

*Murphy v. Pina*

2025 WL 2938007

**FACTS/PROCEDURE**

Marques Pina stole a car from his grandmother's auto body shop. He later crashed the car with a passenger inside. The passenger, Jalen Murphy, suffered a traumatic brain injury. Around two and a half years later, Jalen died of a fentanyl overdose. His parents, plaintiffs and appellants, filed wrongful death and negligent entrustment actions against several defendants, including the respondents: Marques's grandmother, Virginia Ann Pina, and her business, Brea Auto Body, Inc.

As to the first cause of action for wrongful death based on motor vehicle negligence, the trial court determined that Virginia's declaration stating Marques was not an employee of, agent of, or in a contractual relationship with Brea Auto Body Shop was sufficient to shift the summary judgment burden to plaintiffs. As to plaintiffs' second cause of action for negligent entrustment, the trial court agreed with defendants that they had no duty to protect Murphy from Marques. The trial court granted defendants' motion for summary judgment and plaintiffs appealed.

**HOLDING/DISCUSSION**

Plaintiffs argued that Virginia's declaration provided only conclusory assertions, opinions, and ultimate facts regarding Marques's employment, and it was insufficient to shift the burden on summary judgment to the plaintiffs on the issue of whether Marques was defendant's employee. The Court of Appeal stressed that the same rules of evidence that apply at trial also apply to the declarations submitted in support of and in opposition to motions for summary judgment. Declarations must show the declarant's personal knowledge and competency to testify, state facts, and not just conclusions. In her declaration, she identified her personal relationship with Marques as one of grandparent and grandchild. The Court of Appeal found that Virginia's declaration provided sufficient information for the trial court to conclude her statements were based on personal knowledge and that they reflected facts, not unsupported conclusions. The trial court did not err in overruling Herman's objection to Virginia's declaration.

Plaintiffs also contended there was a triable issue of fact as to whether Marques was her employee or agent, or whether he was in a contractual relationship with her. The Court of Appeal confirmed that an employer may be found vicariously liable for an employee's tort under the doctrine of respondeat superior if the tort was committed within the scope of employment. However, Virginia testified in her deposition that Marques used to help her in the body shop sometimes, but she had not seen him since 2014, and the theft occurred in 2016. Plaintiffs proffered no evidence suggesting an ongoing, indeterminate employment relationship. For that reason, the Court of Appeal found no triable issue of fact as to whether Marquis was an employee, agent, or in a contractual relationship with Virginia or her Body Shop.

For the second cause of negligent entrustment, plaintiffs asserted that "special circumstances" existed that warranted the recognition of a legal duty that defendants owed to Murphy. Courts have recognized the existence of "special circumstances" in two situations: (1) cases in which a defendant left the keys inside an unlocked car *and* it was foreseeable the car might be stolen due to the circumstances of the area in which car was left, or something encouraged the public to tamper with the vehicle, and (2) cases involving construction or similar vehicles that pose a danger greater than an ordinary vehicle and give rise to more curiosity from the public than an ordinary vehicle. The evidence here does not establish special circumstances that made the foreseeable risk of harm imposed [by defendants' actions] unreasonable. The keys were kept in a locked shop, on a rack not visible to someone in front of the reception desk. There had been no prior car thefts, and there was evidence that the vehicles were kept locked. There was no evidence of warning signs of theft or security problems. The Court of Appeal concluded that the special circumstances doctrine did not apply in this case. The court affirmed the summary judgment.