IN THE COURT OF APPEALS OF IOWA

No. 1-559 / 00-1852
Filed December 28, 2001

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY An Illinois Corporation Doing Business in Iowa,
Plaintiff-Appellant,

FILED

vs.

THE HARTFORD, An Insurance Company Doing Business In Iowa, DETHMERS MANUFACTURING COMPANY, An Iowa Corporation, COURTNEY SCHIEBOUT and GLENDA SCHIEBOUT, Husband and Wife, and ROBERT RENKEN, Individually,
Defendants-Appellees.

and

GERALD MARTINEZ and DEAN JONES, Administrators of the Estates of Selena Martinez and Shannon Martinez,
Intervenors-Appellees.

Appeal from the Iowa District Court for Pocahontas County, Gary L. McMinimee, Judge.

State Farm appeals from an adverse ruling in a declaratory judgment action. **AFFIRMED.**

William Kevin Stoos of William Kevin Stoos, P.C., Sioux City, for appellant.

Gene Yagla of Yagla, McCoy & Riley, P.L.C., Waterloo for appellee Renken.

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Sam S. Killinger and Matthew T. E. Early of Rawlings, Nieland, Probasco, Killinger, Ellwanger, Jacobs & Mohrhauser, L.L.P., Sioux City, for appellees Courtney and Glenda Schiebout.

Frank A. Comito and Kent A. Gummert of Gaudineer & Comito, L.L.P., West Des Moines, for appellees The Hartford and Dethmers Manufacturing Company.

Steve Hamilton of Hamilton Law Firm, P.C., Storm Lake, for intervenors.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

State Farm Mutual Automobile Insurance Company appeals from the district court's adverse ruling on its petition for declaratory judgment. State Farm claims the court erred in finding the driver of a vehicle involved in a fatal accident was a permissive driver and was therefore an "insured" under the owner's auto insurance policy. We affirm.

I. BACKGROUND FACTS

Robert Renken (Renken) was the owner of a van insured under a policy with State Farm Automobile Insurance Company (State Farm). Renken allowed Shannon Martinez (Martinez) to regularly use the van and his laundry facilities in exchange for providing overnight care for his fourteen-year-old daughter while he worked nights. Martinez did not own or have access to any other vehicles. Renken also had a pickup and a motorcycle.

On April 2, 1999 Martinez had Renken's permission to take the van for a shopping trip to Fort Dodge. During this trip the van collided with a tractor-trailer owned by the defendant Dethmers Manufacturing Company and insured by defendant, The Hartford. Martinez was a passenger in the van at the time of the accident and her acquaintance, Rhianna Glassel, was the driver. Glassel did not have a driver's license. Martinez, Glassel and the other three occupants of the van were all killed in the collision.

State Farm filed an action for declaratory judgment asking the court to hold that Glassel was not operating the van with Renken's knowledge and consent, Renken was therefore not liable for Glassel's acts, and State Farm

therefore had no duty to provide liability coverage for her acts as she was neither a named insured, nor other insured, under the State Farm policy.

Renken did not know Glassel and denied he had ever given her express consent to drive his van. Renken also alleged he had previously instructed Martinez not to allow anyone else to drive the van.

The district court entered a declaratory judgment concluding that Glassel was a permissive user of the van owned by Renken, Renken was liable for the acts of Glassel, and the State Farm policy provided liability coverage for Glassel's acts. State Farm appeals claiming the district court erred when it found and entered judgment declaring Glassel was a permissive driver, Renken was therefore liable for her acts, and the State Farm policy therefore provided liability coverage for her acts.[1]

II. STANDARD OF REVIEW

This case was filed as a declaratory judgment action under Iowa Rule of Civil Procedure 261. We review declaratory judgment actions according to the manner the case was tried in the district court. *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000); *Grinnell Mut. Rein. Co. v. State Farm Auto. Ins. Co.*, 558 N.W.2d 176, 178 (Iowa 1997) (citing *Grinnell Mut. Rein. Co. v. Voeltz,* 431 N.W.2d 783, 785 (Iowa 1988)). This declaratory judgment action was filed and tried as an action at law. Accordingly our review is for correction of errors of law. *Grinnell Mut. Rein. Co.,* 558 N.W.2d at 178. Therefore, the district court's findings are binding on us if supported by substantial evidence. Evidence is

[1] Although he did not separately appeal, Renken has filed a brief seeking reversal of the district court's ruling. Renken does not urge grounds for reversal that are significantly different than those raised by State Farm and we do not separately consider the issue raised in his brief.

substantial if a reasonable mind would accept it as adequate to reach the same findings. *Id.*

III. MERITS

Iowa Code section 321.493 provides in relevant part that "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." Iowa Code §321.493 (1999). "Under Iowa law, '[w]hen ownership of a vehicle is admitted, a presumption is created that the vehicle was operated with the consent of the owner'." *Benson v. Webster,* 593 N.W.2d 126, 131 (Iowa 1999) (quoting *Van Zwol v. Branon,* 440 N.W.2d 589, 591 (Iowa 1989)). However, the inference is not a strong one and in no way changes the burden of proof. *Moritz v. Maack*, 437 N.W.2d 898, 900 (Iowa 1989). This inference can be rebutted by proof there was no actual consent. *Benson*, 593 N.W.2d at 131. In situations where the vehicle is driven by someone other than the consent driver, the inference of consent may be overcome by the owner's showing the first permittee was not given express or implied authority to allow someone else to use the vehicle. *Id.* at 131-32.

