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No. 65336-9-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE**

FILED
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KENNETH HOUSE, Appellant,

v.

The Estate of MICHAEL L. MCCAMEY, and the Estate of WILLIAM
C. MCCAMEY, Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY
#08-2-06706-6

OPENING BRIEF OF APPELLANT

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ORIGINAL

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INTRODUCTION

This appeal concerns a father's responsibility for letting his troubled adult son use his pickup truck. Under the doctrine of negligent entrustment, a vehicle owner is liable for "entrust[ing] it to someone whom he or she knows to be reckless, heedless or incompetent." Cameron v. Downs, 32 Wn. App. 875, 879, 650 P.2d 260 (1982). The question is whether William McCamey knew that his son, Michael, was reckless, heedless or incompetent.

In the first week of November, 2006, William loaned his son a 1972 Dodge 4x4 truck. A few days later, on November 6, 2006, Michael was arrested and held for 30 days on charges of abusing his girlfriend. That same month, on November 26, 2006, William purchased a \$1 million umbrella insurance policy to protect himself – while Michael was in prison. On December 5, 2006, Michael was released, and the next day, he drove his father's truck through a stop sign into the side of appellant Ken House's car. House suffered a severe closed head injury.

House sued both William and Michael, but on April 9, 2010, Snohomish County Superior Court Judge Ronald Castleberry granted summary judgment on all claims against William. The trial

court concluded Michael's record did not make him reckless, heedless, or incompetent.

It is true that the son, Michael McCamey, had a long history of criminal behavior, including the child molestation and probation violations for that child molestation, history of domestic violence, et cetera, but quite frankly, other than Ms. Brown's opinion, there is nothing to suggest that there would be the duty on the part of the lender of the vehicle to say that that was a negligent entrustment to give a child molester a car or to give a probation violator a car or to give somebody who has a history of domestic violence a car.

(4/9/10 VRP 15-16).

Because the trial court inappropriately narrowed William's duty of care, Mr. House now appeals. He respectfully requests this Court to reverse the trial court's summary judgment and remand for trial.

I. ASSIGNMENTS OF ERROR

Mr. House assigns error to two orders from the Superior Court: (1) the April 9, 2010 Order Granting Summary Judgment (CP 29-31) (Attached as Appendix A) and (2) April 20, 2010 Judgment (CP 26-28) (Attached as Appendix B). Mr. House does not appeal the trial court's March 9, 2010 Order of Partial Summary Judgment on vicarious liability. (CP1666-1668). Specific assignments of error are:

A. The trial court erred by awarding judgment to defendant William McCamey on plaintiff's claims for negligent entrustment. (4/20/10 Judgment; CP26-28).

B. The trial court erred by granting defendant William McCamey's motion for summary judgment on negligent entrustment. (4/09/10 Order ¶ 2.1) (CP 29-31).

C. The trial court erred by dismissing plaintiff's claims against William McCamey for negligent entrustment. (4/09/10 Order ¶ 2.2) (CP 29-31).

Issues pertaining to these assignments of error are:

D. Under the tort of negligent entrustment, the vehicle owner must know or should have known that the borrowing driver "was habitually or generally heedless or reckless, or heedless or reckless when driving an automobile, or incompetent otherwise to drive one." Jones v. Harris, 122 Wash. 69, 73, 210 P.2d 22 (1922). Here, William McCamey knew that his son had severe drug and alcohol problems, a lengthy record of driving offenses, a history of angry, abusive behavior, and a significant lack of judgment. Did William know or should have known that Michael was reckless, heedless or incompetent?

E. On summary judgment, the trial court must view all facts and reasonable inferences in favor of the non-moving party. Although William received Michael's comprehensive Department of Corrections file in 2005, the trial court would not "impose a duty on parents to read the psychological reports of their children before giv[ing] them the car." (4/09/10 VRP 12). Should William have reviewed the contents of Michael's DOC file before loaning him the truck?

II. STATEMENT OF FACTS

A. Michael McCamey Had An Extensive History Of Reckless Driving, As Well As Poor Judgment

Michael McCamey had a life-long struggle with anger, violence, drug and alcohol abuse, and dangerous behavior. It ended on September 7, 2008, when he died from a heroin overdose. He had both a long history of reckless driving and an significant criminal record.

