Race Ipsa Loquitur

(The Race That Wasn't)

by Lawrence Savell

An automobile, be it old or new, can generate a wide variety of emotions and feelings in its owner. Sports cars, for example, can make one feel that he or she is a race car driver, able to speed down the road and outrun all challengers (be they real or imagined).

Unfortunately, sometimes drivers act on these sentiments, in contexts such as public roads where they are inappropriate and dangerous. Unfortunately, sometimes these actions lead to injuries, and thereafter to lawsuits.

What if Driver A collides with an unconnected Driver B, and Driver B sues both Driver A and Driver C, who was not part of the collision but whom Driver B alleges was involved in a race with Driver A during which the accident occurred? Can Driver C be held responsible, at least in part?

A recent case addressing this interesting question in the context of an old vehicle was *O'Brien vs. Mansfield*, decided on January 28, 1997 by the Court of Appeals of Missouri (a subsequent motion for rehearing and/or transfer to the Missouri Supreme Court was denied on March 4, 1997).

According to the Court, at approximately 11:15pm on July 6, 1990, Charles O'Brien and his daughter Stephanie were traveling southbound on a two-lane stretch of Route B north of Columbia, Missouri. A customized 1964 Chevrolet pick-up truck driven northbound by Ronald Mansfield swerved over the center line and crashed into the left front of their car. The O'Briens were seriously injured.

At the time, Mansfield's girlfriend Denise Kaiser was driving northbound in front of him in another vehicle. They had just left Columbia, where Mansfield had had a scratch repaired on the Chevrolet. He had earlier restored the truck by adding "wheely bars" and a special paint scheme that included flames running along its sides. He displayed the truck in auto shows.

The O'Briens sued both Mansfield and Kaiser, asserting that they had been racing and that they were thus jointly liable for the O'Briens' injuries.

Kaiser made a motion for summary judgment, asking the Circuit Court to dismiss the claims against her without a trial. The Court granted her motion, ruling there was insufficient evidence that Kaiser and Mansfield had been racing. The O'Briens appealed. The Court of Appeals affirmed the ruling for Kaiser. It noted that in Missouri and elsewhere persons participating in a race on a public highway may be held jointly responsible for injuries caused during the pendency of the race by one of the race participants. Missouri will impose such liability even in the absence of an express (specific) agreement to race and even where the activity of the defendants would fall outside the technical definition of "racing" so long as the plaintiff shows that the defendants were "jointly engaged in committing a tort [wrong]...[by using the highway] in a manner not consistent with its use by others."

The Court agreed with the O'Briens that they had presented evidence from which a jury could find that Kaiser and Mansfield had been traveling toward a common destination and that both had been speeding. However, it observed that numerous cases have held that the mere combination of excessive speed and a common destination is not itself sufficient to support an inference of racing. "[P]roof of speeding alone d[oes] not prove a race. The gist of racing is competition and the facts must support an inference of some agreement to race...[T]here must be some direct evidence from which the jury may find a challenge coupled with a response in speed and relative position indicating acceptance of the challenge."

"In other words, people frequently drive to common destinations and exceed the speed limit; that does not necessarily mean that they should be jointly liable for each other's negligence. Before joint liability can be imposed, a plaintiff must present evidence of concerted action, such as an agreement to race, in addition to proof of speed and a common destination. In the absence of an explicit or implicit agreement to engage in joint tortious conduct, the person not involved in the accident cannot be held liable for the other's misconduct."

The Court also rejected the plaintiffs' attempt to infer racing from alleged evidence that Mansfield and Kaiser had passed each other. "Even assuming that Mr. Mansfield passed Ms. Kaiser once the road became two-lane, the mere fact that he did so and that she later passed him does not, in the absence of other instances of passing and in the absence of other evidence of reckless driving, provide a basis for a jury to conclude that Ms. Kaiser was racing." As another court noted in rejecting a similar argument, "Go out on the highway, any time you want, you see cars speeding up and going 60 to pass other cars; they're not necessarily engaging in a race."

Finally, the Court additionally observed that "[i]t is too great a logical leap to conclude that two drivers are racing from the fact that they are briefly traveling side by side while passing at a high rate of speed."

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