IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 2011

MARY JO BOWEN AS PERSONAL REPRESENTATIVE, ETC.,

Appellant,

v. Case No. 5D09-3888

MARY GREGORY TAYLOR-CHRISTENSEN, ET AL.,

Appellee.
_____/

Opinion filed August 26, 2011

Appeal from the Circuit Court
for Brevard County,
Lawrence Johnston, Judge.

Stephen J. Pajcic, III, and Thomas F. Slater, of Pajcic & Pajcic, P.A., Jacksonville, S. Sammy Cacciatore, Jr., of Nance, Cacciatore, Hamilton, Berger, Nance & Cacciatore, Melbourne, and William A. Bald, of Dale, Bald, Showalter, Mercier & Green, P.A., Jacksonville, for Appellant.

Warren B. Kwavnick, of Cooney, Trybus, Kwavnick, Peets, PLC, Fort Lauderdale, and Dennis R. O'Connor, of Ogden, Sullivan & O'Connor, P.A., Orlando, for Appellee, Robert L. Christensen.

No Appearance for Appellee, Mary Gregory Taylor-Christensen.

GRIFFIN, J.

In this wrongful death lawsuit, Mary Jo Bowen ["Bowen"] appeals the final judgment entered against her and in favor of appellee, Robert Christensen ["Robert"].

Bowen had sought to hold Robert vicariously liable under Florida's dangerous instrumentality doctrine for the death of her husband, Thomas ["Thomas"]. Christensen's ex-wife, Mary Gregory Taylor-Christensen ["Mary"], while operating a motor vehicle under the influence of alcohol, struck and killed Thomas as he was changing a tire on the shoulder of I-95. The jury returned a special verdict against Bowen on her claim of liability against Robert by finding that he was not an owner of the automobile Mary was driving.[1] We affirm.

In April 2005, Bowen, as the personal representative of her husband's estate, filed suit against Mary and her ex-husband, Robert. The complaint explained that in February 2005, Mary was operating a PT Cruiser that was titled in the names of Mary or her former husband, Robert, when she was involved in the fatal automobile accident with Thomas. The complaint alleged that Mary had been operating the car negligently at the time of the accident.

Of importance to this appeal, Robert filed an answer to the complaint in which he denied liability and asserted, as an affirmative defense, that he was not vicariously liable under Florida's dangerous instrumentality doctrine for the damages resulting from Mary's negligence because, although his name was on the title, Robert possessed no beneficial ownership interest in the PT Cruiser driven by Mary at the time of the accident. The matter proceeded to trial before a jury in April 2009. Using a special verdict form, the jury found that, for purposes of liability under Florida's dangerous

[1] The court has been provided a very limited record on appeal, consisting primarily of counsels' pre-trial discussions regarding the admission of certain evidence, opening statement and closing argument, the testimony of a homicide detective, portions of the testimony of Mary, Robert, and a physician's deposition.

instrumentality doctrine, Robert was not an owner of the PT Cruiser at the time of the accident. On appeal, Bowen asserts that it was error to submit the case to the jury and that, as a matter of law, Robert was an "owner" of the vehicle subject to vicarious liability based on two undisputed facts: that he knowingly took title to the vehicle as a co-owner and did not attempt to remove his name from the title.

It appears the only evidence in the record on appeal concerning the issue of Robert's liability is an excerpt of Robert's trial testimony. Robert testified that he formerly had been married to Mary, but the couple separated in April 1999, and Mary had relocated to Brevard County. In April 2003, after the conclusion of the court proceedings for the dissolution of their marriage, he wanted to reconcile with Mary, and he travelled from his home in the Florida Panhandle to visit her. Mary told him that she needed a second car because the vehicle she already had was unsuitable for driving her grandchildren around. After shopping around, "he bought her a car" -- the PT Cruiser that Mary was operating at the time of the fatal accident. Robert stated that his intention was to buy the car as a gift for Mary, and they both signed all the paperwork at the dealership when the purchase took place. Robert acknowledged that, according to the title, the owners of the vehicle were "Mary Taylor-Christensen or Robert Christenson," but stated that it was a gift for her. The following morning, he went to Mary's residence, and she took him to the basement where the car was parked. He took the PT Cruiser to a car wash and got it cleaned up for her. He was never behind the wheel again, and he had only laid eyes on it one other time, in the summer of 2003 when he saw it in her garage. In the ensuing two years, he never had access to the car,

never had any authority over the car, never had a key, never insured it, and never had it registered.

Bowen contends that, as a matter of law, she was entitled to receive a directed verdict in her favor on the issue of Robert's vicarious liability under Florida's dangerous instrumentality doctrine because the evidence demonstrated that: (1) Robert was listed as the co-owner on the title to the PT Cruiser; and (2) Robert did not do anything to remove his name from the title.

According to Bowen's analysis of selected cases, the only persons who can overcome the presumption of liability under the dangerous instrumentality doctrine are title owners who establish that they possess "mere naked title" by showing that: (1) the title is held for security purposes, as in a conditional sale; or, (2) the title is only intended to be held temporarily, as where a transfer of title is in process but not completed. Bowen reasons that, because there was no evidence indicating that there had been a conditional sale between Robert and Mary, or an incomplete transfer of title, as a matter of law, Robert could not avoid liability. In support of this argument, Bowen relies on cases wherein Florida courts have recognized exceptions to the dangerous instrumentality doctrine based on incomplete transfers of title or conditional sales. For example, in *Palm Beach Auto Brokers v. DeCarlo,* 620 So. 2d 250 (Fla. 4th DCA 1993), a used car dealer at the time of the accident had sold the car, but held title to the vehicle as security for payment of the purchase price. The court determined, however, that there was no evidence from which the court reasonably could infer that the dealer exercised dominion and control over the automobile after its sale so as to be liable as owner for damages arising from negligent operation of the automobile by purchaser that

resulted in injuries to the third party. In *Palmer v. R.S. Evans, Jacksonville, Inc.,* 81 So. 2d 635 (Fla. 1955), the court held that where legal title to an automobile remained in the seller under conditional sales contract, but beneficial ownership had been transferred to the buyer prior to the accident, liability for negligent operation of the automobile was not imposed on the seller under Florida's dangerous instrumentality doctrine since seller held "mere naked title." The *Palmer* Court observed that the evidence was sufficient to show the intention on the part of both buyer and seller to make immediate transfer of the beneficial ownership of the automobile to buyer when buyer took possession of the automobile.

For its conclusion that "temporary" title is another exception, Bowen cites to *Carrasquero v. Ethan 's Auto Express, Inc.,* 949 So. 2d 223 (Fla. 3d DCA 2006), where the auto dealership that employed the buyer of the vehicle from a third party agreed to hold title as a device to allow the employee to postpone paying sales tax for thirty days. The court undertook a classic "beneficial ownership" analysis, finding that the dealership did not possess, maintain or control the vehicle and, thus, could not be liable as the owner. The court never suggested that the temporary nature of its title was dispositive.