1. His Reckless Driving

Over 15 years, Michael had at least 16 serious traffic offenses. Here is a summary of his record:

1992

- June 16, 1992 – Speeding 50 MPH in a 25 zone;
- December 12, 1992 – Driving without liability insurance;

1993

- April 1, 1993 – Driving w/o liability insurance;
- May 25, 1993 – Speeding 80 MPH in a 55 zone;
- May 25, 1993 – Driving without liability insurance;

1994

- February 8, 1994 – Speeding 65 MPH in a 55 zone;
- April 30, 1994 – License suspended;

1995

- April 10, 1995 – Arrested for reckless driving;
- August 26, 1995 – Speeding 40 MPH in a 25 zone;
- August 26, 1995 – No license on person;
- September 5, 1995 – Arrested for driving under the influence;

1997 – April 2006

- Incarcerated on two counts of child molestation;

2006

- August 9, 2006 – Driving without a valid license;
- August 9, 2006 – Driving without liability insurance;
- August 9, 2006 – Registration violation; no tabs;
- October 4, 2006 – Obtains driver's license;
- October 26, 2006 – Admits to committing minor traffic offenses;
- November 6, 2006 – William McCamey delivers truck to Michael;
- November 6, 2006 – Michael is arrested and held in Snohomish County Jail;
- December 5, 2006 – Michael released from jail.
- December 6, 2006 – Runs stop sign and collides with plaintiff, Ken House.

(Exhibit 4 & 14 to Mechtenberg Dec.; Sub #7 CP __)*.

As this summary illustrates, Michael had a record of reckless driving that straddled his time in jail. This is not a few minor

* Because Appellant has filed a supplemental designation of clerk's papers for this document, CP cites do not yet exist. The brief uses the sub number to identify the document.

offenses when he was a teenager. Michael drove dangerously and disregarded driving requirements throughout his adult life.

2. His Criminal And Reckless Behavior

In addition to violating traffic laws, Michael had a significant criminal record that confirms his impaired judgment. Michael began using drugs at age 12 and abused them throughout his life. (Pre-Sentence Report, Exhibit 9 to Mechtenberg Dec.; Sub #7 CP __). In a 1996 presentence report he completed, Michael admitted to abusing the following drugs:

- Marijuana – all the time since age 12;
- LSD – once or twice a year since age 12;
- Amphetamines – once in a while since age 14;
- Cocaine – all the time since age 20;
- Morphine – once in a while since age 20;
- PCP – back in the 70s;
- Sniffing Gas – most of his youth;
- Sniffing Glue – most of his youth;
- Sniffing Paint – most of his youth.

(Presentence Report at 5; Sub #7 CP __). He also admitted that he was addicted to drugs and had a drug problem. (Presentence Report at 5; Sub #7 CP __).

Michael began abusing alcohol at age 14. (Presentence Report at 5; Sub #7 CP __). Like his addiction to drugs, Michael's problems with alcohol continued throughout his life. In 1995, he

was arrested for drunk driving. The Ferry County Deputy Sheriff reported that Michael's

pickup almost missed the turn making a very wide turn, then overcorrected into the oncoming lane. The vehicle proceeded North bound weaving in its own lane. As the vehicle came into the sharp left hand curve it appeared that the vehicle was about to leave the roadway crossing over the fog line.

(Report Narrative at 1; Exhibit 15 to Mechtenberg Dec.; Sub #7 CP ____). He had a .12 blood alcohol level. (Report Narrative at 2; Sub #7 CP ____).

Ferry County charged Michael with driving under the influence and released him to his father, William. Toni Fitzgerald, Michael's wife at the time, testified that his drinking became worse when he was living near his parents.

I don't remember him ever just social drinking. He drank till he was drunk. I have no idea how much that took; I didn't count. I didn't know a lot of times.

(Fitzgerald Dep. at 14; Exhibit 7 to Mechtenberg Dec.; Sub #7 CP ____). Michael's parents tried to help him establish a stable life, buying the couple a house to live in. They had to sell it when Michael and Toni divorced and Michael went to prison. (Fitzgerald Dep. at 15; Sub #7 CP ____).

