

United States District Court, S.D. Ohio, Eastern Division.
Connie S. MOORE, et al., Plaintiffs
v.
ARROW TRUCK LINES, INC., et al., Defendants.
No. C-2-82-1131.

Jun. 27, 1984.

William W. Lamkin, Columbus, Ohio, for plaintiff.
Daniel R. Freytag, Columbus, Ohio, for defendant.

*1 On Motion in Limine

This matter is currently before the Court on two separate motions. Plaintiff, Connie S. Moore, has filed a motion in limine seeking to prohibit the introduction at trial, by the defendants, of any evidence relating to the plaintiffs' alleged non-use of seat belts at the time of the accident at issue. She has also filed a motion to strike the two counterclaims filed against her by the defendants. The plaintiffs in this action are Connie S. Moore and her minor child Earl LaRue Sloan. The defendants are Arrow Truck Lines, Inc. and Clifford Moore.

The issues to be decided by this Court, with respect to both of Connie S. Moore's motions, are discrete. First, the Court must decide whether evidence of the nonuse of a seat belt is admissible to prove that the plaintiffs were contributorily negligent. Second, the Court must decide whether a counterclaim for contribution may be pleaded prior to final judgment and payment by a tortfeasor seeking contribution. The Court will address each of these issues separately.

I.

The admissibility of seat belt evidence as relevant to the issue of a plaintiff's contributory negligence

in an action such as this is an issue of great importance. Under Ohio law, to which this Court is required to look for guidance, the resolution of the issue is far from clear. The only two Ohio cases which have addressed the issue are *Roberts v. Bohn*, 26 Ohio App.2d 50, 269 N.E.2d 53 (1971), *rev'd on other grounds sub nom. Suchy v. Moore*, 29 Ohio St.2d 99, 279 N.E.2d 878 (1972) and *Bertsch v. Spears*, 20 Ohio App.2d 137, 252 N.E.2d 194 (1969). In *Roberts v. Bohn*, the Court of Appeals for Mahoning County stated:

Therefore, evidence of the failure of an occupant of an automobile to use an available seat belt is generally not admissible in an action for personal injuries arising out of an automobile accident.

26 Ohio App.2d at 56, 269 N.E.2d at 53. While this language is clear in its import, intervening occurrences make that import of questionable merit. In *Sours v. General Motors Corp.*, 717 F.2d 1511 (6th Cir.1983), the Sixth Circuit observed that:

Under the circumstances it is possible that the Ohio Supreme Court, if the question were properly presented, might adopt a rule different from that of *Roberts*.

Id. at 1520.

In light of the intervening occurrences in the form of the public's perception with respect to seat belt use, the change in Ohio law adopting the comparative negligence doctrine and the general public policy reasons underlying the recent awareness of the importance of seat belts, it is the Court's opinion that the Ohio Supreme Court, if confronted with the issue, would rule that seat belt evidence is admissible to prove the issue of contributory negligence. Implicit within this decision is this Court's belief that the reasons underlying the Court of Appeals' decision in *Roberts* are no longer viable.^{FN1} The most important of those reasons, and the reason upon which the Court of Appeals apparently relied

to the greatest extent, is that it believed that a controversy existed as to whether "... the wearing of seat belts contributes or interferes with the safety of persons using them..." *Id.* at 57. It is, today, common knowledge that "the wearing of seat belts contributes to the safety of motor vehicle occupants. It is this Court's strong belief that the issue of whether a reasonable person would wear a seat belt when occupying a motor vehicle should be submitted to the finder of fact. FN2

II.

*2 The second issue which this Court must resolve is whether the defendants' counterclaims involving claims for contribution from plaintiff Connie S. Moore, in the event they are found liable, is proper at this time. The plaintiff claims that the defendants' counterclaims are premature in that a final judgment has not yet been rendered against them. The defendants argue, however, that a claim for contribution is appropriate at this time and that, therefore, the issue of relative fault should be presented to the jury in this action. Upon consideration and review of the appropriate case law, the Court must rule in favor of the defendants.

In making its determination, the Court relies upon *Bunnel v. State*, 55 Ohio App.2d 39 (1977). In *Bunnel*, the Court of Appeals for Franklin County stated:

Inasmuch as there is a right to contribution among joint tortfeasors in accordance with R.C. 2307.31 and 2307.32, the proper procedure would have been for the trial court to allow the impleader, impanel a jury for the several issues relating to the third-parties and try the entire cause of action in one hearing before the court. A defending party has an absolute right to bring in a proper third-party, if he asserts his claim to third-party practice in a timely manner.

Id. at 41. This Court feels compelled to follow the reasoning of the court in *Bunnel* and, therefore, will

allow the defendants to maintain their claims for contribution.

III.

The final issue which this Court must decide is whether the defendants' second counterclaim is proper because it involves a claim that plaintiff Connie S. Moore was contributorily negligent in failing to require her son, plaintiff Earl LaRue Sloan, to wear a seat belt. For the same reasons given above with respect to the issue of the admissibility of seat belt evidence, the Court believes that the defendants' counterclaim is entirely appropriate. The Court reiterates its belief that the importance to be attached to the use or nonuse of seat belts is, at this time, ripe for submission to a finder of fact.

WHEREUPON, upon consideration and being duly advised, the Court determines the plaintiffs' motions in limine and to strike the defendants' counterclaims to be without merit and they are, therefore, DENIED.

IT IS SO ORDERED.

FN1. The Court wishes to emphasize the fact that the *Roberts* case was decided in 1971 and, therefore, is somewhat dated.

FN2. The problem with the introduction of seat belt evidence is that it may tend to complicate the issue of proximate cause. The nonuse of seat belts at the time of a motor vehicle accident is relevant only to the issue of whether the injuries sustained were the proximate result of the accident or the proximate result of the nonuse of seat belts. It is generally not at all relevant to whether the accident was the proximate result of the defendant's or plaintiff's negligence, respectively.

S.D.Ohio,1984.
Moore v. Arrow Truck Lines, Inc.
Not Reported in F.Supp., 1984 WL 3655

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