

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
In the Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

RECEIVED

Circuit Case No. 2015-CP-15-1124 & 1125

JUL 06 2017

Appellate Case No. 2017-000636

SC Court of Appeals

Antoine Van Steenwicjk..... Appellant,

v.

Amy Garrett, as Parent and Natural Guardian of C.A. Van Steenwicjk,
..... Respondent,

And

Antoine Van Steenwicjk..... Appellant,

v.

Amy Garrett..... Respondent,

APPELLANT'S INITIAL BRIEF

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July 6, 2017

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STATEMENT OF ISSUE ON APPEAL

- I. **THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT GRANTED SUMMARY JUDGMENT AGAINST APPELLANT ANTOINE VAN STEENWICJK ON THE ISSUE OF “LIABILITY” WHEN THE TESTIMONY CREATED ISSUES OF FACT ABOUT WHETHER ANTOINE VAN STEENWICJK WAS NEGLIGENT FOR THE AUTOMOBILE ACCIDENT THAT GAVE RISE TO THESE LAWSUITS.**

STATEMENT OF THE CASE

These negligence lawsuits arise out of a single-vehicle accident in rural west Texas in which a Ford Excursion vehicle driven by Appellant (Antoine Van Steenwicjk) suffered a tire blowout and wrecked. The parties did not dispute that the accident happened because of the tire blowout. The accident injured Antoine’s wife (Amy Garrett) and 10 year-old son (Charles Van Steenwicjk), who are the claimants in the lawsuits and Respondent to this appeal. Garrett sued her husband individually for her personal injuries and, as Guardian Ad Litem, for the injuries to their son. Garrett elected not to make a claim against or sue the tire manufacturer.

Garrett filed the lawsuits with the Colleton County Court of Common Pleas on October 9, 2015 and moved for summary judgment on “liability only” by motion in each case. The trial court held a hearing on February 8, 2017 and issued written orders in both cases on February 21, 2017 granting Garrett summary judgment against her husband on “liability only” in each lawsuit. Van Steenwicjk filed this appeal on March 16, 2017.

STATEMENT OF FACTS

These lawsuits arise out of an August 30, 2014 automobile accident at approximately 4:45 p.m. on Interstate 10 in Sutton County, Texas. Antoine Van Steenwicjk was driving a 2005 Ford Excursion and pulling an Airstream trailer as part of a family vacation when the left rear tire of the Excursion blew and he lost control of the vehicle. Deposition of Antoine Van Steenwicjk, page 24, lines 5-11. Van Steenwicjk said he did not have any indication the tire blowout was going to

happen. Id., page 36, lines 3-6. His wife also commented that during the relevant time period, "... we didn't know if it was the tire." Deposition of Garrett, page 16, line 24.

The accident occurred at the end of a two week family vacation. The deposition testimony showed that Antoine purchased the Ford Excursion years earlier from an out of state dealer. The couple drove the vehicle in Walterboro, South Carolina (where they lived at the time of this accident) for several years without any difficulties or incidents. At some point in June or July 2014, Antoine drove the Excursion and Airstream from Walterboro to Austin, Texas because his job with Dell Computers required him to make occasional appearances at their corporate facility in Round Rock, Texas. Antoine has a master's degree in aerospace engineering. Deposition of Van Steenwicjk, page 10, lines 10-14.

Antoine testified that he drove the Excursion from Walterboro to Texas in late-June 2014 and only experienced an issue with the engine "running rough," which a Ford dealer in Texas repaired. Id., page 30, line 9-page 31, line 10. Antoine testified that he never experienced any vibrations or issues with the tires during that trip. Id., page 31, lines 14-20.

While in Texas, the family decided to go on a vacation road trip through west Texas and New Mexico with the Excursion and Airstream trailer, and both testified they did not have any issues with the vehicle or trailer during those two weeks of travel before the day of the accident. Id., page 29, line 5-page 30, line 8. Deposition of Amy Garrett, page 6, lines 4-12. On the day before the accident, Antoine and family stopped at Davis Mountains State Park in west Texas, which is approximately 425 miles west of Austin, Texas. Deposition of Van Steenwicjk, page 7, line 21-page 8, line 1. On the day of the accident, the family left the state park about 11:00 a.m.-noon Texas time, headed to Austin. Id., page 8, lines 8-12. Both testified that Antoine and Amy checked the lights on the Excursion and the Airstream before leaving Davis Mountains State Park and that Antoine habitually checked the tires on the vehicle and trailer every morning. Deposition of Van Steenwicjk, page 8, lines 18-25. Antoine testified that "everything seemed normal"

when they left. Id., page 11, lines 2-7. The accident report lists the accident time as 4:45 p.m. in Sutton County, Texas, which is approximately 190 miles west of Austin. Thus, Antoine covered approximately 235 miles in the Excursion on August 30, 2014 before the left rear tire blew.