Our review of the case law in this area reveals no basis to support Bowen's theory that a record title owner can overcome the presumption of ownership only by proving (1) a conditional sale, or (2) an incomplete transfer of title to the vehicle. Bowen infers this limitation based primarily upon a line of cases involving the purchase of an automobile for a minor to drive, imposing vicarious liability even though the record title holder professed no beneficial ownership.

Bowen (and the dissent) principally rely on *Metzel v. Robinson,* 102 So. 2d 385 (Fla. 1958). In that case, Metzel's minor nephew, Bryant, who lived with her, was involved in an accident while operating an automobile that was titled in Metzel's name. At trial, Metzel contended that she was not the beneficial owner of the car, and she could not, therefore, be held liable under Florida's dangerous instrumentality doctrine for the damages caused by Bryant's accident. To support her position, Metzel presented evidence that Metzel signed the finance papers and took title to the automobile in her name only because Bryant could not finance the purchase of the automobile due to his age. Bryant kept up the payments and Metzel had nothing to do with the car, except that she insured the car in her name. The trial court ruled, as a matter of law, that Metzel was the owner of the automobile for purposes of applying Florida's dangerous instrumentality doctrine. On appeal, the supreme court affirmed, observing:

> [Metzel] was still in a position to exert some dominion and control over the vehicle. Certainly both appellant and her nephew had a species of ownership and either or both of them could have been held liable for the accident.

Id. at 386.

In *Hertz Corp. v. Dixon,* 193 So. 2d 176 (Fla. 1st DCA 1966), the operator, Dixon, was a minor, and in order to enable him to purchase an automobile his brother-in-law, Gibbs, signed a conditional sales contract and took possession of the vehicle titled in the names of both Dixon and Gibbs. Dixon had possession of the car at all times and was later involved in a collision with an automobile owned by Hertz. Hertz sought to hold both Gibbs and Dixon liable. The trial court refused to enter judgment against Gibbs, holding that mere co-ownership did not impose tort liability. However, upon review, the First District reversed:

> Here, not only was Gibbs one of the record title holders, but in fact had put in motion and made possible the operation of the automobile by Dixon, who, as a minor, could not have bought the automobile. Not only did Dixon operate the car as a co-owner, but with the knowledge, consent and direct participation by Gibbs in the acquisition of title.
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> * * *
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> Suffice it to say, that under the facts of this case the activities of Gibbs, his execution of the conditional sales contract, and his position as a record holder of the title, made him liable for any damages resulting from Dixon's operation of the automobile.

Id. at 177. Again, the court considered both the fact that Gibbs' name was on the title to the vehicle and his involvement with the vehicle to decide whether he was the beneficial owner of his brother-in-law's vehicle or whether he held mere naked title. The court focused upon the fact that Gibbs had enabled Dixon to gain possession of a vehicle by executing the sales contract, yet the court also noted that Gibbs's "activities", along with his position as record holder of the title, required that he be held liable under Florida's dangerous instrumentality doctrine.

Lastly, in *Pennsylvania National Mutual Casualty Insurance Co. v. Ritz*, 284 So. 2d 474 (Fla. 3d DCA 1973), the plaintiff was involved in an automobile accident with Dennis Ritz, a minor. Dennis was operating a vehicle registered in the name of his father, John Ritz. At trial, John Ritz was held vicariously liable for the negligence of his son based on the following evidence:

> The evidence before the trial court showed that at the time of the accident Dennis Ritz did not live with his father. Moreover, Dennis operated and retained exclusive control over the Plymouth, made monthly payments on the vehicle, and paid the premiums to Glen Falls, which has admitted coverage, for the insurance on the car. The son was unable to purchase the automobile in his own name, since he was a

> minor; therefore John Ritz signed the conditional sales agreement and papers for him.

In rejecting the argument that the father possessed "mere naked title", the Third District summarily cited to *Hertz* and *Metzel*, relying on the reference to the adult purchasing the car for the minor who could not otherwise have purchased the vehicle. Far from representing a firm rule of vicarious liability, tempered only by the two exceptions of conditional sale and incomplete transfer of title, cases like *Metzel, Dixon* and *Ritz* are, themselves, using the vernacular of appellants, an "exception" to the rule of beneficial ownership. In truth, these cases appear to represent a unique category of cases where the actions of an adult in making a purchase, taking title, insuring a vehicle or taking similar action that made it possible for a minor to operate the vehicle will prevent the adult from avoiding legal responsibility based on a claim of "bare naked title." In part, this outcome appears to be based on the notion that the purchase-price-supplying, financing, title-owning, vehicle-insuring adult has a measure of control over the minor driver or the vehicle and may properly be liable for the injuries caused by the dangerous instrumentality. Or, it may simply be a species of estoppel whereby the adult who, by taking title, has made it possible for the minor to operate the vehicle and will not be heard to deny financial responsibility.

Bowen's dual-exception theory also simply cannot be squared with other Florida case law. The rule is well described in 4A Florida Jurisprudence 2d, *Automobiles and Other Vehicles,* section 743 (2010):

> As a general rule, the possession of naked legal title to a motor vehicle is not determinative of its ownership when considering the question of tort liability. . . . Rather, only a beneficial ownership of or interest in a motor vehicle, with the right of control and authority over the use of the vehicle,

> is determinative of the question as to which party is to be held liable as owner for a tort committed by another person's operation and use of the vehicle.

Contrary to the view of the dissent that the case before us is indistinguishable from *Metzel*, it is very unlike *Metzel.* This case is more like *Plattenburg v. Dykes*, 798 So. 2d 915 (Fla. 1st DCA 2001), a decision that applies the relevant analysis of "beneficial ownership" in a clear-eyed way and reaches the same result as in this case. There, the owner, Evans, told Dykes that he would give him the vehicle if Dykes would remove it from the driveway. Evidence of intent to make this gift included leaving the keys, the owner's manual and documents in the car and cancelling his insurance. He never signed over the title to Dykes before Dykes was involved in an accident "several days later," however. The *Plattenburg* court said that Evans' gift was complete, that beneficial ownership had passed to Dykes, and that Evans' failure to complete the title transfer could not, standing alone, support a finding of vicarious liability. *Id.* at 916-17. Evans had transferred his beneficial interest and that was enough to avoid liability.

