CATHERINE CANNIZZARO and ARTHUR LAZROVICH, jointly named as Administrators Ad Prosequendum of the Estate of Catherine Ann Cannizzaro, deceased, Plaintiffs-Appellants/Cross-Respondents,

v.

ALEJANDRO CORONEL, ANDREWS AUTO AGENTS, EDWARD BIERSTINE, JR., ALLSTATE NEW JERSEY INSURANCE COMPANY, Defendants-Respondents, and PEERLESS INSURANCE COMPANY, CREATIVE AGENCY GROUP-UCD, and EXCELSIOR INSURANCE COMPANY, Defendants-Respondents/Cross-Appellants.

THE ESTATE OF THERESA SOBIECH, Plaintiff-Appellant,

v.

ALEJANDRO CORONEL, EDWARD BIERSTINE, JR., ANDREWS AUTO AGENTS, and ALLSTATE NEW JERSEY INSURANCE COMPANY, Defendants-Respondents.

Nos. A-4948-09T3, A-4949-09T3, A-5640-09T3.[1]

Superior Court of New Jersey, Appellate Division.

Argued September 27, 2011.
Decided November 1, 2011.

Paul J. Jackson, argued the cause for appellants/ cross-respondents Catherine Cannizzaro and Arthur Lazrovich in A-4948-09 and A-4949-09 (Piro, Zinna, Cifelli, Paris & Genitempo, attorneys; Mr. Jackson, on the briefs).

Patrick D. Donnelly, (Jacobowitz and Gubits, LLP), attorney for appellant The Estate of Theresa Sobiech in A-5640-09.

William J. Rada, argued the cause for respondent Andrews Auto Agents in A-4948-09 and A-5640-09 (**Methfessel** & **Werbel**, attorneys; Mr. Rada, on the briefs).

John V. Mallon, argued the cause for respondent Alejandro Coronel in A-4948-09 and A-4949-09 (Chasan, Leyner & Lamparello, PC, attorneys; Mr. Mallon, on the brief).

John T. Coyne argued the cause for respondents/ cross-appellants Peerless Insurance, Creative Agency Group-UCD and Excelsior Insurance in A-4948-09 and A-4949-09 (McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys; Mr. Coyne, on the brief).

Before Judges Reisner, Simonelli and Hayden.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

PER CURIAM.

In this insurance coverage case, plaintiffs Catherine Cannizzaro and Arthur Lazrovich, administrators of the Estate of Catherine Ann Cannizzaro (Cannizzaro) and the Estate of Theresa Sobiech (Sobiech)[2] appeal from the April 11, 2008 Law Division order, which granted summary judgment to defendant Andrews Auto Agents (Andrews). Cannizzaro also appeals, and defendants Peerless Insurance Company and Excelsior Insurance Company (collectively, Peerless) cross-appeal, from that part of the June 5, 2009 order, which denied summary judgment to Peerless and limited coverage to $5000 pursuant to the insurance policy Peerless issued to Andrews (the Peerless policy). We affirm.

The following facts are pertinent to our review. Terese Hollenstein traded in a 1985 Toyota Corolla to Toyota of Hackensack (Toyota), and gave the original certificate of ownership (the title) to Toyota. Andrews purchased the car from Toyota, but did not

obtain the title at the time of purchase.

On June 6, 2005, Andrews sold the car to defendant Alejandro Coronel (Coronel). Coronel took possession of the car on June 6, paid for it in full on June 7, and obtained automobile insurance for it. Andrews issued him a twenty-day temporary registration until it obtained the title. Following the sale, Coronel drove the car, had mechanical work done, and paid for the work.

On June 7, 2005, Toyota signed and dated a "Reassignment of Certificate of Ownership by Licensed New Jersey Dealer," which named Andrews as the buyer and recorded the odometer reading. Toyota delivered the original title and reassignment to Andrews, and Andrews's manager signed the reassignment. The original title, however, had been voided by the previous owner's request for a duplicate. Therefore, a new title had to be obtained.

