

**IN THE SUPREME COURT OF GUAM**

**ADRIENNE O'MARA,**  
Plaintiff-Appellee,

**vs.**

**SUE P. HECHANOVA, ESTATE OF HOWARD P. HECHANOVA,  
ALPHA INSURERS, a Guam Corporation, and DOES I THROUGH X,**  
Defendants-Appellants.

**OPINION**

Supreme Court Case No.: CVA00-0025  
Superior Court Case No.: CV1252-98

**Filed: June 13, 2001**

**Cite as: 2001 Guam 13**

Appeal from the Superior Court of Guam  
Argued and Submitted on May 11, 2001  
Hagåtña, Guam

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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice; PETER C. SIGUENZA, JR., and F. PHILIP CARBULLIDO, Associate Justices

**CARBULLIDO, J.:**

[1] Adrienne O'Mara ("O'Mara") was injured when her automobile was struck by another vehicle driven by Howard P. Hechanova ("H. Hechanova") and owned by Sue Hechanova ("S. Hechanova"). H. Hechanova died in the accident. O'Mara sued S. Hechanova and Alpha Insurers ("Alpha") under Guam's imputed negligence statute. The principal issue is whether S. Hechanova as the owner of the vehicle gave her consent to H. Hechanova to drive the vehicle which injured O'Mara. After finding implied consent, the trial court denied the defendants motions for directed verdict and judgment notwithstanding the verdict and allowed the jury verdict to stand in favor of O'Mara. Defendants appeal. We reverse.

**I.**

[2] On October 18, 1997, a car driven by H. Hechanova collided with a car driven by Plaintiff-Appellee O'Mara. H. Hechanova was killed and O'Mara was injured in the accident. The vehicle driven by H. Hechanova was owned by Defendant-Appellant, S. Hechanova and insured by Chung Kuo Insurance Co., Inc. (Chung Kuo) whose general agent in Guam at the time was Defendant-Appellant Alpha.

[3] O'Mara filed the underlying Complaint in this action to recover damages for injuries caused by H. Hechanova's alleged negligence from S. Hechanova and directly from the purported insurer of the vehicle, Alpha. O'Mara also named H. Hechanova's estate as a party. However, Defendants pointed out, without dispute from O'Mara, that no probate case was filed for H. Hechanova. Thus, the estate is not a proper

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party hereto. O'Mara did not amend her Complaint to include the actual insurer, Chung Kuo.

[4] Alpha filed an answer, entitled "Answer of Defendant Chung Kuo Insurance Co., LTD.," and later filed an amended answer entitled "Amended Answer of Defendant Alpha Insurers and Answer of Defendant Sue P. Hechanova." The Amended Answer superceded the Original Answer. After O'Mara rested her case in the jury trial, Defendants moved the court for a directed verdict pursuant to Guam Rule of Civil Procedure 50(a). Alpha and S. Hechanova also filed a separate Motion for Directed Verdict per GRCP 50(b). The court took the motions under advisement and the case was submitted to the jury. The jury reached its verdict in favor of O'Mara. Defendants then filed a Motion for Judgment Notwithstanding the Verdict. The grounds for these motions were the same: that O'Mara failed to prove consent and failed to name the appropriate insurer. The trial court denied Defendant' motion and this appeal followed.

## II.

[5] This court has jurisdiction over an appeal from a final judgment. Title 7 GCA § 3107(b) (1994).

[6] A denial of a motion for directed verdict is reviewed *de novo*. *Oglesby v. Southern Pac. Transp. Co.*, 6 F.3d 603, 605 (9th Cir. 1993). A denial of a motion for judgment notwithstanding the verdict is reviewed *de novo*. *Leon Guerrero v. DLB Const. Co.*, 1999 Guam 9, ¶ 11. A motion for a directed verdict and a motion for judgment notwithstanding the verdict is the same as a motion for judgement as a matter of law. *See id.*; *see also Frank v. Daimler-Benz*, 226 N.W.2d 143, 147 (N.D. 1975) (stating that a motion for directed verdict should be granted when the moving party is entitled to judgment as a matter of law). A judgment as a matter of law is proper if the evidence, construed in the light most favorable to

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the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to that of the jury. *Id.* The standard of review for a jury verdict is whether it is supported by substantial evidence or against the clear weight of evidence. *Id.* at ¶ 21 (citing *J.J. Moving Service, Inc. v. Sanko Bussan Co. Ltd.*, 1998 Guam 19, ¶ 28). “Substantial evidence is such relevant evidence which reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence.” *Id.* at ¶ 20 (citations omitted).

### III.

[7] It is not disputed that S. Hechanova was the owner of the vehicle driven by H. Hechanova or that Alpha was merely the general agent of Chung Kuo, the actual insurer of the vehicle. We first address the issue of whether O'Mara may recover damages from S. Hechanova. Guam's Imputed Negligence Statute permits recovery of damages against the owner of a vehicle if the owner gave consent to the negligent driver. The statute provides in part:

#### Liability of Private Owners.

Responsibility of owners for negligent operation by person using motor vehicle with permission: imputation of negligence. Every owner of a motor vehicle is liable and responsible for the death of or injury to person or property resulting from negligence in the operation of such motor vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner, and the negligence of such person shall be imputed to the owner for all purposes of civil damages.

