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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

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioner, Bruce Emerson, has invoked this Court's conflict and certified question jurisdiction to review a district court decision he contends expressly and directly conflicts with *Frankel v. Fleming*, 69 So. 2d 887 (Fla. 1954), and *Aurbach v. Gallina*, 753 So. 2d 60 (Fla. 2000) ("*Aurbach II*"). In *Frankel*, this Court held that the title owner(s) and any interim bailee – that is, a person to whom the owner entrusted the car who in turn entrusts it to another – are vicariously liable under the dangerous instrumentality doctrine for the negligence of an ultimate bailee who negligently causes an accident. 69 So. 2d at 888. Citing *Aurbach v. Gallina*, 721 So. 2d 756 (Fla. 4th DCA 1998) ("*Aurbach I*"), the Second District created an exception to this rule, holding that an interim bailee is **not** vicariously liable for the negligence of the ultimate bailee who causes the wreck where the title owner is a family member who admits liability. Not only does this decision directly conflict with *Frankel*, but it also adopts the very same inter-family exception to liability that this Court granted review to expressly reject in *Aurbach II*.

Mr. Emerson suffered catastrophic injuries when he was thrown from his motorcycle after colliding with a car driven by Kyle Lambert. (App. 5.) Kyle's father, Keith Lambert, held the title but had entrusted the car to his wife (Kyle's mother), Debbie Lambert, as her "daily driver." (App. 4.) The night of the

accident, Kyle asked for and received permission to drive the car from Ms. Lambert. (App. 5.)

Mr. Emerson sued all three, alleging that Kyle was negligent, Mr. Lambert was vicariously liable as the title owner, and Ms. Lambert was vicariously liable as a bailee. (App. 5.) The trial court ultimately entered judgment in favor of Mr. Emerson against all three Lamberts based on the jury's conclusion that Kyle was negligent and that Ms. Lambert was a bailee of the car. (App. 7.)

On appeal by the Lamberts, the Second District affirmed as to Kyle and Mr. Lambert, but reversed the judgment against Ms. Lambert even though it "accept[ed] the jury's determination that a bailment arose between Mr. and Ms. Lambert." (App. 8, 20-21.) It described the relevant legal principles as follows:

> [W]e 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. 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, causes injury, that family member can be held vicariously liable for the tort *if the title owner denies vicarious liability for that entrustment*. 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.

(App. 18-19 (citations omitted) (citing *Christensen v. Bowen*, 140 So. 3d 498 (Fla. 2014), and *Aurbach II*).

The district court viewed Mr. Emerson's attempt to hold Mr. and Ms. Lambert both liable to be an attempt to "expand vicarious liability," and rejected it based in part on the following reasoning:

> [W]ith 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.

(App. 18.) In support of this conclusion, the court quoted the following passage by the Fourth District in *Aurbach I*:

> 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.

(App. 19 (quoting *Aurbach I*, 721 So. 2d at 759).)

Applying this view of the law to the facts of this case, the court ruled as follows:

> 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 ….

(App. 20.)

Recognizing that this issue "could affect many similarly situated cases," the district court certified 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?

(App. 21.)

SUMMARY OF ARGUMENT

This Court has conflict jurisdiction because the district court's decision expressly and directly conflicts with this Court's unqualified approval of the bailment theory of liability under the dangerous instrumentality doctrine in *Frankel* and its express rejection of an exception for inter-family bailments in *Aurbach II*.

The district court's certification of a question of great public importance not only provides an additional basis for this Court's review, but it also highlights why this Court should exercise its discretion to accept review. The importance of this issue goes beyond its application to similarly situated cases and impacts the decisions to be made by Florida families in how to hold title to their vehicles, the ability of injured Floridians to collect judgments they may obtain, and how legal and financial advisors can advise clients in estate planning and asset protection. The district court's decision also affects the balance of incentives the Legislature had provided in this situation – rewarding couples who title family cars in both names with capped liability, which at least makes the resulting judgment in favor of an injured victim collectable against marital assets.

ARGUMENT

In addition to its jurisdiction to answer the certified question, this Court also has jurisdiction because the decision below expressly and directly conflicts with two decisions of this Court. Art. V, § 3(b)(3), (4), Fla. Const. As the district court acknowledged, this Court recognized bailment liability under the dangerous instrumentality doctrine over sixty years ago in *Frankel*, when it stated,

> [W]e have 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 ….

(App. 11-12 (quoting *Frankel*, 69 So. 3d at 888).) Because this Court has never receded from or limited its holding in *Frankel*, the district courts are bound to apply it even if they think the holding should be modified or limited, and they have no authority to create exceptions on their own. *See generally Hoffman v. Jones*, 280 So. 3d 431, 434 (Fla. 1973). Moreover, in conflict with the Second District's conclusion that there should not be overlapping liability against both the owner and the bailee, this Court expressly noted that the plaintiff was not only entitled to recover against the bailee, but had already prevailed against the title owners. *Frankel*, 69 So. 3d at 888 (citing *Fleming v. Alter*, 69 So. 2d 185 (Fla. 1954)).

This is not the first time a district court has attempted to create an exception to bailment liability for a vehicle titled in the other spouse's name. Like this case, *Aurbach I* and *II* arose from an auto accident where the injured plaintiff sued a

negligent driver and both of the driver's parents, even though only one parent held title. In *Aurbach I*, the Fourth District held that only the parent holding title can be liable under the dangerous instrumentality doctrine when their child causes an accident in a family car based, in part, on the following reasoning:

> 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.