Andrews had difficulty in obtaining a new title, and thus, a reassignment was not issued to Coronel until August 19, 2005. However, on August 10, 2005, Coronel was involved in an accident that killed plaintiffs, Cannizzaro and Sobiech, and another person and seriously injured several others, including Coronel.

Coronel had a "basic" automobile insurance policy from Allstate Insurance Company that provided $10,000 in bodily injury liability coverage. The Peerless policy provided $500,000 in liability coverage for bodily injuries caused by an accident involving an automobile owned by Andrews. Section 3a(2)(d) of the Peerless policy defined "an insured," in part, as anyone using an automobile owned by Andrews with its permission, except customers. Section 3a(2)(d)(i), an exception to the customer exclusion, provided bodily injury coverage for customers who had no insurance, but only up to the statutory minimum of $15,000.[3] For customers who had insurance that was less than the statutory minimum, such as Coronel, section 3a(2)(d)(ii) provided bodily injury coverage for the amount by which the statutory minimum exceeded the limits of the customer's policy.

Plaintiffs filed separate complaints against Andrews, alleging, in part, that Andrews was vicariously liable for Coronel's negligence because Coronel was its agent, employee, or servant. Alternatively, plaintiffs alleged that Andrews was directly liable because it violated a duty of care imposed by certain statutes and regulations, and the violations were a proximate cause of their damages. Specifically, plaintiffs claim that Andrews violated N.J.S.A. 39:10-5 (prohibiting the sale or purchase of motor vehicles in this State without compliance with the Motor Vehicle Certificate of Ownership Law (MVCOL)[4]); N.J.S.A. 39:10-21 (requiring a dealer of new and used vehicles to have proper ownership paperwork for all vehicles in its possession); N.J.A.C. 13:21-15.6(b) (prohibiting a dealer from selling a motor vehicle without a valid title at the time of the transaction); N.J.A.C. 13:21-15.9(b) (prohibiting a dealer from issuing a temporary registration if the dealer does not possess a valid title or reassignment certificate for the vehicle); and N.J.A.C. 13:21-15.9(g) (prohibiting a dealer from extending the expiration date of a temporary registration, issuing another temporary registration to the same registrant, or altering a previously issued temporary registration). Cannizzaro also filed a declaratory judgment complaint against Peerless, seeking a determination of the nature and amount of coverage provided to Coronel under the Peerless policy.

Andrews filed a motion for summary judgment and to dismiss plaintiffs' complaints and all crossclaims. Judge Graziano granted the motion, holding that Coronel was not Andrews's agent, and Andrews's statutory and regulatory violations were not a proximate cause of the accident.

Peerless filed a motion for summary judgment and to dismiss Cannizzaro's complaint. Judge Rothstadt held that Andrews was the car's owner for insurance purposes, Coronel remained Andrews's customer and was not a permissive user, Coronel was covered under section 3a(2)(d)(ii) of the Peerless policy, the limits of the Peerless policy did not "step down" to Coronel's basic policy limit of $10,000, but Peerless only owed $5000 in coverage. This appeal followed.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Coyne v. N.J. Dep't of Transp., 182 N.J. 481, 491 (2005); Twp. of Cinnaminson v. Bertino, 405 N.J. Super. 521, 531 (App. Div.), certif. denied, 199 N.J. 516 (2009). Thus, we consider, as the trial judges did, "`whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)).

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007), certif. denied, 195 N.J. 419 (2008). We review issues of law de novo and accord no deference to the trial judge's

conclusions on issues of law. Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009). Applying these standards, we conclude that Judges Graziano and Rothstadt properly granted summary judgment.

I.

Cannizzaro and Sobiech contend that Andrews is directly liable because the above-cited statutes and regulations establish a duty of care, Andrews's violations constitute evidence of negligence, and the violations were a proximate cause of their damages. We disagree.

