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SECREST WARDLE

"Woe to You [Plaintiff's] Lawyers"[1]: Church Not Liable for Assault Carried Out With its Van

By Drew W. Broaddus **October 2, 2023**

The recent, published decision of the Court of Appeals in *Reece* arose out of an argument between the Plaintiff (Reece) and Defendant James. On that day, James drove his grandmother and other parishioners in a van to their church in Detroit, where James' grandmother was the pastor. The van was owned by the church. James was supposed to return to the church later that day to pick up the parishioners. Instead, he went to a neighbor's front porch, drank alcohol, and got into an argument with the Plaintiff and at least one other person. As the Plaintiff tried to walk away, James jumped into the van and ran over the Plaintiff. James was later charged and convicted for the attack. Plaintiff sued James for "negligence, gross negligence, willful and wanton misconduct." *Reece*, ___ Mich App at ___; slip op at 3. Plaintiff also sued the church under an ownership liability theory. *Id.*, citing MCL 257.401.

SECREST WARDLE NOTES

Per MCL 257.401(1), a vehicle owner "is liable for an injury caused by the negligent operation of the motor vehicle," provided that the vehicle is being driven with the owner's consent.

"Negligence" under this provision includes gross negligence or willful and wanton misconduct. *Hashem v Les Stanford Oldsmobile, Inc*, 266 Mich App 61 (2005).

However, "negligence" within the meaning of § 401(1) does not encompass intentional torts. *Reece v James, et al*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No.s 362140 and 362151).

The church moved for summary disposition, arguing that the suit was based on James' intentional act of running over the Plaintiff with the van. James' intent, the church argued, was proven by his testimony that he intended to scare the Plaintiff, along with his guilty plea for attempted assault with intent to cause great bodily harm. *Reece*, ___ Mich App at ___; slip op at 3. "Because the owner liability statute requires a negligent act," the church argued that it "could not be held liable…." *Id*. The trial court denied the church's motion, finding a question of fact because "the only person who can testify with respect to Defendant James' subjective intent in the moment of the accident is Defendant James himself," and James claimed that "he did not intend to hit or injure" the Plaintiff. *Id.* The church applied for leave to appeal, which the Court of Appeals granted.

In reversing, the panel took note of *Berry v Kipf*, 160 Mich App 326 (1987), which held that an owner could not be liable under § 401 when the only allegation is that the driver committed an intentional tort. *Reece*, ___ Mich

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App at ___; slip op at 5. Although the statute has been amended since *Berry*, the panel found that the amendment was not substantive, and "the statute still requires a negligent act, [so] an owner cannot be liable under the statute where the only allegation is that the alleged tortfeasor committed an intentional tort."

On appeal, Plaintiff tried to portray James' conduct as mere negligence, gross negligence, or willful and wanton misconduct. See *Hashem*, 266 Mich App at 88 (holding that, under § 401, liability could also arise in the context of gross negligence or willful and wanton misconduct). The panel rejected this argument because the Plaintiff's testimony "describe[d] two attempts by James to run him over with the van." *Reece*, ___ Mich App at ___; slip op at 6. "Not only that, but during his criminal proceedings James admitted that while operating the car he attempted to assault Reese with the intent to do great bodily harm. MCL 750.84(a)." *Reece*, ___ Mich App at ___; slip op at 6. The elements of this crime are: "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *Id.* "Given the testimonies of both Reese and James, there is no genuine issue of fact that James' conduct was anything but intentional." *Id.*

Although the complaint alleged negligence, gross negligence, or willful and wanton misconduct, the panel noted that it "was not beholden to the labels Reese attached to the complaint." *Id.* at ___; slip op at 7. Rather, in considering a motion for summary disposition, courts look at "the gravamen of an action," which "is determined by reading the claim as a whole." *Id.*

Judges Thomas Cameron and Michael Kelly comprised the majority; Judge Douglas Shapiro wrote separately to emphasize that the holding, in his view, turned on the usual facts of the case, particularly the driver's guilty plea to a specific intent offense.

We welcome your questions – please contact:

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