Garrett testified that Antoine drove several hours that day before a noticeable vibration started with the Excursion. Deposition of Garrett, page 10, lines 10-12. Once the vibration started, Antoine attempted to determine the source of the problem while continuing to drive for about 30-40 minutes. Deposition of Van Steenwicjk, page 33, lines 14-17. The vibration remained the same during that time period. Id., page 33, lines 18-22; Deposition of Garrett, page 12, lines 6-9. During that time, Antoine initially thought the road surface was the cause of the problem, and never suspected the tire as the source of the vibration. Deposition of Van Steenwicjk, page 11, line 25-page 13, line 4. He switched lanes at some point and decided that the highway road surface was not the source. Id., page 14, lines 13-25. So, Antoine decided to exit the interstate in a “very desolate” area of west Texas to continue to investigate the cause of the vibration. Id., page 32, lines 9-13. The area where he stopped did not have any town or establishments. Id., page 32, line 22-page 33, line 3. Garrett described the area as “out in the middle of nowhere.” Deposition of Garrett, page 12, line 17. Garrett said the decision was made to exit the interstate there because, “We need[ed] to find an exit to pull over that’s safe. We would never stop on the actual interstate because ... with a child, that’s just too dangerous.” Id., page 12, lines 17-21.

After Antoine pulled off onto a local road, he looked at the surface of each tire and measured the tire pressure of each tire with a digital gauge. Deposition of Van Steenwicjk, page 16, lines 10-17. He said the tires “looked fine.” Id., page 15, lines 14-16. He recalled the back tire pressures were high, but he thought that was “normal” because of the 100° temperature at that time of day. Id., page 15, lines 10-25. He then looked under the car to see if a transmission issue existed or if something was stuck under the vehicle, but did not find anything. Id. He then asked his wife to drive down the rural road for approximately 200-300 feet while he

walked and slowly jogged beside to see if he could hear anything unusual about the transmission. Id.

Antoine testified he was concerned that something was wrong with the vehicle that could cause damage to the vehicle and would not allow them to continue. Id., page 18, lines 10-24. He testified that he did not see or hear anything “weird from a transmission problem, ... [and] I determined that I couldn’t find anything so everything was fine.” Id., page 16, lines 2-7. Garrett testified that she did not feel any vibration as she drove the Excursion and that the efforts at that time off of the interstate were attempts “to figure out what was wrong with the vehicle.” Deposition of Garrett, page 13, lines 16-17; page 5, lines 12-18. Antoine also checked the tires on the trailer but did not think the vibration came from the trailer.

At that point, Antoine talked with his wife about continuing to drive because of concerns about the heat and their remote location. Garrett stated that she asked “are you sure?” and her husband stated that he could not see anything wrong, he was concerned about the heat and location, and stated “I can’t see anything.” Deposition of Garrett, page 14, lines 18-24; page 15, lines 5-6. Antoine stated he decided to get back on the road and he would take the vehicle to a Ford dealer in Austin after they parked the trailer. Deposition of Van Steenwicjk, page 21, lines 1-4.

The family resumed the route along I-10 headed towards Austin and the vibration continued. Amy stated that her husband was very close to the steering wheel and listening to the engine. Deposition of Garrett, page 19, lines 19-24. Antoine was driving about 70 miles per hour and the speed limit was 80 miles per hour in that part of Texas. Deposition of Van Steenwicjk, page 22, line 3-page 23, line 2; Deposition of Garrett, page 21, line 11.

During that segment of the drive, Garrett recorded a video of the family cat, who was reacting to the vibration in a way that amused the family. Deposition of Garrett, page 15, line 17-page 16, line 1. See Video. The blowout occurred 30-60 minutes after they resumed driving to Austin. Id., page 23, lines 11-15. Again, the

undisputed testimony is that the family did not anticipate or expect the tire to blowout. Deposition of Van Steenwicjk, page 36, lines 3-6. Deposition of Garrett, page 16, line 24.

ARGUMENT

I. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT GRANTED SUMMARY JUDGMENT AGAINST APPELLANT ON “LIABILITY ONLY” UNDER THESE FACTS.