Whether a duty of care exists is a matter of law for the court to decide. Carvalho v. Toll Bros. & Developers, 143 N.J. 565, 572 (1996). A statutory violation in a negligence action will not automatically constitute proof of negligence unless the statute incorporates a common-law standard of care.[5] Eaton v. Eaton, 119 N.J. 628, 642-43 (1990); Blunt v. Klapproth, 309 N.J. Super. 493, 515 (App. Div.), certif. denied sub nom., Blunt v. Wirz, 156 N.J. 387 (1998). A statute establishes a standard of care if its purpose is

> "(a) to protect a class of persons which includes the one whose interest is invaded, and (b) to protect the particular interest which is invaded, and (c) to protect that interest against the kind of harm which has resulted, and (d) to protect that interest against the particular hazard from which the harm results."
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> [Piscitelli v. Classic Residence by Hyatt, 408 N.J. Super. 83, 105 (App. Div. 2009) (quoting Restatement (Second) of Torts § 286 (1965)).]

Where a statute establishes a standard of care applicable to the negligence action, a violation may be regarded as evidence of negligence. Alloway v. Bradlees, Inc., 157 N.J. 221, 236 (1999). Where a statute does not establish a standard of care, "`the violation is ordinarily not even considered to be relevant evidence bearing on the question whether the actor has complied with the standard of conduct of a reasonable man.'" Piscitelli, supra, 408 N.J. Super. at 106 (quoting Restatement (Second) of Torts § 288B(2) comment d (1965)).

In order to determine whether the statutes and regulations at issue here establish a common-law standard of care, we must look to their purpose. Id. at 105. The general purpose of the MVCOL "[is] to regulate and control titles to, and possession of, all motor vehicles in this state, so as to prevent the sale, purchase, disposal, possession, use or operation of stolen motor vehicles, or motor vehicles with fraudulent titles, within this state." N.J.S.A. 39:10-3 (emphasis added); see also Kutner Buick, Inc. v. Strelecki, 111 N.J. Super. 89, 100 (Ch. Div. 1970) ("It is clear from N.J.S.A. 39:10-1 et seq. that the whole scheme of motor vehicle certificates is directed to prevent the transfer of stolen vehicles.") Relevant to this case, one of the purposes of N.J.A.C. 13:21 is to regulate motor vehicle titles so as to prevent "the sale, purchase, possession or use of stolen motor vehicles, or motor vehicles with fraudulent titles, in this State." Proposed Readoption with Amendments: N.J.A.C. 13:21, 32 N.J.R. 3739, 3743 (October 16, 2000) (emphasis added).

The statutes and regulations at issue here clearly do not establish a standard of care in a personal injury negligence action. They merely regulate titles so as to prevent the sale and purchase of stolen vehicles or vehicles with fraudulent titles, and protect those who engage in motor vehicle transactions. Plaintiffs are not within the class of people protected by the statutes and regulations, as they were not involved in the transaction between Andrews and Coronel, nor do the statutes and regulations provide protection from the types of harm they suffered. Accordingly, Andrews's statutory and regulatory violations impose no direct liability and are irrelevant in this case.

II.

Plaintiffs contend that Andrews is vicariously liable for Coronel's negligence based on their principal-agent relationship. Sobiech argues that Andrews was the car's equitable owner, and the underlying commercial nature of the transaction, coupled with the transaction's illegality, establishes a principal-agent relationship.[6] She also argues that Andrews should be held vicariously liable because New Jersey has a strong policy of ensuring compensation for parties injured in automobile accidents. Cannizzaro argues that Andrews exercised dominion and control over Coronel's activities by repeatedly allowing him to continue operating the car through illegally-issued temporary registrations, and their joint relationship in a commercial transaction warrants a finding of vicarious liability.

We agree that, for insurance purposes, Andrews owned the car at the time of the accident. It is well-settled that for purposes of automobile liability insurance coverage, ownership of a used motor vehicle passes when the seller executes and delivers a completed assignment to the purchaser. Eggerding v. Bicknell, 20 N.J. 106, 111-12 (1955); Progressive Group v. Hurtado, 393 N.J. Super. 517, 521-23 (App. Div. 2007). Here, the seller executed a reassignment to Andrews that was completed and delivered to Andrews. The reassignment, thus, served to legally transfer title to Andrews for insurance purposes. Progressive, supra, 393 N.J. Super. at 523.

