STATE OF IDAHO)
County of KOOTENAI)ss

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AT_____ O'Clock _____M
CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

VERNON JOHNSON and KELLY T. JOHNSON, husband and wife, , *Plaintiffs*, vs. **DANIEL T. HORTON and LENNEKE HORTON,** *Defendants*.	Case No. **CV 2013 962** **MEMORANDUM DECISION AND ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on Defendants' "Motion for Partial Summary Judgment Re Joint and Several Liability" filed December 11, 2013.

This is a negligence action arising out of a motor vehicle accident. On January 31, 2011, plaintiff Kelly T. Johnson (Kelly) was operating a motor vehicle heading east on Prairie Avenue in Hayden, Kootenai County, Idaho. Complaint for Damages Resulting from Personal Injuries Sustained as a Result of the Negligent Operation of a Motor Vehicle and Demand for Jury Trial (Complaint), p. 3, ¶ 8. At the same time, defendant Daniel T. Horton (Daniel) was operating a motor vehicle heading west on Prairie Avenue in Hayden, Kootenai County, Idaho. *Id.,* p. 3, ¶ 9. The vehicles collided and Kelly sustained injuries. Complaint, p. 3-4, ¶ 10-11. Plaintiff Vernon Johnson (Vernon), Kelly's husband, is named in the caption of the Complaint, but was apparently not in the vehicle at the time of the collision. The Complaint fails to state any injury to or claim for damage by Vernon.

Defendant Lenneke Horton (Lenneke) was the passenger in the motor vehicle operated by Daniel. Affidavit of Lenneke Horton in Support of Defendants' Motion for Partial Summary Judgment Re Joint and Several Liability (Lenneke Horton Affidavit), p. 1-2, ¶ 4. The vehicle driven by Daniel on January 31, 2011, was owned by Patty Muhalhauser, Lenneke's niece. *Id.*, p. 2, ¶ 5. Muhalhauser is not a party.

On January 30, 2013, plaintiffs Kelly and Vernon brought this suit to recover damages for injuries sustained as a result of the accident, alleging Daniel's operation of the motor vehicle was negligent at the time of the collision. Complaint, p. 4-5, ¶ 12. Kelly and Vernon claim at the time of the collision Daniel was operating the motor vehicle for the benefit of the marital community, so under the "family car doctrine", Daniel's negligent actions are imputed to Lenneke. Complaint, p. 2-3, ¶ 3-4.

On December 11, 2013, defendants Daniel and Lenneke filed their "Motion for Partial Summary Judgment Re Joint and Several Liability and Notice of Hearing" requesting plaintiffs' claims against Lenneke Horton be dismissed. That motion was accompanied by the affidavit of Lenneke Horton and a "Memorandum in Support of Defendants' Motion for Partial Summary Judgment Re Joint and Several Liability and Notice of Hearing." At no time have Kelly and/or Vernon filed a response to defendants' motion for partial summary judgment, nor have either of them filed an affidavit.

Hearing on the motion for partial summary judgment was held on February 5, 2014. On January 30, 2013, contemporaneous with the filing of Kelly and Vernon's Complaint, a "Motion for Limited Admission" was filed for out-of-state counsel, John A. Bardelli, under Idaho Bar Commission Rule 222. Thirteen months later, as of the date of hearing on February 5, 2014, plaintiffs had yet to complete the process for limited admission of Mr. Bardelli. Thus, Mr. Bardelli was not allowed to present oral argument, but plaintiffs' Idaho counsel argued against the motion for partial summary judgment.

