UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 19, 2023

CBCA 7720-DBT

In the Matter of DARREN A.

Darren A., Petitioner.

Kimberly I. Thayer, Office of General Counsel, National Tort Claims Center, General Services Administration, Washington, DC, appearing for General Services Administration.

KULLBERG, Board Judge.

Petitioner seeks review of a notice of debt collection by wage garnishment. The agency, the General Services Administration (GSA), contends that petitioner owes the Government the cost of repairs to a government-owned vehicle, which was damaged by petitioner's spouse. Petitioner has denied liability for the debt. For the reasons stated below, the Board does not find that a legally enforceable debt exists in this matter.

Background

On July 23, 2012, petitioner's spouse was involved in a collision with a GSA vehicle. The Connecticut Uniform Police Accident Report (police report) stated that the GSA vehicle was stopped in a left turn lane while waiting for the traffic light to change, and petitioner's spouse drove her vehicle into the left turn lane and struck the GSA vehicle from behind. Petitioner's spouse represented in the police report that she had sneezed, which distracted her, and she was unable to avoid hitting the GSA vehicle. The police report further noted that petitioner's spouse had a driver's license from another state, but she did not have the proper license class in the state where the accident occurred, which was Connecticut. Additionally, a report on a standard form 91 (SF91), which was signed by the driver of the GSA vehicle, stated that the vehicle was not insured and was "co-owned."

By letter dated October 22, 2012, GSA informed petitioner that he was liable for the cost of repairing the damage to the GSA vehicle and demanded payment for the repairs in the amount of $9901.58, and a subsequent letter dated November 23, 2012, increased that amount to $9909.99. On December 24, 2012, GSA sent a final notice to petitioner, which demanded final payment in the increased amount of $9928.25, and on February 20, 2013, GSA approved referral of its claim to the Department of the Treasury (Treasury) for collection. In an email dated April 24, 2023, GSA recalled the claim from Treasury because "[d]ebtor was not provided due process since he is in the military and did not receive . . . notice [of] the accident."

An email from GSA to petitioner, which was dated April 26, 2013, referenced a discussion with petitioner that summarized petitioner's agreement to pay GSA $9901.58, in fifty monthly payments of $200 each, plus a final payment of the remaining balance. GSA's email included an attached promissory note for petitioner's signature, but petitioner did not execute the promissory note. Petitioner made three payments to GSA in June, July, and August of 2013. The record does not reflect any subsequent payments.

On October 26, 2022, Treasury informed petitioner of its intent to collect the debt, which had increased to $19,004.83, by administrative wage garnishment. Petitioner denied the existence of the debt and sought review by the Board. The Board docketed this matter, and the Board requested an agency report. GSA submitted an agency report, which represented, without explanation, that the amount of the debt was $18,843.79 as of April 28, 2023. Petitioner did not submit a response in spite of repeated requests from the Board.

Discussion

The issue before the Board is whether GSA can collect from petitioner by wage garnishment the cost of repairing its vehicle where the basis for the asserted debt is GSA's allegation of liability in an automobile accident involving petitioner's spouse and a GSA vehicle. The relevant garnishment statute provides the following:

> Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.

31 U.S.C. § 3720D(a) (2018). Additionally, the statute defines a debt subject to wage garnishment as follows:

> [T]he term "claim" or "debt" means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency. A claim includes, without limitation–
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> (A) funds owed on account of loans made, insured, or guaranteed by the Government, including any deficiency or any difference between the price obtained by the Government in the sale of a property and the amount owed to the Government on a mortgage on the property,
>
> (B) expenditures of nonappropriated funds, including actual and administrative costs related to shoplifting, theft detection, and theft prevention,
>
> (C) over-payments, including payments disallowed by audits performed by the Inspector General of the agency administering the program,
>
> (D) any amount the United States is authorized by statute to collect for the benefit of any person,
>
> (E) the unpaid share of any non-Federal partner in a program involving a Federal payment and a matching, or cost-sharing, payment by the non-Federal partner,
>
> (F) any fines or penalties assessed by an agency; and
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> (G) other amounts of money or property owed to the Government.

Id. § 3701(b)(1).

GSA's administrative wage garnishment regulation applies "to any GSA program that gives rise to a delinquent non-tax debt owed to the United States and that pursues recovery of such debt." 41 CFR 105-57.001(c)(1) (2022). "[T]he terms 'claim' and 'debt' are synonymous and interchangeable." *Id*. 105-57.002(k). A debt or claim is defined as follows:

> [A]n amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other

> similar sources including debt administered by a third party as an agent for the Federal Government.

Id. GSA has the burden of proving the existence and amount of a debt. *Id*. 105-57.005(f)(1).

Statute provides for the operation of motor vehicle pools and transportation systems under the authority of the Administrator of General Services. 40 U.S.C. §§ 601–611. GSA regulations provide that "[e]very accident involving a GSA Interagency Fleet Management System (IFMS) vehicle shall be investigated and a report furnished to the manager of the GSA IFMS fleet management center which issued the vehicle." 41 CFR 101-39.403(a). In the case of a claim by the Government, those regulations provide the following:

> Whenever there is any indication that a party other than the operator of the GSA [IFMS] vehicle is at fault and that party can be reasonably identified, the agency responsible for investigating the accident shall submit all original documents and data pertaining to the accident and its investigation to the servicing GSA IFMS fleet management center. The GSA IFMS regional fleet manager, or his/her representative, will initiate the necessary action to effect recovery of the Government's claim.

Id. 101-39.404.

GSA has the burden of proving petitioner's liability for a tort allegedly committed by his spouse. Following decisions by the General Services Board of Contract Appeals (GSBCA), the Board has recognized the following:

> [A] Government claim for a debt based upon tort liability must show "(i) that a tort has occurred and (ii) that the alleged debtor is in fact liable for any resulting damages." [*Tracy W.*,] GSBCA 16520-DBT, slip op. at 5 (Nov. 24, 2004). The GSBCA also recognized that state law would determine liability absent a finding that federal law should control, but the Government must show an analysis of petitioner's conduct and liability in light of that state law. [*Lydia C.*,] GSBCA 16526-DBT, slip op. at 7 (Nov. 24, 2004).

Derric J., CBCA 7134-DBT, slip op. at 5 (Aug. 17, 2021). To the extent that GSA seeks to assert liability against a person other than the driver of the vehicle, it must show an analysis in light of state law. *Lydia C.*, at 7.

GSA contends that even though petitioner's spouse was the driver who struck the GSA vehicle, the petitioner is liable for the damage because the accident occurred in the state of Connecticut, and that state's statute provides the following:

> Proof that the operator of a motor vehicle or a motorboat . . . was the husband, wife, father, mother, son or daughter of the owner shall raise a presumption that such motor vehicle or motorboat was being operated as a family car or boat within the scope of a general authority from the owner, and shall impose upon the defendant the burden of rebutting such presumption.

Conn. Gen. Stat. § 52-182 (2018). "The purpose and effect of § 52-182 was not to affect or create substantive rights; its purpose was merely to govern procedure." *Hunt v. Richter*, 302 A.2d 117, 119 (Conn. 1972). The "one limitation in [Connecticut's] family car doctrine not found in other states was that the operator must be shown to have had from the owner 'general authority to drive the car while it is being used as such family car, that is, for the pleasure or convenience of the family or a member of it.'" *Id*.

The Board finds that application of Connecticut's family car doctrine would be inappropriate in this matter as it rests upon a view of the law that has become increasingly disfavored. The general view of the doctrine is the following:

> The family purpose doctrine is based on public policy, encompassing humanitarian principles designed to protect the public. Liability under the doctrine may be based on the principles of the law of agency or of employer and employee, the theory being that the driver of a family car, in pursuit of recreation or pleasure, is engaged in the owner's business and is viewed as either the agent or employee of the owner. Thus, it has been said that when the owner of an automobile furnishes it for the use and enjoyment of the members of his or her family, the members of the family so using the automobile with the consent of the owner become the owner's agent in carrying out his or her purpose. However, this rationale has been criticized, and it has been said that a more accurate justification of family purpose decisions than reliance upon fictional agency principles is a recognition of the public policy to require a responsible person to answer for damages caused by the user of the family car.

61 C.J.S. *Motor Vehicles* § 962 (2023) (footnotes omitted). "The family purpose doctrine has been the subject of controversy from the time of its inception. The extent of this dispute is demonstrated by the number of jurisdictions in which the doctrine has been rejected." R.E. Barber, Annotation, *Modern Status of Family Purpose Doctrine with Respect to Motor Vehicles*, 8 A.L.R.3d 1191, § 13 (2023).[1] With regard to the law of agency, a commentator has noted that "the head of a household who permits members of the family to use his automobile is not liable for such use except when members use it on his affairs and as his servants." Restatement (Second) of Agency § 238 cmt.c (Am. L. Inst. 1958).

In this case, GSA seeks to impose liability not on the driver of the vehicle who struck the GSA vehicle, petitioner's spouse, but rather, on petitioner, who was not the driver. As discussed above, GSA has the burden of proof in establishing the existence of a legally enforceable debt, but GSA seeks to avoid its burden of proof by relying on Connecticut's family car doctrine, which creates a presumption that petitioner's spouse was operating the vehicle at the petitioner's direction. The Board finds that GSA's position would amount to an uneven process of weighing evidence in similar cases from different states as there is no single consistent rule regarding the family car doctrine or family use doctrine.

The law of agency, which is cited above, however, would limit the liability of the petitioner to only those circumstances in which his spouse could be shown as acting on his behalf. Such a legal principle would allow for a consistent adjudication of such cases as the controlling issue would be whether the owner of a vehicle would only be liable when there is a showing that the driver was acting on the owner's behalf. The record in this matter does not show facts that support such a finding that petitioner's spouse was operating the vehicle at petitioner's direction. Additionally, the record shows that petitioner was not aware of the accident until well after it had occurred. Given the fact that petitioner's spouse lacked a valid license and insurance on the vehicle, it would appear that petitioner's spouse should have known that she should not have been operating the vehicle. GSA also acknowledges that it "is not privy to the relationship between [petitioner's spouse] and [petitioner]." Under such circumstances, the Board finds no grounds for shifting responsibility for the accident to petitioner.

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[1] States cited in the comment that have rejected the family purpose doctrine included the following: Alabama, Arkansas, California, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming. 8 A.L.R.3d 1191, § 13.

Decision

The Board does not find that a legally enforceable debt exists. Accordingly, GSA shall cease any efforts to collect the debt, and the collection of the debt is permanently stayed.

H. Chuck Kullberg

H. CHUCK KULLBERG
Board Judge