

IN THE SUPREME COURT OF THE STATE OF NEVADA

GINA JABLON,  
Appellant,  
vs.  
KENNETH JONES,  
Respondent.

No. 41058

FILED

JUN 18 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ruben*  
CHIEF DEPUTY CLERK

This is an appeal from an order granting summary judgment in a negligence action. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

On May 19, 2000, appellant Gina Jablon was injured in an automobile accident with Mark Freemal. At the time, Freemal was driving a 1978 GMC Jimmy. On July 16, 2001, Jablon filed a negligence claim against Freemal and respondent Keith Jones, whom she named as the owner of the Jimmy. Freemal disappeared after the accident, and neither Jablon nor Freemal's insurance company has been able to locate him.

Jones moved for summary judgment, arguing that he was not liable because he sold the Jimmy to Freemal three days before the accident. Jones produced a bill of sale, which indicated that he sold the Jimmy to Freemal for \$3,000 on May 16, 2000. Additionally, he stated in an affidavit that Freemal paid him \$2,500 on May 16, 2000, and took immediate possession and control of the Jimmy. He also presented an affidavit from his insurance agent, which stated that Jones cancelled insurance on the Jimmy on May 16, 2000, because he had sold the vehicle.

The district court twice continued Jones' summary judgment motion to give Jablon additional time to conduct discovery. Finally, the district court granted summary judgment, and Jablon appealed.

This court reviews a district court's order granting summary judgment de novo.<sup>1</sup> Summary judgment is appropriate when, after a review of the record viewed in the light most favorable to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>2</sup> In determining whether summary judgment is proper, the nonmoving party is entitled to have the evidence and all reasonable inferences accepted as true.<sup>3</sup> The burden of establishing the non-existence of any genuine issue of fact is on the movant.<sup>4</sup> The moving party may discharge its burden by demonstrating that there is an absence of evidence supporting one or more of the prima facie elements of the non-moving party's case.<sup>5</sup> If the movant satisfies his initial burden of production, the non-moving party must demonstrate the existence of a genuine issue of material fact.<sup>6</sup>

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<sup>1</sup>Walker v. American Bankers Ins., 108 Nev. 533, 836 P.2d 59 (1992).

<sup>2</sup>See Medallion Dev. v. Converse Consultants, 113 Nev. 27, 31, 930 P.2d 115, 118 (1997).

<sup>3</sup>Id.

<sup>4</sup>NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 946 P.2d 163 (1997)


<sup>5</sup>Id.


<sup>6</sup>Id.

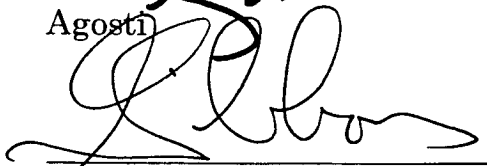
This case is analogous to Bly v. Mid-Century Insurance.<sup>7</sup> During the conditional sale of a vehicle, the person who receives physical possession and control of the vehicle, but does not receive the certificate of title because the seller retained the title to secure final payment, is the "owner" of the vehicle.

Jones presented undisputed evidence that he and Freemal entered into an agreement for the conditional sale of the Jimmy. Freemal took immediate possession of the vehicle, and Jones simply retained the title to secure the remaining payment. Even though the district court granted Jablon additional time to conduct discovery, she was unable to obtain any evidence that disputed Jones' sale of the Jimmy to Freemal. Consequently, as a matter of law, Freemal's partial payment, and his immediate right of possession and control made him the owner of the Jimmy at the time of the accident. Accordingly, we affirm the judgment of the district court.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

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<sup>7</sup>101 Nev. 216, 698 P.2d 877 (1985).

cc: Eighth Judicial District Court Department 11  
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Clark County Clerk