II. STANDARD OF REVIEW.

"Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court . . . demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law." *Brewer v. Washington RSA No. 8 Ltd. Partnership,* 145 Idaho 735, 738 184 P.3d 860, 863 (2008) (quoting *Badell v. Beeks,* 115 Idaho 101, 102, 765 P.2d 126, 127 (1988) (citing I.R.C.P. 56(c)). The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Finance Corp.,* 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "However, if the nonmoving party fails to provide a sufficient showing to establish the essential elements of his or her case, judgment shall be granted to the moving party." *Porter v. Bassett*, 146 Idaho 399, 403, 195 P.3d 1212, 1216 (2008)(*citing Atwood v. Smith,* 143 Idaho 110, 113, 138 P.3d 310, 313 (2006)). In construing the facts, the court must draw all reasonable factual inferences in favor of the non-moving party. *Mackay v. Four Rivers Packing Co.,* 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). If reasonable people can reach different conclusions as to the facts, then the motion must be denied. *Ashby v. Hubbard*, 100 Idaho 67, 593 P.2d 402 (1979).

"Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party," to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer,* 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)); *Samuel v. Hepworth, Nungester & Lezamiz, Inc.,* 134 Idaho 84, 87, 996 P.2d 303, 306 (2000).

The non-moving party's case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue.

Zimmerman v. Volkswagon of America, Inc., 128 Idaho 851, 854, 920 P.2d 67, 69 (1996). The non-moving party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e); *see Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). If the non-moving party does not provide such a response, "summary judgment, if appropriate, shall be entered against the party."

The elements of an action based on negligence are: "(1) a duty, recognized by law, requiring a defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a casual connection between the defendant's conduct and the resulting injuries; and (4) actual loss or damage. *McDevitt v. Sportsman's Warehouse, Inc.,* 151 Idaho 280, 283, 255 P.3d 1166, 1169 (2011) (*citing McKim v. Horner,* 143 Idaho 568, 572, 149 P.3d 843, 847 (2006)). "Typically, issues of negligence ordinarily present questions of fact for a jury to resolve. Therefore, summary judgment should not be granted unless only one reasonable conclusion can be drawn from the facts." *Fuller v. Studer*, 122 Idaho 251, 253, 833 P.2d 109, 111 (1992) (internal citations omitted).

III. ANALYSIS.

Kelly and Vernon claim the vehicle driven by Daniel at the time of the accident was being operated for the benefit of the marital community of Daniel and Lenneke, and as such, under the family purpose doctrine, Lenneke is jointly and severally liable for any negligence by Daniel. Complaint, p. 2-3, ¶¶ 3-4.

That claim by Kelly and Vernon is misplaced. Idaho law is clear that the family purpose doctrine (or "family car doctrine" as characterized by plaintiffs) has been rejected in Idaho. *See Gordon v. Rose*, 54 Idaho 502, 33 P.2d 351, 355 (1934). The family purpose doctrine, which has been adopted by a number of jurisdictions, holds

the owner of a motor vehicle liable for its negligent operation by a family member when said automobile was purchased or maintained for the use of his family and at the time of an accident was being operated with the owner's express or implied consent. *Id*.

The Idaho Supreme Court addressed the family purpose doctrine in *Gordon*, 54 Idaho 502, 33 P.2d 351 (1934) holding: "Even though we had no legislation on this subject we feel that we would not be justified in adopting the family purpose doctrine as a rule of law in this state. . . . [I]t is a question more for the Legislature than for the court." *Id.* at 502, 33 P.2d at 355. The Idaho Legislature has failed to enact law consistent with the family purpose doctrine that would impute the negligence of one spouse driving a community owned vehicle to the other spouse. Rather, it enacted Idaho Code § 49-2417(1), which provides:

> Every owner of a motor vehicle is liable and responsible for the death of or injury to a person or property resulting from negligence in the operation of his motor vehicle, in the business of the owner or otherwise, by any person using or operating the vehicle with the permission, expressed or implied, of the owner, and the negligence of the person shall be imputed to the owner for all purposes of civil damages.

I.C. § 49-2417(1).