Aurbach I, 721 So. 2d at 759. While the district court quoted this exact passage to support its identical reasoning here (App. 19), this Court granted review of *Aurbach I* and expressly disapproved of a family exception to bailment liability. *Aurbach II*, 753 So. 2d at 61, 66.

Confirming this Court has conflict jurisdiction when a district court purports to limit a rule established by this Court, the basis for this Court's jurisdiction in *Aurbach II* was "express and direct conflict with *Frankel*." 753 So. 2d at 61. And while this Court ultimately reached the same result as the Fourth District because there was no proof or even claim of a bailment in that case (unlike here), it only did so after reaffirming *Frankel*:

> [W]hile we commend the Fourth District for its attempt to simplify this area of dangerous instrumentality law, we disapprove of the 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*.

753 So. 2d at 66. The Court then affirmatively held in no uncertain terms that bailment liability **can** arise within the family context by recognizing that while the title owner will be vicariously liable,

> this principle does not preclude the imposition of vicarious liability under the dangerous instrumentality doctrine pursuant to other identifiable property interests, including bailment.

Id. This passage not only answers the certified question in the affirmative but also expressly and directly conflicts with the district court's holding and reasoning.

Moreover, the district court's decision further conflicts with *Aurbach II* by conditioning the bailee spouse's liability on the title-holding spouse denying vicarious liability. (App. 18-19.) In contrast, *Aurbach II* conditioned a bailee's liability on nothing more than the plaintiff pleading and proving bailment. The Court reaffirmed *Frankel*, which expressly recognized that both the owners and bailees are liable. It even noted that the title holding spouse (Carolina Gallina) "did not contest [her] vicarious liability" and held that the reason that the other spouse (Louis Gallina) was not liable was because there was no claim asserted by the plaintiff, much less evidence in the record, of a bailment between Mr. and Ms. Gallina. *Aurbach II*, 753 So. 2d at 65-66. Again, this Court expressly held that the vicarious liability of the title holding spouse "does not preclude" bailment liability. *Id.* at 66. A clearer case of conflict with decisions of this Court is difficult to imagine.

Of course, even if the Court lacked conflict jurisdiction, it still has jurisdiction in light of the certified question. Review is warranted under either ground due to the wide-ranging importance of the issue. As the district court noted, it is "perhaps not uncommon in many families" for one spouse to hold title in a car and then entrust the car to the other spouse, and "this case necessarily draws a demarcation that could affect many similarly situated cases." (App. 4, 21.) But the importance of the issue goes well beyond that. The issue impacts the decisions of all Florida families in how to hold title to their vehicles, the ability of many injured Floridians to collect judgments they may obtain, whether various accidents are covered by insurance policies, and how legal and financial advisors can advise their clients in estate planning and asset protection. It even impacts the Legislature and Congress, which have acted to impose various limits and modifications on the dangerous instrumentality doctrine over the years. (*See generally* App. 12-13 (listing various limits the Legislature and Congress have enacted since 1955).)

For example, the Legislature has limited the vicarious liability of owners who are natural persons. § 324.021(9)(b)3, Fla. Stat. (2019). And while the bailment theory of liability has been around at least since *Frankel* was decided in 1955, the Legislature has not seen fit to limit the liability of bailees. The district court recognized this specific fact and the general principle that the Legislature is presumed to know the common law, but reached the bewildering conclusion that

the Legislature must have "viewed the state of dangerous instrumentality law in the same way we have." (App. 19-20) That makes no sense, and even less sense in light of the district court's apparent view that the bailee would be liable if the title-holding spouse denied liability. The more logical conclusion is that the Legislature limited the liability of individual owners but not bailees as an incentive for people sharing vehicles to jointly assume the financial responsibility of ownership in order to get the benefit of the cap on damages.

Indeed, the Legislature's policy choices on when and how to limit dangerous instrumentality liability reflect a delicate balance of the interests on all sides. If a couple like the Lamberts choose to hold a family car in their joint names, they both enjoy the limitation of liability. That is a major advantage as the facts of this case demonstrate. The damages here were nearly $19 million, but section 324.021(9)(b)3 capped Mr. Lambert's liability as owner at $600,000. Had Ms. Lambert also been on the title, then her liability would have also been capped at $600,000. While that is certainly less than the full amount of his damages, it would have at least permitted Mr. Emerson to collect the resulting judgment against the Lamberts' joint marital property. But because the Lamberts elected to keep Ms. Lambert off the title, her liability as bailee is not capped. That is why the trial court entered judgment against her (and Kyle as the driver) for the full amount of damages.

If allowed to stand, however, the Second District's decision disturbs the balancing of interests that the Legislature had achieved. This decision incentivizes families to title their cars in only one family member's name so they can reap the benefit of the cap while also preventing the injured victim from being able to collect even the capped judgment from family assets. What the district court called the "line of demarcation" has thus been judicially moved further away from protecting families with loved ones injured by the negligence of another and toward insulating other families from liability for the negligence of their loved ones – allowing them to have their cake and eat it, too.

Whether the competing interests should be resolved in favor of Mr. Emerson or Ms. Lambert and even whether it is the courts or the Legislature who should be making these policy choices are issues that go to the merits of the decision below and are thus better addressed in merits briefing. The present point is that this Court should accept review to decide those merits because of the far-ranging importance of the bailment theory of liability under the dangerous instrumentality doctrine.

CONCLUSION

For the foregoing reasons, this Court has jurisdiction and should exercise its discretion to grant review and order briefs on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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