. Millam to Mr. Parker.

"[W]here reasonable minds can reach but one conclusion, questions of fact may be determined as a matter of law." *Hipple v. McFadden*, 161 Wn. App. 550, 561, 255 P.3d 730, 735 (2011) (citing *Hartley v. State*, 103 Wn.2d 768, 775, 698 P.2d 77 (1985) (emphasis added)). Where the **only** evidence in existence on the issue shows that Tara Millam transferred the Toyota to Kyle Parker, reasonable minds can reach but one conclusion about ownership of the car, as the trial court did. Based upon the evidence before the trial court, it correctly ruled that Kyle Parker, not Tara or Jeff Millam, was the owner of the Toyota on August 3, 2009.

2. The facts upon which Mr. Faw based his negligent entrustment claim do not support that cause of action.

Mr. Faw alleged the following "facts" to support the claim of negligent entrustment: the Millams knew Mr. Parker "had been suspended from his privilege to drive in the State of Washington," knew that Mr.

Parker “was intending to take the vehicle owned by them to the State of Washington,” and knew that Mr. Parker had a criminal history, including convictions for “theft of a firearm, taking a vehicle without the owner’s permission, and several assault convictions.” CP 265. The evidence presented to the trial court established that these allegations were factually baseless.

(a) *Mr. Parker’s Washington license was suspended after he had surrendered it for an Oklahoma driver’s license, and Ms. Millam had no knowledge that the Washington license was suspended when she gifted the Toyota to him.*

Mr. Parker left Washington in February of 2009, established residence in Oklahoma, and obtained an Oklahoma driver’s license on April 3, 2009. On that date, he surrendered his valid Washington driver’s license, which was not suspended. See CP 323-325. Ms. Millam testified during her deposition that she and Mr. Parker “went down to the Department of Licensing at the same time. We both surrendered Washington driver’s licenses and were given our Oklahoma licenses.” CP 171, lines 6-9. At the time Ms. Millam gifted the Toyota to Mr. Parker on July 13, 2009, he had a valid Oklahoma driver’s license. CP 325.

Mr. Faw’s counsel questioned both Mr. Parker and Ms. Millam regarding Ms. Millam’s knowledge about the status of Mr. Parker’s

Washington driver's license. When asked whether she was "aware that Kyle Parker did not have a license to drive in Washington," Ms. Millam responded, "No, sir, I was not." CP 159, lines 22-24. Contrary to Mr. Faw's repeated assertions throughout the Opening Brief, Mr. Parker did not testify that Ms. Millam knew his Washington license was **suspended** when she gifted the Toyota to him:

Q. Now, I presume that Tara Millam knew you didn't have a Washington license; is that correct?

A. Yes.

Q. And she knew that when she gave you the vehicle; correct?

A. I had an Oklahoma license when she gave me the vehicle.

CP 37, lines 22-25; CP 38, line 1.

Ms. Millam knew that Mr. Parker did not have a Washington driver's license because she had personally witnessed him surrender it to Oklahoma. Ms. Millam also knew that Mr. Parker had a valid Oklahoma driver's license when she gifted the Toyota to him because she was with him when he obtained the Oklahoma driver's license.

*(b) Mr. Parker's criminal history is unrelated to his operation of vehicles.*

During his deposition, Mr. Faw's counsel questioned Mr. Parker about his criminal history. Mr. Parker has no criminal history in any way

related to competency to operate a vehicle. *See* CP 48, lines 5-8; CP 49, lines 5-20.

Mr. Parker testified that he had been in one prior automobile accident “a couple of years before” the subject accident. CP 46, lines 20-25; CP 47, line 1). Ms. Millam did not meet Mr. Parker until October of 2008 (CP 153, lines 1-2)) and the subject accident occurred on August 3, 2009. Mr. Parker’s one previous accident happened before he met Ms. Millam. Ms. Millam had no knowledge of Mr. Parker’s one previous automobile accident. CP 174, lines 8-10.

Ms. Millam had no knowledge that Mr. Parker was reckless, heedless, or incompetent in his operation of automobiles when she gifted the Toyota to him because there was no basis in fact for such knowledge. A person entrusting a vehicle to another may be liable under a theory of negligent entrustment **only** if that person knew, or should have known that the person to whom the vehicle was entrusted is reckless, heedless, or incompetent in his operation of automobiles. *Meija*, 45 Wn. App. at 704, 726 P.2d 1032; *Kaye v. Lowe’s HIW*, 158 Wn. App. 320, 333, 242 P.3d 27 (2010).

