IN THE SUPREME COURT OF FLORIDA

BRUCE KYLE EMERSON,

Petitioner,

v.

KYLE MICHAEL LAMBERT et al.

Respondents.

Case No.: SC20-1311
L.T. Nos.: 2D18-1872, 2D18-4103
2015-CA-4089

ON REVIEW FROM THE DISTRICT COURT OF APPEAL SECOND DISTRICT, STATE OF FLORIDA

APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION

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Document **Appendix**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following counsel for Respondents by email on September 28, 2020:

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

KYLE MICHAEL LAMBERT, KEITH M. LAMBERT, and DEBBIE LAMBERT,	)	
Appellants,	)	
v.	)	Case Nos. 2D18-1872
	)	2D18-4103
BRUCE KYLE EMERSON,	)	
	)	CONSOLIDATED
Appellee.	)	

Opinion filed April 1, 2020.

Appeal from the Circuit Court Pasco County; Gregory G. Groger, Judge.

Sarah Lahlou-Amine and Chris W. Altenbernd of Banker Lopez Gassler P.A. of Tampa, for Appellants.

John S. Mills, Courtney Brewer and Jonathan Martin of The Mills Firm, P.A. of Tallahassee, for Appellee.

LUCAS, Judge.

Kyle Lambert, Keith Lambert, and Debbie Lambert,[1] the defendants below, appeal the entry of a final judgment in favor of the plaintiff, Bruce Emerson,

[1]For the sake of reference and to avoid confusion, we will refer to Keith Lambert and Debbie Lambert as "Mr. Lambert" and "Ms. Lambert," respectively, while

following a jury trial. They raise two issues on appeal. As to the second issue, the denial of the Lamberts' motion for new trial, we affirm the circuit court's order without comment. With respect to the first issue, whether Ms. Lambert could have been held vicariously liable for her son's use of Mr. Lambert's car under the dangerous instrumentality doctrine, we find merit in Ms. Lambert's argument and reverse the judgment entered against her.

I.

The following facts were adduced at trial. In January of 2015, Mr. Lambert lived in Wesley Chapel with his wife; their daughter; their younger son; Kyle's girlfriend, Vilia Simias; and Ms. Simias and Kyle's child. The Lamberts' older son, Kyle, did not live with them at the time.

Mr. Lambert owned a 2011 Hyundai Sonata. The car was titled solely in his name and was kept at the Wesley Chapel house. Although the car was owned by Mr. Lambert, it was primarily used by Ms. Lambert; it was (in Mr. Lambert's words) her "daily driver." But as is perhaps not uncommon in many families, Mr. and Ms. Lambert also viewed the Sonata as a "family car." Mr. and Ms. Lambert both affirmed that Ms. Lambert had the authority to permit other people in the family to use the car. Mr. Lambert testified that in addition to himself and his wife, his mother-in-law, his father-in-law, his sister-in-law, and Kyle had all driven the car. Indeed, Mr. Lambert stated that Kyle generally had permission to drive the car.

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their older son, Kyle Lambert, will be referred to as "Kyle." Collectively, we may refer to the appellants as the "Lamberts."

On the night of January 5, 2015, Kyle was driving the Hyundai Sonata on Curley Road in Pasco County. Ms. Simias was with him. Kyle had asked his mother to borrow the car that evening, and Ms. Lambert had said he could use it. While making a left turn near Chapel Pines Boulevard, Kyle collided with a motorcycle that was being driven in the opposite direction by Mr. Emerson. Mr. Emerson was propelled a considerable distance and suffered extremely serious injuries. As a result of the accident, Mr. Emerson is quadriplegic and he will require nearly constant care and monitoring for the rest of his life.

Mr. Emerson filed a complaint, alleging a negligence claim against Kyle as the driver of the car, a vicarious liability claim against Mr. Lambert as the car's owner, and a second vicarious liability claim against Ms. Lambert as the alleged "bailee" of the car. The counts against Mr. and Ms. Lambert were premised on the dangerous instrumentality doctrine.[2] The case proceeded to a jury trial, which lasted from March 5 through March 14, 2018.

