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Gary Mugleston v. Emil R. Glaittli : Brief of Respondent

Utah Supreme Court

Horace J. Knowlton; Attorney for Plaintiff and Respondent;

7676

IN THE SUPREME COURT

OF THE STATE OF UTAH

GARY MUGLESTON, by his Guardian ad litem, KENNETH MUGLESTON,

Plaintiff and Respondent,

-vs-

EMIL R. GLAITTLI,

Defendant and Appellant.

Case No. 7676

BRIEF OF RESPONDENT

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I N D E X

TEXT BOOKS CITED

CASES CITED

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BRIEF OF RESPONDENT

NATURE OF THE CASE

This action was brought to recover damages against the father of a fifteen year old boy gorwing out of the negligence of the father in permitting his son to drive an automobile, the driving of which automobile caused the injuries to the plaintiff who was a passenger in the car.

STATEMENT OF THE FACTS

On the 13th day of September, 1950, at about the hour of eight o'clock p.m., the defendant instructed his fifteen year old son to drive an automobile and a panel truck into the yard while he, the defendant, went to a show. The fifteen year old son drove the automobile into the yard but instead of driving the panel truck into the yard, took some of the neighborhood children for a drive in the truck, including the plaintiff, and in doing so ran the truck off the road causing the damages to the plaintiff complained of. The defendant's son had driven the truck at numerous other times with the defendant's knowledge.

STATEMENT OF POINTS UPON WHICH THE RESPONDENT RELIES

Point 1. Did the appellant negligently permit his fifteen year old son to drive the automobile?

ARGUMENT

We have for convenience combined the defendant's first and second points. The Court below held that

this was the only point involved. "The question is whether or not he negligently permitted his son to drive that car . . . A child under sixteen who drives, who is negligently permitted to drive, I think the parent or person who lets him drive is absolutely liable. I don't think there is any defense to it." (Transcript, page 27) The question was submitted to the Court below wholly upon the negligence of the parent and we desire to rely upon that ground only. We do not believe that the guest statute figures in any way in the case. Certainly the plaintiff was not the guest of the defendant.

Volume 39 of the American Jurisprudence at page 692, paragraph 56, on the liability of a parent is as follows:

> "A parent may be liable where he intrusts his child with an instrumentality which, because of the youth or inefficiency of the child, may become a source of danger to others, a parent is liable for resulting injuries where he sends a boy on an errand on a horse known to be unruly. He may also be held liable for intrusting an instrumentality, such as an automobile, to a child known by him to be reckless and incompetent, or to one whom the law forbids to possess or operate such an instrumentality. Liability may even be predicated under some circumstances upon the act

of the parent in merely leaving the dangerous instrumentality accessible to the child, although, of course, this does not always amount to negligence. And the parent has been held liable not only for the acts of the child but also for a third person to whom the child has intrusted the operation of the instrumentality in question. This is true in the case of automobiles."

The question is treated in the case of Hopkins vs. Droffers, 198 N.W. 738, 36 A.L.R. 1156, at page 1162, second column as follows:

"The decided trend of decisions is in the direction of sustaining liability in such cases. It is said in Berry on automobiles, 3rd Edition, paragraph 1040: Intrusting automobiles to incompetent person--. Aside from the relation of master and servant, the owner of an automobile may be rendered liable for injuries inflicted by the operation by one whom he has permitted to drive th car on the ground that such person, by reason of his want of age or experience, or his physical or mental condition, or his known habit of recklessness, is incompetent to safely operate the machine."

"An automobile is a machine that is capable of doing great damage if not carefully handles, and for this reason the owner must use care in allowing others to assume control over it. If he intrusts it to a child of such tender years that the probable consequence is that he will injure others in the operation of the car, of if the person permitted to operate the car is known to be incompetent and incapable of properly running it, although not a child, the owner will be held accountable for the damage done because his negligence in intsusting the car to an incompetent person is deemed to be the proximate cause of the damage."

"In such a case of mere permissive use, the liability of the owner would rest, not alone upon the fact of ownership, but upon the combined negligence of the owner and the driver; negligence of the owner in intrusting the machine to an incompetent driver, and of the driver in the operation."

See also Huddy Auto, 6th Edition, paragraph 662.

The following are some of the cases holding the rule thus expressed:

Rocca v. Steinmetz, 61 Cal. App. 102, 214 P. 257;
Mitchell v. Churches, 119 Wash. 547, Ante 1132, 206 P. 6;
Gardiner v. Solomon, 200 Ala. 115, L.R.A. 1917F, 390, 75 So. 621;
Allen v. Bland, Tex. Civ. App. 168 S.W. 35, 8 N.C.C.A. 299;
Elliott v. Harding, 107 Ohio St. 501, Ante 1128, 140 N.E. 338.

The question of liability growing out of the use of dangerous instrumentalities is annotated in 36 A.L.R. 1164 and 49 A.L.R. 1523. From page 1165 of 36 A.L.R., the middle of the second paragraph, we quote the following:

"The basis of the decision in the Hopkins case is the negligence of the parent in giving the machine to one who is, by legislative declaration, unfit to operate it. In so doing, the parent is said to have failed to observe, for the safety of others, that degree of care which the circumstances justly demanded. This is in accord with the rule expounded in 20 R.C.L. titled Parent

and Child, paragraph 33, that a parent may be held liable, on the ground that he personally is guilty of negligence, where he allows a minor child to have control of an instrument such as a gun, for injuries caused by the child's use of such instrument."

The argument of the appellant is reminiscent of the nursery rhyme "O, mother, may I go out to swim?" "Yes, my darling daughter, hang your clothes on a hickory limb but don't go near the water."

At eight o'clock in the evening while it was getting dark (Transcript 58, line 4) after Mrs. Golightly had told her fifteen year old son not to go into the house in the presence of the defendant, her husband, (Transcript 73, line 21), (Transcript 80, line 28), (Transcript 64, line 25), the defendant said, "Don't get any bright ideas and don't take anything around here. Don't touch the cars at all. Drive them in and lock them up and then go to the show." (Transcript 73, line 19-27) Add to this the defendant's admission that he often permitted the boy to drive a car, (Transcript 72, line 16-26) and that the boy drove the car about the neighborhood many times and as late as the afternoon of the day that the accident happened, (Transcript 61,

line 11) and you have the defendant's case.

However, on the plaintiff's side of the case, two boys that were in the group testified. The plaintiff said that he heard the mother say not to go into the house but did not hear the father say anything about taking or not taking the car. (Transcript 34, line 22) (Transcript 35, line 16) One of the other boys, Nick Kovazovich, said he heard the father tell the son not to take the car but heard nothing about the truck. (Transcript 44, line 26) All of the defendant's witnesses testified that the boy had been seen driving the car about the neighborhood on several occasions. (Transcript 32, 45, 48 and 51).

CONCLUSION

From any construction of the evidence, it seems apparent that the defendant knew or with the exercise of ordinary care should have known that his fifteen year old son would drive away with the panel truck just as he did in fact do, and that the lower Court ruled properly in awarding judgment for the plaintiff, and

was right in his conclusion that "a child under sixteen who is negligently permitted to drive . . . the parent or the person who lets him drive is absolutely liable."

Respectfully submitted,

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