It is undisputed both that Renken gave Martinez express permission to drive the van and that he did not give Glassel such express permission. Thus, the issue before the district court was whether Renken's grant of permission to Martinez was broad enough to include an implied grant of authority to Martinez to allow a "second permittee" (Glassel) to operate or use the vehicle. "In general, a broad, unrestricted grant of authority to use an automobile gives rise to a factual

issue as to whether this permission also includes an implied grant of authority to allow a third party to use the car." *Moritz*, 437 N.W.2d at 901.

> The owner's consent to the use of an automobile by a second permittee, if not expressly provided, may be shown by the circumstances surrounding the original grant of permission, or by a course of conduct on the part of the owner consistent with the first permittee's grant of authority. If the owner denies that the second permittee operated the vehicle with his or her consent, consent may still be established by the owner's course of conduct inconsistent with this denial. Ultimately, the issue of consent turns on the particular facts and circumstances of each case.

Id. (citations omitted); *see also Grinnell Mut. Rein. Co.*, 558 N.W.2d at 179 ("[T]he nature and scope of the initial permission, whether delegation by the first permittee was expressly authorized or prohibited, the relationship and conduct of the parties, and the attending circumstances generally, have been regarded as material and sometimes decisive factors."); *Schneberger v. Glenn*, 176 N.W.2d 782, 786 (Iowa 1970) (stating that consent to the use of an automobile by a second permittee may be shown by the circumstances surrounding use of the vehicle.)

Renken testified he told Martinez not to allow anybody else use the van and that Martinez told him there would be no problems with anybody else driving it. He further stated that before the date of the accident he had never given Martinez permission to loan to van to anyone else or to allow anyone else to operate it. However,

> The owners' testimony, though positive and direct, is not necessarily conclusive. It may be weakened or rebutted by facts and circumstances, or by its own inherent weakness or unreasonable character. The weight of the testimony and credibility of the witnesses depend upon facts and conditions as shown by the record in each case.

De Bolt v. Daggett, 416 N.W.2d 102, 105 (Iowa Ct. App. 1987).

Renken's deposition testimony and trial testimony were inconsistent regarding the restrictions he placed on Martinez's use of the van. His testimony was contradictory concerning when he informed her of such restrictions. Initially he stated the first time he told Martinez that no one else was to drive the van was when his daughter asked to drive it. Martinez therefore would have been using the van before he purportedly imposed any restrictions on her use. However, he later changed his testimony and stated he had in fact told Martinez twice not to let anyone else use the van and that the first time was during an interview when he hired her to provide care for his daughter. The trial court found Renken's trial testimony regarding the restrictions he claims to have imposed on Martinez to be "ambiguous, contradictory, and inconsistent with his deposition testimony." The trial court is in the best position to judge the credibility of the witnesses. *Paglia v. Elliot*, 373 N.W.2d 121, 126 (Iowa 1985); *Capitol Sav. & Loan Ass'n v. First Financial Sav. & Loan Ass'n,* 364 N.W.2d 267, 271 (Iowa Ct. App. 1984). Based on Renken's inconsistent and changing testimony we conclude there was substantial evidence in the record to support the trial court's determination that Renken's testimony lacked credibility and we are thus bound by that finding.

Other evidence in the record indicates there was a broad scope to Renken's consent for Martinez's use of the van. The scope of the initial consent can be determined by the conduct of the parties and the attending circumstances. *Grinnell Mut. Rein. Co.,* 558 N.W.2d at 179; *Schneberger,* 176 N.W.2d at 786. It is uncontroverted there were no witnesses present when Renken purportedly told Martinez about the restricted use of the van. However, there was testimony from Teresa Brown that she was present on one occasion

when Martinez asked Renken to borrow the van and he simply said "yes" without imposing any restrictions. Renken himself testified that although Martinez was required to ask for permission each time she used the van he did not tell her each time to not let anyone else drive it. Renken testified he found Martinez to be a responsible person that he could trust, if she had allowed someone else to drive when she had been drinking or was hurt it would have been okay with him and he would still have trusted her, and he would have given permission for someone else to drive if Martinez were "over tired." He also allowed his son to use the van without any restriction on who else could drive it.

Furthermore, several witnesses testified that Martinez was allowed to keep possession of the van for several days or even a week or more at a time and one witness testified she actually believed the van belonged to Martinez because Martinez had the van so often. This testimony appears to contradict Renken's testimony that Martinez was required to ask permission each time she wished to use the van and casts further doubt on Renken's credibility. There was also testimony from several witnesses that Martinez allowed other persons to drive the van on several occasions prior to the accident and had offered to let yet another person do so. Therefore, both Renken's and Martinez's conduct and the surrounding circumstances demonstrate a sufficiently broad scope of permission that a reasonable person could find it included an implied grant of authority to allow a third party to drive the van. *See Moritz,* 437 N.W.2d at 901.

We conclude the course of conduct by Renken and the course of conduct by Martinez, coupled with the questionable credibility of Renken's testimony, constitute substantial evidence supporting the trial court's findings and decision.

A reasonable fact finder could have made the same findings as the trial court and concluded Renken's grant of permission to Martinez for use of the van was broad enough to include authority for Martinez to allow a second permittee to drive the van. We therefore affirm the district court's conclusion that Glassel was a permissive driver and thus an insured under the State Farm insurance policy, and affirm its declaratory judgment to that effect.

AFFIRMED.