Bailments

Allen v. Hyatt Regency-Nashville Hotel
668 S.W.2d 286 (Tenn. 1984)

HARBISON, Justice.
In this case the Court is asked to consider the nature and extent of the liability of the operator of a commercial parking garage for theft of a vehicle during the absence of the owner. Both courts below, on the basis of prior decisions from this state, held that a bailment was created when the owner parked and locked his vehicle in a modern, indoor, multi-story garage operated by appellant in conjunction with a large hotel in downtown Nashville. We affirm.

There is almost no dispute as to the relevant facts. Appellant is the owner and operator of a modern high-rise hotel in Nashville fronting on the south side of Union Street.

The single entrance was controlled by a ticket machine. The single exit was controlled by an attendant in a booth just opposite to the entrance and in full view thereof. Appellee's husband entered the garage at the street level and took a ticket which was automatically dispensed by the machine. The machine activated a barrier gate which rose and permitted Mr. Allen to enter the garage. He drove to the fourth floor level, parked the vehicle, locked it, retained the ignition key, descended by elevator to the street level and left the garage. When he returned several hours later, the car was gone, and it has never been recovered.

Customers such as Mr. Allen, upon entering the garage, received a ticket from the dispensing machine. On one side of this ticket are instructions to overnight guests to present the ticket to the front desk of the hotel. The other side contains instructions to the parker to keep the ticket and that the ticket must be presented to the cashier upon leaving the parking area. The ticket states that charges are made for the use of parking space only and that appellant assumes no responsibility for loss through fire, theft, collision or otherwise to the car or its contents. The ticket states that cars are parked at the risk of the owner, and parkers are instructed to lock their vehicles. The record indicates that these tickets are given solely for the purpose of measuring the time during

which a vehicle is parked in order that the attendant may collect the proper charge, and that they are not given for the purpose of identifying particular vehicles.

The question of the legal relationship between the operator of a vehicle which is being parked and the operator of parking establishments has been the subject of frequent litigation in this state and elsewhere. The authorities are in conflict, and the results of the cases are varied.

The subject has been discussed in numerous previous decisions in this state. One of the leading cases is *Dispeker v. New Southern Hotel Co.*, 373 S.W.2d 904 (Tenn. 1963). In that case the guest at a hotel delivered his vehicle to a bellboy who took possession of it and parked it in a lot adjoining the hotel building. The owner kept the keys, but the car apparently was capable of being started without the ignition key. The owner apparently had told the attendant how to so operate it. Later the employee took the vehicle for his own purposes and damaged it. Under these circumstances the Court held that a bailment for hire had been created and that upon proof of misdelivery of the vehicle the bailee was liable to the customer.

On the contrary, in the case of *Rhodes v. Pioneer Parking Lot, Inc.*, 501 S.W.2d 569 (Tenn. 1973), a bailment was found not to exist when the owner left his vehicle in an open parking lot which was wholly unattended and where he simply inserted coins into a meter, received a ticket, then parked the vehicle himself and locked it.

Denying recovery, the Court said:

> In the case at bar, however, we find no evidence to justify a finding that the plaintiff delivered his car into the custody of the defendant, nor do we find any act or conduct upon the defendant's part which would justify a reasonable person believing that an obligation of bailment had been assumed by the defendant. 501 S.W.2d at 571.

In the instant case, appellee's vehicle was not driven into an unattended or open parking area. Rather it was driven into an enclosed, indoor, attended commercial garage which not only had an attendant controlling the exit but regular security personnel to patrol the premises for safety.

Under these facts we are of the opinion that the courts below correctly concluded that a bailment for hire had been created, and that upon proof of nondelivery appellee was entitled to the statutory presumption of negligence provided in T.C.A. § 24-5-111.

DROWOTA, Justice, dissenting.

In this case we are asked to consider the nature and extent of liability of the operator of a commercial "park and lock" parking garage. In making this determination, we must look to the legal relationship between the operator of the vehicle and the operator of the parking facility. The majority opinion holds that a bailment contract has been created, and upon proof of non-delivery Plaintiff is entitled to the statutory presumption of negligence provided in T.C.A. § 24-5-111. I disagree, for I find no bailment existed and therefore the Plaintiff does not receive the benefit of the presumption. Consequently, the Plaintiff had the duty to prove affirmatively the negligence of the operator of the parking facility and this Plaintiff failed to do.