3. The complete failure of proof on two essential elements of negligent entrust render all other facts immaterial.

- (a) *Mr. Faw presented no evidence that Mr. Parker was a “reckless, heedless, or incompetent” driver.*

The second element of negligent entrustment is that the driver to

whom a vehicle was given or loaned must be “so far reckless, heedless, and incompetent **in the operation of automobiles** as to render an automobile in his hands a dangerous instrumentality[.]” *Jones v. Harris*, 122 Wn. at 74-75, 210 P.2d (emphasis added). *See also Mejia*, 45 Wn. App. at 704, 726 P.2d 1032 (“there is no evidence from which one could conclude that Felix had personal knowledge that between 1969 and 1980 **his son's driving was not satisfactory, much less “reckless, heedless, or incompetent.”**); *Cameron*, 32 Wn. App. at 879, 650 P.2d 260 (“There is also evidence in the record that Brenda knew, or in the exercise of ordinary care, should have known that **her brother was both a reckless driver** and likely to be intoxicated. Riley stated that Steven Downs had a **reputation in the community as a reckless, dangerous, and incompetent driver**; that those tendencies increased when he drank; and that he was drinking whiskey at the party before the accident.”). (Emphasis added.)

Mr. Faw presented no evidence whatsoever to support a finding that Mr. Parker was such a driver, because such evidence does not exist. Mr. Parker’s past crimes of theft of a weapon, taking a car without the owner’s permission<sup>3</sup>, escape from electronic monitoring, and domestic violence are not related to the ability to operate an automobile. In *Kaye*, the plaintiff was injured in an automobile collision and filed suit, alleging, inter alia, negligent entrustment. The *Kaye* Court wrote:

---

<sup>3</sup> This offense has nothing to do with competency to operate an automobile. RCW 9A.56.075; WPIC 74.02 Comment (“The gist of this statutory offense is the intentional taking of another person's automobile without permission.”).

The findings of fact entered by the trial court state that Templeton [the supplier of the automobile] knew about “Cote's [the driver's] extensive history of problems with authority” and “disregard for the law, the rules of society and for others.” They include findings that Templeton believed Cote “maintained a position of paranoia [about] ... authority” and was mentally unstable. (Alteration in original.) The findings further state that Templeton was aware that Cote “operates ‘off the grid’” and has used drugs. **Despite these findings, the trial court did not err by concluding that there was no evidence that Templeton knew Cote was an incompetent driver or should have been on notice that Cote posed a danger.** The findings are insufficient to support the conclusion that Templeton “knew, or should have known in the exercise of ordinary care, that [Cote] is reckless, heedless, or incompetent.” *Mejia*, 45 Wn. App. at 704, 726 P.2d 1032.

*Kaye*, 158 Wn. App. at 333, 242 P.3d 27 (emphasis added).

Here, as in *Kaye*, Mr. Parker's past criminal history does not suggest that Mr. Parker was an incompetent driver. There was a “complete failure of proof” on this essential element of negligent entrustment.

(b) *Mr. Faw presented no evidence that Ms. Millam knew that Mr. Parker was a “reckless, heedless, and incompetent” driver at the time she gifted the Toyota to him.*

The third element of negligent entrustment is that the defendant “knew of the incompetency” of the driver at the time the defendant entrusted the driver with the automobile. *Jones v. Harris*, 122 Wn. at 74-75, 210 P.22. Mr. Faw argued that Mr. Parker's criminal history and the suspension of his Washington driver's license on April 11, 2009 for failure

to provide proof of insurance indicated that Kyle Parker was incompetent to operate an automobile. However, Mr. Parker's criminal history was unrelated to his ability to operate an automobile, and Mr. Parker had a valid Oklahoma driver's license on July 13, 2009 when Ms. Millam gave him the Toyota. There was a "complete failure of proof" that Ms. Millam "knew of the incompetency" of Kyle Parker to operate an automobile, another essential element of negligent entrustment.