“The mere fact that a tire blows out standing alone, does not, of itself, render the owner or operator of the motor vehicle liable to an injured passenger. It is incumbent upon a plaintiff to establish that the tire was in some manner defective, and that the operator or owner, as the case may be, knew or should have known, by the exercise of reasonable care, of the defect.” Brock v. Sorrell, 288 A.2d 640 (Md. Ct. Spec. App. 1972). In that case, the court further held that a comment made by a driver 50 miles before a tire blowout that the vehicle was not “handling right or something” did not constitute knowledge of a defect in the tire.” Id.; see also Crowe v. Crowe, 129 S.E.2d 585 (N.C. 1963). In our case, summary judgment against Antoine Van Steenwicjk was improper because Garrett did not produce any evidence that her husband knew of the tire defect or should have known by the exercise of reasonable care about the tire defect that caused the blowout.

Further, “negligence” is a relative term to be decided upon the facts of these particular cases because its existence turns on the facts is normally a question left for the jury. Mahaffey v. Ahl, 264 S.C. 241, 214 S.E. 2d 119 (1975). Further, the question of whether Van Steenwicjk was negligent, which would be defined generally as the failure to use or exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances, is a question of fact for the jury.

Garrett conceded this accident resulted from a tire blowout, and the evidence showed that Van Steenwicjk did not have any prior experience with a tire blowout and was not a tire expert or mechanic. The deposition testimony and argument at the hearing showed Van Steenwicjk drove the Ford Excursion from South Carolina

to Texas and then throughout Texas and New Mexico without any issues or warnings about the impending tire blowout. The family stopped before the accident and Van Steenwicjk inspected the tires to the truck and the Airstream trailer being pulled and found no damage or bulge to any tire. He also checked the tire pressure and did not observe any abnormality. Thereafter, Garrett participated with her husband's attempts to determine the cause of the vibration by driving the truck slowly along the frontage road as he followed behind in an attempt to determine whether a mechanical issue caused the noise that led them to exit the interstate. Van Steenwicjk testified he thought this rattling and noise was a transmission issue and nothing alerted either party to the impending failure of the tire, but the rattle, which Van Steenwicjk attributed to a transmission issue.

Accordingly, the jury could conclude Van Steenwicjk was not negligent and/or acted as a person of ordinary reason and prudence would have acted under the same circumstances. No testimony exists in this claim about any statutory violation of any "rule of the road" or disregard of any specific warning from his wife about driving at the time of the unfortunate accident. On the contrary, Garrett was actually amused by the cat's reaction to the vibrations, as depicted in the video. Deposition of Garrett, page 16, lines 16-25 and video. And, as Garrett testified, at the time she recorded the cat, which was within 30-60 minutes before the tire blowout, "We didn't know it was the tire." Id., page 16, line 24. Thus, the trial court improperly granted summary judgment.

CONCLUSION

For these reasons, Antoine Van Steenwicjk respectfully asks this Court to reverse the trial court's orders granting summary judgment on "liability only" and remand the case to the trial court for a jury trial on the issues of negligence, proximate cause, and damages.

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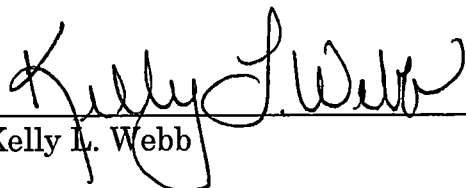
v.

Amy Garrett..... Respondent,

PROOF OF SERVICE

On July 6, 2017, I mailed a copy of **Appellant's Initial Brief, and Appellant's Designation of Matter** to:

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SC Court of Appeals

July 6, 2017

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Re: Amy Garrett, as Parent and Natural Guardian of C.A. VS., Respondent v. Antoine Van Steenwijk, Appellant and Amy Garrett, Respondent v. Antoine Van Steenwijk, Appellant
Appellate Docket No.: 2017-000636
TP File No.: 1464.7360

Dear Ms. Kitchings:

We enclose the original and a copy of Appellant's Initial Brief, Appellant's Designation of Matter to be Included in the Record on Appeal, and proof of service. Please file the original and return a filed copy to our runner. If you have any questions or need additional information, please call me at your convenience. With kind regards,

TURNER PADGET

David S. Cobb/ly CFM

David S. Cobb

DSC/klw
enclosures
cc: Randolph Murdaugh, IV (with enclosures)