STATE OF MINNESOTA
IN COURT OF APPEALS
A09-581

Marcia Geyer, et al.,
Respondents,

vs.

Nathan Summerlet,
Defendant,
K & S Millwrights, Inc.,
Appellant,
and
Krystal Ann Geyer,
Respondent,

vs.

Nathan Summerlet,
Defendant,
K & S Millwrights, Inc.,
Appellant.

Filed December 29, 2009
Reversed
Stoneburner, Judge

Renville County District Court
File Nos. 65CV0735; 65CV0762

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Scott B. Lundquist, Lundquist Law Offices, P.A., 510 Grain Exchange Building, 400 South Fourth Street, Minneapolis, MN 55415 (for appellant)

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Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant employer challenges the district court's holding that, as a lessee under an oral agreement, employer was the owner of employee's truck at the time respondents were injured, making employer jointly liable with the employee for respondents' injuries. Because the district court's finding that the oral agreement "was to extend in duration until the parties reached a written agreement," does not support the district court's conclusion that the respondents met their burden of proof regarding the existence of an oral lease agreement with an initial term of six months or longer, we reverse.

FACTS

Defendant Nathan Summerlet was, at all times relevant, employed by appellant K & S Millwrights, Inc. (K & S) as a crew leader. K & S work crews travel to various work sites to construct and repair grain-handling facilities. On December 5, 2005, Summerlet and K & S entered into a written agreement titled "Lease Agreement–2005," involving Summerlet's 2006 Chevrolet truck. The agreement provided in relevant part that Summerlet, as an employee of K & S, would keep his driver's license current; maintain commercial-insurance-for-business-use coverage on the truck; maintain a mileage log; and refrain from drug and alcohol use or possession while driving in the leased vehicle on K & S's time. K & S agreed to "reimburse [Summerlet] $.26 for every mile that is logged for business use," and "pay [Summerlet] a lease amount of $600 per

month." The agreement made Summerlet responsible for providing another vehicle at his expense if his vehicle was not available and provided for subtracting $25 per day for "any days missed" in a month. The agreement also provided that it could be updated, changed or discontinued at any time at the discretion of K & S without prior notice to Summerlet. The agreement, by its terms, expired at the end of December 2005.

Due to a dispute between the crew leaders and K & S over fuel and mileage reimbursement, a new written agreement was not signed until September 2006. But K & S's use of Summerlet's truck for business purposes continued under an oral agreement that lasted until the parties entered a written agreement in September 2006. The terms of the oral agreement were basically the same as under the written agreement.

On June 29, 2006, Summerlet, on his way home from work, ran a stop sign and collided with a motor vehicle operated by respondent Krystal Geyer in which respondent Marcia Geyer was a passenger. The Geyers were seriously injured.

The Geyers separately sued Summerlet and amended the complaint in each case to add K & S, asserting that under section 65B.43, subdivision 4 of the No-Fault Automobile Insurance Act, K & S, as lessee of Summerlet's truck, is deemed the owner of the truck and is therefore liable for the Geyers' injuries under Minn. Stat. § 169.09, subd. 5a (2008) (the Safety Responsibility Act). The cases were consolidated.

K & S moved for summary judgment. The district court denied the motion and found that an oral lease of Summerlet's truck existed between K & S and Summerlet on the date of the accident. After a bench trial, the district court found that the oral lease agreement began in January of 2006 and "was to extend in duration until the parties

reached a written agreement." Based on this finding and a finding that a written agreement was signed by the parties in September 2006, the district court concluded that the Geyers met their burden of proof that K & S and Summerlet had "an oral lease agreement with an initial term of six months or longer."

At a subsequent proceeding, the district court held that K & S and Summerlet were not joint owners of the truck at the time of the accident and that only K & S was the owner for purposes of the Safety Responsibility Act. Following a second bench trial, the district court held that, at the time of the accident, Summerlet was driving with K & S's consent, making K & S jointly and severally liable for injuries that the Geyers sustained in the accident.

The parties agreed that the Geyers's damages would be established by arbitration, after which judgment was entered. K & S appeals the ruling that K & S is liable under the Safety Responsibility Act for those damages but does not contest the amount of damages.

D E C I S I O N

On appeal from a judgment in a bench trial, we give the district court's factual findings great deference and do not set them aside unless they are clearly erroneous, but we do not give deference to the district court's decision on a purely legal issue. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002).

The No-Fault Automobile Insurance Act provides in relevant part: "If a motor vehicle is the subject of a lease having an initial term of six months or longer, the lessee

shall be deemed the owner for the purposes of . . . [the Safety Responsibility Act]." [1] Minn. Stat. § 65B.43, subd. 4 (2008). K & S first argues that the oral agreement to reimburse Summerlet for use of his truck on the job did not constitute a lease as defined in the No-Fault Act, in part because it did not have "an initial term of six months or longer."

"The construction and effect of a contract are questions of law for the court," unless the agreement is ambiguous. *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979). But to the extent that factual findings underpin the district court's construction of the agreement, we review those findings to see if they are "reasonably supported by evidence in the record considered as a whole." *See Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 41 (Minn. 1983) (stating that the district court's findings are reviewed under a clear –error standard and defining that standard).

In this case, the district court found that the oral agreement that began in January 2006 was to extend until the parties reached a written agreement. That finding is supported by the record. The district court's finding that a written agreement was entered in September 2006 is also supported by the record. But the district court's construction of the oral agreement as having an "initial term of six months or longer" is not supported by any term of the oral agreement or by the district court's findings. The fact that the

[1] We note that the definition of "owner" in the statute that contains the Safety Responsibility Act differs from the definition of "owner" contained in the No Fault Act. *See* Minn. Stat. §169.011, subd. 51 (2008) (providing that "in the event a vehicle is the subject of . . . [a] lease thereof with an immediate right of possession vested in the . . . lessee, . . . then such . . . lessee . . . shall be deemed the owner for the purpose of this chapter"). Because the case was argued, briefed and decided under the No Fault Act, we do not address the inconsistency in these definitions.

oral agreement was actually in existence for more than six months is not relevant. The initial term of the oral agreement was indeterminate; the agreement could have ended in a matter of days. The district court therefore erred by concluding that K & S is deemed an owner of the truck under Minn. Stat. § 65B.43, subd. 4. And because K & S is not an owner of the truck, the district court erred by holding that K & S is, under the Safety Responsibility Act, jointly responsible with Summerlet for injuries caused by the accident.

Because we conclude that the district court erred by construing the agreement between K & S and Summerlet as having an initial term of six months or longer, we decline to reach K & S's other bases for arguing that the agreement it had with Summerlet was not actually a lease. We also decline to reach K & S's argument that even if a lease as defined in Minn. Stat. § 65B.43, subd. 4 existed, K & S was at most a co-owner of the truck and, as such, not liable under the Safety Responsibility Act. *See* Minn. Stat § 169.09, subd. 5a (providing, in relevant part, that when a motor vehicle is operated by "any person other than the owner, with consent of the owner" the operator, in case of accident, is deemed the agent of the owner).

Reversed.