

*Arata v. Faubion*, 123 Nev. Adv. Op. No. 19, (June 28, 2007)<sup>1</sup>

**PERSONAL INJURY – VICARIOUS LIABILITY**

**Summary**

Appeal from the district court's judgment entered on a jury verdict for the injured plaintiff and denial of a new trial.

**Disposition/Outcome**

The Nevada Supreme Court affirmed the district court's judgment finding Appellant Sherry Pucci vicariously liable, under NRS 41.440, and reversed the finding of vicarious liability as to Appellant Rocque Pucci, and remanded.

**Factual and Procedural History**

In January 1999, appellant Andrew Arata struck a pedestrian, respondent Betty S. Faubion, while she was in a crosswalk. Faubion alleged, pursuant to NRS 41.440,<sup>2</sup> appellants Sherri Pucci, Arata's mother, and Rocque Pucci, Arata's stepfather, are vicariously liable because Arata was driving their vehicle.

The respondents argued the statute's constitutionality and scope. Respondents alleged NRS 41.440 violates substantive due process rights and equal protection principles, by imposing liability based solely on familial relationship with the driver. Further, as to Rocque Pucci, a stepfather is not an immediate family member, under NRS 41.440.

The trial court found, pursuant to NRS 41.440, both Sherri and Rocque Pucci jointly and severally liable for any damages resulting from Arata's negligence. Subsequently, a jury awarded Faubion \$5 million in damages, which the trial court reduced to \$3.5 million per a pre-trial stipulation. The court denied appellant's motion for judgment notwithstanding the verdict or a new trial. Arata and the Pucci's appealed.

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<sup>1</sup> Edited from the original by Krystallin Hernandez

<sup>2</sup> NRS 41.440 provides as follows:

Any liability imposed upon a wife, husband, son, daughter, father, mother, brother, sister or other immediate member of a family arising out of his or her driving and operating a motor vehicle upon a highway with the permission, express or implied, of such owner is hereby imposed upon the owner of the motor vehicle, and such owner shall be jointly and severally liable with his or her wife, husband, son, daughter, father, mother, brother, sister or other immediate member of a family for any damages proximately resulting from such negligence or willful misconduct, and such negligent or willful misconduct shall be imputed to the owner of the motor vehicle for all purposes of civil damages.

## Discussion

The family purpose doctrine is an exception to the common law rule that a vehicle owner is not responsible for another person's negligent operation of a motor vehicle. In 1922, the Nevada Supreme Court adopted the doctrine,<sup>3</sup> and, in 1957, the Legislature expanded the doctrine via NRS 41.440. The family purpose doctrine requires the vehicle be driven for a family purpose, while NRS 41.440 imposes vicarious liability upon the owner for a family member's negligence, regardless of the purpose for which the vehicle was driven.

## Constitutionality

The Nevada Supreme Court found NRS 41.440 able to withstand the appellants' due process and equal protection challenges. Because NRS 41.440 does not infringe upon a fundamental right, nor does the statute discriminate against a suspect class, the statute's constitutionality depended upon whether the classifications it creates are rationally related to a legitimate governmental purpose. NRS 41.440 imposes liability on family members to limit the occurrences of judgment proof drivers. Further, the statute encourages owners to use greater care in allowing financially irresponsible drivers to use their vehicle. Therefore, the Court found a legitimate governmental purpose to impose liability upon a vehicle owner for a family member's negligent driving, thus, the statute survives the appellants' constitutional challenge.

## Scope of NRS 41.440

Due to the statute specifically referencing its applicability to a "son," the Court affirmed the trial court's decision to impose vicarious liability upon Sherri Pucci. However, the Court reversed and remanded for the trial court to determine whether Rocque Pucci, as a stepfather, is an immediate family member.

In *Jones*, the Court defined "immediate family member" as follows:

To constitute one or more persons, with another, living together in the same house, a family, it must appear that they are being supported by that other in whole or in part, and are dependent on him therefore, and, further, that he is under a natural or moral obligation to render such support.

*Jones*, 46 Nev. at 23-24, 206 P. at 683 (quoting *Sheehy v. Scott*, 104 N.W. 1139, 1140 (Iowa 1905)).

The Court found conflicting evidence concerning whether Arata's and Rocque Pucci's relationship was sufficient to constitute a finding that they are immediate family members. Therefore, the Court reversed and remanded for a new trial on that issue.

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<sup>3</sup> *Jones v. Golick*, 46 Nev. 10, 206 P. 679 (1922) (The court recognized that, in *Jones*, it did not expressly adopt the doctrine. However, the holding, requiring a familial relationship or other theory of liability necessary to establish a vehicle owner's liability, implies the doctrine's adoption by Nevada.).

## **Conclusion**

The Court found NRS 41.440 Constitutional as the statute has a legitimate governmental purpose. Consequently, pursuant to the statute, the Court found Sherri Pucci, as Arata's mother, vicariously liable for Arata's negligent driving of her vehicle. However, the Court reversed and remanded for a new trial, as to Rocque Pucci's relationship with Arata because the record contained conflicting evidence inadequate to define them as immediate family members.