Under *Young v. Key Pharmaceuticals*, the trial court correctly granted summary judgment on the negligent entrustment claim because Mr. Faw failed to provide any evidence on two essential elements of that claim, rendering "all other facts immaterial." *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323, 106 S.Ct. 2548, 2552-2553, 91 L.Ed.2d 265 (1986))

**G. Mr. Faw failed to establish the existence of a duty owed by the Millams to Mr. Faw to protect him from the intentional and/or criminal acts of Mr. Parker.**

At page 41 of his Opening Brief, Mr. Faw asserts that *Parrilla v. King County*, 138 Wn.App. 427, 157 P.3d 879 (2007) has "facts similar to the present case." Not so: in *Parilla*, a King County Metro bus driver "acted with knowledge of peculiar conditions which created a high degree of risk of intentional misconduct" (*Id.* at 440, 157 P.3d 879) when he left a bus with the engine running next to the curb of a public street with a

passenger on board who was “acting in a highly volatile manner” and “had displayed a tendency toward criminal conduct by refusing the driver’s requests that he leave the bus and by hitting the windows of the bus with his fists.” *Id.* A duty was found under Restatement (Second) of Torts 302 B “pursuant to the circumstances alleged.” *Id.* at 441, 157 P.3d 879. The facts here are nothing like the facts in *Parilla*.

Nevertheless, based on *Parilla, Kim v. Budget Rent a Car System, Inc.*, 143 Wn.2d 190, 15 P.3d 1283 (2001), and Restatement (Second) of Torts 302 B, Mr. Faw argues that he “may pursue a general theory of negligence against the Millams.”

The essential elements of a negligence action are (1) the existence of a duty to plaintiff; (2) breach of that duty; (3) resulting injury; and (4) proximate cause between the breach and the injury. *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991). The threshold determination in a negligence action is whether a duty of care is owed by the defendant to the plaintiff. *Taylor v. Stevens County*, 111 Wn.2d 159, 163, 759 P.2d 447 (1988). The existence of a duty is a question of law for the court. *Hutchins*, 116 Wn.2d at 220, 802 P.2d 1360.

*Robb v. City of Seattle*, 159 Wn. App. 133, 139 245 P.3d 242 (2010).

Mr. Faw asserts that, “[c]learly, Ms. Millam knew that Mr. Parker would be engaging in criminal behavior, driving while his license was suspended in Washington, as soon as he crossed the border into Washington while driving the vehicle.” Appellant’s Opening Brief, page 42. The evidence before the trial court and this Court is that

Ms. Millam did not know that Mr. Parker's Washington driver's license was suspended when she gifted the Toyota to him on July 13, 2009.

What Ms. Millam knew was that Mr. Faw had a valid Oklahoma driver's license.

Mr. Faw also asserts that "Mr. Parker's social history and criminal background is additional evidence that Tara Millan negligently entrusted the vehicle to Mr. Parker based upon the Restatement (Second) of Torts 302B." Appellant's Opening Brief, page 42.

Section 302 B of the Restatement (Second of Torts) provides:

An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is **intended** to cause harm, even though such conduct is criminal.  
(Emphasis added.)

This Section of the Restatement address liability for the **intentional** act of a third person. "The intentional conduct with which this Section is concerned may be intended to cause harm to the person or property of the actor himself, the other, or even a third person." *Id.*, Comment b. There is no claim that Mr. Parker intentionally collided with Mr. Faw. Again, under Section 302 B, Ms. Millam must have realized or should have realized that gifting the Toyota to Mr. Parker involved an unreasonable risk of intentional harm to another. Mr. Faw presented no evidence whatsoever that Ms. Millam had such knowledge. He presented

no facts to suggest, in fact, that Ms. Millam should have had such knowledge.

“The general rule at common law is that a private person does not have a duty to protect others from the criminal acts of third parties.” *Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 199, 943 P.2d 286 (1997). “Ordinarily, . . . in the absence of a special relationship between the parties, there is no duty to control the conduct of a third person so as to prevent him from causing harm to another.” *Richards v. Stanley*, 43 Cal.2d 60, 65, 271 P.2d 23, 27 (1954).