Between 1997 and April 2006, Michael was in state prison for two counts of child molestation. This was the only period in Michael's adult life when he did not commit traffic or criminal offenses. After nine years of imprisonment, Michael was released, moved to Everett and lived with his girlfriend, Terry Dahlin. (Dahlin Dep. at 12; Exhibit 5 to Mechtenberg Dec.; Sub #7 CP __).

Within two months of his release, Michael resumed his dangerous behavior. His son, Jonathan, was killed in June 2006 and in the aftermath, Michael became increasingly self-destructive and dangerous. (Dahlin Dep. at 27; Sub #7 CP __). His girlfriend, Terry, testified that Michael would drink heavily and then physically abuse her.

Q. ...[F]rom June until the time he moved out in November, was that the time frame where you observed him drinking, I think we established, about two, three times a week?

A. Yes.

Q. And each time he would drink, he would drink at least half a case of beer; is that correct?

A. Yes.

Q. Now, you mentioned that he started abusing you; was this abuse that was verbal, physical?

A. Verbal and physical.

(Dahlin Dep. at 18; Sub #7 CP ____). Terry forced Michael to leave in November 2006 when the abuse became intolerable. (Dahlin Dep. at 19; Sub #7 CP ____).

While with Terry, Michael told her that he knew how to mask his urine to pass periodic urinalysis tests. (Dahlin Dep. at 47; Sub #7 CP ____). He also claimed that he beat a lie detector test by not revealing his drinking and drug use while on probation. (Dahlin Dep. at 47-48; Sub #7 CP ____). Twice, Michael drove Terry's car after drinking. (Dahlin Dep. at 33; Sub #7 CP ____).

3. Michael's Behavior Spiraled Downward Before The Collision With Ken House

In early November 2006 – the same time Michael was abusing Terry and drinking alcohol – his father, William, bought a heavy-duty 1972 Dodge 4x4 truck and drove it to his son in Everett. (McCamey Dep. at 42; Exhibit 6 to Mechtenberg Dec.; Sub #7 CP ____). William owned the truck, insured it, and had it registered in his name. (McCamey Dep. at 26; Sub #7 CP ____). Michael had full use of the truck after that.

Shortly after Michael got the truck, Terry demanded that he leave. She also pressed charges against him for assault. On November 6, 2006, Michael was arrested for assaulting Terry and

incarcerated for the next 30 days. (Answer to Request for Admission No. 11; Exhibit 1 to Mechtenberg Dec.; Sub #7 CP __). He would have been sent back to prison if convicted, but Terry refused to testify against him.

While Michael was in jail, William purchased a \$1 million umbrella insurance policy, protecting William from liability. (Answer to Request for Admission No. 3; Exhibit 2 to Mechtenberg Dec.; Sub #7 CP __).

On December 5, 2006, Michael was released from jail. He was homeless, unemployed, destitute, and in alcohol withdrawal. (Brown Dec. at 7; CP 1836). The next day, December 6th, Michael planned to visit his ex-wife to pick up some belongings. He drove his father's pickup from Everett to Marysville. When he approached a four way stop in Marysville, he "looked down for directions and looked back up." (McCamey Driver Collision Statement at 2; Exhibit 5 to Ganfield Dec.; CP 1622). Michael drove through the stop sign and hit Ken House's car in the middle of the intersection. (Exhibit 5 to Ganfield Dec.; CP 1621-1631). Michael admitted he was at fault for the accident. (Exhibit 5 to Ganfield Dec.; CP 1621-1631).

House suffered a closed head injury from the collision. He lost function in his pituitary gland, which caused numerous hormone deficiencies. This in turn resulted in painful joints and muscles, loss of muscle mass, forgetfulness, lack of concentration, fatigue, and severe disability.

Michael never should have been driving after his release from jail. As plaintiff's expert on chemical dependency, Cindy Brown, concluded,

Mr. McCamey's inattentive driving and distraction are symptoms of protracted withdrawal. Protracted withdrawal is a brain dysfunction that has been documented in 75 to 95% of addicts and alcoholics that have been tested...Common symptoms are dizziness, trouble with balance, problems with coordination between hand and eye, slow reflexes resulting in clumsiness and [being] accident prone. This is how the term "dry drunk" came into being. They have the appearance of being intoxicated even when not using.

(Brown Dec. at 7; CP 1836).

