

DISTRICT COURT

Eklund v. Trost, Moody, et al, Wheatland DV 01-713, 10/17/03.

NEGLIGENCE: Detention center escapee's theft of grandfather's truck and subsequent injury accident not foreseeable by grandfather ... Spaulding.

Roy Trost, 13, walked away from Yellowstone Co. Youth Service Center with a companion in 6/01. They hitchhiked to Roundup and found Trost's grandfather Carl Moody's diesel pickup in front of the Pioneer Cafe with the keys in the ignition. They drove away with Trost at the wheel. In Harlowton they were chased by a Wheatland Co. officer. Trost struck Donald Eklund's vehicle and Eklund after Eklund had exited to go into a barbershop. Eklund sustained catastrophic injuries. When Moody discovered his truck missing he thought initially that someone had moved it as a prank, but eventually deduced that it had been stolen by Trost and reported it. Trost subsequently pled true to criminal charges stemming from the accident. Eklund sued various parties including Moody. Moody requests summary judgment.

Eklund alleges that Moody was negligent in that he knew that Trost was detained, would likely run, and would come to Roundup looking for his vehicle, and by leaving it on the main street with the keys in, unlocked, and the engine running he failed to exercise due care to prevent theft, he was negligent for failing to immediately notify authorities that his vehicle was missing, and his negligence was a proximate cause of the accident and Eklund's injuries.

In weighing the *Strever* (Mont 1996) policy considerations, reasonable minds would not attach moral blame to Moody's act of leaving his keys in his unlocked vehicle in Roundup during daylight hours. It is likely that many people in Roundup and other parts of rural Montana would act similarly. In applying the other policy considerations underlying imposition of a duty, there would clearly be a desire to prevent future harm and taking the keys out and locking the vehicle is not a difficult burden, together with the fact that insurance may be obtained for the risk of stolen vehicles. However, the Supreme Court has made clear that the prime consideration in whether a duty is to be imposed is whether the defendant's conduct presents a foreseeable and great risk of harm. Moody, having left the keys in his unlocked pickup, did not present foreseeable risk of harm to Eklund. The Court is persuaded by other jurisdictions which recognize that risks to others as a result of the negligent driving of a thief is not reasonably foreseeable to one who leaves the keys in his unlocked vehicle. No duty from Moody to Eklund existed because it could not have been reasonably foreseeable as a matter of law that any special circumstance existed to increase the probability or likelihood that Trost would steal his pickup and then injure Eklund, especially since Trost was in the detention facility in Billings, was only 13, and had no driver's license. Nor did Moody have enough information to have determined that Trost would find and steal his pickup. When he learned that Trost was in town he did not know that he was looking for his pickup and did not know what he was doing in town at all. No reasonable person would expect that escapees from a detention facility 50 miles away would travel to Roundup, risk being seen on Main St. in broad daylight and during work hours, and steal an unlocked pickup in front of a busy café.

Even assuming that Moody was negligent, Trost's criminal acts constitute a superceding cause which intervenes in the chain of causation to absolve Moody of liability, as in *Strever*. Summary judgment for Moody.

Thomas Towe (Towe, Ball, Enright, Mackey & Sommerfeld), Billings, for Eklund; James Ragain (Ragain, Christensen, Fulton & Fitz), Billings, for Trost; Jared Dahle (Nelson & Dahle), Billings, for Moody; Norman Grosfield (Uttick & Grosfield), Helena, for Wheatland Co. and Sheriff Riveland; Dep. Yellowstone Co. Atty. Kevin Gillen.