16 GCA § 17101(a) (1993).

[8] Under the statute, and because there is no dispute as to S. Hechanova's ownership, the only element to be proved is consent. O'Mara must affirmatively prove that S. Hechanova gave express or implied permission to H. Hechanova to drive her car. See *Engstrom v. Auburn Auto. Sales Corp.*, 11 Cal.2d 64, 68, 77 P.2d 1059, 1062 (1938); *Scheff v. Roberts*, 35 Cal.2d 10, 12, 215 P.2d 925, 926 (1950).<sup>1</sup> The fact that S. Hechanova was the owner of the vehicle at the time of the accident does not prove consent. See *Engstrom*, 11 Cal.2d at 69, 77 P.2d at 1062.

[9] Review of the record including the transcripts of the trial shows that O'Mara did not submit any evidence showing that S. Hechanova gave H. Hechanova her express consent to drive her car. We note that during the post-trial Motion for Judgment Notwithstanding the Verdict, O'Mara introduced as an exhibit in her opposition, S. Hechanova's response to interrogatories in which S. Hechanova admitted giving H. Hechanova permission to use her vehicle. Appellant's Excerpts of Record at Tab 55, Exh. 2. However, the responses to interrogatories were not introduced during O'Mara's case in chief and were not part of the record before the jury. Thus, this admission cannot be considered in this appeal.

[10] There being no express consent, the issue, under section 17101, becomes whether S. Hechanova gave implied permission to H. Hechanova. We look to the record to determine whether there is substantial evidence of implied consent. See e.g. *Leon Guerrero*, 1999 Guam 9 at ¶¶ 20-21. Implied consent may be determined from circumstances in the evidence and inferences therefrom. *Scheff*, 35 Cal.2d at 12-13, 215 P.2d at 926. The only evidence of implied consent presented at trial was that S. Hechanova and H.

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<sup>1</sup> Guam's Imputed Negligence Statute was adopted from California. *Look v. Mobley*, 323 F.2d 214, 215 (9th Cir. 1963). California case law on this issue is persuasive when there is no compelling reason to deviate from California's interpretation. See e.g. *Fajardo v. Liberty House Guam*, 2000 Guam 4, ¶ 17.

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Hechanova shared the same last name. Although O'Mara failed to introduce any evidence that S. Hechanova and H. Hechanova were related, the suggestion here was that there was a relation and consent could be implied from this inference.<sup>2</sup>

[11] However, even where a relationship such as by blood, marriage or principal-agent is not disputed, the party proving consent must provide some direct evidence, albeit weak, of implied consent. *Elkinton v. Calif. State Auto. Ass'n.*, 173 Cal.App.2d 338, 344, 343 P.2d 396, 399 (1959) (“Where, for example, the parties are related by blood, or marriage, or where the relationship between the owner and the operator is that of principal and agent, weaker direct evidence will support a finding of such use than where the parties are only acquaintances, or strangers.”) (citations omitted).

[12] In the case at bar, there was no evidence whatsoever of a relationship other than the shared last name. Shared last names does not automatically mean that the parties are related by blood or marriage. Two people can share the same last name and be total strangers to each other. A shared name by itself does not amount to affirmative proof to support an inference of express or implied permission. *See e.g. Engstrom*, 11 Cal.2d at 68, 77 P.2d at 1062. Further, it is not substantial evidence to support the jury's verdict. *See Leon Guerrero*, 1999 Guam 9, at ¶ 12. Thus, we find that O'Mara failed to prove the essential element of consent and hold that the trial court erred in not granting the Motion for Directed Verdict or the Motion for Judgment Notwithstanding the Verdict.

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<sup>2</sup> We note that during closing arguments O'Mara's counsel mentioned that H. Hechanova was the son of S. Hechanova. Opposing counsel correctly objected. However, the trial court did not strike the statement, ordering the jury to let their recollections govern. Transcript vol. II p. 58 (Jury Trial May 8, 2000).

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[13] Because we find that S. Hechanova is not liable under the Imputed Negligence Statute, her insurer is also not liable thereunder. Thus, we need not pass on the issue of whether the suit against Alpha, as the general agent of Chung Kuo, should be dismissed. Accordingly, we do not decide whether a general agent of an insurer may be liable under Guam's Direct Action Statute, 22 GCA § 18305.

**IV.**

[14] In a cause of action brought pursuant to Guam's Imputed Negligence Statute, plaintiff must prove that the owner of the vehicle gave express or implied consent to the negligent driver. Proof that the driver and owner shared the same surname, in and of itself, is not substantial evidence of consent. In this case, O'Mara's counsel determined during discovery that consent was expressly given. This evidence was not submitted to the jury. Counsel's inexplicable failure to prove this essential element of his case is fatal error. The trial court's denials of the Motion for Directed Verdict and the Motion for Judgment Notwithstanding the Verdict are **REVERSED**. This case is **REMANDED** for entry of a new judgment consistent with this opinion.

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PETER C. SIGUENZA, JR.  
Associate Justice

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F. PHILIP CARBULLIDO  
Associate Justice

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BENJAMIN J.F. CRUZ  
Chief Justice