B. William McCamey Knew About His Son's Problems

Because both Michael and William McCamey died before this case was filed, there is no direct evidence of what William knew about his son's reckless driving and irresponsible behavior. However, circumstantial evidence shows that William knew, or

should have known, Michael's behavior was dangerous and out of control. He had at least three sources of information.

First, Terry Dahlin told William about Michael's drinking and physical abuse.

A. ...William was not happy with some of the things that Michael did.

Q. Such as...?

A. His, you know, drug habits and drinking, abusing me, because I would call William and talk to him about his son abusing me.

Q. Would you talk to William about Michael's alcohol use?

A. Yes.

Q. Do you recall what William would say to you in those conversations?

A. Basically, with him being in Republic, he was concerned, but he really couldn't do anything about it.

(Dahlin Dep. at 24-25; Sub #7 CP __). When William gave his pickup to Michael in November 2006, he knew that his son was abusing drugs, alcohol and Terry.

Second, in November 2005, William received Michael's Department of Corrections file in preparation for his son's release. (Exhibit 11 to Mechtenberg Dec.; Sub #7 CP __). The materials

included Michael's: (1) educational history; (2) psychiatric evaluation; (3) psychological evaluation; (4) drug alcohol assessment; (5) progress in treatment; (6) presentence report; (7) assessment or reassessment of risk forms; (8) criminal history; and (9) anything pertaining to his release plan to Island County. (Exhibit 11; Sub #7 CP __). William had records of his son's history of traffic infractions and reckless driving; alcohol and drug abuse; anger and physical violence; and impaired judgment.

Third, he knew about Michael's 1995 DUI arrest because the Ferry County Sheriff released Michael to his custody. (Report Narrative at 2; Exhibit 15 to Mechtenberg Dec.; Sub #7 CP __) ("at approx 0404 hours I released McCamey to his father Mr William C McCamey").

C. The Trial Court Ruled That William Was Not Negligent

The Superior Court's written summary judgment order does not give a rationale for the court's ruling. The court's comments at the summary judgment hearing, however, suggest four reasons for its decision.

First, there was no evidence that Michael had drugs or alcohol in his system when he caused the car accident. (4/09/10

VRP 9). Second, William did not have a duty to read the DOC file on his son.

THE COURT: So you're saying there is a legal obligation on the part of the father to have read those records before he gave the car to his son?

MR. KOHLES: I think that's a factual matter for the trial court to decide. Not necessarily a legal matter, but a factual matter.

THE COURT: What you're doing is saying impose a duty on parents to read the psychological reports of their children before you give them the car.

(4/09/10 VRP 12).

Third, Michael was an emancipated adult and had a valid driver's license.

In this particular case we have an emancipated adult child, 48 years old, who has a valid driver's license. He's been out of the family home for 31 years, albeit a good portion at that point in time was either in a jail or in prison or whatever, but nevertheless, he was emancipated, living on his own.

(4/09/10 VRP 15). Fourth, Michael's criminal record does not prove he was a dangerous driver.

I think that would be a very dangerous path to go down if in fact you cannot demonstrate objectively that the past behavior was known to the entrustor to affect a person's ability to drive or how they drove.

In fact, all of the objective evidence in the case that's not rebutted from even the victims of the domestic violence indicate that he was a safe driver.

(4/09/10 VRP 16). The court granted summary judgment and dismissed all claims for negligent entrustment.

Because Michael's driving record and criminal behavior is sufficient evidence he was reckless, heedless and incompetent, Ken House now appeals.

ARGUMENT

III. STANDARD OF REVIEW

This Court reviews the trial court's summary judgment *de novo*.

We review petitioners' motion for summary judgment *de novo*, engaging in the same inquiry as the trial court. A trial court must grant a motion for summary judgment if "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c).

Lake v. Woodcreek Homeowners Ass'n, 168 Wn.2d 694, 703-704, 229 P.3d 791 (2010).

IV. THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT

A. Credible Evidence Establishes That Michael Was Reckless And William Knew That

Washington tort law imposes a duty of reasonable care whenever someone lends something that could be dangerous in the wrong hands. Under the Restatement (Second) of Torts § 390,

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.

Restatement (Second) of Torts § 390. Washington courts rely on the Restatement to develop and explain the doctrine of negligent entrustment. Hickle v. Whitney Farms, Inc., 148 Wn.2d 911, 925, 64 P.3d 1244 (2003).

