

SUPREME COURT OF FLORIDA

Leonetti v. Boone

74 So. 2d 551 (Fla. 1954) · Decided August 31, 1954

SUMMARY

The Florida Supreme Court affirmed an order granting a new trial in a personal injury action arising from a motor vehicle collision. The court held that the statutory presumption of an owner's liability based on vehicle ownership and operation vanished when uncontradicted evidence showed that the driver lacked the owner's consent and agency, and that the jury had been improperly instructed that the defendant retained the burden of disproving consent. The court also held that the appellee's challenge to the denial of a directed verdict was not properly presented on an appeal from the order granting a new trial.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Sebring, Justice; Terrell, Acting Chief Justice; Hobson, Justice; Patterson, Associate Justice
JURISDICTION	Florida
DECIDED	August 31, 1954
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting the defendant a new trial in a personal injury action; the appellee also attempted to cross-appeal the trial court's refusal to direct a verdict on the agency issue.
STANDARD OF REVIEW	Review of an order granting a new trial is limited to the grounds specified by the trial judge as the basis for the order; an interlocutory or supplemental ruling on a directed-verdict motion is reviewable only with an appeal from the final judgment.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding precedent in Florida subject to subsequent treatment.
PARTIES	Peter Anthony Leonetti v. C.A. Boone

TOPICS

- presumptions
- vicarious liability
- negligence
- evidence
- appellate procedure

PRACTICE AREAS

Torts

Evidence

Appellate Procedure

QUESTIONS PRESENTED

1. Whether the trial court properly granted Boone a new trial based on an instruction that treated the statutory presumption of owner consent as continuing after rebutting evidence was introduced.
2. Whether Leonetti could obtain review on cross-appeal of the trial court's refusal to rule affirmatively on Boone's motion for directed verdict after the jury verdict.

HOLDINGS

1. Under section 51.12, Florida Statutes 1951, the presumption that a person driving another's motor vehicle has the owner's consent shifts the burden of producing evidence, not the ultimate burden of proof. Once competent evidence rebutting the presumption is introduced, the presumption vanishes, and the plaintiff must prove the driver's rightful possession and the owner's liability as though the presumption had never existed.
2. On an appeal from an order granting a new trial, the appellate court may not consider grounds or cross assignments beyond those specified by the trial judge as the basis for granting the new trial.

KEY QUOTATIONS

"A presumption of law which arises upon the pleading or during the course of the trial after the introduction of evidence may aid a party in the discharge of the burden of proof cast upon him and shift to his adversary the burden of explanation or of going on with the case, but does not, as a general rule, shift the burden of proof" (552)

"The presumption then disappears and the burden of proving the driver's rightful possession of the motor vehicle is cast upon the plaintiff, just as if the presumption had never existed." (553)

"For an order granting a new trial is appealable only by virtue of a specific statutory denomination as such, and the review of such an order is limited" (554)

FACTUAL BACKGROUND

Leonetti was injured when his car collided with a motor truck owned by Boone and operated by Ollie Haynes. The evidence at trial showed that Haynes was not Boone's agent or servant, was not operating the truck with Boone's express or implied consent, and that no evidence supported negligent entrustment. Despite that evidence, the trial court instructed the jury that Boone retained the burden of overcoming the presumption that the driver operated the vehicle with the owner's consent.

PROCEDURAL HISTORY

Leonetti sued Boone for injuries allegedly caused by the negligent operation of Boone's truck by Ollie Haynes. The jury returned a verdict for Leonetti, but the trial court granted Boone a new trial because the jury instruction improperly treated the statutory presumption of owner consent as continuing after rebutting evidence was

introduced. The Supreme Court of Florida affirmed the new-trial order and held that the directed-verdict issue was not properly reviewable on this appeal.

DISPOSITION

affirmed

CASES CITED

- Johnson v. Mills, 37 So. 2d 906 (Fla. 1948)
- Powell v. American Sumatra Tobacco Co., 17 So. 2d 391 (Fla. 1944)
- Loftin v. Skelton, 12 So. 2d 175 (Fla. 1943)
- Atlantic Coast Line R. Co. v. Voss, 186 So. 199 (Fla. 1939)
- Seaboard Air Line R. Co. v. Bailey, 190 F.2d 812 (5th Cir. 1951)
- Martin v. Meyer, 68 So. 2d 597 (Fla. 1953)
- Wolfe v. City of Miami, 154 So. 196 (Fla. 1934)