Bowen attempts to square *Plattenburg*, with its "only two exceptions" theory of liability by suggesting that *Plattenburg* is an example of its "incomplete transfer" exception. But transfer was "incomplete" only in the sense that it had not been done. The title transfer in this case is no more (or less) incomplete than the one in *Plattenburg.* In neither case was it commenced, and in neither case does that fact create dangerous instrumentality liability for the negligent acts of the person having beneficial ownership. Bowen can only explain the decision in *Plattenburg* by devising a corollary to its "incomplete transfer" exception, to-wit: there will be dangerous instrumentality liability for the record title owner of the vehicle unless transfer of title has

been undertaken but not completed, or unless title is "temporary." That begs the question whether the outcome in *Plattenburg* would have been different if the accident involving the new owner, Dykes, had happened twenty-two months after Dykes had taken possession of the car and had exercised exclusive beneficial ownership of the vehicle. Clearly not, because beneficial ownership was in Dykes, not Evans. In that case, as in this case, the failure to execute the title transfer would be a relevant fact if the transfer of beneficial ownership were a contested issue, but if not, not.

Also, in *Carrasquero v. Ethan's Auto Express, Inc.,* 949 So. 2d 223 (Fla. 3d DCA 2006), the facts established that driver Abel Diaz bought a vehicle for his individual use from Randall Auto Finance, Inc. Diaz paid the entire purchase price, and possessed, maintained and controlled the use of the vehicle himself. However, Diaz's employer, Ethan's Auto Express, Inc., agreed to take title to Diaz's vehicle in its name as a "tax-delaying convenience" to Diaz. The Third District held that, under these circumstances, the trial court properly concluded that Ethan's had no liability under the dangerous instrumentality doctrine for damages arising out of Diaz's negligent operation of the vehicle because, as a matter of law, notwithstanding that it was the record title holder, Ethan's was not the beneficial owner of the vehicle involved in the subject accident, and thus, was not liable for its negligent operation.

Similarly, in *Wummer v. Lowary by Lowary*, 441 So. 2d 1151 (Fla. 4th DCA 1983), the facts established that Wummer refinanced the repossessed Camaro of one of her employees. She then deducted the monthly payments from the employee's paycheck and the employee maintained control over the car. Lowary was injured while a passenger in the Camaro and sued Wummer as the owner of the vehicle. The trial

court entered summary judgment in Lowary's favor and Wummer appealed. Upon review, the Fourth District reversed:

> Beneficial ownership carries with it liability for damages which arise from an automobile's negligent operation. [Citations omitted.] Wummer's employee had sole possession of the auto. Wummer saw it for the first time after the accident occurred. She was not the beneficial owner of the Camaro. Accordingly, we reverse the order granting Lowary's and denying Wummer's motion for summary judgment.

Id. at 1151-1152.[2]

In summary, the trial court properly concluded that beneficial ownership of a vehicle is key to vicarious liability, and that the determination whether a title holder possesses mere naked title or is the beneficial owner of the vehicle hinges on the evidence concerning whether the title holder had control and authority over the use of the vehicle. That being said, if the evidence establishes that the title holder has beneficial use of the vehicle then the trial court is authorized to rule, as a matter of law, that the title holder is liable under the dangerous instrumentality doctrine. *See Cox Motor Co. v. Faber*, 113 So. 2d 771 (Fla. 1st DCA 1959).

The dissent says that having executed the purchase and title documents at the dealership when he bought the car, Robert's testimony that he intended to buy the car as a gift for his wife and his immediate relinquishment of all use of the car are of no

[2] In her brief, Bowen contends that this court has held, "on facts indistinguishable from those of this case, that a titled owner of a motor vehicle is the owner for vicarious liability purposes as a matter of law." To support this contention, Bowen cites to *Johnson v. DeAngelo,* 448 So. 2d 581 (Fla. 5th DCA 1984) and to *Johnson v. Sentry Ins.,* 510 So. 2d 1219 (Fla. 5th DCA 1987). We reject this conclusion. In *Johnson v. DeAngelo*, there is no discussion of whether the parent exercised control and authority over the child's vehicle. *Johnson v. Sentry Insurance,* is an insurance coverage case.

legal significance. For this proposition, the dissent relies on the cases previously discussed. Although this line of cases stands for the proposition that the subjective reason for taking title is irrelevant, that principle has no application here. Robert never explained, nor did he try to explain why he executed the application for title. He instead explained what he intended to *do* with the car: he intended to make a gift to his former wife and, consistent with that intent, he relinquished all access, use and control of the car immediately. This testimony is relevant to show that he made a gift of the automobile to Mary; whatever interest he had in the car was given to her. A transfer of ownership can just as easily be a gift as a sale. Intent to make a gift, plus delivery, equals a completed gift. The dissent suggests that when husbands buy cars as gifts for their wives, they do not intend literally to *give* the cars to them, merely for the wives to *use* them. Whatever the merit of that point of view, it is not pertinent here. In this case, the husband/wife relationship had been broken. The trial court had announced the terms of the final judgment of dissolution; the only thing lacking was the rendition of the written judgment. Moreover, Robert did not say he purchased the car for her to *use*; he said he purchased it for her. Whether Robert had turned over to Mary all of his beneficial ownership in the car was a question of fact, and the jury decided he was not an owner. Unless mere title equals "ownership," for purposes of the dangerous instrumentality liability, the jury's decision ends that argument.

Finally, the dissent and Bowen both argue at length that title is, or should be, dispositive – that section 319.22 "prohibits" courts from recognizing an ownership interest that is not in compliance with the statute, and the common law of dangerous instrumentality is superseded by these statutes. That argument was considered and

rejected, however, by the Florida Supreme Court in *Palmer v. R.S. Evans, Jacksonville, Inc.*, 81 So. 2d 635, 636 (Fla. 1955).

> It is evident from a reading of Section 319.22 in its entirety that the primary emphasis intended by this section is upon the marketability of title to a vehicle. Appellant contends, however, that one who has not complied with the provisions of this section has not succeeded in divesting himself of ownership of the vehicle, with the result that tort liability growing out of such interest may successfully be asserted against him. The source of this contention is to be found in F.S.A. s 319.22(2) which provides that an owner who has sold and delivered a vehicle to a purchaser 'shall not by reason of any of the provisions of this law, be deemed the owner of such vehicle so as to be subject to civil liability for the operation of such vehicle thereafter by another' when the owner has fulfilled either of two specified requirements pertaining to endorsement and delivery of the title certificate, which appellant contends R. S. Evans has not complied with.
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> [1] The provisions of this section have been construed in *Ragg v. Hurd*, Fla., 60 So.2d 673, *Rutherford v. Allen Parker Co.*, Fla., 67 So.2d 763, and *Platt v. Dreka*, Fla., 79 So.2d 670, opinion filed April 6, 1955. In the *Ragg* and *Platt* cases, supra, this court was careful to point out that Chapter 319, Florida Statutes, did not provide an exclusive method of transferring title nor abrogate the common law of sales. By putting these decisions together, the true import of Section 319.22(2) as it affects the possible tort liability of the seller of an automobile is brought into focus. While it is clear that under this section no civil liability can accrue to a seller who has complied with the title certificate requirements, it does not necessarily follow that a seller who does not comply with these requirements is ipso facto liable. This is true because the common law of sales is available to test the liability of a non-complying seller. We therefore turn to examine the evidence which was submitted upon the issue of ownership, to determine whether under the common law the jury was authorized to return a verdict exonerating R. S. Evans.

