

Summer, 2024

AEI CLAIMS LAW QUIZ

BAILMENTS AND THE PRESUMPTION OF NEGLIGENCE

[Ref. Law of Bailments, Para. 2.06]

FACTS: Drake Air owned a Brantly B-2B helicopter and brought it to Gerald Goldsberry for maintenance. It had been the practice of Drake Air to have Goldsberry perform regular maintenance on its B-2B because the helicopters are no longer manufactured and Goldsberry, who was known as “Mr. Brantly,” had considerable experience with Brantly helicopters and had access to all of their parts.

Goldsberry did the work on the helicopters along with friends Bill Myrtle and Brad Huddle, although Myrtle and Huddle weren't his employees. Myrtle and Huddle viewed their work with Goldsberry on Brantly helicopters as simply part of their friendship. In the past, Goldsberry's invoices to Drake Air stated that the labor for the requested services on the helicopter had been performed by Goldsberry, Bill Myrtle, and Brad Huddle.

When Drake Air delivered the helicopter to Goldsberry for routine maintenance on this occasion it was in airworthy condition. Goldsberry accepted delivery of the helicopter in order to perform the requested maintenance. Myrtle worked on the helicopter, Huddle inspected his work, and then Goldsberry took it up for a test flight. During the flight, the engine quit and the helicopter crashed. Myrtle rushed to the scene and struggled to extract Goldsberry from the wreckage. Before he died, Goldsberry told Myrtle that he had “lost power.” The helicopter was destroyed. Although it investigated the crash, the National Transportation Safety Board (NTSB) was not able to determine its cause.

Drake Air filed a civil action against Goldsberry's estate for the loss of the helicopter. Following a bench trial (without a jury, the court resolved both questions of law and fact), the court found that Drake Air had delivered the helicopter to Goldsberry in good operating condition. The court also found that under the law applicable to mutual benefit bailments, when Drake Air – the bailor – demonstrated that Goldsberry – the bailee – failed to return the helicopter, a presumption of negligence arose, thereby establishing a prima facie case of negligence against the bailee.

The burden then shifted to the bailee to prove that he wasn't negligent. And since neither the bailor nor the bailee provided any probative evidence to establish whether Goldsberry did or did not negligently inspect or perform maintenance on the helicopter, the trial court concluded that the estate failed to overcome the presumption of the bailee's negligence. Accordingly, the court held that Drake Air was entitled to damages in the amount of \$50,000, which it found to be the value of the helicopter at the time of the crash.

On appeal, the estate argued that the trial court erred as a matter of law in concluding that there was a bailment relationship between the parties. The estate cited Indiana law, which provides that there is a bailment when a bailee takes exclusive possession of a bailor's property to the exclusion of both the owner of the property and others. The estate argued that since Myrtle and Huddle had access to the helicopter in violation of the law requiring that "others" be excluded, the court should not have found that there was a bailment. If there was no bailment, the estate argued, the trial court erred by concluding that the estate failed to prove that the loss of the helicopter was not Goldsberry's fault.

QUESTION: Did the trial court err as a matter of law when it found there was a bailment despite the fact that parties other than the bailee had access to the property? And if there was a bailment, did the trial court err when it concluded that the estate failed to demonstrate that the loss of the helicopter was not the bailee's fault?

ANSWER: No, as to both questions, according to the Court of Appeals of Indiana in *Estate of Goldsberry v. Drake Air, LLC*, 228 NE3d 498 (Ind. App. 2024). The court began its analysis with a brief review of bailment law.

A bailment arises when (1) personal property belonging to a bailor is delivered into the exclusive possession of the bailee, and (2) the property is accepted by the bailee. For delivery to occur, there must be a full transfer of the property . . . *to the sole custody of the bailee such as to exclude both the owner of the property and others*. Acceptance of the property by the bailee may arise from an express contract or from the circumstances that imply such a contract.

If a bailment is found to exist, the bailee in possession of the bailed property must exercise the degree of care commensurate with the benefit derived from the arrangement. In a mutual benefit bailment, where a bailment exists for both the bailor's and the bailee's benefit, the bailee must exercise a duty of ordinary care.

A showing by the bailor that the items were in good condition and were either returned in a damaged condition or not returned at all creates an inference that the bailee has failed to exercise the appropriate degree of care. The burden then shifts to the bailee to demonstrate that the loss . . . was not his fault.

Relying on the italicized language above, the estate argued that because both Myrtle and Huddle had access to the helicopter prior to the crash, Goldsberry did not have sole custody of the property as is required for a bailment to exist. Accordingly, there could be no bailment between Drake Air and Goldsberry. The court rejected this argument.

The court said that the requirement that the bailee take sole custody of the bailed property to the exclusion of others "does not mean that . . . the bailee must be the only one who has access to the property. The bailee may allow others to access the property without destroying the bailment. The requirement is only that the bailee have the right to exclude all persons not covered by the agreement and to control the property."

According to the court, evidence in the record showed that the agreement between Drake Air and Goldsberry contemplated Myrtle's and Huddle's access to the helicopter. In the past, when Drake Air had serviced the B-2B, Goldsberry had invoiced Drake Air for labor performed by them. This prior history demonstrated that both Myrtle and Huddle were parties covered by the bailment agreement. The court held that the trial court did not err when it concluded that his associates' access to the helicopter did not destroy the bailment between Goldsberry and Drake Air.

The estate also argued that the court erred in finding that it hadn't presented any evidence to show that the helicopter crash wasn't Goldsberry's fault. It claimed that statements by Myrtle and Huddle that the helicopter was airworthy prior to the test flight along with the NTSB's failure to

determine the cause of the crash was such evidence. The court rejected that argument because the record supported its conclusion that the trial court simply did not find Myrtle's and Huddle's testimony to be persuasive, and that finding, according to the court, was within the trial court's discretion. And although the NTSB was unable to identify the cause of the crash, that did not negate the estate's burden to demonstrate that the loss was not Goldsberry's fault.

The court held that there was testimony that the helicopter went from being an airworthy vehicle at the time Drake Air delivered it to Goldsberry, to not being an airworthy vehicle while it was in Goldsberry's possession and control. Since the trial court concluded that the bailee had not submitted any evidence to rebut the presumption of its negligence, an assessment the trial court had the discretion to make, the court affirmed the judgment in favor of the bailor, Drake Air.

CONCLUSION: When there is a delivery of personal property to a person or business who, for a fee, will perform some service with respect to the property, it is a mutual benefit bailment. The bailment arises when the bailor's property is delivered to and accepted by the bailee. In a bailment of this type, the bailee must exercise a duty of ordinary care with respect to the bailed property. If the bailor shows that the bailed property was delivered in good condition and was later returned in a damaged condition or not returned at all, then a presumption of negligence arises, thereby establishing a prima facie case of negligence against the bailee. The burden then shifts to the bailee to demonstrate that it was not negligent or that its negligence did not cause the loss or damage.

The rationale for the presumption of negligence is that the bailee, as the party in possession of the bailed property, is in a better position to control the conditions that may cause damage to or loss of the property. However, as the court in *Estate of Goldsberry* explained, the requirement that the bailee take custody of the bailed property to the exclusion of others doesn't mean that the bailee must be the only one who has access to the property. The bailee may allow others to access the property without destroying the bailment. The requirement is only that the bailee have the right to exclude all persons not covered by the agreement and to control the property.