

**CITATION:** Joseph v. Coxall-Mejia et al, 2021 ONSC 2508  
**COURT FILE NO.:** CV-18-610946  
**DATE:** 2020406

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

DENOSON JOSEPH

Plaintiff

and

DOUGLAS A. COXALL-MEJIA, VIDNIA A. MEJIA RAMOS and  
CERTAS HOME AND AUTO INSURANCE COMPANY

Defendants

**BEFORE:** Justice Edward P. Belobaba

**COUNSEL:** *Christopher R. Martyr* for the Defendant Vidnia A. Mejia Ramos

*Tamara Maurer* for the Defendant Certas Home and Auto Insurance

*Patricia Sim* for the Plaintiff

**HEARD:** March 30, 2021 via Zoom video

**Summary Judgment – Implied Consent**

[1] The plaintiff, Denoson Joseph, was seriously injured in a motor vehicle accident while a passenger in a car driven by the defendant Douglas Coxall-Mejia. The vehicle was owned by Douglas' mother, defendant Vidnia Mejia Ramos, and insured by the defendant Certas Home and Auto Insurance.

[2] I will refer to the parties as the plaintiff, Douglas, Vidnia and Certas.

[3] In these motions for summary judgment, the defendants Vidnia and Certas ask that the action against them be dismissed because Douglas took his mother's car on the day of the accident without her consent. The plaintiff disagrees and, in any event, says the question of consent — here “implied consent” — should be decided at trial and not on a motion for summary judgment.

[4] I am satisfied that summary judgment is appropriate. As I explain below, the evidence on point is uncontroverted. There are no credibility issues. There are no issues requiring a trial. There is no reason why this matter cannot be decided summarily.

### **Background**

[5] On September 5, 2017, the plaintiff (a family friend) came to visit Douglas. They smoked “a lot of weed” and the plaintiff also consumed a large amount of Crown Royal whiskey. Douglas' mother, Vidnia, returned from work and parked her car in the driveway. A few hours later, Douglas asked his mother if he could drive the plaintiff home. Vidnia said no: that Douglas could not drive without her and she didn't want to go out. She suggested that the plaintiff take a taxi or the bus.

[6] Vidnia went to bed. Douglas decided to find her keys and drive his friend home. After five to ten minutes of searching his mother's bedroom (Vidnia remained asleep), Douglas found her keys either in a drawer or her jacket. He detached the car key and proceeded to drive the plaintiff home. At some point, while driving, Douglas lost control of the vehicle and crashed into a tree. The plaintiff was seriously injured. Vidnia knew nothing of this until the police knocked on her door, woke her up and told her what had happened.

[7] At the time of the accident, Douglas was 18 years old and living with his mother, two younger sisters, one about 15 and the other an infant, and Vidnia's father. He had a G1 driver's licence which meant he could drive only if accompanied by a fully licenced driver. Douglas had driven his mother's car but was always accompanied by his mother. The plaintiff did not have a driver's licence.

### **The applicable law**

[8] The applicable law is not in dispute. Under both s. 192 (2) of the *Highway Traffic Act*<sup>1</sup> and section 1.8.2 of the standard *Ontario Automobile Policy*, there is neither liability

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<sup>1</sup> *Highway Traffic Act*, R.S.O. 1990, c. H.8.

for loss or damage nor insurance coverage where the operator is in possession of the vehicle without the owner's consent.<sup>2</sup>

[9] Section 192 (2) of the *Highway Traffic Act* provides that:

The owner of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway, unless the motor vehicle or street car was without the owner's consent in the possession of some person other than the owner or the owner's chauffeur.

[10] OAP 1.8.2 which deals with *Excluded Drivers and Driving without Permission* likewise provides as follows:

Except for certain Accidents Benefits coverage, there is no coverage (including coverage for occupants) under this policy if the automobile is used or operated by a person in possession of the automobile without the owner's consent...

[11] The question of whether a motor vehicle is in someone's possession without the consent of the owner is a question of fact to be determined by the evidence in a particular case.<sup>3</sup> The owner of the vehicle can provide consent expressly or by implication.<sup>4</sup> Here both sides agree that this is not a case of express consent. The issue in dispute is whether on the evidence there was implied consent.

[12] As this court noted in *Emond v. Reid*:<sup>5</sup>

- A person may be said to have permitted possession and use if they failed to take precautions which could be considered as reasonable to avoid the incident from occurring;
- A tolerant, indulgent, or ineffective control over an irresponsible member of the family can lead to an inference of implied consent.

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<sup>2</sup> *Shipman v. Dominion of Canada General Insurance Co.* [2004] O.J. No. 4160 (C.A.) and *Connors v. D'Angelo*, 2019 ONCA 905.

<sup>3</sup> *Seegmiller v. Lagner* (2008), 301 D.L.R. (4th) 454 (S.C.J.) and cases cited therein; and more recently, *Ledger v. Sabourin*, 2019 ONSC 1893.

<sup>4</sup> *Myers-Gordon (Litigation Guardian of) v. Martin*, 2013 ONSC 5441.