Cases involving loaned automobiles are only a subset of negligent entrustment claims. The key issue in all cases is the foreseeability of harm.

Negligent entrustment is a “well-established” common law doctrine in Washington. Christen v. Lee, 113 Wn.2d 479, 499, 780 P.2d 1307 (1989). It is based on the foreseeability of harm when one knew or should have known that the person to whom materials were entrusted was unable to safely handle the materials. See Restatement (Second) of Torts § 390 (1965).

Hickle, 148 Wn.2d at 925.

Here, Ken House had to prove four elements to claim negligent entrustment: (1) William entrusted the truck to Michael; (2) Michael was reckless, heedless or incompetent to operate the truck; (3) William knew or should have known about Michael's

recklessness; and (4) Michael's recklessness is a proximate cause of House's damages.

In order to prevail on a theory [of negligent entrustment], the plaintiff must show that a person entrusting a vehicle to another knew, or should have known in the exercise of ordinary care, that the person to whom the vehicle was entrusted is reckless, heedless, or incompetent.

Caouette v. Martinez, 71 Wn. App. 69, 78, 856 P.2d 725 (1993);
Mejia v. Erwin, 45 Wn. App. 700, 704, 726 P.2d 1032 (1986)
(same); Cameron v. Downs, 32 Wn. App. 875, 878, 650 P.2d
260 (1982) (same).

No dispute exists on the first and fourth elements – William entrusted the truck to Michael and Michael's negligent driving was the proximate cause of House's damages. The dispute is over the second and third elements – Michael's recklessness and William's knowledge.

As detailed in the statement of facts above, Mr. House submitted compelling evidence of Michael's recklessness – both behind the wheel and with his health and safety. Michael committed at least 16 driving violations during his life, including three in August 2006. (4/20/09 Abstract of Driving Record at 2; Exhibit 4 to Mechtenberg Dec.; Sub #7 CP ___). Furthermore, in an

October 2006 pre-test interview for a polygraph test, Michael admitted that he deliberately violated the law by committing “minor traffic” offenses. (Pre-Test; Exhibit 14 to Mechtenberg Dec.; Sub #7 CP __).

Next, no dispute exists that Michael was abusing drugs and alcohol and was physically abusive in November 2006. This alone was proof of recklessness, but his incarceration up until the day before his accident *also* affected his driving. As Cindy Brown stated,

in my professional opinion, on a more probably than not basis, William McCamey created a risk of harm when he provided his son Michael with the truck. As I noted in my previous declaration, Michael McCamey was just coming off a 30 day jail sentence for violating the terms of his release and it is my opinion he was suffering from post acute withdrawal – sometimes commonly referred to as dry drunk.

(Brown Supp. Dec. at 2; CP 1418). Symptoms of dry drunk include lack of coordination and distractibility – the two reasons Michael identified for missing the stop sign.

None of the trial court’s reasons for granting summary judgment invalidates this evidence *as a matter of law*. First, the fact that Michael obtained a drivers license creates a presumption of competence. Vikelis v. Jaundaleris, 55 Wn.2d 565, 570, 348

P.2d 649 (1960). It does not rebut all evidence of recklessness or heedlessness. Second, the lack of drugs or alcohol in Michael's system on the day of the accident does not make the collision any less reckless, negligent or foreseeable. Whether Michael was "dry drunk" or whether he was committing yet another traffic offense, viewing the facts and reasonable inferences in favor of House, Michael was a reckless driver.

Credible evidence also establishes that William knew or should have known his son was a reckless driver and a reckless person. As Cindy Brown stated, William's actions fit the pattern of an enabling parent.

The elder Mr. McCamey was intimately involved in Michael McCamey's adult life on many occasions over many years. In part he was an enabler. Michael McCamey obtained from him over the years support in many ways. This included allowing him to return to be home with his parents, residences in the area of the parents' home, assistance with transportation needs, and I fully expect financial assistance from time to time.

(Brown Dec. at 2; CP 1831). William knew about Michael's reckless behavior and past driving offenses, but felt he could do little about it. (Dahlin Dep. at 25; Sub #7 CP __).

