

CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT, DIVISION ONE

Nachsin v. De La Bretonne

17 Cal. App. 3d 637, 95 Cal. Rptr. 227 (Cal. Ct. App. 1971) · No. 10198 · Decided May 18, 1971

SUMMARY

The California Court of Appeal held that, under California law applicable at the time of the crash, a nonnegligent aircraft owner was not liable for negligence by a permittee pilot absent an independent basis for liability. The court also held that the Federal Aviation Act's definitional provision did not create a civil remedy or preempt state tort law on imputed negligence.

CASE DETAILS

COURT	California Court of Appeal, Fourth District, Division One
WRITING FOR THE COURT	Gerald Brown, Presiding Justice; Coughlin, Justice; Whelan, Justice
JURISDICTION	California
DECIDED	May 18, 1971
DOCKET	10198
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a judgment for the defendant after the parties stipulated to the material facts and the trial court rejected liability based on imputed pilot negligence and the Federal Aviation Act.
STANDARD OF REVIEW	The material facts were stipulated, and the appellate court reviewed the legal issues concerning imputed negligence and statutory interpretation de novo.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion
PARTIES	Sylvia Nachsin v. Charles De La Bretonne

TOPICS

- negligence
- vicarious liability
- statutory interpretation
- federalism
- torts

PRACTICE AREAS

- aviation torts
- negligence
- vicarious liability
- federal aviation law

QUESTIONS PRESENTED

1. Whether, under California tort law applicable to similar relationships on land or water, a nonnegligent aircraft owner may be held liable for negligence of a permittee pilot.
2. Whether the Federal Aviation Act of 1958, particularly 49 U.S.C. § 1301(26), creates a civil remedy or imputes a pilot's negligence to an aircraft owner or lessor.
3. Whether federal aviation legislation preempts state tort law governing civil remedies for damages arising from aircraft operation.

HOLDINGS

1. At common law, absent independent negligence by the owner or a special relationship between the owner and pilot, the pilot's negligence is not imputable to the aircraft owner.
2. The Federal Aviation Act's definitional provision, 49 U.S.C. § 1301(26), does not create a civil remedy or independently impose liability on an aircraft owner or lessor for a pilot's negligence.
3. Congress did not preempt state tort law insofar as civil remedies for damages arising from aircraft operation are concerned.

KEY QUOTATIONS

“At common law negligence of the pilot alone, absent any independent negligence of the owner or any special relationship between owner and pilot, is not imputable to the owner.” (at 639)

“Nor did Congress preempt the field through the Federal Aviation Act insofar as civil remedies for damages are concerned.” (at 640)

FACTUAL BACKGROUND

Samuel Nachsin died when a Piper Cherokee aircraft crashed because of the pilot's negligence. The pilot operated the aircraft with owner Charles De La Bretonne's permission, but De La Bretonne was not independently negligent. Sylvia Nachsin, the decedent's widow and sole heir, claimed \$50,000 in damages.

PROCEDURAL HISTORY

The parties stipulated that the decedent died as a result of the pilot's negligence in an airplane crash and that the defendant aircraft owner was not independently negligent. The trial court entered judgment for the defendant, concluding that the pilot's negligence was not imputable to the nonnegligent owner under California law and that the Federal Aviation Act did not create a civil remedy based on imputed negligence. The California Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Johnson v. Central Aviation Corp., 103 Cal. App. 2d 102, 229 P.2d 114 (1951)

- Boyd v. White, 128 Cal. App. 2d 641, 276 P.2d 92 (1954)
- Rogers v. Ray Gardner Flying Service, Inc., 435 F.2d 1389 (5th Cir. 1970)
- Rosdail v. Western Aviation, Inc., 297 F. Supp. 681 (D. Colo. 1969)

OPINION

BROWN, J.

17 Cal. App. 3d 637 (1971) 95 Cal. Rptr. 227 SYLVIA NACHSIN, Plaintiff and Appellant, v. CHARLES DE LA BRETONNE, Defendant and Respondent. Docket No. 10198. Court of Appeals of California, Fourth District, Division One. May 18, 1971. *638 COUNSEL Magana, Olney, Levy & Cathcart and Daniel C. Cathcart for Plaintiff and Appellant. Luce, Forward, Hamilton & Scripps, Marshall L. Foreman, Jr., and C. Douglas Alford for Defendant and Respondent.

