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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-567 / 89-849

ELAINE M. FRETHEIM, Executor of the Estate of MITCHELL K. FRETHEIM, Deceased, DEANNA FRETHEIM, and DANIEL FRETHEIM,

Plaintiffs-Appellants,

vs.

CARSTEN MICHAEL QUAM,

Defendant

and

DALE McCORMICK,

Defendant-Appellee.

Appeal from the Iowa District Court for Winneshiek County, C. W. Antes, Senior Judge.

The plaintiff filed a wrongful death action against the driver of a truck involved in an accident, and also against the alleged owner, McCormick. McCormick obtained a summary judgment on the ground he had sold the vehicle to the driver before the accident. The plaintiff has appealed from the summary judgment in favor of McCormick, contending summary judgment was inappropriate because there was a genuine issue of material fact concerning the ownership of the truck. **REVERSED AND REMANDED.**

Marion L. Beatty and Linny C. Emrich of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for the appellants.

Douglas M. Henry, of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for the appellee (McCormick).

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

Mitchell Fretheim was killed in a highway accident which occurred on June 19, 1988. The executor of his estate filed a wrongful death action against the driver of the other vehicle, Carsten Michael Quam, and against the alleged owner of the other vehicle, Dale McCormick.

McCormick filed a motion for summary judgment denying ownership of the truck driven by Quam. McCormick asserted he had owned the truck at one time but had sold it to Quam, his nephew, before the accident. McCormick purchased the truck in March of 1984. He made a down payment and financed the rest of the purchase price through a loan with Norwest Bank. The payments on this loan were to be made in installments of $210.72 per month for forty-eight months, with an annual interest rate of 8.8%. In conjunction with this purchase, the lender took a security interest in the truck as security for payment of the debt.

In the fall of 1984, McCormick alleges he was not satisfied with the truck and agreed to sell it to Quam. To allow Quam to take advantage of the favorable loan terms McCormick had received when purchasing the truck, McCormick claims Quam paid him cash to cover the monthly payments and McCormick would then make the actual installment payments. The final payment was made in March 1988.

The district court granted McCormick a summary judgment holding he was not the owner of the truck and therefore had

no liability for Quam's negligence under Iowa Code section 321.493.

The plaintiff has appealed from the summary judgment in favor of McCormick. The plaintiff contends summary judgment was inappropriate because there is a genuine issue of material fact as to the ownership of the truck. In support of the claim that a genuine issue existed with regard to ownership of the truck, plaintiff points to the following factors: 1) no certificate of title exists which shows Quam was the truck's owner; 2) after the accident title was transferred directly from McCormick to an insurance company; 3) McCormick made all but one of the truck loan payments between September 1984 and March 9, 1988; 4) the State Farm car insurance policy purchased by Quam for the period March 1988 to September 1988 reflects that Dale McCormick was the owner of the truck; and 5) McCormick's 1984, 1985, 1986, and 1987 income tax returns show the payments he received from Quam were treated as rental payments pursuant to a truck lease.

I. **Summary Judgment.** A summary judgment is properly granted only when there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237; Froning & Deppe v. South Story Bank & Trust, 327 N.W.2d 214, 215 (Iowa 1982). A court must examine the entire record (i.e. pleadings, motions, affidavits and testimony) to determine if it discloses a

genuine issue as to any material fact. City of Ankeny v. Armstrong Co. Inc., 353 N.W.2d 864, 867 (Iowa App. 1984).

The burden is upon the moving party to establish the absence of any genuine issue of material fact. Colton v. Branstad, 372 N.W.2d 184, 188 (Iowa 1985). The court must view the record in the light most favorable to the party against whom summary judgment is sought. Id. Every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved. Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984).

Once the moving party has met its burden, the opposing party may not rest on the mere allegations or denials of its pleading. It must set forth specific facts showing there is a genuine issue. Bauer v. Stern Finance Co., 169 N.W.2d 850, 853 (Iowa 1969), cert. denied, 396 U.S. 1008 (1970).

In reviewing the grant or denial of a summary judgment motion, this court is guided by the same principles utilized by a trial court in making that determination. Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868, 872 (Iowa 1984). Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. Id.

II. Ownership. The statute at issue in this case provides:

> In all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage.
>
> A person who has made a bona fide sale or transfer of the person's right, title, or interest in or to a motor vehicle and who has delivered possession of such motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of such motor vehicle by another, but the purchaser or transferee to whom possession was delivered shall be deemed the owner. The provisions of subsection 2 of section 321.45 shall not apply in determining, for the purpose of fixing liability hereunder, whether such sale or transfer was made.

Iowa Code § 321.493 (1987). The purpose of this statute is to protect an innocent third party from the careless operation of a motor vehicle and to make the owner responsible for the negligence of one to whom the owner entrusted its operation. Briner v. Hyslop, 337 N.W.2d 858, 870 (Iowa 1983).

Under the owners' responsibility law, the titleholder is the owner unless (A) the vehicle is the subject of a security agreement with an immediate right of possession in the debtor, or (B) the person's right, title, or interest in the motor vehicle has been sold or transferred and possession delivered to the purchaser or transferee. In those instances, the debtor, purchaser, or transferee in possession shall be deemed the owner. Petersen v. Ford Motor Company, No. 88-1210, slip op. at 6 (Iowa November 22, 1989).

McCormick claims he made a bona fide sale of the truck to Quam. It is well established section 321.493 exempts former car owners who have made bona fide sales of their vehicles. Goetz v. Welk Ford Mercury, Inc., 405 N.W.2d 842, 843 (Iowa 1987). McCormick offers plausible explanations for the presence of his name as the owner on Quam's insurance policy, his designation of Quam's payments as rental proceeds for a truck lease on his tax forms, his conduct in making the installment payments, and the fact that the vehicle continued to be registered in his name. However, plausible explanations do not sustain a motion for summary judgment. This case revolves around McCormick's alleged ownership of the truck, and appellant set forth specific facts showing there was a genuine issue as to the truck's ownership. Even the trial court's ruling recognized the implications to be drawn from McCormick's tax returns and Quam's insurance policy were in dispute. When reasonable minds could draw different inferences and reach different ultimate conclusions from the undisputed facts, then the issue must be reserved for the fact-finder at trial and summary judgment is inappropriate. Liska v. First Nat'l Bank in Sioux City, 310 N.W.2d 531, 534 (Iowa App. 1981).

If McCormick were in fact leasing the truck to Quam, he may be liable as the truck's owner pursuant to section 321.493. Peterson, slip op. at 2. On the other hand, he

may be able to prove he and Quam had a lease-purchase arrangement which was in reality a security agreement, thus excluding McCormick from liability under section 321.493. Id. at 6-9. In either case, when evidence regarding ownership conflicts, the issue should not be decided as a matter of law, but should be submitted for determination by a jury. Six v. Freshour, 231 N.W.2d 588, 591 (Iowa 1975). The decision of the trial court granting summary judgment is reversed. This matter is remanded for further proceedings.

REVERSED AND REMANDED.