STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Tony Courtney, Plaintiff Below,
Petitioner

vs) No. 11-0647 (Mason County 10-C-71)

David Elias, Defendant Below,
Respondent

FILED
April 13, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Tony Courtney, plaintiff below, appeals the Circuit Court of Mason County's March 15, 2011, summary judgment order in favor of Respondent David Elias, defendant below. Petitioner appears by counsel Harry G. Deitzler. Respondent appears by counsel David A. Mohler and Greg S. Foster.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner asserts that he was seriously injured when he was struck by a vehicle negligently driven by Tara Jo Elias. Petitioner settled his claims against Ms. Elias, but he also asserted a separate claim against Ms. Elias's father, respondent herein, under the family purpose doctrine. Respondent denied liability. This Court has explained the family purpose doctrine as follows:

> Liability, under this doctrine, is not based on the existence of a family relationship or on the fact that the vehicle was entrusted to a minor. Rather, the family purpose doctrine is founded on the principles of the law of agency or of master and servant. Where one purchases and maintains an automobile for the comfort, convenience, pleasure, entertainment and recreation of his family, any member thereof operating the automobile will be regarded as an agent or servant of the owner, and such owner will be held liable in damages for injuries sustained by a third person by reason of the negligent operation of the vehicle by such agent or servant. The family member is carrying out the purpose for which the automobile was provided. Were not liability incurred by the owner of the automobile in such circumstances, an innocent victim of the negligence of a financially irresponsible driver would be entirely without recourse. This could not be condoned.

Freeland v. Freeland, 152 W.Va. 332, 336, 162 S.E.2d 922, 925 (1968), *overruled on other grounds by* Syl. Pt. 3, *Lee v. Comer*, 159 W.Va. 585, 224 S.E.2d 721 (1976); *see also*, *Cole v. Fairchild*, 198

W.Va. 736, 747-48, 482 S.E.2d 913, 924-25 (1996), and *Bell v. West*, 168 W.Va. 391, 284 S.E.2d 885 (1981).

At the time of the accident, Tara Jo Elias was a twenty-two-year-old college graduate who maintained full-time employment and rented her own apartment in a different city than where her parents resided. Although the car she was driving was titled in both her and her father's names, Ms. Elias had the exclusive use and control of the vehicle. Respondent testified in his deposition that he paid for his daughter's vehicle because it had been a graduation gift to her. Under these facts, the circuit court concluded that the family purpose doctrine did not apply and granted summary judgment in favor of respondent.

This Court reviews a circuit court's entry of summary judgment under a de novo standard of review. Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). After a careful consideration of the parties' briefs and the record on appeal, we conclude that summary judgment for respondent was proper under the facts of this case and we affirm the circuit court. The circuit court correctly relied upon our opinion in *Bell v. West*, where we stated the following:

> [I]t is our opinion that when a child leaves the family circle and establishes a home of his own he ceases to be a member of the family within the meaning of the family purpose doctrine, and when he uses his parents' automobile with their consent and for his own pleasure he is a borrower of it and not an agent.

Bell, 168 W.Va. at 395, 284 S.E.2d at 888, *quoting McGinn v. Kimmel*, 221 P.2d 467, 469 (Wash. 1950) (citations omitted).

Petitioner points out that Ms. Elias maintained several contacts with her parents and her parents' home, including maintaining personal possessions in "her room" in the family home and listing her parents' address on her bank account and tax returns. At the time of the accident, Ms. Elias had just recently finished college and entered the work force, so certain contacts with her family home were to be expected. However, the family purpose doctrine is based on the law of agency, and, under the facts of this case, we conclude that Ms. Elias was not operating this vehicle as an agent of her father or for the comfort, convenience, pleasure, entertainment, and recreation of the family.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 13, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh