

THE CASE OF RUTH V. BOB:

Unique and Creative Ways to Avoid the Injustice Created by Alabama's Guest Statute

BY CHRISTOPHER M. WOOTEN AND HEATH BROOKS

One day a pleasant elderly woman named Ruth comes into your office and tells you her woe-filled story. She was searching internet sites in hopes of starting a new relationship after her husband passed away. She came across the profile of a nice looking "seventy-four year old" gentleman named Bob on one of the commercial match-making internet sites. Bob peaked her interest. He appeared to be compatible with Ruth. His spouse had recently passed away and he seemed interested in many of the same hobbies and activities. Ruth decided to take a chance. After making the initial call, the two met at a restaurant for coffee. Bob looked a little older in person than in his picture on the website, but Ruth dismissed this as bad lighting. The two had a nice conversation that swirled from health issues to grandchildren and finally to their previous relationships.

When asked about the passing of his wife, Bob told Ruth that his wife died in a tragic accident while walking to the mailbox. He explained that his wife tripped and fell on the concrete driveway striking her head and the doctors were unable to stop the internal bleeding because she was taking blood thinning medication for a heart condition. Bob confessed that this date was his first hesitant step into the dating scene since losing his wife. After a few hours of deep conversation, the new couple decided to meet again that weekend.

Bob picked her up on Saturday night in a red Cadillac Seville and off they went to for a night of a ballroom dancing in a nearby town. Unfortunately, Ruth's life soon changed forever when Bob attempted to drive across a four lane highway. He slowed the Cadillac at the intersection, looked to his left, then – in a moment of youthful fervor -- gunned the gas propelling

his car into the highway. The shiny red Cadillac was hit broadside by a Ford F-150 pickup that Bob did not see. Ruth's right leg was shattered and she lost consciousness before being removed from the car by paramedics using the jaws of life. She desperately fought for her life as she was transported to the hospital.

Only later, as she was recuperating in ICU, did Ruth learn that sweet old Bob was not a truthful man. Bob lied to her about his age. He was 83 years old – not 73 years old as he claimed -- and he modified his picture on the internet dating site to make himself look younger. But that was just the beginning. In fact, Bob had also lied about the death of his wife. She did not trip and fall. Instead, Bob accidentally drove into her while backing his red Cadillac out of his driveway. The impact caused his wife's fall and ultimate death. Furthermore, Bob failed to tell Ruth about all the medications he

was prescribed and the warnings his doctors gave him about driving under their influence. Wiping away tears, Ruth tells you that she would have never gotten in that Cadillac if Bob had told her the truth.

As a person, you feel horrible for Ruth and how she has been hurt and misled, but as an attorney, you're not sure that you can help her. You lean back in your chair, steeple your fingers, and tell her about the dreaded Alabama guest statute. You tell her that Alabama law provides:

The owner, operator or person responsible for the operation of a motor vehicle shall not be liable for the loss or damage arising from injuries to or death of a guest while being transported without payment thereof in or upon said motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the willful or wanton misconduct of such operator, owner or person responsible for the operation of said motor vehicle.¹

You tell her that this so called "guest statute" is one of only a handful of this type still in existence in the United States. Then you shake your head and say the statute prohibits a "guest" from bringing an action against a driver unless that driver is found to have willfully or wantonly operated a motor vehicle to the detriment of the "guest."

For a moment, you see a brief glimmer of hope, and you ask if she gave Bob money for gas. She replies no, of course not, they were on a date. Then you frown as you steel yourself to tell this gentle woman that, because of the guest statute, there is nothing that can be done to help her under the law of Alabama. You start to tell her how sorry you are for everything she has gone through, and how much you appreciate her coming to see you; but before the words are out of your mouth you

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pause to think about the exceptions to the guest statute. Fortunately for Ruth, you realize that in her case, the guest statute might not be the insurmountable obstacle that it often appears.

The following discussion provides a capsule summary of the traditional arguments an attorney can utilize to overcome the limitations of the guest statute as well as a unique approach relying on misrepresentations of a defendant driver to avoid application of the guest statute. Lastly, a discussion of the policy implications and possible solutions to the unfairness created by our guest statute are explored.

A. Passenger, Not Guest

Of course, the easiest way to overcome Alabama's guest statute, and the way that is sadly not applicable in Ruth's case, is to show that the plaintiff was riding with the defendant driver as a passenger, and not as a social guest. The guest statute only applies to situations where the injured plaintiff was riding as "a guest while being transported without payment."² "Payment" does not necessarily mean cash for transportation as one would pay for a taxi ride. Our Supreme Court has held that any substantial "material and tangible" benefit or compensation that the plaintiff confers upon the defendant driver in exchange for transportation will render the plaintiff a paying passenger instead of a guest.³ Alabama cases have found that the plaintiff could be a "passenger" under such diverse circumstances as when the plaintiff was going to provide nursing services for the defendant's wife,⁴ when the plaintiff regularly rode to work with the defendant and contributed for gas,⁵ when the plaintiff was the defendant's employee riding with the defendant's son while on the job⁶ and when the plaintiff was injured while riding with the defendant to pick up brake parts which the plaintiff was going to help install on the defendant's car.⁷ When seeking to overcome the guest statute on grounds that the plaintiff was a passenger, the chief thing

to remember is that the plaintiff must present evidence that the ride was not merely a social excursion, that some material and tangible benefit must flow to the defendant driver from the transportation, or the transportation must be of mutual benefit to both parties.⁸

B. Wantonness

Because the facts do not demonstrate that Ruth was a passenger, you should expect to receive a motion for summary judgment based on the guest statute soon after you file suit on Ruth's behalf. However, through carefully targeted discovery you can develop sufficient evidence to keep your claim alive. Although the guest statute typically bars any claim against the operator of a motor vehicle brought for injuries sustained by a guest, damages may be recovered by a guest if the injuries are caused by the willful or wanton misconduct of the operator.⁹ Therefore, if you can establish that there is substantial evidence that Bob acted wantonly you can survive summary judgment. In this case, Bob was operating his motor vehicle while under the influence of prescription medications that carry warnings against the operation of motor vehicles, and he accelerated without looking across a highway into the path of an on-coming vehicle. Under current Alabama case law, these facts create a valid wantonness claim allowing you to overcome the limitations of the guest statute.

In Alabama, "[w]antonness is statutorily defined as conduct which is carried on with a reckless or a conscious disregard of the rights or safety of others."¹⁰ The Alabama Supreme Court has also defined wantonness as, "the conscious doing of some act, or the omission of some duty, while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will probably result."¹¹ "Wantonness must be viewed in the light of the circumstances of the particular case under review," and, "that which constitutes

wanton misconduct depends on the facts in each particular case."¹² In deciding whether a question of wantonness should be submitted to the jury, an Alabama trial court "must accept the adduced evidence most favorable to the plaintiff as true, and indulge in such reasonable inferences as the jury [is] free to draw from the evidence."¹³ Additionally, "[w]antonness should be submitted to the jury unless there is a total lack of evidence from which the jury could reasonably infer wantonness."¹⁴

In *Klaver v. Elliott*, the Supreme Court of Alabama found that summary judgment -- under the scintilla standard -- based on the guest statute was improper when a genuine issue of material fact existed as to whether the defendant driver acted wantonly when her vehicle slid off the road in a sharp curve under wet conditions, resulting in injury to a guest riding in the vehicle.¹⁵ The most important factor of the court's wantonness analysis in *Klaver* was whether the defendant acted recklessly with knowledge of the possible consequences.¹⁶ In conducting this analysis, the Court looked at the totality of the circumstances on the day of the collision, including the weather, the road, the speed of the vehicle, and the defendant driver's familiarity with the area.¹⁷ Explaining that the defendant driver's knowledge of the risks did not have to be proven directly but could be inferred from the facts of the case, the court stated:

"A jury could reasonably infer, based upon the foregoing conditions, that [the defendant driver] knew of the possible danger and acted recklessly with regard to the consequences. Because there is a scintilla of evidence of wanton misconduct, considering all of the facts and circumstances, we reverse the summary judgment and remand the case for trial on the issue of wanton misconduct."¹⁸

Although *Klaver* was decided under the more lenient scintilla standard, the opinion provides guidance as to the factors the Court will consider

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when evaluating the totality of the circumstances in any case. With the particular facts of Ruth's case, and looking at the totality of the circumstances on the day of the wreck, such as Bob's age, health, medication side effects, and the fact he drove in front of an oncoming car without looking, a strong case for wantonness can be presented.

In *McDougle v. Shaddrix*, the Alabama Supreme Court found that the plaintiff, a guest in the defendant's vehicle, could submit a claim of wantonness to the jury, thus overcoming the guest statute, when the defendant came to a full stop at a stop sign, waited for two oncoming vehicles to pass, and then "slowly and deliberately pulled into the intersection" in front of an oncoming vehicle which had the right of way.¹⁹ Evidence presented in the case indicated that the defendant driver had an unobstructed view of oncoming traffic and that the driver pulled out in front of the oncoming vehicle when it was no more than 50 feet away.²⁰ The Court found that there was contradictory evidence as to whether the defendant failed to look in the direction of the oncoming traffic or whether the defendant pulled into the path of the oncoming vehicle regardless of the approaching danger; and that the jury could have concluded that the defendant's conduct was wanton based upon this evidence.²¹

In *Barker v. Towns*, the Alabama Court of Civil Appeals held that summary judgment based on the guest statute was improper because a question of wantonness existed when the plaintiff, who was a guest in the defendant's vehicle, provided evidence that the defendant may have stopped at a stop sign, looked in the direction of an oncoming vehicle which had the right of way, and then "pushed on the gas" to cross the intersection before the oncoming vehicle arrived at the intersection, which resulted in a collision.²²

The facts in Ruth's case are very similar to both *McDougle* and *Barker*. From what Ruth has told you, Bob simply failed to look for oncoming

vehicles, and there is evidence that he was attempting to cross the highway at a high rate of speed in the face of oncoming traffic. Given the similarity to the facts of *McDougle* and *Barker*, a summary judgment would be improper in this case because evidence exists which could cause a fair minded person exercising reasonable judgment to find that Bob wantonly pulled out from the stop sign without looking or wantonly pulled out at a high rate of speed in the face of the approaching danger posed by the oncoming vehicle.

The fact that Bob drove his vehicle into the path of another oncoming car is especially noteworthy given the fact that he was under the influence of prescription drugs. While conducting an analysis similar to that in *Klaber*, viewing Bob's behavior preceding the collision with the particular facts and circumstances of the case-- taking into consideration his age, the fact that he was under the influence of prescription drugs which carried warnings regarding the operation of motor vehicles, and considering that he had pulled out from the stop sign in the face of oncoming traffic-- a jury could reasonably infer, based upon the foregoing conditions, that Bob knew of the possible dangers posed by driving an automobile under those conditions and acted recklessly with regard to those dangers. Looking at either the potential influence of the prescription medications or the way Bob pulled out from the stop sign alone, there is substantial evidence of wanton misconduct. Since the trial court must accept the adduced evidence of wantonness most favorable to Ruth as true, and indulge in such reasonable inferences as the jury is free to draw from the evidence, and since wantonness should be submitted to the jury unless there is a total lack of evidence from which the jury could reasonably infer wantonness, you can show that summary judgment would not be proper in Ruth's case.

A wise practitioner should always keep in mind that the wantonness analysis in the context of the guest

statute is very fact specific. In two recent cases, the Alabama Supreme Court has issued opinions that appear to tighten the wantonness standard when dealing with the guest statute. A careful reading of these cases, however, reveals that these opinions only serve to emphasize the "particular facts of the case" and "knowledge of the risks" standards that were established in *Marshall v. Marshall*²³ and *Klaber v. Elliott*.²⁴ In *Phillips v. U.S.A.A.*, the Supreme Court of Alabama found that the defendant driver's actions did not amount to wantonness when the driver, a teenage girl, took her eyes off the road to wave at friends in another car just as a vehicle in the oncoming lane crossed the center line, causing the defendant to lose control of her vehicle.²⁵ In *Phillips*, the key to finding that the driver was not wanton was based on the fact that she was an inexperienced driver who did not appreciate the risks of her behavior, and the fact that another car crossed the center line to cause the accident.²⁶ In *Ex parte Essary*, the Alabama Supreme Court held that the defendant's conduct was not wanton when the defendant made a "rolling stop" at a stop sign and then pulled out in front of an oncoming vehicle.²⁷ The controlling facts preventing a finding of wantonness in *Essary* were that the collision occurred at night and the defendant driver testified that he looked both ways before entering the intersection but failed to see the oncoming vehicle due to the artificial lighting along the highway.²⁸

Misrepresentation

In the present scenario defense counsel will certainly argue that, as a matter of law, Ruth was a "guest" rather than a "passenger" in Bob's vehicle at the time of the collision. But what about Bob's dishonesty? How does his deceit come into play? Do Bob's misrepresentations of fact impact Ruth's status as a guest or passenger or affect the application of the guest statute?

Generally, when evaluating misrep-

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representations of the driver in relationship to the status of an occupant of a vehicle, Alabama courts have examined situations where the driver made misrepresentations to the occupant just prior to entering the vehicle in an attempt to induce the person to ride with the defendant.²⁹ However, a careful reading of these decisions reveals that misrepresentations by the driver may impact the occupant's status in fact scenarios.

Our appellate court opinions have often discussed the dichotomy between individuals traveling in a vehicle that are "guests" and those determined to be "passengers."³⁰ Because the guest statute is in derogation of the common law it must be "strictly construed"³¹ Thus, it must be clear from all the evidence, that Ruth was a "guest" in Bob's vehicle to trigger the application of the statute. In order for an occupant to be a "guest" and therefore within the purview of the guest statute, the "relationship between the host and guest must be consensual in nature."³² In fact, "the ability to consent is a major factor in the operation of the guest statute."³³ Thus, when Ruth entered Bob's vehicle on the day of the collision she must have been able to consent to the risks associated with traveling in his vehicle to be considered a "guest." A review of the applicable decisions confirms that a driver's misrepresentation may operate to negate consent and preclude the application of the guest statute.³⁴ Our Supreme Court has emphasized the "need for the potential guest to be able to accept, and appreciate the possible hazards that may arise from a given situation."³⁵ Thus, to be a "guest," Ruth must have been able to, at the very least, have knowledge of the "possible hazards" associated with getting into a vehicle with Bob. Such knowledge is required for her to make a consensual decision.

Bob's dishonestly and suppression of material facts directly affects Ruth's status as a guest or passenger because "misrepresentations [either] express or by implication which oper-

ate to induce one to become a rider in an automobile, can nullify the [guest] relationship."³⁶ Bob expressly misrepresented the circumstances of his wife's death. He told Ruth she fell. This express misrepresentation prevented Ruth from being aware of the possible hazards associated with riding with Bob, i.e. the fact that he was not a cautious driver. Bob was also guilty of implicit misrepresentation or suppression by failing to disclose information relating to his overall health that concerned his ability to safely operate a motor vehicle. Namely, Bob failed to disclose facts surrounding his use of prescribed medications that affected his physical condition. Knowledge of this information is critical for Ruth to be able to make an informed consent about riding in a vehicle with Bob and therefore be considered a 'guest'. In light of Bob's blatant express and implicit material misrepresentations in response to Ruth's direct and unambiguous questions, Ruth was unable to "accept and appreciate" the hazards associated with traveling with Bob. As such, under Alabama law, Ruth was not a "guest" in Bob's vehicle.

The current decisions concerning misrepresentation in the context of the guest statute do not address the issue of reliance of the occupant on the driver's misrepresentations. However, it can be assumed that the courts would require some measure of reliance—likely analogous to the reasonable reliance standard utilized in fraud cases.³⁷ Therefore, if Bob told Ruth that he was 49 years old and currently serving as a Secret Service defensive driving instructor this would likely raise a question of reasonable reliance on the part of Ruth.

As an additional consideration when evaluating misrepresentation, the practitioner should always keep in mind the policy implications inherent in every case. The stated purpose of Alabama's guest statute has been described as "to prevent generous drivers, who offer rides to guests, from being sued in what are often close

cases of negligence."³⁸ The purpose of the statute is not being advanced by allowing Bob to escape liability for his wrongful conduct when his misrepresented facts to Ruth that, if known, could have prevented her injuries. If the law were to allow Bob to claim Ruth was a "guest," the court would be rewarding a defendant for falsifying material information, which is behavior that could never be characterized as "generous."

Is Uninsured Motorist Coverage available to Ruth ?

Even when strictly construed, our guest statute has operated to deprive many injured persons from receiving fair compensation. Once Ruth is found to be a "guest" in Bob's car, under current Alabama law she can not recover unless she can prove that Bob acted wantonly. In many situations this may not be possible. For a brief time, our law recognized this inequity and allowed "guests" who could not demonstrate that the driver acted wantonly to make claims against uninsured motorist policies. However, in *Ex parte Carleton*, the court reversed course thereby depriving injured "guests" of any claim for compensation.³⁹ In fact, the practical effect of this decision was to leave "guests" in a position where they are unable to insure themselves from the negligent conduct of a driver. This is an inequity that can certainly be resolved by our legislature or addressed from a regulatory standpoint. Any solution promotes the public policy of allowing persons to have insurance to protect them in the event they are injured while riding as a "guest."