Furthermore, in late 2005, William received Michael's DOC file that documented his reckless driving and behavior. (Exhibit 11

to Mechtenberg Dec.; Sub #7 CP __). Whether or not William read it, he should have been aware of its contents. First, William was requesting DOC to release Michael to his custody and had an obligation to read the file. Second, any parent with a son like Michael should have known his son had serious behavioral issues that affected his driving.

The trial court refused to make this inference, suggesting parents do not have a duty to read the psychological reports of their children before giving them the car. (4/09/10 VRP 12). But here, William had an obligation to review the DOC files before accepting custody of his son. Furthermore, William gave his son the pickup *immediately after* Terry evicted Michael for abuse. Reasonable care under the circumstances required William to read Michael's files before loaning him a truck.

For this reason, the outcome of Mejia v. Erwin, 45 Wn. App. 700, 726 P.2d 1032 (1986) does not govern here. The Court of Appeals in Mejia acknowledged that "ordinary issues of negligence are not susceptible to summary judgment." Mejia, 45 Wn. App. at 704. But the Court also stated that "it is not reasonable to expect a parent of an emancipated child to be intimately acquainted with all aspects of his grown child's personal life." Mejia, 45 Wn. App. at

704. The Court concluded “knowledge of an entrustee’s previous reckless acts should have little bearing on the entrustor’s present perception of the entrustee’s competence to drive at the time of entrustment.” Mejia, 45 Wn. App. At 704

William had greater knowledge and a different set of obligations than the father in Mejia. He knew that his son had resumed abusing drugs, and alcohol. He also knew that his son had a history of reckless driving and behavior that continued to the present. His son was not truly emancipated and independent, but rather dependent on his father for money, transportation and a place to live. And William had asked for custody of his son and received a DOC file in preparation. Unlike the facts in Mejia, William had a duty to know about his son’s reckless behavior.

Finally, William’s purchase of an umbrella policy in November 2006 implies that he understood the unreasonable risk from Michael’s behavior. William delivered the truck to his son in early November, 2006. He then purchased a \$1 million umbrella policy on November 26, 2006. Nothing in William’s life changed during these three weeks other than Michael’s incarceration for assault. A jury could reasonably find that William feared Michael

would get in an accident after his release and purchased insurance for protection.

In response to defendant's motion for summary judgment, Ken House provided compelling evidence that William negligently entrusted a pickup truck to his son, Michael. The trial court erred by rejecting this evidence as a matter of law.

B. The Court Failed To View The Facts And Reasonable Inferences In Favor Of Mr. House

To grant summary judgment, the trial court necessarily decided three contested issues of fact. First, the court ruled that no reasonable juror could find that Michael was reckless, heedless and incompetent. As the court noted in its oral ruling,

all of the objective evidence in the case that's not rebutted from even the victims of the domestic violence indicate that he was a safe driver.

(4/09/10 VRP 16). Michael's driving record, the facts of his accident with Ken House, and the declaration from Cindy Brown prove the opposite. After his release from prison, Michael was spiraling downward and his driving would inevitably match his reckless behavior.

Second, the court ruled that no reasonable juror could find William negligent, namely that he knew or should have known that

his son posed an unreasonable risk to himself and others. As described above, William was a compassionate father who never gave up on his son. But he also placed a 2-ton truck in the hands of an addict recently released from jail who would soon return for assaulting his girlfriend. Reasonable care under the circumstances required his father to say no.

Third, the court implicitly ruled that Michael's accident with Ken House was not foreseeable. Yet a jury could reasonably conclude that Michael would eventually hurt himself or someone else with the truck. It was only a matter of time. The foundation of negligent entrustment is that a vehicle becomes a dangerous instrumentality in the hands of the driver.

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.

Jones v. Harris, 122 Wash. 69, 74, 210 P. 22 (1922).

Had he given Michael a gun rather than a truck, William's negligence would be obvious. Michael was headed down a dangerous path and it was inevitable he would hurt himself or others. Giving Michael a truck was equally negligent. The trial

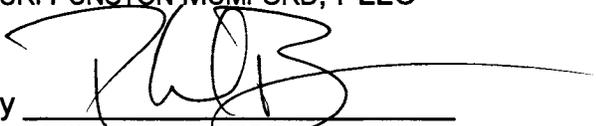
court erred by failing to view all evidence and reasonable inferences in favor of Ken House.

