UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 28, 2023

CBCA 7389-DBT

In the Matter of TONY H.

Tony H., Petitioner.

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

O'ROURKE, Board Judge.

The General Services Administration (GSA) seeks reimbursement for the costs of repairing a government vehicle which was damaged in an automobile accident with petitioner's vehicle in Hartwell, Georgia. Petitioner was not in the vehicle at the time of the accident, and the vehicle was not insured. Georgia's vicarious liability law precludes a finding that petitioner, rather than the driver of the vehicle, is liable for the repair costs. Consequently, GSA must refund amounts already garnished from petitioner's wages.

Facts

On August 20, 2014, petitioner's vehicle was involved in an automobile accident with a government vehicle in Hartwell, Georgia. Petitioner was not in the vehicle when the accident occurred. Police responded to the scene and completed an accident report. The report identified the driver of the vehicle as Ms. B and stated her address. At the time of the accident, Ms. B was seventeen years old and was the only person in the car. The report also identified Ms. B as the party at fault in the accident, citing a traffic law violation of "failure to yield after stopping at [a] stop sign."

The police report listed petitioner and Ms. B as having the same address, but the report did not indicate the source of that information. Other data in the record indicates that they did not reside at the same address. Petitioner was Ms. B's stepfather when the accident

occurred. The residence of petitioner and his then-wife (Ms. B's mother), along with their two sons, was on the same street as Ms. B's residence but at end of the block.

The vehicle was not insured when the accident occurred. Police issued a citation to petitioner for failure to have vehicle insurance, in violation of state laws. Petitioner was the sole owner of the vehicle that Ms. B was driving. Petitioner stated that he purchased the vehicle for his wife and explained:

> This was not a family car, as it was just me, [my wife], and my two boys living in the home. This was her car, I already had two vehicles of my own. My car insurance at the time was with Nationwide, I signed for the car with [the dealership] on a Friday evening, they put insurance on the car for a total of 18 days. I told my wife to go first thing Monday to put the car on our insurance with Nationwide. It was exactly 20 days later, I get the call that the car had been in an accident. When I arrived at the scene, I noticed my stepdaughter . . . was driving the car when I never gave her permission to drive the car. It was agreed between me and my wife that no one would be driving this car but her with my two boys . . . to and from school and so forth. I called my insurance company to report the accident not even knowing the car was never added to our insurance. I was very upset when they told me it was never added. Because of this I had to appear in court for having no insurance, my license was suspended for 60 days and I had to pay a fine.

An invoice in the record, dated September 11, 2014, shows that GSA paid $9801.45 to an auto body shop to repair the government vehicle. Shortly thereafter, GSA sent a demand letter to petitioner, stating, "[W]e have determined that you are liable for damages to the government vehicle totaling $9801.45." The letter, dated September 16, 2014, was mailed to Ms. B's address, *not* petitioner's address. GSA received no response to the letter.

On November 17, 2014, GSA sent petitioner a "final notice," stating, "Our records indicate [a] claim . . . in the amount of $9827.68 remains unpaid. This includes late charges accrued to date. We have not received your payment, or a valid reason for nonpayment in response to the collection notices previously sent to you." Like the previous notice, this one was also sent to Ms. B's address, and GSA received no response to it.

Seven years later, on November 18, 2021, the United States Department of the Treasury issued petitioner an administrative wage garnishment notice (AWG) in the amount of $18,708.40. Unlike the previous notices, the AWG notice was sent to petitioner's address. Petitioner submitted a handwritten reply to the notice on December 13, 2021, stating that this was the first time he received any information about the debt. He also challenged the nature

of the debt, the amount, and wished to discuss it. The agency treated the response as a request for a hearing.

The Board docketed the case, issued an initial order on proceedings, and ordered GSA to stay the garnishment of petitioner's wages pending resolution of the disputed debt. The Board requested and received information from both parties to decide the dispute. On January 19, 2023, petitioner informed the Board that, "[a]fter receiving th[e] [AWG] letter . . . I started being garnished for a while and then the garnishment stopped for a few years . . . the garnishment started again in which I have been making payments on." Petitioner provided evidence in support of the garnishment, and GSA subsequently confirmed that the garnishment action had proceeded despite the Board's order. To date, more than $7200 has been garnished from petitioner's wages.

Petitioner acknowledges responsibility for the lack of insurance since the vehicle was in his name, but he disputes liability for the debt at issue in this case because he did not cause the accident and because Ms. B did not have permission to drive the car.

Discussion

This decision is being issued on the record pursuant to 41 CFR 105-57.002(o), -57.005 (2022). The evidence considered in rendering this decision includes the following: (1) petitioner's wage garnishment hearing request, dated December 13, 2021; (2) GSA's administrative statement dated June 6, 2022, with attachments A–C; (3) petitioner's response dated January 23, 2023; (4) petitioner's supplemental response, dated March 14, 2023, to the Board's Order of March 2, 2023; (5) GSA's supplemental statement dated April 3, 2023; and (6) publicly available information, such as the registry of deeds for Hartwell, Georgia.