<sup>5</sup> *Emond v. Reid*, [1993] O.J. No. 1349 (S.C.J.) at para. 72.

[13] Many of the “implied consent” cases turn on evidence of a preceding course of conduct and the continuing availability of the owner’s car key. For example, if the owner of an automobile refused express consent but, knowing that the driver has taken the car without her consent several times before, still left the car keys in her purse on a doorknob or on a hook by the door, the owner may be found to have provided implied consent.<sup>6</sup>

[14] The onus of proving that a vehicle was in another's possession without the consent of the vehicle's owner is on the owner.<sup>7</sup> That is, Vidnia must establish the absence of implied consent on a balance of probabilities.

### Analysis

[15] The evidence filed on these motions consists of the discovery transcripts and the parties’ filed affidavits. Both sides agree that the plaintiff himself has no meaningful evidence on the issue of consent. Counsel for the plaintiff acknowledges in her factum that her client was intoxicated at the time of the accident and is “unclear” about the events leading up to the accident. The probative evidence is provided by Douglas and Vidnia, neither of whom was cross-examined on their filed affidavits.

[16] The following evidence is uncontroverted:

- (i) Douglas understood that his G1 licence meant he could not legally drive his mother’s car unless accompanied by someone who was fully licensed.
- (ii) Douglas had never previously attempted to take Vidnia’s vehicle without her consent. The first time he did so was on the night of the accident.
- (iii) Because Vidnia did not trust teenagers, including Douglas and his 15-year-old sister, she would routinely hide her keys in her bedroom — in between the mattress, in a bedroom cupboard or in her bag.
- (iv) After Vidnia fell asleep, Douglas entered her bedroom: “I had to go looking for the keys.” He searched the room “for five to ten minutes” and found the keys in either a drawer or a jacket pocket. He detached the car key and proceeded to drive the plaintiff home.

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<sup>6</sup> *Ibid.* (keys in the purse) and *Myers-Gordon*, *supra*, note 4 (keys on a hook by the door).

<sup>7</sup> *Conners v. D'Angelo*, 2017 ONSC 1104, at para. 56.

- (v) Douglas acknowledges that Vidnia explicitly refused permission for him to take her car. He understands that it was “wrong” to do what he did. He made a “a poor decision” when he took the keys to his mother’s vehicle without her permission.

[17] Douglas candidly admitted that when he was younger, between 12 and 15, he sometimes drove cars belonging to other people without even a G1: “I was a hard-headed kid, I was always doing things I wasn't supposed to, so it's the truth.”

[18] There is no evidence, however, that his mother knew about any of these earlier incidents.

[19] For her part, Vidnia acknowledged that Douglas “was not necessarily a good boy ... teenagers have their problems in school” but “he’s a good son.” She also added that she had no specific or particular reason not to trust him because of anything that had happened before. There is no evidence to suggest otherwise.

[20] In sum, the uncontroverted evidence remains as summarized in the five points set out above. The fact that Vidnia thought she put the keys in her purse that evening and Douglas said he found them in either a drawer or her jacket is not the kind of conflicting evidence in the context herein that requires a credibility assessment and precludes a summary judgment. Where the keys were found matters less than the evidence that they were purposely “hidden” and were found only after “five to ten minutes” of searching.

## **Conclusion**

[21] This is obviously not a case where consent can be inferred from a preceding course of conduct. Douglas had never taken his mother’s car before without her consent. Vidnia did not leave the keys on a hook by the door or otherwise easily available. Indeed, it took Douglas five to ten minutes of searching her bedroom to find them.

[22] This is not a case where the owner of the vehicle failed to take reasonable precautions with her car keys. Nor is it a case where the owner demonstrated ineffective control over an irresponsible member of the family. Indeed, I find that the defendants have amply proven otherwise.

[23] The defendants have established on the evidence before me that Douglas took his mother’s car on the evening of the accident without her express or implied consent.

## **Disposition**

[24] The defendants’ motions for summary judgment are granted and the plaintiff’s action is dismissed.

[25] The defendant Vidnia asks for \$16,900 in costs for both the motion and the action; Certas seeks \$15,000. I find it fair and reasonable to fix Vidnia's costs at \$16,000 and Certas' costs at \$14,000 for a total of \$30,000 all-inclusive payable forthwith by the plaintiff.

[26] Order to go accordingly.

[27] I note that no costs are sought as against the Minister of Government and Consumer Services who has responsibility over the so-called "uninsured motorist fund".<sup>8</sup> The Ministry filed a statement of defence on Douglas' behalf but advised the court that it was not opposed to these motions and filed no material.

[28] I thank all counsel for their assistance.

**Signed:** Justice Edward P. Belobaba

Notwithstanding Rule 59.05, this Judgment [Order] is effective from the date it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Judgment [Order] need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party to this Judgment [Order] may nonetheless submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

**Date:** April 6, 2021

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<sup>8</sup> *Motor Vehicle Claims Act*, R.S.O 1990, c. M.41.