In addition to disputing Kyle's negligence and whether Mr. Emerson was comparatively negligent, Ms. Lambert argued that she could not be held vicariously liable under the dangerous instrumentality doctrine as a matter of law. She moved for a directed verdict at the close of Mr. Emerson's case. Mr. Emerson countered that since Ms. Lambert had dominion and control over the Sonata, a bailment of the car was created between Mr. Lambert and Ms. Lambert and that, as such, Ms. Lambert could be

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[2]"Under the dangerous instrumentality doctrine, an automobile owner is vicariously liable for damages caused by the operation of his vehicle by a permissive user." Fischer v. Alessandrini, 907 So. 2d 569, 570 (Fla. 2d DCA 2005) (citing Hertz Corp. v. Jackson, 617 So. 2d 1051, 1053 (Fla. 1993)).

deemed liable under the Florida Supreme Court's decisions in Aurbach v. Gallina, 753 So. 2d 60 (Fla. 2000), and Frankel v. Fleming, 69 So. 2d 185 (Fla. 1954). The trial court denied Ms. Lambert's motion for directed verdict.

Although Ms. Lambert disputed the legal proposition that she could be held liable under the dangerous instrumentality doctrine as a bailee, it does not appear that she seriously disputed the discrete issue of whether she was a bailee of her husband's Hyundai Sonata. She did not raise an objection to the part of the jury instruction Mr. Emerson proposed defining "bailee," and which the circuit court ultimately adopted.[3] In closing arguments, her only remark on this subject was to say: "It's Keith Lambert's car. You can listen to the [jury] instructions. It was a family situation." So, too, in this appeal, she focuses almost entirely on the broader legal argument that a family member bailee of a car cannot be held liable pursuant to the dangerous instrumentality doctrine.

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[3]The pertinent instruction read as follows:

> There is a preliminary issue for you to decide. That issue is:
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> . . . .
>
> Whether Debbie Lambert was the bailee of the vehicle driven by Kyle Lambert and whether Kyle Lambert was operating the vehicle with the express or implied consent of Debbie Lambert. A person who is the bailee of a vehicle and who expressly or impliedly consents to another's use of it is responsible for its operation.
>
> A bailee of a vehicle is one to whom the vehicle has been furnished or delivered by its owner for a particular purpose, with the understanding that it will be returned.

The jury returned a verdict finding Kyle seventy-five percent at fault for the January 5 accident, while Mr. Emerson was apportioned twenty-five percent of the negligence. The jury awarded damages to Mr. Emerson totaling $27,437,306.25. By special interrogatory, the jury also found that Ms. Lambert was a bailee of the car and that she had consented to Kyle's use of it on the night of the accident. Final judgments were then entered against each of the Lamberts in the following amounts:

$18,906,429.19 against Kyle;

$600,000.00 against Mr. Lambert;[4] and

$18,906,429.19 against Ms. Lambert.

Ms. Lambert's vicarious liability was based solely on her having been a bailee of the Sonata and her entrustment of the Sonata to Kyle. We turn, then, to the first issue Ms. Lambert has raised in this appeal, whether she can be held vicariously liable as a bailee under the dangerous instrumentality doctrine.

II.

Because this issue comes to us following the denial of a motion for directed verdict, we review the circuit court's ruling de novo, applying the same test used by the court below in ruling on the motion. See Fell v. Carlin, 6 So. 3d 119, 120 (Fla. 2d DCA 2009) (citing Sims v. Cristinzio, 898 So. 2d 1004, 1006 (Fla. 2d DCA 2005)). Under that test, we, like the trial court, must give great deference to the jury's fact-finding role:

> A motion for directed verdict should be granted only where no view of the evidence, or inferences made therefrom, could support a verdict for the nonmoving party.