CONCLUSION

Genuine issues of material fact exist over Michael McCamey's recklessness – both behind the wheel and in his life – and William McCamey's knowledge of it. Because the trial court erred by deciding this case on summary judgment, Appellant Ken House respectfully requests this Court to reverse and remand for trial.

DATED this 20th day of August, 2010.

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DECLARATION OF SERVICE

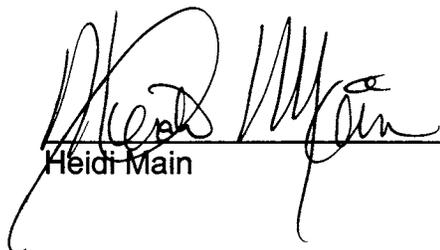
The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of Opening Brief of Appellant to:

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DATED this 20th day of August, 2010.


Heidi Main

APPENDIX A

FILED

APR 9 2010

SONYA KENNEDY
COUNTY CLERK
SNOHOMISH CO. WASH.

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IN THE SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

KENNETH HOUSE,

Plaintiff,

v.

The Estate of MICHAEL L.
MCCAMEY, and The Estate of
WILLIAM C. MCCAMEY,

Defendants.

NO. 08-2-06706-6

ORDER GRANTING WILLIAM C.
MCCAMEY'S MOTION FOR SUMMARY
JUDGMENT

I. MOTION

1.1 Date. April 9, 2010.

1.2 Purpose. To consider The Estate of WILLIAM C. MCCAMEY'S MOTION
FOR SUMMARY JUDGMENT RE.

1.3 Documents & Evidence.

- a. The Estate of WILLIAM C. MCCAMEY'S MOTION AND MEMORANDUM FOR SUMMARY JUDGMENT;
- b. STEVE MCCAMEY DECLARATION; and STEVE MCCAMEY DECLARATION Dated April 1, 2010.
- c. TONI FITZGERALD DECELERATION;
- d. TERRY DAHLIN DECLARATION dated March 7, 2010;

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

DANIEL F. GANFIELD
15806 NORTHEAST 24TH STREET
BELLEVUE, WA 98008-2400
(425) 848-5302

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- e. DANIEL GANFIELD DECLARATION dated March 11, 2010; and DANIEL GANFIELD DECLARATION dated April 5, 2010.
- f. The Estate of WILLIAM C. MCCAMEY'S REBUTTAL BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.
- g. PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - NEGLIGENT ENTRUSTMENT.
- h. DECLARATION OF TED MECHTENBERG IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - NEGLIGENT ENTRUSTMENT.
- i. SUPPLEMENTAL DECLARATION OF CINDY BROWN.
- j. DECLARATION OF SHERIFF PETE WARNER.
- k. DECLARATION OF THERESA GREAVES.
- l. The court record.

II. ORDER

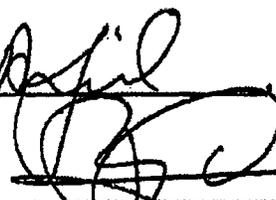
This court having reviewed all documents submitted in support of an in opposition of The Estate of WILLIAM C. MCCAMEY'S MOTION FOR SUMMARY JUDGMENT, and having heard the argument of counsel, and being duly advised in this matter, this court finds that there is no genuine issue as to material fact and that the Estate of William C. McCamey is entitled to judgment as a matter of law and it is therefore ORDERED:

2.1 WILLIAM C. MCCAMEY'S MOTION FOR SUMMARY JUDGMENT is granted.

2.2 All of the plaintiff's claims against the Estate of William C. McCamey, as stated in the plaintiff's AMENDED COMPLAINT FOR PERSONAL INJURIES in the above-entitled action, are dismissed with prejudice and without costs to any party and the Estate of William C. McCamey is dismissed as a party to this action.

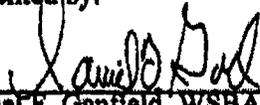
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DATED this 9 day of April, 2010.



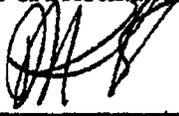
JUDGE RONALD L. CASTLEBERRY

Presented by:



Daniel F. Ganfield, WSBA #18037
Attorney for Defendants

Notice of Presentation Waived:



David A. Kohles, WSBA #7678
Attorney for Plaintiff

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ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

DANIEL F. GANFIELD
15505 NORTHEAST 24TH STREET
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APPENDIX B

FILED

APR 23 2010

SHARON L. JONES
COUNTY CLERK
SNOHOMISH COUNTY, WASHINGTON

IN THE SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

KENNETH HOUSE,

Plaintiff,

vs.