In *Robb*, 159 Wn.App. at 146, 245 P.3d 242, the Court of Appeals discussed Restatement (Second) of Torts § 302 B:

It describes limited circumstances in which an actor has a duty to protect another against third party conduct **intended** to cause harm. There must be a **recognizable high degree of risk of harm**, evidence of which was found lacking in *Kim* and in *Hutchins* but present in *Parrilla*. **The risk must be one that a reasonable person would take into account.** And as comment e explains, these situations arise where **the actor has a special relationship to the one suffering the harm or where the actor's own affirmative act has created or exposed the other to the high degree of risk of harm.**

Emphasis added.

Ms. Millam had no special relationship with Mr. Faw, and took no affirmative act that exposed Mr. Faw to a high degree of risk of harm.

Washington courts have found a duty based on Restatement (Second) of Torts § 302 B **only twice**: first, in the *Parilla* case, where

“the defendant bus driver was aware that an instrumentality uniquely capable of causing severe injuries was left idling and unguarded within easy reach of a severely impaired individual.” *Robb*, 159 Wn. App. at 147, 245 P.3d 242. The *Robb* Court also found a duty in that case, where police “officers t[ook] control of a situation and then depart[ed] from it leaving shotgun shells lying around within easy reach of a young man known to be mentally disturbed and in possession of a shotgun.” *Id.*

In this case, Ms. Millam had no reason to suppose that Mr. Parker would engage in conduct to intentionally harm Mr. Faw or any other driver. It is not Section 302 B that applies in this case, but the general rule that Ms. Millam had no duty to control the conduct of Kyle Parker so as to prevent him from causing harm to another. The Court should rule that Ms. Millam owed Mr. Faw no duty under Restatement (Second) of Torts Section 302 B.

Where no duty arises, there can be no negligence claim, since the existence of a duty is the “threshold question.” *Jackson v. City of Seattle*, 158 Wn. App. 647, 651, 244 P.3d 425 (2010). The trial court’s summary dismissal of Mr. Faw’s “general theory of negligence” should be affirmed.

**H. The Millam’s marriage was defunct as of the date of their separation in February 2009.**

At page 44 of his Opening Brief, Mr. Faw argues that “Mr. Millam has not demonstrated by clear, cogent and convincing evidence that the presumption that property acquired during his marriage to Ms. Millam, specifically the 1992 Toyota Paseo, is community property.” (Respondents believe that Mr. Faw omitted the word “not” before “community property.”).

RCW 26.15.140 provides, “When spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each.” RCW 26.16.140 “requires some mutuality on the part of the spouses.” *Seizer v. Sessions*, 132 Wn.2d 642, 659, 940 P.2d 261 (1997). A marriage is defunct when the evidence demonstrates that “both parties to the marriage no longer have the will to continue the marital relationship.” *Id.* at 658, 940 P.2d 261 (1997) (quoting *In re Marriage of Short*, 125 Wn.2d 865, 871, 890 P.2d 12 (1995)). Acquiescence in a separation is sufficient to establish a defunct marriage. *Seizer*, 132 Wn.2d at 659, 940 P.2d 261.

The “living separate and apart” statute contemplates a permanent separation, a “defunct” marriage. *Bunt*, 110 Wn.2d at 372, 754 P.2d 993; *Cross*, 61 Wash.L.Rev. at 34. A marriage is considered “defunct” when both parties to the marriage no longer have the will to continue the marital relationship. *Cross*, 61 Wash.L.Rev. at 34. **In other words, when the deserted spouse accepts the futility of hope for restoration of a normal marital relationship, or just acquiesces in the separation, the**

**marriage is considered “defunct” so that the “living separate and apart” statute applies.** Cross, 61 Wash.L.Rev. at 35.

*In re Marriage of Short*, 125 Wn.2d 865, 871, 890 P.2d 12 (1995).

(emphasis added).

Ms. Millam submitted a declaration stating:

I separated from my husband, Jeff, February 12, 2009 when I rented a U-Haul truck and moved from Tacoma Washington to Bethany Oklahoma. I had previously sought alternate employment with my employer, Netflix. I had already decided that our marriage was over and looked for employment and advancement away from Tacoma. When I left for Oklahoma, our marriage was finished.

When I purchased the Toyota Paseo in Oklahoma I was living separate and apart from my husband with no intention of reconciliation. I had my own separate earnings through my employment with Netflix. I purchased the Toyota as my sole and separate property. My husband had no interest, whatsoever, in the vehicle.

