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Guest Statute -- Change of Status

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court, that the plaintiff cannot recover because she ran and fell and then suffered a heart attack, is without merit.

An interesting inconsistency in the law of Pennsylvania is illustrated by the case of *Gillam v. Hague*[31] where damages were recovered for the loss in value of a horse frightened by an automobile. The dissent inferred, that since similar evidentiary and causal problems appear in both this and the instant case, *Mr. Bosley would have recovered damages if his horse, and not his wife, had collapsed.*

Justice Musmanno concluded that, since the majority admits: (1) medical evidence proved that Mrs. Bosley's heart disability was a direct result of the bull's chase; (2) Mr. Andrews was a *trespasser* by the actions of his cattle; then, under the law of *quare clausum fregit*, liability should follow for all ensuing damages.

Mr. Andrews owed a duty to his neighbors to keep his cattle off their land. The breach of this duty resulted in Mrs. Bosley sustaining a heart attack. It is difficult to see why the proximate cause of the injury was anything *but* the fright created by the bull's chase. Certainly it was forseeable that wild cattle might frighten those who attempted to constrain them. Applying their predecessors' reasoning, the court refused the plaintiff the right to redress at law because *she was fortunate enough not to be struck by the defendant's bull.* Proof of impact has always been required by the Pennsylvania courts in order to enable the plaintiff to take his case to the jury. The only reason presented by the court for denying recovery was the fear of setting a precedent that would eventually create a flood of unjust claims. The practical experience gained from observing the records of jurisdictions allowing recovery, unquestionably wrecks any possible foundation for maintaining this view. Our judicial system is mature enough to separate the wheat from the chaff before any damage can be done. A blind adherence to the doctrine of stare decisis destroys the very basis of judge-made tort law. The judicial policy of our modern courts must be flexible in order to conform to the needs and advancements of society.

LAWRENCE J. SHONGUT

GUEST STATUTE — CHANGE OF STATUS

Plaintiff, a passenger in defendant's automobile, was injured after protesting about defendant's improper driving and demanding to be let out. *Held*, plaintiff's reasonable protest and demand to leave the automobile changed her status from guest to that of a *passenger against her will.* There-

31. 39 Pa. Super. 547 (1909).

fore, proof of gross negligence as required by the Florida Guest Statute[1] was not necessary and recovery could have been based on a finding of simple negligence. *Andrews v. Kirk*, 106 So.2d 110 (Fla. App. 1958).

The precise issue in the instant case had not been previously decided in Florida and only two other states[2] have passed upon this particular issue. It is generally agreed that a mere protest without a demand to leave does not change the status of the guest or the degree of care required by the driver.[3] In Washington it was held, on the basis of the guest statute,[4] that "once a guest always a guest"[5] and a change of status could not be brought about by a protest of improper driving and a demand to be let out.[6] The court treated the enumerated exceptions of the statute as impliedly excluding all other invited riders from its exceptions.[7] In a concurring opinion, Justice Hill resorted to the rationale that it is more desirable that there be an "occasional injustice than a wholesale perversion of justice"[8] by collusive law suits against insurance companies.

A contrary result has been reached in Georgia where it is recognized that a guest becomes a passenger against his will when the driver fails to heed a demand to be let out of the automobile.[9] The court reasoned that the host and guest had voluntarily engaged in a common endeavor and the guest assumed the risk of ordinary negligence. Once the guest displayed his desire to withdraw from the journey, he could no longer be said to have

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1. FLA. STAT. § 320.59 (1957): "No person transported by the owner or operator of a motor vehicle as his guest or passenger, without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss in case of accident unless such accident shall have been caused by the gross negligence or willful and wanton misconduct of the owner or operator of such motor vehicle, ..."

2. Akins v. Hemphill, 33 Wash.2d 735, 207 P.2d 195 (1949); Anderson v. Williams, 95 Ga. App. 684, 98 S.E.2d 579 (1957).

3. Wachtel v. Bloch, 43 Ga. App. 756, 160 S.E. 97 (1931); Schlater v. Harbin, 273 Mich. 465, 263 N.W. 431 (1935); Hayes v. Brower, 39 Wash.2d 372, 235 P.2d 482 (1951). See Annot., 25 A.L.R.2d 1448.