The issue of whether the negligence of a motor vehicle co-owner can be imputed to the non-negligent co-owner has not yet been addressed in Idaho. Accordingly, it is necessary to look to other jurisdictions for guidance. Section 17150 of the California Vehicle Code, which is similar to Idaho Code § 49-2417(1), provides:

> Every owner of a motor vehicle is liable and responsible for death or injury to person or property resulting from negligence or wrongful act or omission in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same with the permission, expressed or implied, of the owner.

Cal. Vehicle Code § 17150. In *Hooper v. Romero,* 262 Cal. Ct. App. 2d 574, 68 Cal. Rptr. 749, (Ct. App. 1968), the California Court of Appeals interpreted the 1959 version

of section 17150 of the California Vehicle Code. This section is very similar to Idaho Code § 49-2417(1). It provides:

> Every owner of a motor vehicle is liable and responsible for the death of or injury to a person or property resulting from negligence in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same with the permission, expressed or implied, of the owner, and the negligence of such person shall be imputed to the owner for all purposes of civil damages.

Cal. Vehicle Code § 17150 (1959). In *Hooper*, the plaintiff sustained injuries as a result of an automobile collision. At the time of the accident she was the passenger of a motor vehicle driven by her husband. She filed suit against the driver of the other motor vehicle and his employer to recover damages for injuries she sustained during the accident. It was unclear whether the motor vehicle driven by the plaintiff's husband was community property or her separate property. The defendants interpreted the plaintiff's complaint and pretrial statements to designate the vehicle driven by her husband as her separate property. Based on this, the defendants submitted a proposed jury instruction based on the doctrine of imputed contributory negligence. The plaintiff then moved to amend her complaint and pretrial statements to clarify language that could have been construed to allege that the vehicle was her separate property, rather than community property. Reversing the trial court's decision not to allow the plaintiff to amend her complaint and pretrial statements, the court of appeals stated:

> [W]here the Husband drives a Community property automobile, his negligence may not be imputed to his wife so as to impose liability upon her whether or not she consented to his operation of the automobile. The rule precluding liability against the wife for the negligent operation of a community motor vehicle by her husband which results in injuries to a third person is based on the rationale that the management and control of the community property is vested in the husband; therefore, the wife's consent would add nothing to his existing right to use the vehicle; thus, the husband's negligence is not imputable to the wife under sections 17150 and 17151 of the Vehicle Code.

Hooper, 262 Cal. Ct. App. 2d at 578, 68 Cal. Rptr. at 752 (internal citations omitted).

Similarly, in *Bowser v. Resh,* 907 A.2d 910 (Md. Ct. App. 2005), the Maryland Court of Appeals addressed the issue of imputed liability among spouses. In that case, the negligent driver of a motor vehicle collided with a skidloader. His wife was a passenger in the vehicle at the time of the accident. The driver of the skidloader brought a counterclaim alleging the husband's negligence was imputable to his wife because, among other things, the title of the vehicle was in her name alone. The court determined that that fact was not determinative as to ownership. There was testimony that the vehicle was co-owned by both the husband and wife. The court concluded that imputed liability was inapplicable in that instance because there is no policy reason as to why a co-owner should be liable for the acts of another co-owner. The negligent person was operating the car on his own authority and did not need the permission of the non-negligent co-owner.

Alternatively, in Michigan and Nevada, liability for negligence of a co-owner is imputed by the plain language of the statute. Michigan Vehicle Code § 257.401(1) provides in pertinent part:

> The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. It is presumed that the motor vehicle is being driven with the knowledge and consent of the owner if it is driven at the time of the injury by his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the family.

Mich. Comp. Laws § 257.401(1). Similarly, Nevada Revised Statute § 41.440 provides in pertinent part:

> Any liability imposed upon a wife, husband, son, daughter, father, mother, brother, sister or other immediate member of a family arising out of his or her driving and operating a motor vehicle upon a highway with the permission, express or implied, of such owner is hereby imposed upon the owner of the motor vehicle, and such owner shall be jointly and

> severally liable with his or her wife, husband, son, daughter, father, mother, brother, sister or other immediate member of a family for any damages proximately resulting from such negligence or willful misconduct, and such negligent or willful misconduct shall be imputed to the owner of the motor vehicle for all purposes of civil damages.

