
LIABILITY - NEW HAMPSHIRE

Weaver v. Stewart

Supreme Court of New Hampshire - October 27, 2016 - A.3d - 2016 WL 6276083

Motorcyclist brought negligence action against town, police officer, and towing company arising out of automobile accident in which motorcyclist was injured and his wife died, after being struck by intoxicated motorist who drove his vehicle into oncoming traffic and who had retrieved his vehicle from the towing company on the morning of the accident.

The Superior Court granted summary judgment for town and officer and the Superior Court granted summary judgment for company. Motorcyclist appealed.

The Supreme Court of New Hampshire held that:

- Motorcyclist could not recover on negligent entrustment claim against town and officer;
- Towing company did not need to obtain authorization from police or court before releasing vehicle to motorist; and
- Motorcyclist could not recover on negligent entrustment claim against towing company.

There was no evidence that police officer knew or should have known that, at time motorist arrived at towing company to pick up his vehicle the morning after his arrest for driving under the influence (DUI), he was impaired and unfit to drive, and thus motorcyclist could not recover on his claim of negligent entrustment against town and officer arising out of accident in which motorcyclist was injured and his wife died after being struck by motorist's vehicle. Motorist only speculated that it would have been obvious that he exhibited signs of impairment when he was at towing company, officer was not at towing company when motorist picked up his vehicle, and while motorist left voicemail message for officer from which officer allegedly was in position to know of motorist's intoxication, motorist had retrieved his car well before he left message.

Motorist's vehicle was towed pursuant to statute authorizing police officers to remove vehicle after owner was arrested if vehicle was menace to traffic, as opposed to statute authorizing officers to remove and impound vehicle because it might have been evidence of crime, and, thus, towing company did not need to obtain authorization from police department or court before releasing vehicle to motorist who had been arrested the previous night for driving under the influence (DUI). No officer ordered removal and impoundment of vehicle, vehicle was not placed in custody of law enforcement official or court and was not retained for any evidentiary purpose, and officer caused removal and storage of vehicle because he had reasonable grounds to believe that motorist was under arrest or otherwise incapacitated and vehicle would have been menace to traffic if permitted to remain in roadway.

There was no evidence that owner of towing company knew that motorist was unfit to operate his vehicle due to intoxication when motorist retrieved it from company on the morning after his arrest for driving under the influence (DUI), and thus motorcyclist could not recover on his negligent entrustment claim against company arising out of automobile accident in which motorcyclist was injured and his wife died after being struck by motorist's vehicle. Motorist merely speculated that it

would have been obvious that he exhibited signs of impairment when he was at company, there was no indication in toxicology report as to whether motorist was impaired at time he picked up vehicle from company, and owner stated that motorist did not appear to be impaired when he picked up his vehicle, as he was not falling down, did not smell of alcohol, and did not have glassy eyes, slurred speech, or seem unsteady on his feet.

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com