OPINION BROWN (Gerald), P.J. The facts were stipulated in the trial court: Plaintiff Sylvia Nachsin is the widow and sole heir of Samuel Nachsin who died when the Piper Cherokee aircraft in which he was riding as an occupant crashed on June 19, 1966, as the proximate result of the pilot's negligence. Plaintiff's damage was \$50,000.

The pilot operated the airplane with defendant owner Charles De La Bretonne's permission, but De La Bretonne himself was not negligent. (1a) May the pilot's negligence be imputed to the owner? The trial court held for defendant, concluding as of June 16, 1966 the pilot's negligence was not imputable to the airplane's nonnegligent owner; and the Federal Aviation Act of 1958 did not create a civil remedy based upon imputed negligence in the circumstances.

(2) At common law negligence of the pilot alone, absent any independent *639 negligence of the owner or any special relationship between owner and pilot, is not imputable to the owner. (1b) At the time of the crash, June 16, 1966, the California Aeronautics Act, Public Utilities Code, section 21404 provided the liability of the owner or pilot of an airplane for damages to passengers is determined by the law applicable to torts on the land or waters of California, arising from similar relationships.

In 1968, after this action arose, this section was amended to make an aircraft owner liable for a permittee pilot's negligence, subject, however, to a limitation of liability of \$15,000 for one person and \$30,000 for one accident.

Thus, had the crash with which we are concerned occurred after the 1968 amendment became effective, there would be liability, limited, however, to \$15,000. What is the liability of an owner for damages to a passenger in an airplane based on the California law of torts occurring on land or waters, arising from similar relationships?

Before 1968, California's position had not been to make a nonnegligent owner, in his capacity solely as an owner, liable for a pilot's negligence. (Johnson v. Central Aviation Corp. (1951) 103 Cal. App. 2d 102 [229 P.2d 114]; Boyd v. White (1954) 128 Cal. App. 2d 641 [276 P.2d 92].) Does liability rest on the definitional statutory section 1301(26) of the Federal Aviation Act of 1958 (49 U.S.C. § 1301(26))?

We think not. Under this section any person authorizing the operation of an aircraft is deemed to be engaged in operating it "within the meaning of this chapter." The language of this section is identically contained in the Civil Aeronautics Act of 1938, 49 United States Code, section 401(26), was in effect when the Johnson v. Central Aviation Corp. and Boyd v. White decisions were made, and did not control their result.

Looking to other jurisdictions, the closest case we find is Rogers v. Ray Gardner Flying Service, Inc. (5th Cir.1970) 435 F.2d 1389. Diversity of citizenship accounted for federal jurisdiction. The case was one for wrongful death following the crash of a private plane in Oklahoma.

The plaintiffs, parents of two deceased occupants, claimed the pilot's negligence was imputable to the plane's lessor, based upon 49 United States Code, section 1301(26). The district court had denied defendants' motion for summary judgment, stating, although section 1301(26) did not establish liability of an owner or lessor for a pilot's negligence, the cause of action was created by the Oklahoma wrongful death statute.

The appellate court pointed out, however, the owner or lessor is liable only if the deceased might have maintained an action against him for the same negligence. *640 And under Oklahoma law the pilot's negligence may not be imputed to the owner. Nor did Congress preempt the field through the Federal Aviation Act insofar as civil remedies for damages are concerned.

The court concluded tort law has historically been left to the states, and had Congress intended to preempt the area "[I]t was fully capable of making that intent clear directly and not by indirection requiring the circuitous reasoning plaintiffs find themselves driven to employ.

In our judgment, what Congress did intend was to subject the classes of persons named in Title 49, Sec. 1301(26), equally with pilots to the rules, regulations, and penalties provided in the Federal Aviation Act." (P. 1393.)

The judgment was reversed with directions to enter summary judgment for the defendants. We agree with the reasoning of the Rogers case and with its analysis of cited cases. One of them, Rosdail v. Western Aviation, Inc. (D.C.Colo. 1969) 297 F. Supp. 681, after treatment in depth, also concluded the definitional statute, section 1301(26) does not create a civil remedy for damages.

Judgment affirmed. Coughlin, J., and Whelan, J., concurred.

