

IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

FILED
June 26, 1998
C/A NO. 03A01-9712-CV-00532
Cecil Crowson, Jr.
Appellate Court Clerk

HAROLD REECE & MIKE GRIMMETT,

Plaintiffs-Appellees,

v.

KAREN REDDICK & LARRY REDDICK,

Defendants-Appellants.

) C/A NO. 03A01-9712-CV-00532
)
) HAMILTON CIRCUIT
)
) HON. RUSSELL HENSON,
) JUDGE BY DESIGNATION
)
) REVERSED
) AND
) DISMISSED

LLOYD A. LEVITT, LEVITT & LEVITT, Chattanooga, for Plaintiffs-Appellees.

LAURA BETH RUFOLO, ROBINSON, SMITH & WELLS, Chattanooga, for Defendants-Appellants.

OPINION

Franks, J.

In this action for damages for injuries sustained as a result of an automobile accident, the Trial Judge, after a bench trial, entered judgment for the plaintiffs and defendants have appealed.

Plaintiffs allege that on July 20, 1994 at night, they had stopped at a red light and were rear-ended by another automobile which left the scene, bearing license plate: "LUMINA3". It is not disputed that the license plate was registered to and owned by the defendants Karen Reddick and Larry Reddick.

After hearing the evidence, the Trial Judge in his ruling, observed:

Mr. Reddick must have been driving that car, in spite of the testimony of the plaintiff. And I reason that he probably was in bed asleep at that time. That then, for one reason or another, he got out in his car, had a spat with his wife or something, they were having trouble at the time, and he goes out in his car and rear-ended this car, realizing he was in trouble and left. . . . [a]s I indicated or said, determining - the fact was that the plaintiff observed this LUMINA3 tag at the scene, and that was - there is hardly any other way that he could have gotten that, because it

was - had already been reported the next morning. That is the reason I came to the conclusion that Mr. - the defendant was driving the car.

On appeal, defendants have raised three issues, the first being that the Court erred in failing to grant their motion for summary judgment. This issue is not reviewable on appeal, the case having gone to trial on the merits. *See Cortez v. Alutech, Inc.*, 941 S.W.2d 891 (Tenn. App. 1996). Next defendants insist that the evidence does not support the Trial Court's finding of fact that "defendant Larry Reddick was driving the automobile that allegedly rear-ended the automobile driven by the plaintiffs".

Plaintiff Reece testified that when he was stopped at the light he was struck from the rear by a motor vehicle, and a dark complected male with a mustache approached the vehicle, inquiring if they were ok. However, after alighting from the vehicle, plaintiff spoke to a woman in the driver's seat of the other vehicle, who had "blondish-colored hair". The other car then left the scene and at that time plaintiffs made a notation of its license plate number. A few days later plaintiffs were called to the police station and met the Reddicks who had brought their car to the station. No damage was observable on the Reddicks' vehicle, and plaintiffs could not identify the Reddicks as occupants of the vehicle on the night of the accident, at one point stating "no" when asked if the Reddicks were in the vehicle. Subsequently, plaintiffs were able to determine that Zaffor Kaddoura was the person who alighted from the other vehicle and inquired about their condition on the night of the accident. Kaddoura was not called to testify.

Defendants testified that their car was housed in their garage on the night in question, and that they both were in bed asleep when the alleged accident took place and they had given no one permission to use their vehicle.

We review the evidence *de novo* according the Trial Judge the presumption of correctness, unless the evidence preponderates otherwise. T.R.A.P.

13(d). Plaintiffs rely upon T.C.A. §55-10-311 as a basis to support the Trial Court's judgment. The statute and plaintiff's testimony create the presumption of a bailment. However, the Trial Judge rejected this plaintiff's testimony on this issue.¹ Moreover, this standing alone would not establish a basis for recovery. As the Supreme Court said in *Hamrick v. Spring City Motor Company*, 708 S.W.2d 383 (Tenn. 1986) at p. 385:

Permissive use, standing alone, establishes only a bailment. In and of itself, it is not a basis for the imposition of personal liability upon the owner of a vehicle. . . . It is well settled that ordinarily, a bailor is not liable for the negligence of a bailee.

We conclude that the evidence preponderates against the Trial Court's findings. T.R.A.P. Rule 13(d). The evidence clearly establishes beyond dispute that the defendants were not in the vehicle that struck plaintiff's vehicle. Accordingly, the Trial Court's finding that defendant Reddick was operating the vehicle at the time of the accident is not supported by the evidence.

The judgment of the Trial Court is reversed and the cause remanded with cost of the appeal assessed to plaintiffs.

Herschel P. Franks, J.

CONCUR:

Charles D. Susano, Jr., J.

William H. Inman, Sr.J.

¹
The Trial Judge rejected plaintiffs' evidence that the vehicle was being operated by a third party.