

65336-9

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No. 65336-9-I

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

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

REPLY BRIEF OF APPELLANT

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INTRODUCTION

This case turns on inferences. Because both defendants are dead, all evidence regarding what William McCamey knew or should have known about his son, Michael, is circumstantial. Not surprisingly, the Estate of William McCamey (William) argues no direct evidence proves Michael was a reckless driver and that his father knew that.

But a jury could draw the following reasonable inferences from the evidence:

- Michael's long history of abusing drugs and alcohol; his violent, reckless behavior; and his driving infractions made a car accident foreseeable, if not inevitable; and
- William knew or should have known enough about his son's background to reasonably foresee his son driving recklessly.

After hearing all the evidence, a jury may decide not to draw these inferences, but it is the jury's role to decide.

The trial court erred on summary judgment by resolving these inferences in favor of William, taking the issue from the jury.

We must accept [Plaintiff's] evidence as true and must consider all the facts and all reasonable inferences therefrom in the light most favorable to her. An inference is a process of reasoning by which a fact or proposition sought to be established is deduced as a *logical consequence* from other facts, or a state of facts, already proved or admitted. It is not the court's function to resolve existing factual issues, nor can the

court resolve a genuine issue of credibility such as is raised by reasonable contradictory or impeaching evidence.

Fairbanks v. J.B. McLoughlin Co., Inc., 131 Wn.2d 96, 101-102, 929 P.2d 433 (1997) (citations omitted).

Appellant Ken House respectfully requests this Court to reverse the trial court's summary judgment and remand for trial.

I. MICHAEL'S HISTORY CREATES A REASONABLE INFERENCE OF RECKLESS DRIVING

With few exceptions, William does not dispute Michael's extensive criminal background and driving offenses. Instead, he argues this does not prove Michael was a reckless driver.

House cites no authority that holds that a person's record of the types of crimes that Michael had committed that show nothing about how he operated motor vehicles, even if considered together with a single DUI that occurred more than ten years earlier, makes it reasonable to find that the person was a reckless or heedless driver.

(Response Brief at 18). The lack of a published case on this issue of fact is not surprising. The real issue is whether a jury could infer reckless driving from Michael's history of reckless behavior.

This is a reasonable inference for five reasons. First, undisputed evidence confirms that on September 2, 1995, Michael drove drunk. (Sheriff's Report; Exhibit 15 to Mechtenberg Dec.; CP

1551). Michael did not commit further DUIs from 1997 through 2006 because he was in jail.

Second, Michael operated a car irresponsibly as soon as he left prison. On August 9, 2006, he was cited for driving without a valid license, driving without liability insurance, and driving with expired tabs. (Driving Record; Exhibit 4 to Mechtenberg Dec.; CP 1467). William argues “those tickets do not establish that Michael’s driving skills were deficient”, but provides no argument in support. (Response Brief at 21). The tickets show that Michael was reckless, heedless, and incompetent in operating his car, failing to have the minimum requirements for driving.

Third, Michael’s drinking, drug abuse, violent outbursts, and multiple probation violation illustrates his lifelong, unabated risky behavior. He did not obey rules, follow authority, or care for his own safety or those around him. A jury could reasonably infer that a person who abuses himself and those around him would also fail to appreciate the dangers of driving.

As Cindy Brown, chemical dependency professional, observed,

due to his criminal background and untreated chemical dependency, Michael McCamey presented a serious risk of hurting himself and others while

driving a vehicle. Although it was recommended on multiple occasions, Michael McCamey never completed any kind of chemical dependency treatment. He was an adult incapable of functioning in any aspect of society. He was not functioning with employment, he was not functioning financially, he was homeless, and he was facing a multitude of stressors.

(Brown Supp. Dec. at 2; CP 1418).

Fourth, because Michael did not change while in jail, his past criminal and driving history predicted his future dangerousness. William cites repeatedly to Meija v. Erwin, 45 Wn. App. 700, 726 P.2d 1032 (1986), arguing that “Michael’s four speeding tickets, one each year from 1992-1995, and his 1995 arrest for DUI” are too old for consideration. (Response Brief at 22). But the Court in Meija assumed that the driver was reckless in his youth, but grew up. Meija, 45 Wn. App. at 705 (“life experience suggests that in many cases persons become more prudent in their driving habits as they leave their late adolescent years and enter adulthood”). Here, Michael never grew up, never changed his behavior, and never gave up the reckless life that eventually killed him.