The record shows that upon entering this parking garage a ticket, showing time of entry, is automatically dispensed by a machine. The ticket states that charges are made for the use of a parking space only and that the garage assumes no responsibility for loss to the car or its contents. The ticket further states that cars are parked at the risk of the owner, and parkers are instructed to lock their vehicles. The majority opinion points out that it is not insisted that this language on the ticket is sufficient to exonerate the garage, since the customer is not shown to have read it or to have had it called to his attention. *Savoy Hotel Corp. v. Sparks*, 421 S.W.2d 98 (Tenn. Ct. App. 1967). The ticket in no way identifies the vehicle, it is given solely for the purpose of measuring the length of time during which the vehicle is parked in order that a proper charge may be made.

In this case Mr. Allen, without any direction or supervision, parked his car, removed his keys, and locked the car and left the parking garage having retained his ignition key. The presentation of a ticket upon exit is for the sole purpose of allowing the cashier to collect the proper charge. The cashier is not required to be on duty at all times. When no cashier is present, the exit gate is opened and no payment is required.[1] As the

[1] Between one or two in the morning and six or seven a.m., the garage is entirely open without a cashier to collect parking fees. During the day if the cashier leaves his or her post on a break, the exit gate is opened and the vehicle owner may exit without payment.

majority opinion states, the ticket is "not given for the purpose of identifying particular vehicles." The ticket functioned solely as a source of fee computation, not of vehicle identification.

The majority opinion states: "[W]e do not find the facts of the present case to be at variance with the legal requirements of the concept of a bailment for hire." I must disagree, for I feel the facts of the present case are clearly at variance with what I consider to be the legal requirements of the traditional concept of a bailment for hire.

Bailment has been defined by this Court in the following manner:

> The creation of a bailment in the absence of an express contract requires that possession and control over the subject matter pass from the bailor to the bailee. In order to constitute a sufficient delivery of the subject matter there must be a full transfer, either actual or constructive, of the property to the bailee so as to exclude it from the possession of the owner and all other persons and give to the bailee, for the time being, the sole custody and control thereof.
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> In parking lot and parking garage situations, a bailment is created where the operator of the lot or garage has knowingly and voluntarily assumed control, possession, or custody of the motor vehicle; if he has not done so, there may be a mere license to park or a lease of parking space.

Rhodes v. Pioneer Parking Lot, Inc., 501 S.W.2d 569, 570 (Tenn. 1973).

From its earliest origins, the most distinguishing factor identifying a bailment has been delivery. Our earliest decisions also recognize acceptance as a necessary factor, requiring that possession and control of the property pass from bailor to bailee, to the exclusion of control by others. The test thus becomes whether the operator of the vehicle has made such a delivery to the operator of the parking facility as to amount to a relinquishment of his exclusive possession, control, and dominion over the vehicle so that the latter can exclude it from the possession of all others. If so, a bailment has been created.

The full transfer of possession and control, necessary to constitute delivery, should not be found to exist simply by the presentation of a ticket upon exit. In the case at bar, I find no such delivery and relinquishment of exclusive possession and control as to

create a bailment. Plaintiff parked his car, locked it and retained the key. Certainly Defendant cannot be said to have sole custody of Plaintiff's vehicle, for Defendant could not move it, did not know to whom it belonged, and did not know when it would be reclaimed or by whom. Anyone who manually obtained a ticket from the dispenser could drive out with any vehicle he was capable of operating. Also, a cashier was not always on duty. When on duty, so long as the parking fee was paid – by what means could the Defendant reasonably exercise control? The necessary delivery and relinquishment of control by the Plaintiff, the very basis upon which the bailment theory was developed, is missing.