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[4]Mr. Lambert's judgment was reduced by agreement of the parties to a statutory cap of $600,000 pursuant to section 324.021(9)(b)(3), Florida Statutes (2018).

> In considering a motion for directed verdict, the court must evaluate the testimony in the light most favorable to the nonmoving party and every reasonable inference deduced from the evidence must be indulged in favor of the nonmoving party. If there are conflicts in the evidence or different reasonable inferences that may be drawn from the evidence, the issue is factual and should be submitted to the jury.

Id. (quoting Sims, 898 So. 2d at 1005).

Although Ms. Lambert does not outright concede the propriety of the jury's finding of a bailment between her and her husband, she does not seriously contest it either; instead, she focuses her attention on whether such a finding could predicate her legal liability under the dangerous instrumentality doctrine. Without endorsing how this jury was instructed on the law of bailments, we accept the jury's determination that a bailment arose between Mr. and Ms. Lambert and proceed in our de novo review of the threshold legal question Ms. Lambert has raised in this appeal. See Love v. State, 286 So. 3d 177, 183 (Fla. 2019) (explaining that an issue that "presents a pure question of law" is reviewed de novo); Aills v. Boemi, 29 So. 3d 1105, 1108 (Fla. 2010) (stating that questions of law arising from undisputed facts are reviewed de novo).

III.

The issue here turns on the application of Florida's dangerous instrumentality doctrine, a species of vicarious liability that took root in our state's common law a century ago. The federal district court in Garcia v. Vanguard Car Rental USA, Inc., 510 F. Supp. 2d 821, 827 (M.D. Fla. 2007), provided a cogent summary of the doctrine's origin and history:

> The dangerous instrumentality concept was first applied to motor vehicles by the Florida Supreme Court in 1920. Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (1920). The doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." Estate of Villanueva ex rel. Villanueva v. Youngblood, 927 So. 2d 955 (Fla. Dist. Ct. App. 2006); see also Southern Cotton, 86 So. at 637. The dangerous instrumentality doctrine was judicially adopted based on public policy concerns:
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> > The dangerous instrumentality doctrine seeks to provide greater financial responsibility to pay for the carnage on our roads. It is premised upon the theory that the one who originates the danger by entrusting the automobile to another is in the best position to make certain that there will be adequate resources with which to pay the damages caused by its negligent operation. If Florida's traffic problems were sufficient to prompt its adoption in 1920, there is all the more reason for its application to today's high-speed travel upon crowded highways. The dangerous instrumentality doctrine is unique to Florida and has been applied with very few exceptions.
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> Aurbach v. Gallina, 753 So. 2d 60, 62 (Fla. 2000) (quoting Kraemer v. Gen. Motors Acceptance Corp., 572 So. 2d 1363, 1365 (Fla.1990)).
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> The Florida Supreme Court extended the dangerous instrumentality doctrine to lessors, thereby making them vicariously liable for the lessee's negligent operation of the motor vehicle, in 1959. Susco Car Rental System v. Leonard, 112 So. 2d 832 (Fla.1959). In 1999, the Florida Legislature passed a tort reform package which, among other things, created Florida Statute § 324.021(9)(b). This section created an exception to the dangerous instrumentality doctrine for lessors of motor vehicles.

Ascertaining the "owner" of an automobile for purposes of dangerous instrumentality liability is often a straightforward inquiry—as, indeed, it was in the case at bar since Mr.

Lambert never disputed that the Sonata was titled in his name. However, as the Garcia court observed, the doctrine's reach has extended beyond the title owners of automobiles. Over the years, through judicial decisions and legislative acts, the extent of the doctrine's vicarious liability has oscillated. It is, therefore, necessary for us to review more closely some of the key cases that have attempted to define the dangerous instrumentality doctrine's boundaries.

A.