Finally, Michael’s driver’s license created only a presumption of competence. The jury, not the trial judge on summary judgment,

should decide whether House's evidence overcomes that presumption.

The jury may deduce from these facts that Michael would eventually injure himself and others in an accident. Whether sober or not, Michael was spiraling downward after his release from prison. He lost his home after assaulting his girlfriend, he was abusing drugs and alcohol again, and he had no job. A logical consequence of Michael's reckless behavior is that it would translate into reckless driving.

Why must House rely on reasonable inferences to prove Michael was a reckless driver? Because he cannot put Michael on the witness stand and confront the defendant with his history. A jury would normally have the opportunity to see Michael, listen to his answers, and judge his credibility. Instead, the jury must weigh the undisputed evidence of Michael's reckless behavior, and reckless driving, and decide whether Michael was heedless, reckless and incompetent.

II. VIEWING ALL FACTS AND INFERENCES IN HOUSE'S FAVOR, WILLIAM KNEW OR SHOULD HAVE KNOWN ABOUT HIS SON'S RECKLESSNESS

Next, the jury may also draw the reasonable inference that William knew his son remained a danger, yet gave him the truck

anyway. Respondent does not dispute the testimony from chemical dependency professional, Cindy Brown. She has evaluated countless abusers like Michael, with parents like William. And William fit a pattern. "William McCamey essentially embraced his son's flaws and acted as many parents will with a dependent child." (Brown Dec. at 3; CP 1832). A jury could reasonably conclude that William ignored the risks posed by Michael's life and driving, rather than cutting him off from support.

What William McCamey knew about his son is a disputed question of fact. As detailed in House's opening brief, Terry Dahlin, Michael McCamey's girlfriend from April to November, 2006, told William about Michael's reckless behavior, drinking and drug abuse. (Dahlin Dep. at 24-25; CP 1474) (William "was concerned, but he really couldn't do anything about it"). This was less than a month before William gave the 1972 Dodge 4x4 truck to his son.

Furthermore, in November 2005, Michael authorized William to receive his complete Department of Corrections file, documenting his history of traffic infractions, reckless driving, drug and alcohol abuse, anger and physical violence, and impaired judgment. (DOC Release; Exhibit 11 to Mechtenberg Dec.; CP 1536). Respondent argues that no evidence exists that William

received or read the file. (Response Brief at 19). Because of William's death, the jury must decide what the more reasonable inference is. Furthermore, the jury must decide whether a reasonable person in William's position *would have* obtained and read the file before giving Michael the truck.

Finally, on September 2, 1995, William picked up his son at four in the morning from the Ferry County Sheriff's Office after Michael was arrested for driving under the influence. (Sheriff's Report; Exhibit 15 to Mechtenberg Dec.; CP 1551). Respondent argues there is no evidence William knew why his son was there. (Response Brief at 20). It takes little imagination to assume William asked Michael what happened.

Negligent entrustment requires proof of what William knew or *should have known*. Because William is dead, the jury will not know directly what William knew. Instead, the jury must draw inferences from the evidence on what William knew, and use its common sense to decide what William should have known before entrusting the truck to his recently released son. Viewing the facts and reasonable inferences in favor of him, House has a strong argument that William knew how dangerous his son was, but

ignored it. Michael had a truck, and severely injured Ken House, because William could not tell Michael no.

CONCLUSION

Was it foreseeable that a 48-year old man with a lifelong addiction to drugs and alcohol, a consistent history of motor vehicle infractions, a past DUI, and a disregard for his well-being and those around him would eventually get in an automobile accident? A jury must answer that question.

Plaintiff Ken House respectfully requests this Court to reverse the trial court's summary judgment and remand this case for trial.

DATED this 23rd day of December, 2010.

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DECLARATION OF SERVICE

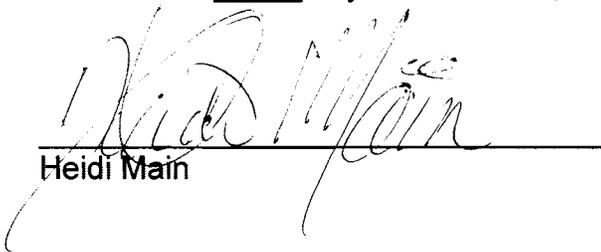
The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of Opening Brief of Appellant to:

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