Questions

1. Which is more persuasive, the majority or dissenting opinion?
2. Assume that bank safe deposit boxes are considered bailments in Tennessee. How could you use that fact to argue that the situation in Allen v Hyatt was also a bailment? How could argue that, even if a safe deposit box creates a bailment, the situation in Allen v Hyatt does not?
3. Same facts as Allen v Hyatt, except Allen had left 5 gold bars in the trunk. When he sued the hotel, he claimed not only the value of the car but also the value of the gold bars. Should Allen be able to recover the value of the gold bars? Why or why not? Would it matter if Allen had told the hotel concierge, before parking the car, that it had 5 gold bars in the trunk?
4. Suppose Allen's car was insured against theft. Does that matter? Note that it is much cheaper for people to insure their cars against theft than to litigate bailment disputes. When one buys insurance, about eighty percent of premia go to pay claims and only about twenty percent are used for administrative expenses, advertising, and litigation. When parties litigate, about fifty percent of the money goes to lawyers, and only about half goes to pay the plaintiff. Does that change your view of whether situations such as Allen v Hyatt should be construed to create bailments? Why or why not?
5. Assume the same facts as in Allen v Hyatt, except the facility was completely automated. There was no attendant at the exit booth. Instead, persons who had paid for parking received an electronic ticket from the hotel lobby, and, when they inserted that ticket into a machine near the exit gate, the gate automatically lifted. No hotel security patrolled the garage, and hotel

employees entered the garage only to clean it or to respond to problems, which was rare.

6. Suppose Lady Fennell accidently left her mink coat in the lobby of the Wilshire hotel. A hotel employee found it and brought it to the hotel lost and found room. Later that day, am unknown woman went to the lost and found and asked if they had found a black coat. The attendant said "yes," and handed the unknown woman Lady Fennell's mink coat. The next day, Lady Fennell came to the hotel and asked if they had found her mink coat. Upon learning that they had given her coat to an unknown woman, Lady Fennell sued the hotel for the value of her coat. Who should win and why?
7. Same facts as question 6, except Lady Fennell had left a large diamond ring in the pocket of her coat, so she sued not only for the value of her coat but also the value of her diamond ring.
8. Why isn't the hotel insulated from liability by the ticket, which states the hotel "assumes no responsibility for loss through fire, theft, collision or otherwise to the car or its contents [and] that cars are parked at the risk of the owner"? Can you argue that the ticket should protect the hotel from liability?
9. Suppose that, upon entering the garage, but before receiving a ticket, an attendant at the gate booth handed Allen a contract that included ten paragraphs, one of which stated, "the hotel assumes no responsibility for loss through fire, theft, collision or otherwise to the car or its contents. Cars are parked at the risk of the owner." Allen signed the contract without reading it. Should the case have come out differently? Why or why not?
10. Same facts as question 9, except that one of the other ten paragraphs of the contract states, "The car owner promises to pay the hotel $10,000 one month after this contract is signed." Allen's car is not stolen, and he successfully drives it out of the parking lot after his hotel stay. One month later, the hotel sends him a request to pay $10,000 pursuant to the contract. Is Allen legally obligated to pay the $10,000? Why or why not?
11. Same facts as Allen v Hyatt, except there is a large sign at the entrance booth to the parking lot that states, "The hotel assumes no responsibility for loss through fire, theft, collision or otherwise to the car or its contents. Cars are parked at the risk of the owner." If Allen's car was stolen, would the hotel be liable? Why or why not?

12. Suppose Allen parked his car at a restaurant parking lot, which is a flat vacant lot next to the restaurant. The attendant asks for $10 and directs him where to park. Allen asks how late the lot is open, and the attendant says, "I'm here until 10PM. You can leave your car here until 6AM, if you want." Allen returns to pick up his car at 9:30 PM. Neither the attendant nor his car are in the lot. Allen sues the lot owner for the value of his car. Is the lot owner liable? Why or why not?
13. Suppose Lady Fennell lost her mink coat in Griffith Park. Prof. Rose finds it and wears it to Spago Restaurant in Beverly Hills, where she gives it to the coat room clerk. When she is finished with her meal, Prof. Rose goes to the coat room to collect the coat. By coincidence, Lady Fennell is there at the same time, retrieving her sable fur coat. As the coatroom clerk brings the mink coat to the counter, Lady Fennell recognizes it and tells the clerk, "That's my coat. I lost it yesterday in Griffith Park. Please give it to me." To whom should the clerk give the coat?
14. Same facts as Allen v Hyatt, except Hyatt is able to track down the car thief. The thief has already sold the car. Hyatt sues the thief for the value of the car. Should Hyatt prevail? If Hyatt prevails, can Allen also sue the thief for the value of the car?