One of the more notable pronouncements came twenty-seven years after the doctrine's adoption, when the supreme court clarified what the basis was for vicarious liability of a car's entrustment:

> As to those cases following the broad statements quoted above from each of the two appeals of the Southern Cotton Oil Co. cases there has arisen some confusion as to the basis of liability of a bailor-owner of an automobile for torts committed by his bailee. In some cases the liability is based on the general allegations of principal and agent and in other cases the liability is an implied agency growing out of the relationship of master and servant; while in other cases liability is one mere bailment often called 'entrustment'; others speak of liability because of 'license'.
>
> Ordinarily when one bails an automobile to another and such other negligently injures a third person, liability as a matter of substantive law is not essentially dependent upon the relationship of 'master and servant', 'principal and agent', or 'license'.
>
> In all these different relationships there appears a common and basic factor to wit: When an owner authorizes and permits his automobile to be used by another he is liable in damages for injuries to third persons caused by the negligent operation so authorized by the owner.
>
> By reason of the doctrine of stare decisis liability under the foregoing circumstances has been so repeatedly

> and consistently adhered to by the decisions that it has become law.

Lynch v. Walker, 31 So. 2d 268, 271 (Fla. 1947).

According to Lynch, identifying the nature of the relationship between the owner of an automobile and the person he or she entrusts it to was no longer an operative concern of the dangerous instrumentality doctrine. Stare decisis had rendered the owner's vicarious liability an assumed facet of negligence law if the owner authorizes or permits another to use his or her vehicle.

Having essentially jettisoned a relational component (beyond permitted entrustment) for the doctrine, the question then arose why the doctrine should not be extended further still to reach those who might not be an owner but have some possessory interest in a car. That was the very issue in Frankel v. Fleming, 69 So. 2d 887, 888 (Fla. 1954), in which the Florida Supreme Court was presented with the question: "Is the doctrine of dangerous instrumentality limited in scope to the owner thereof rather than to include a bailee [Frankel] for hire who in turn delivers possession to another person [Wellener]?" (Alterations in original.) Citing its prior opinion in Wilson v. Burke, 53 So. 2d 319 (Fla. 1951),[5] the Frankel court observed that "[p]roof of actual

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[5]In Wilson, 53 So. 2d at 321, the court affirmed a civil judgment against the lessee of a commercial truck when a truck driver caused an accident. It is unclear from the opinion, however, whether the court intended to extend the dangerous instrumentality doctrine's vicarious liability to lessees as a matter of law or whether the court was satisfied, for purposes of the trial and appeal, that the plaintiff had sufficiently proven that the vicariously liable defendant "owned" the truck. Id. ("When the allegation was put in issue by the plea it was not necessary to prove actual title, but only to establish who exerted such dominion over the truck as to be responsible for damage caused by it. We think the appellee met the burden in the first instance by showing that the name of the company was prominently painted on the vehicle and that the company applied to, and received from the Railroad and Public Utilities Commission permission to operate it. This was a prima facie showing of company ownership."). Certainly, the

ownership of the vehicle causing injury is not indispensable to recovery, for the misfortune of the injured person should not depend entirely on the repository of the legal title." Frankel, 69 So. 2d at 888. The court in Frankel concluded:

> Having held a lessee liable in the cited case . . . we find no difficulty in now holding the appellant, a bailee, responsible in the instant case for injury caused by the one to whom he entrusted the car, especially where, to all intents and purposes . . . that person was the bailee's spouse.

Id.

A few years later, in Metzel v. Robinson, 102 So. 2d 385, 385 (Fla. 1958), the court addressed the circumstance of an aunt who had financed and held title to a car so that her nephew (who could not obtain financing on his own) could use it. The nephew "kept up the payments, and [the aunt] had nothing further to do with the car." Id. While driving the car, the nephew caused an accident, and the aunt was sued for damages. Id. The trial court entered a directed verdict for the plaintiff on the issue of the aunt's vicarious liability. Id. On appeal, the aunt argued that "she was not the actual owner of the car, and since she had nothing to do with the accident the judgment should be reversed." Id. The supreme court affirmed the directed verdict and, interestingly, in its holding indicated that both the aunt and her nephew had a "species of ownership" in the car so that "*either or both of them* could have been held liable for the accident." Id. at 386 (emphasis added).