4. WASH. REV. CODE §46.08.080 (1952): "No person transported by the owner or operator of a motor vehicle as an invited guest or licensee, without payment for such transportation, shall have a cause of action for damage against such owner or operator for injuries, death, or loss, in case of accident, unless the accident was intentional on the part of the owner or operator; provided, that this section shall not relieve any owner or operator of a motor vehicle from liablity while it is being demonstrated to a prospective purchaser." This statute was later amended to allow recovery for the driver's intoxication or gross negligence: LAWS OF WASH. ch.132 §132, §1 (1957).

5. Akins v. Hemphill, 33 Wash.2d 735, 738, 207 P.2d 195, 197 (1949) (dissenting opinion which commented on the majority opinion statement: "when she became a guest of the respondent driver, she became such for the entire journey").

6. Akins v. Hemphill, *supra* note 5, in which three justices dissented. See also the dictum to the same effect in Bateman v. Ursich, 36 Wash.2d 729, 220 P.2d 314 (1950); Taylor v. Taug, 17 Wash.2d 533, 136 P.2d 176 (1943).

7. In Bateman v. Ursich, *supra* note 6 at 735, 136 P.2d at 317; "The legislature, in enacting the host-guest statute, saw fit to specify only three exceptions: . . . . Under these circumstances, we have no authority to make additional exceptions to those enumerated in the statute."

8. Akins v. Hemphill, 33 Wash.2d 735,739, 207 P.2d 195,197 (1949) (concurring opinion).

9. Anderson v. Williams, 95 Ga. App. 684, 98 S.E.2d 579 (1957); Blanchard v. Ogletree, 41 Ga. App. 4, 152 S.E. 116 (1929).

assumed against his will the risk of the driver's negligence.[10] In other states where the change in status was not specificially pleaded, the courts have treated the guest's protests and demand to be allowed to leave the automobile as matters to be considered in determining the degree of the driver's negligence.[11]

The court in the instant case adopted the Georgia view and treated the status of the plaintiff as having changed from a guest to a passenger against her will.[12] Consequently, the defendant was under a duty to use ordinary care and became liable for simple negligence. A distinction was drawn as to demands to leave the automobile for purposes of convenience[13] and demands to leave because of improper driving and "a feeling of impending disaster";[14] the latter being required to recover for simple negligence.

The Washington court was apparently concerned with the possibility of collusion.[15] It is unsound reasoning to deny recovery to those otherwise entitled to it simply because of the existence of potential chicanery. It should be noted that the enumerated exceptions to the Washington Guest Statute are also susceptible to collusion.[16] The court in the present decision, without offending the Florida Guest Statute,[17] has logically created a reasonable exception to it. However, the limitation that the passenger's demand to be let out of the automobile *must* be motivated by a fear of impending injury[18] does not appear to be sound in principle. Since the essence of the reasoning is that the passenger is riding against his will,[19] a passenger's objective manifestation of his desire to withdraw from the trip should suffice to create the change in status irrespective of the passenger's motive. A driver's refusal to let the passenger out of the automobile has been construed on occasion as an unlawful restraint upon the passenger's freedom.[20] Ironically, a person riding in an automobile against his wishes

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10. *Ibid.*

11. Berman v. Berman, 110 Conn. 169, 147 A. 568 (1929); Jones v. Melvin, 293 Mass. 9, 199 N.E. 392 (1936); Manzer v. Eder, 263 Mich. 107, 248 N.W. 563 (1933); Worcester v. McClurkin, 174 Va. 221, 5 S.E.2d 509 (1939).

12. Andrews v. Kirk, 106 So.2d 110, 116 (Fla. App. 1958).

13. Vance v. Grohe, 223 Iowa 1109, 274 N.W. 902 (1937) (a change in status was not recognized where demand to get out of the automobile was for the purpose of saving time).

14. Andrews v. Kirk, 106 So.2d 110, 117 (Fla. App. 1958). The court distinguished Vance v. Grohe, *supra* note 13, from the instant case.

15. Shea v. Olson, 185 Wash. 143,155, 53 P.2d 615,620. See also cases cited note 6 *supra.*

16. See notes 4 and 7 *supra.* The host and guest could falsely testify that the guest was a prospective purchaser or had paid for the transportation.