CP 291.

Mr. Millam submitted a declaration stating:

When my wife, Tara Millam, packed up her things, rented a U-Haul and moved to Oklahoma on February 12, 2009, it was clear that our marriage was over.

Tara had left her job in the Tacoma area. She obtained an advancement and new job in Bethany Oklahoma. She has continued to reside there ever since. We were subsequently divorced.

After Tara left the Northwest, she had her own earnings, and her own residence. I had no interest in her earnings or items that she purchased on her own such as the Toyota

Paseo automobile.

CP 327.

The parties separated permanently on February 12, 2009. Mr. Millam acquiesced in the separation. They commenced formal divorce proceedings seven months after the separation. The marriage was “defunct” as of February 12, 2009.

Mr. Faw asserts that “the family home remained a community asset on August 3, 2009.” Opening Brief, page 45. That may be correct, because the family home was acquired before the marriage became defunct. However, Ms. Millam purchased the Toyota after the marriage was defunct, and it was her own separate property. As Mr. Millam and Tara both stated by declaration, Mr. Millam had no interest in the Toyota. This is because there was no “community” when the Toyota was purchased by Ms. Millam.

**I. Ms. Millam did not make a “decision” to maintain automobile coverage on the Toyota after gifting it to Mr. Parker.**

At pages 45-46 of the Opening Brief, Mr. Faw argues that Ms. Millam’s “decision to maintain automobile insurance coverage on the vehicle for the 17 days from the time of the purported vehicle transfer is further evidence that Ms. Millam owned the vehicle; otherwise she could not legally insure the vehicle for lack of an ‘insurable interest.’” First, Ms.

Millam insured the Toyota when she purchased it -- at that time she had an "insurable interest" as owner of the vehicle. Second, the record reveals that Ms. Millam made no "decision" to maintain the insurance after transferring the Toyota to Mr. Parker. Rather, she simply forgot to cancel it. During her deposition, Mr. Faw's attorney asked Ms. Millam several questions about the insurance coverage on the Toyota:

Q Why did you cancel the insurance on the Paseo?

A Because I gave the car to Kyle and he was leaving the state.

Q Hadn't he already left the state when you canceled the insurance?

A Yes. I believe it was a week or so later.

Q Okay. Had he arrived in Washington prior to you canceling the insurance or after you canceled the insurance?

A To the best of my recollection, he had already made it up there before I ended up canceling it.

...

Q Why did you keep insurance on the vehicle after you gave the vehicle to Kyle Parker?

A I was busy. I forgot to call and cancel it.

Ms. Millam's testimony is the only evidence in the record regarding why she did not cancel the insurance coverage on the Toyota sooner than she did.

There is no factual basis whatsoever for Mr. Faw's allegation that Ms. Millam made a deliberate decision to "maintain automobile insurance coverage on the vehicle for the 17 days from the time of the purported vehicle transfer[.]"

**J. Mr. Faw's argument regarding the statutory incompetence of Mr. Parker is full of false statements, unsupported assertions of fact and law, and is generally irrelevant.**

Apparently a believer in throwing in the kitchen sink, at pages 46-47, Mr. Faw sets out statements and arguments that require a direct response.

- "Ms. Millam knew that Mr. Parker was suspended in Washington when she allegedly gave the vehicle to Mr. Parker." Ms. Millam testified that she was **not** aware that Mr. Parker did not have a license to drive in Washington. CP 159, lines 22-24. Ms. Millam testified that she knew that Mr. Parker had a valid Oklahoma driver's license.

- "She also had knowledge that Mr. Parker was recently incarcerated for felony theft of a firearm and that he had a criminal record. She knew generally of his criminal records." This is true, but irrelevant on

the claims of negligent entrustment and negligence under a “general theory.” Mr. Parker’s criminal history is entirely unrelated to his ability to drive an automobile.

- “Entrusting a motor vehicle to a suspended driver can be negligence per se.” There is no “negligence per se” for violation of a statute in Washington, with a few inapplicable exceptions. RCW 5.40.050 (“A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se[.]”).

- “Mr. Parker was twenty-one (21) years of age at the time of receiving the vehicle and at the time of the accident. He had spent what little time he had post minority primarily in custody pursuant to his incarcerations or living in a tent with his brother as a homeless person.” One wonders why this sad collection of facts was placed on the page. It is entirely irrelevant on the issues that were before the trial court and now this Court.

