

RENDERED: MAY 13, 2016; 10:00 A.M.  
TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2015-CA-000198-MR

SANDRA BURCHETT, ADMINISTRATRIX  
OF THE ESTATE OF BENJAMIN ESTILL  
BURCHETT II; SANDRA BURCHETT; and  
BENJAMIN BURCHETT

APPELLANTS

v. APPEAL FROM LAWRENCE CIRCUIT COURT  
HONORABLE JOHN DAVID PRESTON, JUDGE  
ACTION NO. 12-CI-00317

AMANDA BURCHETT; ERIK A. BLAIR;  
DAVID PERRY d/b/a LOUISA AUTO MART;  
and AUTO OWNERS INSURANCE COMPANY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, D. LAMBERT, AND VANMETER, JUDGES.

D. LAMBERT, JUDGE: This is an appeal from the January 6, 2015 order of the  
Lawrence Circuit Court finalizing dismissal of a wrongful death suit against an  
automotive dealer and his insurer. After review, we affirm.

## I. BACKGROUND

On May 14, 2012, Amanda Burchett (Amanda) and Erick Blair (Blair) bought an automobile from David Perry, d/b/a Louisa Auto Mart (Perry). Blair crashed the automobile six days later while driving intoxicated. Amanda Burchett and Benjamin Burchett II (Benjamin) were riding with Blair at the time. Benjamin was killed in the crash.<sup>1</sup>

Sandra Burchett (Burchett), as the representative of Benjamin's estate, later filed a wrongful death action against Blair and Perry. In the complaint, she alleged (1) that Perry violated KRS<sup>2</sup> 186A.220 because he sold the automobile to Blair and Amanda and neither one had insurance; (2) that Perry violated KRS 186.620 by authorizing and permitting a person without a driver's license to drive an automobile; (3) that Perry negligently entrusted the automobile to Blair and Amanda; and (4) that Perry remained the owner of the automobile because he sold it to individuals who did not have insurance in violation of KRS 186A.220.

Perry eventually moved for summary judgment with respect to these claims. On June 9, 2014, the trial court granted Perry's motion as to the violations of KRS 186A.220 and denied the remaining motions. A jury trial was later held to decide two issues: whether Perry delivered title documents to Blair and Amanda on the day of the sale, and whether Amanda had a driver's license.

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<sup>1</sup> Blair was prosecuted criminally and was convicted of second-degree manslaughter, second-degree assault, a fourth DUI offense, and driving on a suspended license. He received a ten-year prison sentence for his crimes.

<sup>2</sup> Kentucky Revised Statutes.

After considering and weighing the evidence, the jury determined that Perry delivered the automobile's original title and an Application for a Kentucky Certificate of Title to Blair and Amanda on May 14, 2012. The jury also determined that Amanda did not have a drivers' license. Based on the jury's determination, the trial court ruled that title to the automobile transferred on the day of the sale and eliminated any issues relating to Perry's alleged liability. The trial court dismissed Perry from the action on September 10, 2014, but held the action open until Blair's liability was decided. Upon a joint motion of the parties to do so, the trial court entered a final order dismissing Perry from the action on January 6, 2015. This appeal followed.

### **III. STANDARD OF REVIEW**

Statutory interpretation is a question of law, and appellate courts review questions of law *de novo*. *Spencer Cty. Pres., Inc. v. Beacon Hill, LLC*, 214 S.W.3d 327, 329 (Ky. App. 2007). The role of an appellate court when reviewing the evidence supporting a judgment entered upon a jury verdict is to accept all evidence in favor of the prevailing party as true without determining the credibility of the evidence, and then determine whether the verdict rendered was “‘palpably or flagrantly’ against the evidence so as ‘to indicate that it was reached as a result of passion or prejudice.’” *Lewis v. Bledsoe Surface Min. Co.*, 798 S.W.2d 459, 461-62 (Ky. 1990) (quoting *NCAA v. Hornung*, 754 S.W.2d 855, 860 (1988)). If so, an appellate court may reverse the judgment.

### **III. DISCUSSION**

On appeal, Burchett first argues that Perry breached a statutory duty of care by authorizing or knowingly permitting Blair to drive the automobile because Blair did not have a driver's license. Burchett also argues that Perry had a duty to verify that Blair and Amanda were insured. Lastly, Burchett argues that a jury issue remains as to whether Perry negligently entrusted the vehicle to Blair and Amanda because he should have known that neither Blair nor Amanda had a driver's license or insurance. For the following reasons, we are not persuaded by Burchett's arguments.

**1. Perry did not breach a statutory duty of care**

In Kentucky, the owner of a vehicle is the one who holds its legal title, KRS 186.010(7), and he has a duty to prevent those without a legal right to drive from driving his vehicle. *See* KRS 186.620(1). An owner may transfer ownership of his vehicle in two ways. First, he can complete and sign the assignment of title section on the certificate of title and deliver it to the buyer directly. *Nantz v. Lexington Lincoln Mercury Subaru*, 947 S.W.2d 36, 37 (Ky. 1997); KRS 186A.215. Second, when the owner is also licensed motor vehicle dealer, he can obtain the purchaser's consent to file the certificate of title and other necessary paperwork directly with the county clerk on the purchaser's behalf. KRS 186A.220(5). If the vehicle's ownership is transferred under the first method, "the responsibility for insurance coverage on the part of the dealer ceases." *Nantz*, 947 S.W.2d at 39. However, if ownership is transferred under the second method, the dealer must "verify that the purchaser has obtained insurance on the vehicle before

relinquishing possession.” *Gainsco Companies v. Gentry*, 191 S.W.3d 633, 636 (Ky. 2006); *see also* KRS 186A.220(5).

Here, because the jury determined that Perry delivered the necessary title documents to Blair and Amanda on May 14, 2012, Blair and Amanda became the owners of the automobile on that day. Moreover, since Perry was no longer the owner, he was under no duty to prevent either Blair or Amanda from driving the automobile on the day of the accident. Finally, because Perry transferred the title documents to Blair and Amanda directly, and did not retain the certificate of title with the consent of the new owners to file it with the county clerk, he did not have to verify whether Blair or Amanda were insured.

## **2. Perry did not negligently entrust the vehicle to Blair and Amanda**

“The common law theory of negligent entrustment is that one who entrusts *his* vehicle to another whom he knows to be inexperienced, careless, or reckless, or given to excessive use of intoxicating liquor while driving, is liable for the natural and probable consequences of the entrustment.” *McGrew v. Stone*, 998 S.W.2d 5, 9 (Ky. 1999) (emphasis added). Logically, one cannot maintain a negligent entrustment suit against the former owner of a vehicle who properly transferred ownership of the subject vehicle. *See Graham v. Rogers*, 277 S.W.3d 251 (Ky. App. 2008).

Here, Blair crashed the automobile he jointly owned with Amanda on May 20, 2012. Perry did not own the automobile following May 14, 2012. Accordingly, Burchett’s negligent entrustment claim must fail as a matter of law.

The order of the Lawrence Circuit Court is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Eldred E. Adams, Jr.  
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BRIEF FOR APPELLEE:

James M. West  
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