Mother and Son Successful on Summary Judgment after Son's Head-On Vehicle Collision

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In the recent decision of *Moushi v. Stephen*, 2019 ONSC 3125, the Ontario Superior Court (Court) considered the impact of a mental disorder on civil liability while also considering the issue of possession and implied consent.

The defendant driver (Son) was discharged from the hospital following an overnight involuntary admission for a psychiatric evaluation. Less then 30 minutes after he left the hospital, Son took his mother's car and drove head-on into the plaintiff's vehicle. It was later revealed that Son had been attempting to drive himself into a cement barricade when the collision occurred. The plaintiff claimed for damages as a result of the collision. Son and his mother (Mother) were both named as defendants in the action and both brought motions for summary judgment, which were ultimately successful.

Facts and Basis for Summary Judgment

Son was 37 years old and had been abusing both marijuana and alcohol in the weeks before the incident. This led to incidents of paranoia and depression, which eventually culminated with him attacking a police officer in an apparent attempted "suicide by cop," following which he was hospitalized involuntarily. After discharge from the hospital, Mother drove him home. After getting out of the vehicle, Son grabbed the keys from the ignition. Mother did not immediately demand the return of the keys as she believed he was going to get items out of the vehicle's trunk. Instead, Son got into the vehicle and locked the doors. As soon as Mother realized that Son intended to operate the vehicle, she began pounding on the windows and telling him to "stop" and "don't do this", but he drove away.

In support of her motion, Mother argued that Son did not have her consent to possess her vehicle and, therefore, she was not vicariously liable for the collision. Mother also denied that she was negligent in failing to ensure Son could not take her keys. Son argued that he could not be civilly liable for his actions because he was suffering from a mental disorder at the time of the collision.

Mother's Motion

Section 192(1) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8 states:

> 192(1) The driver of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway.

As noted by the Court, the case law is clear that an owner of a vehicle will be vicariously liable if the owner has entrusted possession of the vehicle to another who has driven the vehicle and caused a collision. An owner cannot escape liability on the basis that possession of the vehicle was given but there was no permission to operate the vehicle.

The plaintiffs conceded that Son did not have Mother's express consent. However, they took the position that he had her implied consent to possess the vehicle. The Court disagreed for a number of reasons, noting that:

(i) Mother did not give Son the keys, he grabbed them;

(ii) She remained with the vehicle and did not relinquish its possession to him; and

(iii) As soon as she realized that Son intended to use the keys to operate the car, she tried to regain control of the car and told him to stop.

On the issue of whether Mother was negligent, both the plaintiffs and Son asserted that she was negligent in failing to prevent Son from grabbing the keys and/or in failing to exert proper care and control over him after he had been entrusted to her care. With respect to Son's mental state, Mother had been with him at the hospital before his involuntary admission, but was not aware of all of the details, including his attempted suicide. The Court found that at the relevant times, she did not know that Son was experiencing a psychotic episode and that Mother's agreement to drive Son to a detox centre that afternoon did not mean she had assumed "care and control" over him. The Court concluded that no duty of care was created by Mother's parent-child relationship to Son, nor by Mother's agreement to drive him home from the hospital. As to her alleged negligence in failing to keep her keys away from Son, the Court found that it was not foreseeable that Son would pursue a plan of suicide that would involve the possession of the vehicle and putting others at risk.

For the foregoing reasons, the mother was entirely successful on her motion for summary judgment.

Son's Motion

The issue on Son's motion for summary judgment was whether he was suffering from an acute mental disorder that rendered him incapable of understanding or appreciating a duty to take care for others. As noted by the Court, the question "is not limited to the bare inquiry whether or not [the driver] at the time of the collision was labouring under this particular delusion, but whether or not he understood and appreciated the duty upon him to take care, and whether he was disabled, as a result of any delusion, from discharging that duty."

At the related criminal trial, Son was found not criminally responsible. He recovered from the one-time psychotic episode that preceded the collision and experts and treating physicians agreed that Son's psychotic episode was caused by substance abuse. Since the incident, he had been able to abstain from alcohol and marijuana.

The Court concluded that Son was suffering from a substance-induced psychosis at the time of the collision. Further, he had proven that he lacked the ability to understand and appreciate the duty upon him to take care in the circumstances of the case and that he was unable, by reason of mental illness, to discharge the duty to take care.

The Court recognized the competing interests of relieving the mentally ill of liability and compensating an innocent victim. Citing a decision from the Alberta Court of Appeal, the Court noted that “negligence law is concerned with fault associated with falling below the requisite standard of care in the circumstances. If a person is suffering from a mental illness such that it is impossible to attribute fault to him, holding him liable for his actions would create a strict liability regime, which does not exist in Canada.”

Accordingly, the action against Son was dismissed as well.

Comment

While very fact-specific, this decision provides a good example of a summary judgment being used effectively even in a factually difficult situation.

As of the date of writing, we are not aware of any Notice of Appeal being filed.

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