- “Mr. Parker could not transfer the vehicle title in Oklahoma without presenting proof of insurance. He had no insurance other than Ms. Millam’s insurance.” These facts are irrelevant.

- “She did not cancel her insurance until seventeen days after the purported gift of the vehicle.” Ms. Millam testified that she was busy and simply forgot to make the call to cancel the insurance after giving the

Toyota to Mr. Parker.

- “By keeping the vehicle insured after it was allegedly gifted to Parker, Ms. Millam’s action raised the inference that the bill of sale was a sham; that the vehicle was not gifted to Mr. Parker; and that the bill of sale was merely intended to excuse Mr. Parker from a lack of a vehicle title or registration in the event he was stopped for a traffic violation as he drove back to Washington.” The bill of sale was authenticated by Ms. Millam, and Ms. Millam’s testimony was corroborated by that of Ms. Estes. Both Ms. Millam and Mr. Parker, the donor and the donee, have testified that the gift was complete and unconditional and was accepted as such by Mr. Parker. The suggested “inferences” are rank speculation and conjecture, wholly unsupported by any factual evidence whatsoever.

“The entrustee’s drivers history of reckless or careless driving is one basis for establishing his or her general incompetence to operate a motor vehicle pursuant to theory of Negligent Entrustment.” To prove negligent entrustment, however, a plaintiff must prove that the defendant **knew** of such a history. In this case, there was no such history. One accident does not qualify as a history of reckless or careless driving. Further, Ms. Millam had no knowledge of that one prior accident.

- Ms. Millam had a “duty to inquire” about Mr. Parker’s criminal history. The existence of such duty is not supported by any legal authority.

• “She also had a duty as to inquire why Mr. Parker was suspended from driving in the State of Washington. Finally, Ms. Millam clearly had a duty not to entrust the vehicle to Mr. Parker knowing that he was immediately [going to] take the vehicle to Washington while he was suspended from driving in the State of Washington and later that he was uninsured.” There is no legal authority for imposing a duty of inquiry about a person’s background before gifting a vehicle to him or her. Ms. Millam did not know that Mr. Parker’s Washington driver’s license was suspended: she had seen him surrender his Washington driver’s license to Oklahoma and had seen him obtain a valid Oklahoma driver’s license in its place.

• “This situation is similar to the example provided in Restatement (Second) of Tort § 390, comment (B).” Section 390 provides:

One who supplies directly or through a third person a chattel for the 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.

Illustration 3 of comment b to Restatement (Second) of Torts § 390 states: “A rents an automobile to B, a young man who **announces his purpose** to drive it from Boston to New York on a bet that he will do so in

three hours. A is subject to liability if the excessive speed at which the car is driven causes harm to travelers on the highway.” Emphasis added.

“The situation” in this case was that Ms. Millam gifted the Toyota to Mr. Parker without any knowledge or reason to know that he was a reckless, heedless, or incompetent driver. There was no evidence presented by Mr. Faw that Mr. Parker had announced he had a bet that he could drive the Toyota from Oklahoma to Washington in any limited period of time or that, after arriving in Washington, he planned to use the Toyota to race on the highway. Ms. Millam did not know and had no reason to know that Kyle Parker would use the Toyota “in a manner involving unreasonable risk of harm to himself and others.” The facts in this case are nothing like the facts in Illustration 3 of comment b to Section 390 of the Restatement (Second) of Torts.

## V. CONCLUSION

Washington courts have consistently required negligent entrustment plaintiffs to show that the entrustor knew or should have known that the trustee was a reckless, heedless, or incompetent driver. *See Weber v. Budget Truck Rental, LLC*, 162 Wn.App. 5, 13–14, 254 P.3d 196, review denied sub nom., *Weber v. Turner*, 172 Wn.2d 1015, 262 P.3d 64 (2011); *Kaye*, 158 Wn.App. at 333, 242 P.3d 27; *Mejia*, 45 Wn.App. at 704, 726 P.2d 1032; *Cameron*, 32 Wn.App. at 879, 650 P.2d 260.