Soon enough, though, the legislature began to assert its authority to define the public policy parameters of the dangerous instrumentality doctrine. The year

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Frankel court appeared to have read Wilson as a pronouncement expanding the doctrine's reach to lessees.

after Frankel was decided, section 324.021, Florida Statutes (1955), was enacted. See ch. 29963, Laws of Fla. (1955). The statute defined the owner of an automobile to include the legal title holder and lessees. By amendment in 1986, however, the legislature eliminated long-term automobile lessors from liability under the dangerous instrumentality doctrine: "[T]he lessor, under an agreement to lease a motor vehicle for one year or longer . . . shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith." See ch. 86-229, § 3, Laws of Fla. (1986). Then in 1999, the legislature capped the extent of vicarious liability for bodily injury and property damage for lessors "under an agreement to rent or lease a motor vehicle for a period of less than 1 year" and for owners who are natural persons who loan "a motor vehicle to any permissive user." See ch. 99-225, § 28, Laws of Fla. (1999). The United States Congress later enacted the Graves Amendment, which further limited the reach of vicarious liability for certain lessors of motor vehicles. See Vargas v. Enter. Leasing Co., 60 So. 3d 1037, 1041-42 (Fla. 2011) (remarking that the Graves Amendment "clearly sought to eliminate vicarious liability for a specific category of owner/lessors that under Florida's reforms remained, to an extent, exposed—those 'engaged in the trade or business of renting or leasing motor vehicles.' 49 U.S.C. § 30106(a)(1)" and holding that the Graves Amendment preempted section 324.021(9)(b)(2)). Thus, while the courts had been intermittently expanding the extent of vicarious liability under the dangerous instrumentality doctrine, the legislature, both State and Federal, began to curtail it.

B.

With this backdrop we can now address the case that the parties rightly devote the lion's share of their attention upon, Aurbach v. Gallina, 753 So. 2d 60 (Fla. 2000), where, for the first time perhaps, the unique intersection between familial relationships and property interests appears to take on a greater emphasis in the doctrine's applicability. The plaintiff, Aurbach, had been injured in an automobile accident. Id. at 61. He sued the driver of the car, 18-year-old Angelina Gallina, as well as her parents, Louis and Carolina Gallina, under the dangerous instrumentality doctrine. Id. The Gallinas conceded Angelina's liability, as well as Carolina's vicarious liability because the car Angelina had been driving was titled in Carolina's name and Carolina had given her daughter permission to drive it at the time of the accident. Id. Louis, however, disputed Aurbach's claim that Louis could also be held vicariously liable as one who owned "or had the right to control the motor vehicle." Id.

The case proceeded to trial, and the jury found in favor of Aurbach, awarding him $384,935.99. See Aurbach v. Gallina, 721 So. 2d 756, 757 (Fla. 4th DCA 1998). By a special interrogatory, the jury determined that Louis Gallina "owned or had the right to control" the car.[6] Id. at 758. The trial court directed a verdict in Louis' favor, id., and the Fourth District affirmed, id. at 759-60. With respect to Louis' liability, the Fourth District considered Frankel and Metzel, but concluded:

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[6]Considering that the car's title was solely in Carolina's name, the evidence of Louis' "ownership" was scant: essentially, he contributed funds to purchase and maintain the car, he test drove it, and the car was kept at the Gallinas' house, apparently with the intent that it would primarily be used by their other daughter, Caroline. Id. at 759. On review, both the Fourth District Court of Appeal and the Florida Supreme Court addressed the issue as if the jury had concluded the second alternative proffered within the single interrogatory: that is, that Louis Gallina "had the right to control" the car.

