

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL**

MERLE WILLIAMS & ALBERT WILLIAMS,)

Plaintiffs,)

vs.)

**ANDRES S. ACEVEDO & WILLMAR
ACEVEDO,)**

Defendants.)

CIVIL NO. 246/1997

**ACTION FOR DAMAGES, LOSS
OF CONSORTIUM AND
NEGLIGENT ENTRUSTMENT**

NOT FOR PUBLICATION

Jacqueline Warner Mills, Esq.
#250 Peter's Rest
Christiansted, St. Croix
U.S. Virgin Islands 00820
(Attorney for Plaintiffs)

Britian H. Bryant, Esq.
Bryant, Barnes & Simpson, P.C.
47 King Street, 2nd Floor
P.O. Box 4589
Christiansted, St. Croix
U.S. Virgin Islands 00822
(Attorneys for Defendants)

CABRET, J.

MEMORANDUM OPINION

(February 16, 1999)

Merle Williams and Albert Williams sued Andres S. Acevedo and Willmar Acevedo for injuries they allegedly sustained in an automobile collision. In their complaint, the plaintiffs alleged that they were driving through an intersection when Andres Acevedo drove a pickup truck, owned by his father Willmar Acevedo, through a red traffic light and struck the side of their car. They contend that their injuries were caused by Andres Acevedo's negligent driving and Willmar Acevedo's negligent entrustment of the pickup truck to his son. Willmar Acevedo

moved for summary judgment on the ground that there is insufficient evidence to support the plaintiffs' negligent entrustment claim. The Court agrees and will therefore grant the motion.

I. SUMMARY JUDGMENT STANDARD

To prevail on his motion for summary judgment, Willmar Acevedo must show that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [he is] entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). Under this standard, Acevedo "bears the initial burden of showing that no genuine issue of material fact exists. But once [Acevedo] properly supports a motion for summary judgment, [the Williams] 'may not rest upon the mere allegations or denial of [their] pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial.' Any doubts are resolved in favor of [the Williams] whose allegations are taken to be true." Mingolla v. Minnesota Mining and Mfg. Co., 893 F. Supp. 499, 503 (D.V.I. 1995) (citations omitted). In determining whether Acevedo has met his initial burden, the Court must view the evidence in a light most favorable to the Williams as the party opposing the motion. See Fleming v. Frett, 33 V.I. 58, 60 (Terr. Ct. 1995).

II. THE EVIDENCE

Viewed in a light most favorable to the Williams, the evidence shows that on the day of the accident, Andres Acevedo awoke at approximately 5:00 a.m. after a restless night of lying sick in bed. Approximately 30 minutes later, Andres left home in the pickup truck for his job as a bus driver for a local construction company. While driving to work, Andres fell asleep at the wheel, apparently suffering from the effects of his illness and the lack of sleep. Unaware that he

was approaching a red light, Andres drove into the intersection where he struck the car occupied by the Williams.

In their complaint, the Williams alleged, *inter alia*, that "Willmar Acevedo was aware of the physical condition of Defendant, Andres Acevedo" and that he was therefore liable to them for negligently entrusting the pickup truck to him.¹ In response to this allegation, Willmar Acevedo pointed to evidence which shows not only that he was unaware of his son's condition on the morning of the accident, but also that he believed his son was a good driver. Specifically, the evidence shows that approximately one year before the accident, Willmar Acevedo loaned the truck to Andres on what the defendants characterized as "a permanent basis."² In his affidavit, Willmar Acevedo asserted that prior to the accident, he had never seen any evidence that Andres, who is 22 years old and fully emancipated, was an unsafe driver. Mr. Acevedo stated that he paid for his son to take a driver education course before he received his driver's license and that Andres passed both the written and road tests on his first attempt. Andres Acevedo has never had his driver's license revoked or suspended, and his father stated that whenever he had accompanied Andres in the truck, "he had always driven in a safe manner and exhibited knowledge of the rules of the road and abided by them."³ As for Andres' condition on the morning of the accident, Willmar Acevedo stated:

¹ Compl. at para. 23.

² Defs.' Resp. to Pls.' First Interrogs., No. 7.

³ Aff. of Willmar Acevedo at para. 4.

I had not seen my son the morning of the accident prior to his leaving for work at 5:30 a.m. and had no knowledge of the fact that he had slept poorly the night before due to the effects of the flu which he was fighting. Therefore, I had no knowledge of the fact that he might be susceptible to causing an accident by impaired ability to concentrate on his driving due to his being ill and overly tired, nor did I know he would attempt to go to work if he was still sick.⁴

The foregoing evidence concerning Willmar Acevedo's knowledge of his son's condition on the morning of the accident and his driving record is uncontroverted.

III. DISCUSSION

To prevail on a claim of negligent entrustment, a plaintiff must prove:

- (1) entrustment of a chattel to a party;
 - (2) likelihood that such party because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom the entruster should expect to be endangered;
 - (3) knowledge or reason to know by the entruster of such a likelihood;
 - (4) proximate cause of the harm to plaintiff by the conduct of the entrustee.
- RESTATEMENT (SECOND) OF TORTS § 390 (1977).

Baron v. Rosario, 982 F.Supp. 1037, 1039 (D.V.I. 1997).

In this case, Willmar Acevedo met his initial burden of showing that there is no genuine issue of material fact concerning his knowledge of his son's condition or that the condition would pose an unreasonable risk to others. Although the evidence, viewed in a light most favorable to the Williams, showed that Willmar Acevedo entrusted the pickup truck to his son and that there was a likelihood that his son would be involved in a collision due to his physical condition that morning, there is no evidence that Mr. Acevedo had actual knowledge of this condition. Furthermore, despite the Williams' allegations, there is no evidence that Mr. Acevedo

⁴ Id. at para. 2.

had any reason to know of his son's condition prior to the accident. Rather, the evidence shows that Andres Acevedo was fully emancipated, lived in a separate dwelling than his father and that his father had not seen him during the morning hours prior to the accident.

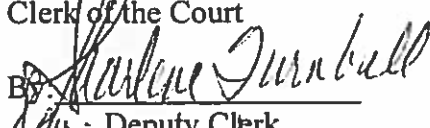
As stated above, the Williams could not rest upon the mere allegations in their pleadings to prove that Willmar Acevedo negligently entrusted his truck to his son Andres., but were required to set forth specific facts in support of their claim. See Fed. R. Civ. P. 56 (c). Notwithstanding this burden, they failed to present any evidence that Willmar Acevedo knew or should have known about his son's condition on the morning of the accident. They have done no more than rest on their pleadings. See Baron, 982 F.Supp. at 1041.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that the Williams have failed to present evidence creating a genuine issue of material fact which would preclude summary judgment in favor of Willmar Acevedo. The evidence of record shows that Mr. Acevedo did not know or have any reason to know of his son's condition on the morning of the accident or that the condition would render him unfit to drive. Accordingly, the Court will grant summary judgment in favor of Willmar Acevedo.


MARIA M. CABRET
Territorial Court Judge

A T T E S T:
YVONNE V. WESSELHOFT
Clerk of the Court

By: 
Deputy Clerk
Dated: 2/17/94