To paraphrase what the high court said in *Palmer*, the relevant inquiry is whether "the definite intention existed on the part of [Robert] to make immediate transfer of the beneficial ownership of the vehicle to [Mary]." *Id.*

In essence, both Bowen and the dissent suggest that all the courts of Florida except, perhaps, *Metzel* have failed to realize that anyone whose name is on an automobile title, *ipso facto*, has the level of control that triggers liability under the dangerous instrumentality doctrine. It is plain, however, that the principle of all the cases, even *Metzel,* is the recognition that title alone does not trigger liability. Only *beneficial* ownership triggers liability. Robert's failure to take action to remove his name from the title is a fact the jury may consider in deciding whether he did not intend to divest himself of a beneficial interest and, therefore, that he was, in fact, an owner, but it does not mean "as a matter of law" that he had a beneficial interest. At the end of the day, he only had title and mere title is not enough to make him liable.

AFFIRMED.

SAWAYA, J., concurs and concurs specially, with opinion.
TORPY, J., dissents, with opinion.

I concur in the majority opinion. I write to more fully explain my views regarding the issues raised by the parties in this appeal.

The jury returned a verdict specifically finding that Robert L. Christensen was not an owner of the P.T. Cruiser driven by his ex-wife that was involved in the accident that caused the death of the decedent. In order to overcome that finding in the verdict and establish liability against Robert under the dangerous instrumentality doctrine, Appellant contends that the trial court erred in failing to grant her motion for directed verdict on the issue of Robert's ownership of the vehicle. Appellant argues that the motion should have been granted as a matter of law because Robert's name was on the certificate of title and he did not have his name removed from it prior to the accident.[3]

In Aurbach v. Gallina, 753 So. 2d 60 (Fla. 2000), the court held that "[l]egal title remains the most common basis for imposing vicarious liability under the dangerous instrumentality doctrine. However, a narrow exception for the legal title owner to escape vicarious liability has been recognized where the holder of 'mere naked title' is able to demonstrate the absence of beneficial ownership of the vehicle." Id. at 63. The court noted that the standard jury instructions regarding the dangerous instrumentality

[3] Appellant raises a fall-back issue that the verdict is against the manifest weight of the evidence and, therefore, the trial court erred in denying its motion for new trial. This court has consistently held that "[t]he question for an appellate court is not whether or not the evidence was contrary to the manifest weight of the evidence presented below. Indeed that is the question addressed to the trial court on motion for a new trial. Rather, the appellate court is limited to considering whether or not the trial court abused its discretion in denying a new trial." Dewitt v. Maruhachi Ceramics of Am., Inc. 770 So. 2d 709, 711 (Fla. 5th DCA 2000); see also Pena v. Vectour of Fla., Inc. 30 So. 3d 691 (Fla. 1st DCA 2010); Rosario-Paredes v. J.C. Wrecker Serv., 975 So. 2d 1205, 1207 (Fla. 5th DCA), review denied, 990 So. 2d 1059 (Fla. 2008). I will not address this issue any further other than to say, based on this record, we cannot conclude that the trial court abused its discretion in denying Appellant's motion for new trial.

doctrine should be revised to reflect existing law. Specifically, the court stated, "To the extent that Standard Jury Instruction 3.3(a) instructs the jury that **either** ownership **or** right to control could give rise to dangerous instrumentality liability, we request that the Civil Standard Jury Instruction Committee consider whether, consistent with existing law, a revision to the jury instruction is necessary." Id. at 66 n.5 (emphasis added). The Florida Supreme Court subsequently adopted a revised standard jury instruction to make it clear that an owner is an individual who has both legal title and beneficial ownership of the vehicle. Specifically, in In re Standard Jury Instructions—Civil Cases (No. 02-1), 828 So. 2d 377, 382-83 (Fla. 2002), the court revised Florida Standard Jury Instruction (Civil) 3.3(a) to provide, "An owner of a vehicle is one who has legal title to the vehicle **and** who has the right of control and authority over its use." Id. at 382 (emphasis added).[4]

Appellant latches on to the word "narrow" used by the court in Aurbach to argue that the exception is confined only to cases where there is an incomplete transfer of title to the vehicle or where a conditional sale occurs. I do not believe that the court meant the exception to be that narrow or constricted. The majority opinion fully explains why gift of the vehicle may be another valid exception, and I will not repeat that analysis here. I do find it interesting that the Note on the use of the revised instruction indicates

[4] This jury instruction has been renumbered 401.14(a) without change. See In re Standard Jury Instructions in Civil Cases, 35 So. 3d 666 (Fla. 2010). The dissent contends that the definition of "owner" has been codified in various statutes. Section 316.003(2), Florida Statutes, defines "owner" for purposes of the Florida Uniform Traffic Control Law. Section 322.01(31), Florida Statutes, provides a definition for purposes of drivers licenses. Section 324.021(9)(a), Florida Statutes, provides a definition for purposes of financial responsibility. The standard jury instructions provide the definition of "owner" for purposes of the dangerous instrumentality doctrine and that is the definition the trial court gave to the jury in the instant case.

that a number of exceptions exist and explains that "[o]ther exceptions may exist for which special instructions may be required. See generally 4A Fla. Jur. 2d, Automobiles and Other Vehicles, §§ 667-91. The instruction may also have to be tailored to fit the particular factual circumstances of the case." Id. at 383. Other exceptions may certainly exist and a gift of the vehicle is one of them. See Plattenburg v. Dykes, 798 So. 2d 915, 916 (Fla. 1st DCA 2001) ("Here, the undisputed facts of record show a gift from Evans to Dykes.").

The jury instruction given in the instant case states, "An owner of a vehicle is one who has legal title to the vehicle and who has a beneficial ownership with the right of control and authority over its use." This instruction is closely patterned after the standard instruction, and Appellant raises no challenge to this instruction on appeal. Appellant's primary argument centers on Robert's testimony that he gifted the car to his ex-wife and therefore he had no beneficial ownership of it at the time of the accident. Appellant contends that the testimony is immaterial and insufficient. Therefore, Appellant argues, the motion for directed verdict should have been granted because there was no reasonable evidence upon which a jury could predicate a verdict that Robert was not the owner of the vehicle. That argument is based on language in Johnson v. Deangelo, 448 So. 2d 581 (Fla. 5th DCA 1984), which states:

> Her subjective intent or reason or motive in causing her name to be placed on the title certificate was legally immaterial and, accordingly, her testimony was insufficient as a matter of law to rebut the legal presumption arising from the motor vehicle title certificate itself and insufficient to avoid the legal consequences of that fact.

Id. at 582.

The court in Johnson simply held that the mother's subjective intent in placing her name on the certificate of title was immaterial and insufficient to overcome the presumption of legal ownership that flows from her name being on the title. The opinion does not mention that the mother made any argument that she did not have beneficial ownership of the vehicle. Indeed, from reading the Johnson opinion, it does not appear that beneficial ownership was an issue.

Here, Robert's lack of beneficial ownership was specifically pled in the answer and was argued to the trial court, the jury, and to this court on appeal. Moreover, rather than testify why he put his name on the certificate of title, Robert testified what he intended to do with the car, which was to make a gift of it to his ex-wife in the hopes of reconciling with her. Johnson is inapplicable to the instant case because the testimony of Robert relates to whether he had beneficial ownership of the vehicle.

In Ferran Engineering Group, Inc. v. Reid, 600 So. 2d 1307 (Fla. 5th DCA 1992), this court held that intent is a relevant factor the jury should consider in determining the issue of beneficial ownership. Specifically, this court stated the jury should be instructed that "[t]he name shown on the certificate of title is not conclusive proof of beneficial ownership, but is one factor you should consider." Id. at 1308. The other factors the court held should be considered by the jury to determine beneficial ownership include the intent of the parties, which party had possession of the vehicle, and which party had control and authority over the use of the vehicle. As the majority opinion explains, intent is as relevant a factor for the jury to consider in cases involving a gift as it is in cases involving an incomplete transfer of title or a conditional sales agreement. I think that analysis is legally correct, and it makes common sense. I

therefore reject the argument that Robert's testimony regarding the issue of beneficial ownership is immaterial under the holding of Johnson.

Moreover, the court in Johnson held that the immaterial testimony was **insufficient** to overcome the presumption of ownership established by the certificate of title. Here, in addition to Robert's testimony that he gifted the car to Mary, there was other evidence presented regarding the beneficial ownership issue that was not based on Robert's subjective intent. That uncontradicted evidence includes the following:

> 1. From the date of purchase until the accident some two years later, Mary Taylor-Christensen had sole and exclusive possession, custody, and control over the vehicle;
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> 2. From the time of purchase until the accident some two years later, Robert never possessed the vehicle or had control of it;
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> 3. Robert lived several hundred miles away from Mary's residence where the car was kept and he did not have access to the vehicle, drive it, or in any way possess the vehicle for the two-year period;
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> 4. Robert did not have keys to the vehicle and even if he did, he could not have taken possession or control over it because it was securely kept in a gated condominium garage where Mary lived;
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> 5. The vehicle was purchased at a time when Robert and Mary were divorced (they were awaiting the entry of the final judgment) and any attempts at reconciliation and reunion had failed;
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> 6. Robert never purchased insurance for the vehicle;
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> 7. Robert never registered the vehicle;
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> 8. The address placed on all of the purchase documents, including the application for certificate of title, was Mary's address; and
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> 9. The certificate of title was mailed to Mary at her address.

I believe the evidence presented by Robert regarding the issue of beneficial ownership is relevant and admissible evidence upon which a jury could legally predicate

a verdict in his favor. Therefore, I do not think that the motion for directed verdict should have been granted as a matter of law. This court and others have repeatedly indicated that a party moving for a directed verdict has a difficult burden to overcome. As this court has explained:

> A motion for directed verdict should only be granted if no view of the evidence could support a verdict for the non-moving party. The trial court must evaluate the evidence in a light most favorable to the non-moving party, and indulge every reasonable inference possible in that party's favor. If there are conflicts in the evidence or different reasonable inferences can be drawn from the evidence, the issues should be submitted to the jury and not decided by the trial court as a matter of law.

Goss v. Permenter, 827 So. 2d 285, 287-88 (Fla. 5th DCA 2002) (footnote omitted), review denied, 845 So. 2d 889 (Fla. 2003); see also Harris v. Gandy, 18 So. 3d 569 (Fla. 1st DCA 2009); Scott v. TPI Rests., Inc., 798 So. 2d 907, 909 (Fla. 5th DCA 2001) ("When considering a motion for directed verdict, the trial court is required to evaluate the evidence in the light most favorable to the plaintiff and every reasonable inference therefrom must be indulged in the plaintiff's favor. If there are conflicts in the evidence or different reasonable inferences may be drawn from it, then the issue is a factual one that should be submitted to the jury and not be decided by the trial court as a matter of law." (citations omitted)). This standard applies to the trial court's consideration of a motion for directed verdict and to our review of the trial court decision. Scott.

The reasonable inferences that can be drawn from the evidence evaluated in the light most favorable to Robert, the non-moving party, are: Robert made a gift of the car to Mary; Robert had no right of control over the vehicle; he had no beneficial ownership interest in the vehicle; the only person with the right of control over the vehicle was

Mary, from whom Robert was divorced; and the only beneficial owner was Mary. Appellant contends that Robert did not take his name off the certificate of title and, therefore, he may have had the right to purchase insurance for it or to sell it. If that is conflicting evidence, or if it could produce different reasonable inferences, the trial court was required to submit the case to the jury and not decide the issue as a matter of law. Scott; Reid.

I do not believe, as the dissent contends, that the provisions of chapter 319, Florida Statutes, specifically section 319.22, require compliance with the formalities of sales and transfers in order to avoid liability. In Reid, this court held that those provisions are a shield, not a sword, meaning that if a person does comply and his or her name is deleted from the title, a shield is raised and liability will generally not attach, but the failure to comply is not a sword to be used to impose liability. 600 So. 2d at 1308; see also Cooney v. Jacksonville Transp. Auth., 530 So. 2d 421 (Fla. 1st DCA 1988).

Finally, I disagree with the contention in the dissent that the ultimate issue is whether Robert had an "identifiable property interest" in the vehicle. That language derives from the statement in Aurbach that "[i]n determining who is vicariously liabl[e] under the dangerous instrumentality doctrine, this Court repeatedly has required that the person held vicariously liable have an identifiable property interest in the vehicle, such as ownership, bailment, rental, or lease of a vehicle." 753 So. 2d at 62. Those categories of identifiable property interest are contained in Standard Jury Instruction (Civil) 3.3(a). Ownership is the only category involved in the instant case, and an owner is one who has legal title and beneficial ownership of the vehicle. An identifiable

property interest therefore does not derive solely from legal title, as Appellant and the dissent seem to infer, but from beneficial ownership and that is the ultimate issue in this case.

The trial court properly denied the motion for directed verdict. The jury, after proper instruction from the trial court, considered all of the evidence and determined that Robert was not an owner. He was not an owner because, when he gifted the car to Mary, he delivered possession of it to her and relinquished all right of authority and control over it. That is the essence of a gift. Hence, he was not the owner because he was not a beneficial owner of the vehicle. That is the issue in this case, it has been resolved by the jury, and that should conclude the matter.

TORPY, J., dissenting.

Appellee, Robert Christensen, went to the car dealer with his wife, test-drove the car and paid for it. He signed document after document wherein he identified himself as a "purchaser" or "co-owner" or both. He signed a purchase agreement that identified himself as "buyer" and "purchaser." He signed an HSMV 82994 form (required to obtain title) as "Buyer." Under **penalty of perjury**, he signed an application for title wherein he designated himself at the top of the page as "co-owner," and his signature appears as "APPLICANT (CO-OWNER)." The application was both a sworn manifestation that he was an owner and an instruction that he be designated as co-owner on the title. All of these documents were unambiguous, short, and simple. Appellee made no allegation of coercion, duress, or fraud. Nor did he claim that he had executed the documents by accident or that he was prevented from reading or understanding the documents. To his credit, he did not deny that he had read them. Instead, his only testimony to avoid the consequence of his deliberate and unequivocal acts was his purported subjective intent to make a gift, coupled with his contention that he had nothing to do with the car after its purchase, except for a brief trip to the car wash the day after its purchase. As for his intent, he said:

> My intention was to buy a gift for my wife so that she could drive a car and, of course, that was my interest, was to buy her a car for that purpose. And so I signed the documents there so that I could purchase that car for her.

Importantly, Appellee, who had the burden to overcome the presumption created by the legal title, did not offer any testimony that he signed anything, said anything, or did any

other overt act to contradict these documents at any time before, during or after the purchase from the dealer.[5]

The real question here is whether Appellee presented sufficient, **material** evidence to fall within "a narrow exception for the legal title owner to escape vicarious liability . . . [by demonstrating] the absence of beneficial ownership of the vehicle." *Aurbach v. Gallina,* 753 So. 2d 60, 63 (Fla. 2000). The ultimate issue is whether Appellee had an "identifiable property interest" in the vehicle at the time of the accident. *Id.* If he did, he has vicarious responsibility. My quarrel with the majority centers on the sufficiency of the evidence that Appellee relied upon to prove that he never had any such property interest in the vehicle. Appellee relied on two categories of evidence, neither of which is material to the issue of whether he held a property interest in the vehicle at the time of the crash. The first category of evidence was Appellee's self-

[5] The majority makes note of a very limited record. If it is a criticism of the lawyers, I think it is misplaced. I think it is commendable that the lawyers took the time to cull down the record to give us what we need to decide the very limited issue on appeal. This was a wrongful death trial. From my perspective, I do not need to sift through hours of testimony from eyewitnesses, police officers, doctors, economists and biomechanical engineers, to decide whether Appellee is vicariously liable. Indeed, the rules contemplate that lawyers will send only those portions of the record that are necessary. *See* Fla. R. App. P. 9.200(a)(1). The rule also prohibits the court from disposing of a case based upon an incomplete record without first affording an opportunity to supplement. Fla. R. App. P. 9.200(f)(2). Based on the thoroughness of the presentations of both lawyers here, I assume that they have given us all that there is on the subject of Appellee's vicarious liability, and maybe a little extra. I also assume that they gave the jury all there was in the form of testimony on this subject. Appellee went in to the dealer, bought a car and signed some papers. He didn't have any discussion about the terms of the purported "gift," the pros and cons of how title would be held or anything else because he wasn't thinking about his potential liability and wasn't paying attention to the formal aspects of the transaction. The lawyers, judges and juries are left to determine where the chips fall with this evidence. If the majority thinks the evidence is sparse, that is because Appellee was inattentive in the manner by which he address this transaction, not because the lawyers were remiss. That is why I say that Appellee did not meet his burden below of refuting the sworn, written manifestations of what he intended.

serving testimony that he purchased the car with the intent to make a gift to his wife. The second category of evidence was his testimony that he had virtually nothing to do with the car after its purchase.

As to the first category of evidence, our Court long ago rejected the use of this type of subjective evidence to avoid the consequences of the deliberate act of placing one's name on a vehicle title.[6] We stated:

> Mary S. Johnson's name, together with that of her husband, Willie D. Johnson, Jr., was on the title certificate of the motor vehicle operated by their son, Gary Evan Johnson, at the time of the accident that resulted in a wrongful death. Mrs. Johnson **intentionally caused her name to be placed on the title certificate**, it did not happen by accident or without her knowledge and consent, nor did she hold her formal ownership interest in the vehicle as a mere security device or because she had made a good faith but ineffectual attempt or effort to transfer her title interest. Her **subjective intent or reason or motive in causing her name to be placed on the title certificate was legally immaterial** and, accordingly, her testimony was insufficient as a matter of law to rebut the legal presumption arising from the motor vehicle title certificate itself and insufficient to avoid the legal consequences of that fact.

Johnson v. Deangelo, 448 So. 2d 581, 582 (Fla. 5th DCA 1984) (emphasis supplied); s*ee Aurbach,* 753 So. 2d at 64 (parties' intent regarding ownership of vehicle must be determined from "overt acts"). This is because a property right is grounded in principles of contract law, and contracts are determined by objective acts, not subjective beliefs. When a written document addresses the subject matter of the contract, it cannot be contradicted by subjective intent. *Gendzier v. Bielecki,* 97 So. 2d 604, 608 (Fla. 1957).

[6] Actually, Appellee's professed intent is not necessarily in conflict with the status of the title. It is not unusual for one spouse to buy a car as a gift for the other spouse but title it in joint names. Married couples often allocate the use of vehicles in a manner distinct from how the vehicles are titled.

Here, Appellee and his wife executed many legal documents at the same time the purported gift was consummated. The legal significance of the documents cannot be overstated. "[A] party who signs a document . . . is bound by its terms in the absence of coercion, duress, fraud in the inducement or some other independent ground justifying rescission." *Hale v. State,* 838 So. 2d 1185, 1187 (Fla. 5th DCA 2003). Clearly, Appellee and his wife, by affixing their signatures to these important legal documents, expressed their collective intent that they would share a property interest in this vehicle. By statute, Appellee was a co-owner because he held legal title to the vehicle. §§ 316.003(26), 322.01(31), 324.021(9)(a), Fla. Stat. (2010). Appellee retained the "absolute" legal **right** to encumber the vehicle or sell it without the joinder of his wife. § 319.22(2)(a)1.a., Fla. Stat. (2010). If his wife had predeceased him, he also retained the right of survivorship in the vehicle. *Id.* In any other factual context whatsoever – a title dispute between the parties, an attempt by a creditor to levy on Appellee's interest, divorce, survivorship, etc. – we would make short shrift of any attempt to contradict these documents, especially with the limited evidence presented here.

As to the second category of evidence, Appellee's testimony that he relinquished all use of the car the day after its purchase is likewise of no legal significance to the issue of whether he retained a property interest in the vehicle. Ownership and possession are distinct concepts. A property interest is based on the **right to control**, not the exercise of that right. In this case, it makes no difference to the outcome whether the accident occurred two years or two seconds after Appellee's wife drove the vehicle from the dealership. Nor would Appellee's legal interest in the vehicle turn on

his on-again, off-again use or nonuse of the vehicle. In the absence of any subsequent, overt act by Appellee to divest himself of any interest in the vehicle, his property interest in the vehicle was fixed at the time it was purchased from the dealer. The fact that his wife used it exclusively is of no consequence, as is clearly demonstrated by two decisions of our high court.

In *Aurbach*, the court held, as a matter of law, that the father could not be liable for the negligence of his daughter because his name was not on the title to the car, even though the jury had determined, as an ostensible finding of fact, that he had the "right to control" the car. 753 So. 2d at 64. The court held that the legal right of control, not actual control, was the dispositive issue in determining whether the father had a property interest in the car. *Id.* The clear holding of *Aurbach* is that the "right" of control follows ownership, not use or exercise of control. Here, Appellee, the titled owner, seeks to avoid liability by arguing that he did not exercise control, even though he might have had the legal right. Appellee's attorney successfully argued to the jury that Appellee's failure to exercise actual control was tantamount to not having any "right" to control. That argument was a distortion of the law; it is the precise argument that was rejected in *Aurbach,* **as a matter of law***.*

Even more to the point is *Metzel v. Robinson,* 102 So. 2d 385 (Fla. 1958), the decision that the *Aurbach* court expressly approved, relied upon, and expounded upon. There, the appellant signed the loan documents and took title to a car **only** to accommodate her eighteen-year-old nephew, who desired to purchase the car but could not obtain financing. After the purchase, the nephew "kept up the payments, and [the] appellant **had nothing further to do with the car**." *Id.* at 385 (emphasis added).

While driving the car, the nephew caused an accident, resulting in a claim for damages against the appellant as the titled owner of the car. The lower court directed a verdict for the plaintiff on the issue of the appellant's vicarious liability. It concluded that the appellant was the legal owner of the car, notwithstanding her subjective purpose in permitting the title to be placed in her name and regardless of the fact that she had "nothing to do with the car" after its purchase. *Id.* Our supreme court affirmed. It concluded that both the appellant and her nephew were liable, ***as a matter of law***, because **both had a "species of ownership" in the vehicle.** *Id.* at 386.

The court in *Aurbach* expounded upon the holding in *Metzel*:

> According to the facts, the aunt had taken title to the vehicle only to assist her nephew in purchasing and financing the vehicle. The nephew took possession of the vehicle after its purchase, and the aunt had nothing more to do with the vehicle. Nevertheless, because the aunt took no action to divest herself of title to the car, the Court determined that she was the "owner" of the automobile as a matter of law. In making this determination, the Court further explained that the aunt was "still in a position to *exert some dominion and control over the vehicle*." Thus, because the aunt held title to the vehicle and could exercise dominion and control over the vehicle, the Court concluded as a matter of law that the aunt would be held vicariously liable under the dangerous instrumentality doctrine.

Aurbach, 753 So. 2d at 64 (internal citations omitted).

Here, like in *Metzel*, Appellee denied that he ever intended to own the car, but he had titled it in his name as a part of the purchase/gift transaction. He claimed to have nothing to do with the car after its acquisition, except for a brief jaunt in it the next day. However, after he caused title to be placed in his name as co-owner, he took no overt action to "divest [himself] of [his] **title** to the car." *Metzel*, 102 So. 2d at 386 (emphasis added). By virtue of his titled ownership, Appellee retained the **right** to exercise control

over the vehicle at any time**,** just as the appellant in *Metzel* had done. Therefore, **as a matter of law**, Appellee remained legally responsible for its negligent operation. *Metzel* cannot be distinguished.

The majority glosses over *Metzel* by merely calling it "unlike" this case. Instead, the majority diverts the reader's attention from this binding precedent to other, lower court decisions, all of which are readily distinguishable and none of which are binding on this Court nevertheless. I have cited *Metzel* for three legal propositions: 1) that, **as a matter of law**, if a person causes or permits his name to be on the title when the vehicle is acquired, he cannot contradict the title by claiming that he did not intend to be an owner at the outset; 2) that, **as a matter of law**, once that person has caused his name to be affixed to the title, he must take some affirmative action to divest himself of that interest to avoid liability; and 3) that**, as a matter of law**, relinquishing possession of and having nothing to do with the vehicle after its acquisition is not sufficient to divest that person of his legal interest.

This is clearly not a case where one of the "extremely limited" exceptions described in *Aurbach* applies.[7] The cases that have applied these exceptions are easily distinguishable from this case. They involve situations where **all** of the legal owner's objective acts are consistent with an intent to convey all of his or her interest in the vehicle, thereby relinquishing **all** beneficial ownership, or where title is held solely as

[7] This is not a case where Appellee had mere "naked title" to the vehicle. Naked title is where the title holder has no legal **right** to the vehicle -- where all of the sticks in the bundle have been transferred. The retention of even a twig is tantamount to an "identifiable property interest."

security. The cases on which the majority relies fall into this category, including *Plattenburg v. Dykes,* 798 So. 2d 915 (Fla. 1st DCA 2001).

By contrast, here, Appellee's only objective manifestation of his intent was his act in intentionally causing title to be placed in his name as co-owner, which he did **simultaneously** with the purported making of the gift. He did not give her the money to go purchase the car herself. He could not gift the car to his wife before he owned it. The majority makes no effort to pinpoint the act that marks the transfer of ownership. Did the purported transfer occur when Appellee's wife left the dealership with the car? Did it occur the next day, after Appellee drove it for the last time? Or did it occur at some point in time during the ensuing years thereafter? Based on what Appellee said, the only reasonable interpretation is that the making of the purported gift was inextricably part of the purchase transaction itself. All of the cases that have addressed this type of situation, however – where the titled owner claims to have never intended to have an ownership interest – have rejected this contention, **as a matter of law.** *See, e.g.*, *Metzel*, 102 So. 2d at 386 (aunt was owner for vicarious liability purposes, notwithstanding contention that her name was on title as accommodation only); *Johnson v. Sentry Ins.,* 510 So. 2d 1219 (Fla. 5th DCA 1987) (summary judgment could not be avoided by sworn testimony that son's name on title was for survivorship purposes only); *Deangelo*, 448 So. 2d at 582 (as matter of law, titled owner liable notwithstanding reason she was on title); *Pa. Nat'l Mut. Cas. Ins. Co. v. Ritz,* 284 So. 2d 474 (Fla. 3d DCA 1973) (father was vicariously liable though he put his name on conditional sales contract to facilitate financing; son, who did not live with father, had total control of car, made payments, procured insurance); *Hertz Corp. v. Dixon,* 193 So.

2d 176 (Fla. 1st DCA 1966) (where defendant signed conditional sales contract as "co-buyer," he was vicariously liable though he only intended to be guarantor). Notwithstanding Appellee's subsequent relinquishment of possession of the vehicle, he still retained the **right** of control. This is a critical distinction that the majority has completely overlooked and that Appellee's counsel cleverly circumvented.

The majority dismisses some of these authorities by labeling them a "unique category of cases" where adults are held responsible because they facilitate ownership by a minor under their control. This observation does not explain our two binding precedents, *Deangelo* and *Sentry Insurance,* neither of which even mentioned whether the son was a minor or lived with the parents. *Sentry Insurance* was not even a vicarious liability case. The issue in that case was whether the deceased son had been a co-owner of a car, thereby affecting his entitlement to uninsured motorist coverage on another car. Our court applied *Deangelo* to conclude that the mother could not contradict the state of the title by explaining that she put her son's name on the title solely for survivorship purposes. 510 So. 2d at 1220. More importantly, this observation overlooks what our high court said in *Aurbach* when it explained *Metzel* in the context of an argument that a father was responsible for his eighteen-year-old (the same age as the driver in *Metzel*) daughter's liability:

> In neither *Metzel* nor *Marshall* [*v. Gawel*, 696 So. 2d 937 (Fla. 2d DCA 1997)], however, did the courts hold that the ability to exert some degree of dominion and control constitutes an independent basis for vicarious liability under the dangerous instrumentality doctrine absent an identifiable property interest in the vehicle.

Aurbach, 753 So. 2d at 65.

If I were to group these cases into a specific category, I would take them literally as an express prohibition against attempts by a titled owner to refute that he or she had title at the outset. To allow this permits the titled owner to directly contradict the effect of the documents, in contravention of the myriad of legal principles that are designed to protect the integrity of written instruments. If one wished to read between the lines, these cases might be characterized to embody the notion that, as between related parties, the documents will control to avoid after-the-fact collusion. The *Aurbach* court alluded to this notion when it said that in the "context of family relationships, the better rule is to have legal responsibility follow title ownership."[8] *Id.* at 61. Neither interpretation helps Appellee.

If the majority is correct, then it logically follows that Appellee could have avoided liability even if his name was the sole name on the title. It follows from there that his wife could be vicariously liable, if, for example, she permitted a son or daughter to drive the car, even though her name was not on the title at all. This logical extension of today's holding directly conflicts with the holding in *Aurbach*. It would also directly contravene the mandatory language of section 319.22(1), Florida Statutes (2010), which expressly prohibits a court from recognizing any ownership interest in any vehicle unless the interest is documented in a certificate of title.[9]

[8] Were I to accept this interpretation as a rule, I would apply it in all circumstances where the parties are not at arm's length, such as employer/employee, family, significant others, and friends.

[9] This illustrates one of the difficulties with these cases. The dangerous instrumentality doctrine was judicially created, but almost all of its elements, including the so-called exceptions we are addressing here, are now memorialized in statutes. *See Aurbach*, 753 So. 2d at 64 n.3 (conditional sales exception is statutory); *see also* § 316.003(26), Fla. Stat. (2010) (defining owner as one who holds legal title or conditional

The purchase and ownership of a vehicle is not like the purchase and ownership of a television. A vehicle is a dangerous instrument. The first word in this phrase is "dangerous," which is why the mere ownership of a vehicle gives rise to serious responsibility and potential liability. § 324.021(9)(a), Fla. Stat. (2010) (for purposes of imposing financial responsibility, "owner" is statutorily defined as the "person who holds the **legal title** of a motor vehicle" (emphasis added)). Its acquisition and ownership are highly regulated by statutes and rules, which should not be circumvented by something as elusive as one's after-the-fact characterization of his or her subjective belief. The form application for title is mandated by law and given under penalty of perjury. One must swear that he or she is the owner of a car to obtain title. § 319.23, Fla. Stat. (2010).

Here, had Appellee desired to make a gift of this car and avoid future responsibility, all he needed to do was direct the salesman to make his wife the sole

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sales vendee); § 319.22(2)(a), Fla. Stat. (2010) (transferor not liable for incomplete transfer if certain formalities are honored). For purposes of imposing financial responsibility, "owner" is statutorily defined as the "person who holds the **legal title** of a motor vehicle." § 324.021 (9)(a), Fla. Stat. (2010) (emphasis added). Specific dollar limits are placed on the extent of this liability under some circumstances. § 324.021(9)(b)3., Fla. Stat. (2010). By statute, a court is expressly prohibited from recognizing any ownership interest in any vehicle unless the interest is documented in a certificate of title. § 319.22(1), Fla. Stat. (2010). While it is true that the common law has evolved in tandem with the development of the statutory scheme, there comes a point where the courts must recognize that the common law is superseded. *See Broward v. Broward,* 117 So. 691 (Fla. 1928) (comprehensive statute designed to regulate entire subject supersedes common law; statute may expressly or by implication supersede common law). I cannot envision a situation where the legislature has attempted to regulate a subject area in a more comprehensive way than the financial responsibility for and ownership and transfer of vehicles. Even if not superseded, the evolution of the common law must take into account the evolution of legislation on this topic. Thus, for example, when the legislature expressly prohibits courts from recognizing any interest not memorialized in a title, the common law must be harmonized with that mandate.

owner. Instead, inexplicably, he intentionally retained a legal interest in the car as co-owner. In doing so, he retained the **power** to use, transfer, and encumber the vehicle. He also retained survivorship interests in the vehicle. Appellee did not deny that he had read the documents. Even if he had, as Judge Griffin once said in writing for a majority of our Court: "In Florida, in the civil context, a party who signs a document without reading it is bound by its terms in the absence of coercion, duress, fraud in the inducement or some other independent ground justifying rescission." *Hale v. State,* 838 So. 2d 1185, 1187 (Fla. 5th DCA 2003).

In the simplest of contracts, when a party attempts to avoid the written word, we say "tough!" Here, in the context of the purchase of a $28,000, 3,000 pound dangerous instrument, where the law imposes significant personal responsibility and liability on an owner and mandates that the title application process be undertaken with the solemnity of an oath, the majority has sanctioned the after-the-fact re-characterization of the written word with nothing more than the nonchalant assertion that he didn't mean what the documents say. I would reverse.