> In the context of family relationships, the better rule is to have legal responsibility follow title ownership, a bright line standard which makes liability under the dangerous instrumentality doctrine both foreseeable and predictable. To analyze family dynamics to determine all the "beneficial" owners of a car is to impose a fuzzy legal standard that will encourage litigation and potentially expand liability beyond that which is justified by the rationale for the rule.
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> In this case, Louis Gallina was not an owner, bailee, or lessee of the automobile sufficient to impose liability under the dangerous instrumentality doctrine. He did not put the car in the possession of a non-family member. Angelina Gallina's operation of the car on the date of the accident was with the permission of the title owner, her mother Carolina. Under the facts of this case, the trial court did not err in granting Louis Gallina's motion in accordance with his motion for directed verdict.

Id. at 759-60.

The Florida Supreme Court accepted jurisdiction to review the Fourth District's decision based on conflict with the supreme court's Frankel decision. Aurbach, 753 So. 2d at 61. The court then phrased the issue it would resolve with both narrow precision (essentially, tracking the facts of the case before it) and, interestingly, with recognition of the family dynamic the Fourth District had touched upon:

> The issue before this Court is whether the dangerous instrumentality doctrine extends to hold a parent vicariously liable for an accident caused by a child's negligent operation of a motor vehicle where the parent purchased the vehicle for his or her child, paid for the motor vehicle's maintenance, and had a general right to control the operation or use of the vehicle as the child's parent, even though the parent did not hold legal title to the vehicle.

Id. at 62. The court concluded that the facts of the case, "without more," could not justify imposing vicarious liability upon Louis as a matter of law. Id. Thus, the supreme

court approved of the Fourth District's ruling, but, as we will see, with something of a caveat.

The Florida Supreme Court began by canvassing the development of the dangerous instrumentality doctrine through its precedents and certain district court of appeal holdings, and observed that "[t]he most common application of the dangerous instrumentality doctrine is where the legal title holder is held vicariously liable for the negligent operation of a motor vehicle." Id. at 62-63. The court acknowledged that a "variety of identifiable property interests" besides ownership, including lessees and bailees of motor vehicles, can also implicate vicarious liability under the doctrine. Id. at 63. However, the court reiterated: "Legal title remains the most common basis for imposing vicarious liability under the" doctrine. Id.

The Aurbach opinion proceeded to analyze case law that distinguished between "bare" legal title and beneficial ownership under the doctrine, and then devoted a separate section on parental vicarious liability for children's torts, noting "that no prior case in Florida has extended the dangerous instrumentality doctrine to hold a parent liable for a child's negligent operation of a motor vehicle where the vehicle was not titled in the parent's name and where there was no indication that the parent was the intended owner of the vehicle." Id. at 65. Citing favorably to the Third District's Wilsen v. Lesser, 434 So. 2d 1033 (Fla. 3d DCA 1983), decision, it appears the Aurbach court used the term "intended owner" in precisely the way the term implies: one who is intended to become the title owner of a vehicle. Id. So the fact that a parent might have exercised control over a car's operation would not, by itself, stand as a sufficient basis to impose vicarious liability upon the parent.

With that extensive exposition, the Aurbach opinion proceeded to the merits of the case before it; and here we come upon the aforementioned caveat. First, the court noted that although the plaintiffs argued that Louis Gallina had control over the car, they did not contend that he could be held liable as a bailor. Id. at 66. Which would seem to imply that that was an omission of some importance. Indeed, the Aurbach opinion concluded by disapproving of the Fourth District's opinion

> to the extent it could be construed to mean that legal title is the only basis for imposing vicarious liability in a family relationship, because this would conflict with our decision in Frankel. Although vicarious liability will generally flow from legal title, this principle does not preclude the imposition of vicarious liability under the dangerous instrumentality doctrine pursuant to other identifiable property interests, including bailment.