The question then is whether Andrews and Coronel had a principal-agent relationship. The "use of an automobile upon a public highway by one who is not its owner raises a presumption of agency between the operator and the owner." Harvey v. Craw, 110 N.J. Super. 68, 73 (App. Div.), certif. denied, 56 N.J. 479 (1970). The presumption is not conclusive and "can be rebutted by a defendant-owner where a plaintiff seeks to hold him vicariously liable for the negligence of the driver." Id. at 73. The presumption fails where the owner "show[s] by uncontradicted testimony that no employer-employee or principal-agent relationship existed, or, if one did exist, that the employee or agent had transgressed the bounds of his authority." Ibid. To establish a principal-agent relationship "so far as third persons are concerned, . . . the use of [a motor] vehicle must be in furtherance of and not apart from the [principal's] service and control, and . . . a distinction must be made between a mere permission to use and a use subject to the control of the [principal] and connected with his affairs." Smith v. Kirby, 11 N.J. Misc. 809, 811 (Sup. Ct. 1933).

Here, there is no dispute that Coronel was not Andrews's employee. We are also satisfied that Coronel was not Andrews's agent. Andrews did not control Coronel's use of the car; rather, Coronel used the car for his own purposes, insured and maintained it, and paid for its maintenance. His use of the car was in no way connected with Andrews's affairs.

Plaintiffs cite no authority imposing vicarious liability on Andrews because this was a commercial or illegal transaction. In addition, we reject Sobiech's argument that Andrews should be held vicariously liable because New Jersey has a strong policy of ensuring compensation for parties injured in automobile accidents. To the contrary, we have noted that

> New Jersey's common law rule regarding owner liability [in the context of automobile-related injuries] is not designed to protect the injured party, in this case a New Jersey resident, or to protect the driver. It is designed to shield an owner from liability in cases in which the owner has not been negligent and in which the culpable driver is not related to the owner in a way that will justify the imposition of vicarious liability under traditional principles of the law of agency or master servant.
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> [Willett v. Ifrah, 298 N.J. Super. 218, 220 (App. Div. 1997) (quoting Haggerty v. Cedeno, 279 N.J. Super. 607, 611-12 (App. Div.), certif. denied, 141 N.J. 98 (1995)) (alteration in original).]

Our Supreme Court endorsed this view of public policy, see Fu v. Fu, 160 N.J. 108, 120 (1999), and it continues to be followed, see Dolan v. Sea Transfer Corp., 398 N.J. Super. 313, 323 (App. Div.), certif. denied, 195 N.J. 520 (2008). Public policy therefore does not operate to impose vicarious liability on Andrews.

III.

Cannizzaro contends that Coronel was using the car with Andrews's permission on the day of the accident, and thus, the initial permission rule requires coverage under the Peerless policy. Alternatively, she argues that the Peerless policy's step-down clause for customers is invalid as against public policy and applicable caselaw.[7] Peerless counters that Coronel remained a customer of Andrews at the time of the accident, and it should pay nothing because the step-down clause is valid and operates to reduce coverage to the level of Coronel's "basic" policy limit of $10,000, not the statutory $15,000 "standard" policy limit.

We reject Cannizzaro's contention that Coronel was a permissive user of the car on the day of the accident. Coronel was not using the car with Andrews's permission; rather, as previously stated, he was using it for his own purposes after having purchased, insured, and maintained it. At best, he remained a customer of Andrews on the day of the accident because he had not yet received the title or a reassignment.

We also reject Cannizzaro's contention that the step-down clause is invalid. Liability step-down clauses have been approved in customer cases. Aubrey v. Harleysville Ins. Cos., 140 N.J. 397 (1995). In Aubrey, the plaintiff signed a contract with an auto dealer, who gave her permission to drive the car while awaiting financing approval. Id. at 399. She was seriously injured in a car

accident several days later. Id. at 400. She had obtained her own automobile insurance policy with underinsured and liability limits of $15,000. Id. at 400. She sought coverage under the UIM provision in the dealer's policy, which provided $1 million in UIM coverage. Id. at 399-400. The policy had a step-down clause that limited the liability coverage available for customers, such as the plaintiff, "to the minimum required by law." Id. at 400-01. The policy did not contain a step-down clause for UIM coverage. Id. at 401.