The Estate of MICHAEL L. MCCAMEY,
and The Estate of WILLIAM C.
MCCAMEY,

Defendants.

NO. 08-2-06706-6

ORDER GRANTING PLAINTIFF'S MOTION
FOR FINDINGS AND ORDER OF FINAL
JUDGMENT

THIS MATTER having come on upon motion of plaintiff and the Court being fully advised in the premises does hereby make its:

FINDINGS

1. By order dated April 9, 2010, this court granted defendants' motion to dismiss all remaining claims against the Estate of William McCamey that said estate was liable to plaintiff on the theory of negligent entrustment of the vehicle driven by Michael McCamey at the time of the subject accident. Since plaintiff's previous theories of agency and family car doctrine had previously been dismissed by the court, there remains no further claims against the Estate of William McCamey so this order effectively terminated that estate's involvement in this lawsuit at the trial court level.

ORDER DIRECTING ENTRY OF FINAL JUDGMENT IN
FAVOR OF THE ESTATE OF WILLIAM MCCAMEY - 1

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PHONE 360.629.4100
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1 2. A bench trial is currently scheduled to take place on May 24, 2010. Common issues that
2 would have involved both defendant estates if both estates had remained in the case would have included
3 the amount of damages and a potential comparative negligence claim.

4 3. The only common claims involving both defendant estates is the amount of damages and
5 potential comparative negligence claims. If this matter proceeds to trial, as matters now stand, a
6 determination as to either of these issues will not be binding on the Estate of William McCamey.
7 Should plaintiff prevail on appeal the matter would have to come back to court for a second trial on the
8 same issues.

9 4. There are no questions that will be involved in the appeal relating to the dismissal of the
10 Estate of William McCamey that are involved in any determinations remaining in the trial court. The
11 issues that will be taken up on appeal relate to the potential liability of that estate which is not an issue
12 in the claims involving the Estate of Michael McMey where Michael was the driver of the vehicle at
13 the time of the subject accident and subject to liability under separate theories.

14 5. The appellate review of the dismissal of the Estate of William McCamey will not be mooted
15 by any future developments in the trial court.

16 6. An immediate appeal will not delay the trial court's adjudications of matters without gaining
17 any offsetting advantage. In fact the opposite is true. If the appeal is not taken at this time with a stay
18 of proceedings in the trial court the matter could very well end up having two trials on the same issues
19 against different defendants as noted above.

20 7. The practical effect of allowing an immediate appeal of the dismissal of the Estate of
21 William McCamey will allow the determination of whether William McCamey's estate has potential
22 liability and should participate in the trial of all of the issues involved in this claim rather than retrying
23 some of the same issues twice.

24 Having entered its findings, the Court does hereby:

25 ORDER, ADJUDGE, AND DECREE that there is no just reason for delay and by this order the
Court directs entry of final judgment in favor of the Estate of William McCamey which has been

ORDER DIRECTING ENTRY OF FINAL JUDGMENT IN
FAVOR OF THE ESTATE OF WILLIAM MCCAMEY - 2

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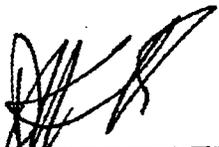
1 dismissed as a party to this matter. This judgment is appealable pursuant to the civil and appellate rules.

2 DATED this 20th day of April 2010.

3 ARDEN J. BEDLE
4 COURT COMMISSIONER

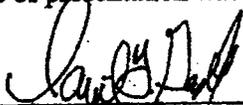
5 JUDGE

6 Presented by:

7 

8 DAVID A. KOHLES - WSBA #7678
9 TED MECHTENERG, WSBA#38558
10 Attorney for Plaintiffs

11 Copy received, approved as to form,
12 notice of presentation waived.

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14 DANIEL GANFIELD, WSBA#18037
15 Attorney for Defendants

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ORDER DIRECTING ENTRY OF FINAL JUDGMENT IN
FAVOR OF THE ESTATE OF WILLIAM MCCAMEY - 3

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