Nev. Rev. Stat. § 41.440.

The plain language of Idaho Code § 49-2417(1) is most similar to California Vehicle Code § 17150. Unlike the Michigan and Nevada statutes, it does not specifically impute the negligence from one spouse to another. In this case, Kelly and Vernon claim the vehicle driven by Daniel was being operated for the benefit of the marital community and that, as such, any negligent operation of the vehicle on the part of Daniel is imputed to Lenneke. As stated above, the family purpose doctrine was rejected in Idaho and not supported by Idaho Code § 49-2417(1). As stated in paragraph five (5) of the Lenneke Horton Affidavit, the motor vehicle driven by Daniel at the time of the accident was not the property of the Hortons, but rather was solely owned by Lenneke's niece, Patty Muhlhauser. Lenneke Horton Affidavit p. 2, ¶ 5. Therefore, Lennenke could not have given Daniel permission to operate the motor vehicle. Daniel was acting on his own authority at the time of the accident. Accordingly, the Court finds as a matter of law that any negligence on the part of Daniel cannot be imputed to Lenneke.

At oral argument, Idaho counsel for Kelly and Vernon cited *Hansen v. Blevins,* 84 Idaho 49, 367 P.2d 758 (1962), as to why the Court should deny Daniel and Lenneke's motion for partial summary judgment. The Idaho Supreme Court in *Hansen* made it clear that the marital community is responsible for the tortious acts of husband (or wife, as the case may be) who commits the tort. 84 Idaho 49, 57, 367 P.2d 758, 762. The argument by Idaho counsel for Kelly and Vernon entirely misses the point of

the motion for summary judgment brought by Daniel and Lenneke. Daniel and Lenneke argue:

> Despite the fact that all of Plaintiffs' allegations are directed toward Daniel T. Horton, Plaintiffs' Complaint requests that judgment be entered against Daniel T. Horton and Lenneke Horton "jointly and severally." However, there is simply no basis in law or fact for holding Lenneke Horton jointly and severally liable for any alleged negligence because she was not driving the vehicle involved in the collision, nor did she own the vehicle. Although the Plaintiffs could potentially seek to satisfy any judgment that is obtained from the community assets of Daniel T. Horton and Lenneke Horton as husband and wife, Plaintiffs' claim that Lenneke Horton is jointly and severally liable for the alleged negligence of Daniel T. Horton must be dismissed as a matter of law. Therefore, summary judgment should be granted in favor of the Defendants on the issue of Lenneke Horton's liability.

Memorandum in Support of Defendants' Motion for Partial Summary Judgment Re Joint and Several Liability, p. 4. This Court agrees. Kelly and Vernon misunderstand the doctrine of joint and several liability as it pertains to this case. Nothing adduced at the February 5, 2014, hearing changes this Court's legal conclusion that any negligence on the part of Daniel cannot be imputed to Lenneke.

IV. CONCLUSION AND ORDER.

For the reasons set forth above, the Court must grant defendants' "Motion for Partial Summary Judgment Re Joint and Several Liability" and must dismiss all of plaintiffs' claims against defendant Lenneke Horton.

IT IS HEREBY ORDERED defendants' Motion for Partial Summary Judgment Re Joint and Several Liability is GRANTED in its entirety;

IT IS FURTHER ORDERED all of plaintiffs' claims against defendant Lenneke Horton are DISMISSED WITH PREJUDICE and Lenneke Horton is DISMISSED as a party from this lawsuit.

Entered this 5TH day of February, 2014.

_____

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of February, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	**Lawyer**	**Fax #**
Starr Kelso	664-6261	Mark A. Ellingsen	667-8470

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Jeanne Clausen, Deputy Clerk