FILED
APR 26 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed April 26, 1983

ROSE A. REASONER AND CLAUDE REASONER,

Plaintiffs-Appellants,

vs.

RAYMOND KASSEL, individually and in his official capacity as director of the Iowa Department of Transportation; and the STATE OF IOWA,

Defendants-Appellees.

3-08
2-68349

Appeal from Polk District Court, Richard Strickler and VanWifvat, Judges.

Plaintiffs appeal the decision of the trial court granting summary judgment for defendants in an action brought by plaintiffs to recover damages arising out of an automobile accident in which they were injured. AFFIRMED.

Joseph G. Bertogli of Flagg, Hockett, Benhart & Golden, Des Moines, for plaintiffs-appellants.

Thomas J. Miller, Attorney General, and Robert Goodwin, J. Eric Heintz and James D. Miller, Assistants Attorney General, for defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

OXBERGER, C.J.

Plaintiffs appeal the decision of the trial court granting summary judgment for defendants in an action brought by plaintiffs to recover damages arising out of an automobile accident in which they were injured. We affirm the decision of the trial court.

I.

The facts in this case are entirely undisputed. Plaintiffs were injured in an automobile accident involving a motorist whose chauffeur's license carried unusual restrictions permitting him to drive only state-owned vehicles and only in the course of his state employment until he obtained an SR-22 filing (demonstrating financial responsibility) from an independent insurance company. The motorist, who is not a party to this suit, had had his operator's license suspended for being a habitual offender (Iowa Code section 321.210). It was reinstated, subject to the restrictions mentioned above, when he accepted a job with the state which required him to drive state-owned vehicles. At the time of the accident, the motorist was not driving a state-owned vehicle, was acting outside the scope of his employment, and had never obtained an SR-22 filing.

Plaintiffs filed suit, alleging that the circumstances sketeched above rendered the State financially responsible an as insuror for any damages caused by the motorist's negligence. Plaintiffs also alleged that defendants had been negligent in issuing the motorist a regular (albeit restricted) chauffeur's license rather than a temporary driving permit.

The trial court granted a summary judgment for defendants on the ground that the undisputed fact that the motorist had been acting beyond the scope of his restricted license permitted a determination that the State was not liable as a matter of law.

On appeal, plaintiffs argue that the trial court erred in granting defendants' motion for a summary judgment. They contend that there exists a real and genuine issue of material facts concerning the issue of the State's responsibility as an insurer of the motorist's financial responsibility, and the issue of defendants' negligence in issuing a regular license to him.

II. State's Liability as an Insurer of Financial Responsibility

Under the provisions of Iowa Code section 321A.17(4), an operator's license which has been suspended under section 321.210 cannot be reinstated unless proof of financial responsibility is supplied. This requirement does not apply to operators of state-owned vehicles operating said vehicles in their official capacities. Iowa Code section 321A.33. The effect of this provision is that the state becomes an insurer of the operator's financial responsibility to the extent that he is operating a state-owned vehicle while on official state duty.

An insuror's liability is measured by the terms of its policy. See Iowa National Mut. Ins. Co. v. Fidelity & Cas. Co. of N.Y., 128 N.W.2d 891 (Iowa 1964). In this case, the "policy" is clear. The state's liability does not extend to situations where the operator is acting beyond the scope of his state employment or where the vehicle being driver does not belong to the state. The facts in this case are also clear. The offending motorist was not driving a state-owned vehicle, nor was he driving in the course of his employment with the state. The district court did not err in granting summary judgment on this claim.

2. State's Liability for Negligence

The State is generally protected from suit by the doctrine of sovereign immunity. This doctrine protects the State by denying subject matter jurisdiction in all but a narrow range of cases. "Except where consent has been given by the legislature, the state is immune from suit." Montandon v. Hargrave Construction

Co., 130 N.W.2d 659, 660 (Iowa 1964). Statutes providing consent to be sued are narrowly construed in favor of the State. If the court determines that the requirements of the statute have not been strictly met, it must dismiss the suit. Lloyd v. State, 251 N.W.2d 551, 558 (Iowa 1977).

Iowa Tort Claims Act is contained in chapter 25A of the Iowa Code. Section 25A.14(1) denies subject matter jurisdiction in cases where the claim is based upon the "exercise or performance or the failure to exercise or perform a discretionary function or duty... whether or not the discretion be abused." The term "discretion" is not defined in chapter 25A, so its ordinary meaning is presumed to be applicable.

The issuance of licenses subject to temporary restrictions is clearly a discretionary function of the Director of the Department of Transportation. Iowa Code section 321.210 provides that the director "may, on application, issue a temporary restricted license to any person convicted... who cannot perform his or her regular occupation without the use of a motor vehicle." (emphasis added). Because the question of whether and to whom to issue temporary restricted licenses is left to the discretion of the director, such a decision cannot be subject of a suit brought under the Tort Claims Act. See Davis v. Jennes, 253 N.W.2d 610, 613 (Iowa 1977).

Even if suit was not barred by the Tort Claims Act, the trial court would have still been justified in granting summary judgment for defendants. Not every allegation of negligence states a cause of action under section 25A. See Smith v. State, 324 N.W.2d 299 (Iowa 1982). Smith involved a suit brought under Chapter 25A, in which the plaintiffs alleged that the BCI had been negligent in its investigation of a crime. The Supreme Court of Iowa ordered an entry of judgment for the State on the ground that there is no tort of negligent investigation. Similarly, our review of authority indicates that there is no tort of negligent licensing.

To begin with, the licensing statutes create no duty which is owned to the individual plaintiffs. Licensing statutes create a duty to the general public, and failure to properly discharge that duty is regarded as an injury to the public which may only be redressed in some form of public prosecution, and not by a private party claiming special injuries. See Yaselli v. Goff, 12 F.2d 396, 404 (2d cir. 1926).

More important, however, is the lack of proximate cause between the state's alleged negligence in licensing and the accident.

> [A]ssuming arguendo, that there was an abuse in the use of discretion, it does not follow, ipso facto, that such abuse constituted causal connection between the issuance of a license and the accident. The irresponsibility of one driver cannot be predicated upon the discretion of the individual who issued or revoked a license as such risk is not reasonably perceivable.

Guy v. State, 269 N.Y.S. 2d 504, 507 (New York 1966). It was reasonable for defendants to presume that the motorist would comply with the limitations and restrictions on his chauffeur's license, and it was no less illegal for him to drive in violation of those restrictions than it would have been for him to drive with no license at all. Even a complete refusal by defendants to reinstate the motorist's license would not have prevented him from driving. Therefore, any negligence on the part of defendants in issuing a temporarily restricted license in this case, as opposed to a temporary driving permit, could not have been a proximate cause of the accident.

AFFIRMED.