Conclusion

As it appears our Supreme Court is not willing to address the inequity of the guest statute and our legislature is not likely to act soon, attorneys around our state must look to new and creative ways to push the envelope in cases where the injured plaintiff is a "guest" in a vehicle. The story of Ruth and Bob

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provides some insight on how to work within the current caselaw to obtain good results. In particular, attorneys should look for misrepresentations that prevent an injured client from making an informed choice about riding in a vehicle. Although our burden may sometimes appear overwhelming, each of us has the responsibility to see that this antiquated law is not allowed to stand between injured persons and justice. 

- 1 Ala. Code § 32-1-2 (1975).
- 2 Ala. Code § 32-1-2 (1975).
- 3 See Sullivan v. Davis, 83 So. 2d 434 (Ala. 1955).
- 4 Id.
- 5 See Wagon v. Patterson, 70 So. 2d 244 (Ala. 1954).
- 6 See White v. Pratt, 721 So. 2d 210 (Ala. Civ.App. 1998).
- 7 See Kemp v. Jackson, 145 So. 2d 187 (Ala. 1962).
- 8 For a more thorough discussion on cases articulating the "payment" exception to Alabama's Guest Statute see Michael L. Roberts & Gregory S. Cusimano, Alabama Tort Law §§ 5.01-5.02 (4th Ed. 2004).
- 9 Ala. Code § 32-1-2 (1975).
- 10 Scott v. Villegas, 723 So. 2d 642, 643 (Ala. 1998) (citing Ala. Code 1975, § 6-11-20(b)(3)).
- 11 Scott, 723 So. 2d 642, at 643.
- 12 Marshall v. Marshall, 226 So. 2d 298, 300 (Ala. 1969).
- 13 Randolph v. Kessler, 152 So. 2d 138, 139 (Ala. 1963) (citing English v. Jacobs, 82 So. 2d 542).
- 14 McDougle v. Shaddrix, 534 So. 2d 228, 231 (Ala. 1988) (citing Burns v. Moore, 494 So.2d 4).
- 15 See Klaber v. Elliott, 533 So. 2d 576 (Ala. 1988).
- 16 Klaber v. Elliott, at 578.
- 17 Id.
- 18 Id. at 579..
- 19 McDougle v. Shaddrix, 534 So. 2d 228, 230 (Ala. 1988).
- 20 Id. at 232.
- 21 McDougle, at 232
- 22 See Barker v. Towns, 747 So. 2d 908 (Ala. Civ.App. 1999).

- 23 See Marshall v. Marshall, 226 So. 2d 298, 300 (Ala. 1969).
- 24 See Klaber v. Elliott, 533 So. 2d 576 (Ala. 1988).
- 25 See Phillips v. United States Automobile Association, ---So. 2d---, 2008 WL 110475 (Ala.).
- 26 See Id.
- 27 Ex parte Essary, ---So. 2d---, 2007 WL 3238879, 7 (Ala.).
- 28 See Id.
- 29 Crovo v. Aetna Ca. & Surety Co., 336 So. 2d 1083 (Ala. 1976); see also Knowles v. Poppell, 545 So. 2d 40 (Ala. 1989).
- 30 See Roe v. Lewis, 416 So. 2d 750, 753 (Ala. 1982) (noting that a guest in a vehicle can be converted to a passenger thus removing the defendant from guest statute protection).
- 31 Walker v. Garris, 368 So. 2d 277, 279

- (Ala. 1970).
- 32 Roe, 416 So. 2d at 753.
- 33 Walker, 368 So. 2d at 279 (finding that the ability of a minor to consent is a question for the jury).
- 34 See Roe, 416 So. 2d at 750.
- 35 Walker, 368 So. 2d at 279.
- 36 Crovo, 336 So. 2d at 1085 (following 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 475) (emphasis added).
- 37 See Foremost Ins. Co. v. Parham, 693 So. 2d 409 (Ala. 1997).
- 38 Roe, 416 So. 2d at 753 (finding that the purpose of the statute was not being served when the plaintiff requested the defendant to stop the car and he refused).
- 39 Ex parte Carlton, 867 So. 2d 332 at 334 (Ala. 2003) overruling Hogan v. State Farm Mutual Auto. Ins. Co., 730 So. 2d 1157 (Ala. 1998).



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