The fact that a driver has a valid and subsisting driver's license gives rise to a presumption "as a matter of law" that the driver is competent to drive. *See Vikelis v. Jaundalderis*, 55 Wn.2d 565, 570, 348 P.2d 649 (1960) (noting in negligent entrustment case that "in view of the fact that Talis had a valid and subsisting driver's license, at the time, we must presume as a matter of law; that he was competent and qualified to operate his parents' car").

In this case, Kyle Parker had one automobile accident before Ms. Millam gave him the Toyota, and she had no knowledge of that single accident. She witnessed Mr. Parker surrender his valid Washington driver's license to Oklahoma and receive a valid Oklahoma driver's license in its place. Mr. Faw presented no evidence whatsoever to support a finding that Ms. Millam "knew or should have known" that that Mr. Parker was a reckless, heedless, or incompetent driver. In the absence of any facts to support this essential element of a negligent entrustment claim, all other facts are immaterial under *Young v. Key Pharmaceuticals*.

The Court correctly applied Oklahoma law on the issue of ownership of the Toyota, and correctly ruled that Mr. Parker was the owner of the vehicle. Mr. Faw presented no evidence whatsoever that the Bill of Sale written by Ms. Millam was a "sham" or that no completed gift was made that transferred ownership of the Toyota to Mr. Parker.

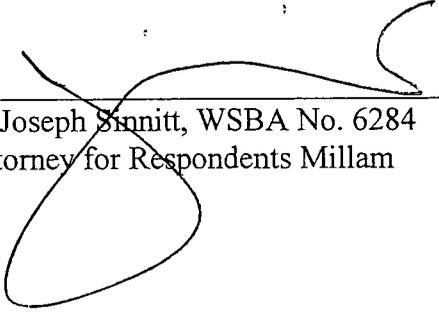
Ms. Millam did not merely “entrust” her vehicle to Mr. Parker on July 13, 2009. She made a completed inter vivos gift of the vehicle to Mr. Parker, thereby transferring ownership of the car to him. Ms. Millam was neither the owner nor the person in possession and control of the Toyota on August 3, 2009.

The trial court made no error in granting summary judgment on Mr. Faw’s negligent entrustment claim, for Mr. Faw failed to present facts sufficient to raise an issue for trial on several elements of the claim.

Restatement (Second) of Torts § 302 B, *Parrilla*, and Restatement (Second) of Torts) 390 are not applicable to the facts in this case. Mr. Faw failed to present any facts whatsoever upon which a duty could be found running from Tara Millam to Mr. Faw to protect him from harm as a result of Mr. Parker’s driving.

At page 49 of his Opening Brief, Mr. Faw asserts that “the trial court had no basis to dismiss” his “general negligence” claim or his negligent entrust claim. In fact, the trial court dismissed these claims because there was no factual basis to let them proceed to trial. This Court should affirm the trial court’s decision granting the Millams’ Motion for Summary Judgment Dismissal.

Respectfully submitted this \_\_\_\_ day of September, 2012.



---

C. Joseph Sinnitt, WSBA No. 6284  
Attorney for Respondents Millam

RECEIVED  
SEP 21 2012

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

Judge Stephanie Arend

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF PIERCE

JOSHUA L. FAW, a single person,  
Plaintiff,

vs.

KYLE S. PARKER, individually; and KYLE  
S. PARKER and "JANE DOE" PARKER,  
husband and wife, and the marital  
community composed thereof, and ;  
TARA MILLAM and "JOHN DOE" MILLAM,  
wife and husband, and the marital  
community composed thereof,  
Defendants.

Pierce County Superior Court No.  
10-2-05533-4  
Court of Appeals No. 42840-7-11

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2012, copies of the following documents:

- 1. RESPONSE BRIEF OF TARA MILLAM AND "JOHN DOE" MILLAM, and
- 2. this Certificate of Service

were served on counsel at the following addresses and by the method(s) indicated below:

DOUGLAS CLOUD	<u>        </u> Email
901 SOUTH I STREET #101	<u>XX</u> Legal Messenger
TACOMA WA 98405	

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION TWO	
950 BROADWAY, Suite #300	<u>XX</u> Legal Messenger
Tacoma Washington 09402	

*I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and accurate.*

Dated this 21st day of SEPTEMBER 2012

  
Renee Sowers  
Signed in Tacoma Washington