Id. But that disapproval was tempered by this critical limitation:

> Contrary to petitioners' position, the concept of beneficial ownership in Florida law has not been an expansive one that extends to hold vicariously liable anyone with a theoretical right to control a motor vehicle. Rather, *the concept of beneficial ownership has been narrowly used in cases where the legal title owner is attempting to deny liability*, such as the defendants in Palmer, Metzel and Marshall.

Id.[7]

[7]This was not the only place where the Aurbach court made this observation. Earlier in the opinion, the court went so far as to limit the reach of some of the language in its Metzel opinion as well as some potentially broad pronouncements our court had made about the dangerous instrumentality doctrine in Marshall v. Gawel, 696 So. 2d 937, 939 (Fla. 2d DCA 1997) (reversing summary judgment in favor of title owner who had relinquished control of car to another because "[t]hese facts could indicate that Kathleen [the title owner] had the ability to exert some dominion and control over the vehicle" and "[t]he parties' intent regarding who would have beneficial ownership must be determined from their overt acts"): "The statements in Marshall must be read in the context of the facts of that opinion. In both Metzel and Marshall the legal title holders were attempting to avoid liability under the dangerous instrumentality

C.

Drawing together Aurbach's affirmance of the Fourth District's ruling, Aurbach's observations that the extension of beneficial ownership under the dangerous instrumentality doctrine should be reserved for instances where the car's owner was trying to deny vicarious liability, and the general development of the doctrine in both the common law and in legislation,[8] we synthesize the current state of the dangerous instrumentality doctrine as follows: if title owners of a car entrust their car to a family member who, in turn, causes injury, the title owners may be held vicariously liable for that tort. See Christensen v. Bowen, 140 So. 3d 498, 504 (Fla. 2014) ("The underlying rationale of the doctrine is that if a vehicle owner, who has control over the use of the vehicle, exercises his or her control by granting custody of the vehicle to another, the owner commits himself or herself to the judgment of that driver and accepts the potential liability for his or her torts." (citing S. Cotton Oil, 86 So. at 634)); Aurbach, 753 So. 2d at 62 ("The most common application of the dangerous instrumentality doctrine is where the legal title holder is held vicariously liable. . . . "). If a family member has an identifiable property interest in a car (whether a bailment or some other recognized property interest) and entrusts their car to another who, in turn,

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doctrine by asserting that another individual was the actual 'beneficial' owner." Aurbach, 753 So. 2d at 65.

[8]We note that many of the judicial pronouncements about the public policies underlying this common law doctrine preceded the enactment of increasingly comprehensive legislation that addresses—and balances—the various societal and individual interests the courts were purporting to safeguard. Ascribing vicarious liability in a time when automobile operation is heavily regulated and car insurance has long been a mandatory condition for operating a car on a public road is perhaps a task better suited to the legislature than the courts.

causes injury, that family member can be held vicariously liable for the tort *if the title owner denies vicarious liability for that entrustment*. Aurbach, 753 So. 2d at 65. But we do not believe there is a sound basis in the law to hold *both* the acknowledged title owner *and* a family member bailee liable for the bailee's entrustment of a car under the dangerous instrumentality doctrine. To expand vicarious liability to that degree ignores the precautions Aurbach repeated about this facet of the common law—that it is not expansive and is narrowly implicated outside of its "most common" application to title owners. Aurbach, 753 So. 2d at 62-63. And with families, expanding the doctrine's reach beyond vicariously liable title owners to add spouses, children, step-children, siblings, and other relatives who may use a proverbial "family car" in varying ways under varying circumstances, would require courts to taxonomize the precise property rights among relatives whose use of a car may be so loose and vacillating as to be indiscernible. Cf. Aurbach, 721 So. 2d at 759 ("To analyze family dynamics to determine all the 'beneficial' owners of a car is to impose a fuzzy legal standard that will encourage litigation and potentially expand liability beyond that which is justified by the rationale for the rule."). Finally, it seems odd and certainly at cross-purposes to use the fiat of common law to expand a form of vicarious tort liability that the legislature has repeatedly curtailed. See § 324.021(9); cf. Futch v. Head, 511 So. 2d 314, 321 (Fla. 1st DCA 1987) ("[W]e are aware that the legislature often enacts legislation for the purpose of amending the common law."). Indeed, the very imposition of a statutory cap on this form of vicarious liability to a singular entity (defining "owner" as a person who holds the legal title of a motor vehicle "; or" a conditional vendee, or lessee, or mortgagor) suggests that the legislature viewed the state of dangerous instrumentality law in the