When an operator of a GSA-owned vehicle is involved in an accident and someone else is at fault, GSA is specifically authorized to initiate an action to recover the claim of the United States from the party at fault. 41 CFR 101-39.404. A named debtor may be heard "concerning the existence [of the debt] and/or amount of the debt, and/or the terms of the repayment schedule under the garnishment order." *Id.* 105-57.004(a)(3). GSA has the burden of establishing the existence of a debt. *Id.* 105-57.00(f). "If the debtor disputes the existence and/or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect." 31 CFR 285.11(f)(8)(ii).

Neither party disputes Ms. B's liability for the accident. Where the parties disagree is over liability for the cost of repairing the GSA vehicle. GSA maintains that petitioner is liable for the repairs under Georgia's vicarious liability/family purpose doctrine, which holds that "when the owner of a vehicle maintains the vehicle for the use and convenience of his

family, the owner is liable for the negligence of a family member who was using the vehicle for a family purpose and who had the authority to do so." *Simmons v. Hill*, 528 S.E.2d 557, 559 (Ga. Ct. App. 2000). To impose vicarious liability on petitioner for the damages caused by Ms. B, the tribunal must establish the following four elements: (1) petitioner had an ownership interest or control over the vehicle, (2) petitioner made the vehicle available for family use, (3) Ms. B was a member of petitioner's immediate household, and (4) the vehicle was driven with the permission of petitioner. *Id.*; *Hicks v. Newman*, 641 S.E.2d 589, 590 (Ga. Ct. App. 2007). In light of the above elements, GSA stated:

> Here, it is not in dispute that [petitioner] owned the vehicle being driven by Ms. B[], and it has never been asserted that Ms. B[] was operating the vehicle without permission and for family use. Additionally, both Ms. B[] and [petitioner] resided at the same address at the time of the accident. Ms. B[] appears to have been just 17 at the time of the accident, leading GSA to believe that she was likely [petitioner's] daughter. GSA would have liked to have spoken to [petitioner] to verify his relation to Ms. B[], however no response was received following GSA's attempted communications.

Using a preponderance of the evidence standard, we apply the elements of vicarious liability, articulated under Georgia law, to the facts in this case. The first two elements are easily ascertained from the record. Petitioner owned the vehicle that Ms. B was driving, and he made the vehicle available for his wife's use. The third and fourth elements are less clear. "[T]o establish that a child is a member of his parents' immediate household, it is necessary to present evidence that the child lived at the same residence with them at the time of the accident." *Hurley v. Brown*, 564 S.E.2d 558, 559 (Ga. Ct. App. 2002). GSA stated that petitioner and Ms. B lived in the same household at the time of the accident. We do not know the source of that information, however, and there is other data in the record that undermines the conclusion that Ms. B was a member of petitioner's immediate household.

In addition to petitioner's own statements, the Treasury Notice, to which petitioner responded, was addressed to petitioner's address, and public information regarding the deed to that property identifies him as the homeowner. No such association can be found between the address where Ms. B lived and petitioner.

Georgia courts have held that "parents will not be held liable for the negligence of their children who live elsewhere at the time of the incident in question as it cannot be said that such child is a member of the owner's immediate household." *Hicks*, 641 S.E.2d at 590; *see, e.g.*, *Hurley*, 564 S.E.2d at 559 ("We have never extended family purpose liability to children living apart from their parents."); *Simmons*, 528 S.E.2d at 560 ("[A]t a minimum, the driver and the owner of the vehicle must live together before we will apply the family

purpose doctrine."); *King v. Hutcheson*, No. 4:09-CV-25 CDL, 2009 WL 3299818, at *2 (M.D. Ga. Oct. 9, 2009).

Finally, evidence in the record indicates that petitioner's wife was the only one with permission to drive the vehicle. Petitioner stated that he purchased the car for his wife, and she was the only other person allowed to drive it. Petitioner repeatedly stated that his stepdaughter did not have permission to drive it. There are no contrary statements in the record and no evidence to rebut petitioner's statements. The fact that Ms. B was driving the vehicle could be evidence of permission, but in light of the other evidence—the separate households and petitioner's own statements—we find the evidence to be insufficient to establish that Ms. B had permission to drive the vehicle. For these reasons, we find that GSA has failed to establish that petitioner is liable for the debt at issue, which is the cost of repairing the GSA vehicle that was damaged by Ms B.

Decision

In accordance with 41 CFR 105-57.005, petitioner is found to be not liable for the debt at issue. GSA shall promptly refund to petitioner any amount collected from petitioner through the AWG process. *Id.* 105-57.013.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge