

The Mangled Mustang

Liability for a Wheel of Misfortune

The Carole King and Gerry Goffin song, *Take Good Care of My Baby*, was first made famous by one Robert Thomas Velline - a.k.a. Bobby Vee - in 1961 when it shot to the top of the charts. The title can also convey the sentiments of a collector car owner, who entrusts the care of a beloved vehicle to either a storage or automotive repair company. But apart from any obligations relating to the vehicle the company may have to the car owner, does it have any obligations to third parties?

That was one of the questions involved in *Montoya v. Connolly's Towing, Inc.*, decided on May 1, 2008 by the Court of Appeals of Colorado.

According to the Court, Brian Cecil owned a 1967 Mustang. The Mustang was severely damaged in an accident. Cecil towed the car to Connolly's storage facility, and his friend John Connolly gave him permission to store the vehicle on Connolly's lot. Incorrectly believing that he did not have insurance to cover the Mustang's damage, Cecil returned to Connolly's that Sunday and replaced the tires with older tires. An insurance adjuster determined the car was totaled; Klode Salvage, Inc. was hired to tow the Mustang to Klode's lot for crushing.

Klode employee, Chris Montoya, who regularly conducted business with Connolly's, picked up the Mustang. Connolly's connected the Mustang to Montoya's tow truck using its forklift. As Montoya towed the Mustang, the left rear wheel fell off, knocking off the brake drum. When Montoya pulled over to the shoulder and got out of his truck to pick up the pieces, a passing vehicle hit the brake drum, which hurtled into Montoya's right leg, shattering it.

Subsequent investigation discovered that some of the Mustang's lug nuts were missing.

Montoya sued Cecil and Connolly's for negligence. Cecil settled with Montoya. Connolly's moved for summary judgment, arguing, among other things, that it did not owe a duty to Montoya. The trial court granted Connolly's motion for summary judgment and dismissed the case. Montoya appealed.

The Court of Appeals ruled in favor of Montoya, reversing the judgment of the trial court, and remanding (sending the case back to the trial court) for further proceedings consistent with the appellate court's ruling.

The Court of Appeals noted that Connolly's "Rules for Persons in the Yard" explained that customers who wished to enter the storage yard were required to be accompanied by

an employee and were only allowed ten minutes to view their vehicle and retrieve their personal belongings. The lot was closed to the public on Sundays, and the rules were strictly enforced. The rules existed, at least in part, for safety reasons. However, Connolly's did not apply these rules to friends and family members, who could, with Connolly's permission, enter the storage lot unsupervised, for more than ten minutes, and on Sundays.

Before Montoya towed the Mustang, no one from Connolly's told him that Connolly's customer safety rules had not been applied to the care of the Mustang.

The Court noted that "[t]he relevant inquiry here is not whether Connolly's owed a duty to the owner of the Mustang . . ., but rather whether Connolly's owed a duty to Montoya."

"To determine whether the law imposes a duty on a defendant, relevant factors include (1) the risk involved; (2) the foreseeability of harm to others and likelihood of injury as weighed against the social utility of the actor's conduct; (3) the magnitude of the burden of guarding against the injury or harm; and (4) the consequences of placing the burden on the actor. . . . A court may consider any other relevant factors based on the competing individual and societal interests implicated by the facts of the case."

"Connolly's permitted the Mustang to be stored on its lot and represented to the public that its customer safety rules applied to all vehicles stored therein. Connolly's thus created the circumstances that placed Montoya at risk of harm by not uniformly applying its safety rules and thus permitting Cecil to alter the condition of the Mustang, or, alternatively, by not disclosing to Montoya that its customer safety rules did not apply to Cecil's Mustang."

"[W]e conclude Connolly's had a duty to apply its customer safety rules uniformly or, alternatively, to disclose to third parties that its customer safety rules were not applied to vehicles owned by certain individuals. Because Connolly's owed a legal duty of care to Montoya, we conclude the trial court erred in granting summary judgment in favor of Connolly's."

"[T]o the extent Connolly's asserts that Montoya was comparatively negligent for failing to carefully inspect the Mustang prior to transporting it, this argument does not negate Connolly's duty of care to Montoya. However, at trial, Connolly's may of course argue that Montoya was comparatively negligent." (Such an argument, if successful, could, for example, affect the amount of damages that might be awarded.)



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