same way we have. See, e.g., Adler-Built Indus., Inc. v. Metro. Dade County, 231 So. 2d 197, 199 (Fla. 1970) ("The [l]egislature is presumed to be acquainted with judicial decisions on the subject concerning which it subsequently enacts a statute.").[9]

IV.

Applying this analysis to the facts at bar leads us to conclude that the circuit court erred when it denied Ms. Lambert's renewed motion for directed verdict. Though the jury determined that she was a bailee of the Sonata—a finding she does not seriously dispute—that is not a basis upon which vicarious liability can be applied under the dangerous instrumentality doctrine since Mr. Lambert, the undisputed title owner, has also been found vicariously liable for what is, essentially, the same entrustment of the same vehicle. Accordingly, we reverse the final judgment against Ms. Lambert and

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[9]Mr. Emerson also draws our attention to our decision in Stanford v. Chagnon, 86 So. 3d 565, 566-67 (Fla. 2d DCA 2012), in which we reversed a summary judgment in favor of a pickup truck's owner where his wife (who had permission to drive the truck) had left the truck's keys available for his stepdaughter (who did not) and the stepdaughter later caused an accident. Although both the stepfather and his wife testified in deposition that the stepdaughter did not have his permission to use the truck, we found there were genuine issues of material fact in dispute. Id. at 568. In so holding, we did say, "if [the wife] is a bailee of the motor vehicle when it is left at home with its keys in the designated location on the wall, *then it is possible that she is liable in this context for her bailment* to her daughter and that her husband is liable in turn as her bailor." Id. (emphasis added). It is unclear why the panel included a remark about the wife's "possible" liability. Plainly her "possible" liability as a bailee was not an issue for us to decide *because she was not a party to the lawsuit or the appeal*. Cf. Sundie v. Haren, 253 So. 2d 857, 859 (Fla. 1971) ("It is settled law that reversal of a decree on appeal does not affect the rights under that decree as to persons who were not parties to the appeal."). We construe this part of the Stanford opinion as nothing more than the panel's speculation; it is dicta that does not bind our consideration of the issue today. See State v. Yule, 905 So. 2d 251, 259 n.10 (Fla. 2d DCA 2005) (Canady, J., specially concurring) ("A holding consists of those propositions along the chosen decisional path or paths of reasoning that (1) are actually decided, (2) are based upon the facts of the case, and (3) lead to the judgment. If not a holding, a proposition stated in a case counts as dicta." (quoting Michael Abramowicz & Maxwell Stearns, Defining Dicta, 57 Stan. L. Rev. 953, 1065 (2005))).

remand with directions to the circuit court to enter a judgment in accordance with this opinion.

Having so held, we recognize that our opinion touches upon an important issue in negligence law. Many hands have shaped the dangerous instrumentality doctrine over the past century, and our attempt to lay hold of its form and application to this case necessarily draws a demarcation that could affect many similarly situated cases. Accordingly, pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v), we certify the following as a question of great public importance:

> UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE, CAN ONE FAMILY MEMBER WHO IS A BAILEE OF A CAR BE HELD VICARIOUSLY LIABLE WHEN THE CAR'S ACKNOWLEDGED TITLE OWNER IS ANOTHER FAMILY MEMBER WHO IS ALSO VICARIOUSLY LIABLE UNDER THE DOCTRINE?

We have answered the question in the negative.

Affirmed in part; reversed in part; remanded with instructions; question certified.

SILBERMAN and SMITH, JJ., Concur.