17. For an analysis of exceptions to guest statutes see Annots. 82 A.L.R. 1365, 95 A.L.R. 1180. For exceptions to the Florida Guest Statute see Miller v. Morse Auto Rentals Inc., 106 So.2d 204 (Fla. App. 1958); Peery v. Mershon, 149 Fla. 351, 5 So.2d 694 (1942).

18. Andrews v. Kirk, 106 So.2d 110, 117 (Fla. App. 1958).

19. *Id.* at 116.

may be considered a *prisoner*[21] in one state and a *guest*[22] in another. The unsoundness of treating the unwilling rider as a guest within the meaning of the automobile guest statutes becomes apparent when the rider's freedom is viewed as being unlawfully restrained without his consent. Regardless of the possible alternate remedy of false imprisonment, a driver should not be allowed to negligently injure a passenger without incurring liability when the passenger is *riding against his will.*

Daniel H. James

DIVORCE — LIABILITY OF THE HUSBAND'S ESTATE TO PAY ALIMONY

The plaintiff sought an order requiring the ancillary administrator of her deceased husband's estate to make alimony payments. The divorce decree and prior property settlement provided that payments "would cease upon her death or remarriage." *Held,* where the decree or property settlement expressly provides for the continuance of the payments "until the death of the wife or her remarriage" the husband's estate remains liable. *Johnson v. Every,* 93 So.2d 390 (Fla. 1957).

Under the common law, the obligation to pay alimony is regarded as a personal one which terminates upon the death of either spouse.[1] In the absence of a statute[2] or an agreement between the parties, the rule adopted by the majority of courts in the case of an absolute divorce is that the death of the husband terminates the right of the wife to receive alimony payments.[3]

20. Cieplinski v. Severn, 269 Mass. 261, 168 N.E. 722 (1929) (driving past street where plaintiff demanded to be let out of automobile entitled plaintiff to at least nominal damages for false imprisonment); Jacobson v. Sorenson, 183 Minn. 425, 236 N.W. 922 (1931) (taking plaintiff for an involuntary ride for the purpose of "telling her off" constituted false imprisonment).

21. *Ibid.*

22. Akins v. Hemphill, 33 Wash.2d 735, 207 P.2d 195 (1949).

1. 19 C. J. *Divorce* § 633 (1920).

2. Murphy v. Shelton, 183 Wash. 180, 48 P.2d 247 (1935); Hale v. Hale, 108 W. Va. 337, 150 S.E. 748 (1929).

3. Roberts v. Higgens, 122 Cal. App. 170, 9 P.2d 517 (1932); International Trust Co. v. Liebhardt, 111 Colo. 208, 139 P.2d 264 (1943) (dictum); Parsons v. Parsons' Estate, 70 Colo. 333, 201 Pac. 559 (1921); Underwood v. Underwood, 64 So.2d 281 (Fla. 1953); Berry v. Berry, 208 Ga. 285, 66 S.E.2d 336 (1951); Kramp v. Kramp, 2 Ill. App. 2d 17, 117 N.E.2d 859 (1954); Re Yoss Estate, 237 Iowa 1092, 24 N.W.2d 399 (1946); Succession of Carter, 32 So.2d 44 (La. 1947); Poor v. Poor, 237 Mo. App. 744, 167 S.W.2d 471 (1942); North v. North, 339 Mo. 1226, 100 S.W.2d 582 (1936); Robertson v. Brewer, 88 N.H. 455, 190 Atl. 709 (1937); Re Grimley's Estate, 200 Misc. 901, 107 N.Y.S.2d 129 (Surr. Ct. 1951); Platt v. Davies, 82 Ohio App. 182, 77 N.E.2d 486 (1947); Snouffer v. Snouffer, 132 Ohio St. 617, 9 N.E.2d 621 (1937); Prime v. Prime, 172 Ore. 34, 139 P.2d 550 (1943); Re Watrous's Estate, 10 Pa. D. & C. 639 (1927), *aff'd,* 95 Pa. Super 11 (1927); Brandon v. Brandon, 175 Tenn. 463, 135 S.W.2d 929 (1940); Wilson v. Wilson, 195 Va. 1060, 81 S.E.2d 605 (1954).