The Court noted that N.J.S.A. 17:28-1.1(b), which mandates parity between the UIM coverage and an insured's liability policy limits, states that an insured's UIM coverage shall not exceed the insured's liability policy limits. Id. at 401, 405. Thus, the question was whether the plaintiff's right to recover, if any, would extend to the $1 million limit of the UIM provision or would be limited to $15,000 under the liability step-down clause. Id. at 401. To resolve this issue, the Court had to determine the amount of liability coverage available to the plaintiff, and thus whether the step-down was enforceable. Ibid. The Court concluded that a limit on the amount of coverage, unlike an exclusion of a class of people, is valid. Id. at 407-08. Cannizzaro has characterized Aubrey as only relevant to UIM coverage. However, while the ultimate effect of Aubrey was to limit UIM coverage in that case, that result was dependent on the finding that the liability step-down was valid.

We also reject Peerless's contention that the step-down clause operates to reduce coverage to the level of Coronel's "basic" policy limit of $10,000, not the statutory $15,000 "standard" policy level, and thus, it should pay nothing. Automobile drivers in this State are required to maintain minimum liability coverage in the amount of $15,000 for one person in any one accident and $30,000 for more than one person in any one accident. N.J.S.A. 39:6A-3(a); N.J.S.A. 39:6B-1(a). N.J.S.A. 39:6A-3.1 provides an alternative to these mandatory limits. This alternative "basic" policy, which falls under the definition of a "standard" policy, see N.J.S.A. 39:6A-2(n), must include $5000 of property damage liability coverage; may include $10,000 of optional bodily injury liability coverage; does not contain UM/UIM coverage; and subjects anyone covered by the policy to the "limitation on lawsuit option," which precludes them from suing for noneconomic loss. N.J.S.A. 39:6A-2, -3.1(b) and (c).

We have held that the "standard" $15,000/$30,000 liability limits are considered the statutory minimums. See N.J. Mfrs. Ins. Co. v. Varjabedian, 391 N.J. Super. 253, 258-59 (App. Div.), certif. denied, 192 N.J. 295 (2007). In Varjabedian, a driver insured under policies with limits above the statutory minimums injured an innocent third party. Id. at 255, 260. The insurance companies involved in the case subsequently sought to revoke coverage because of the defendant's misrepresentation about the status of her driver's license. Id. at 254-55. We held that the law requires vehicle owners to obtain, and insurers to provide, a minimum of $15,000 in bodily injury liability coverage. Id. at 258. Although the insured may elect the "basic" policy alternative, "[f]rom the perspective of the insurers' obligation, the required compulsory insurance liability limits remain $15,000/$30,000." Id. at 258. Given that perspective, plus the fact that the "basic" policy may be chosen only by an affirmative act with thorough warning of the implications, and considering the State's public policy favoring coverage for injured victims, we determined that drivers in this State could still have a reasonable expectation that other drivers would be covered to the $15,000 "standard" policy level. Id. at 258-59.

This result is reasonable in this case for additional reasons. Andrews did not choose a basic policy, and therefore was not subject to the consequences of that choice. Coronel may have chosen "basic" coverage, but the relevant policy here is the Peerless policy, the policy Andrews chose. The clear language of the step-down clause in the Peerless policy provides coverage for customers up to the statutory minimum, not up to the limits of the customer's policy. The statutory minimum is $15,000, and thus, Peerless is obligated to pay $5000.

Affirmed.

[1] These appeals originally calendared back-to-back are consolidated for purposes of opinion only.

[2] We shall sometimes collectively refer to Cannizzaro and Sobiech as "plaintiffs."

[3] See N.J.S.A. 39:6A-3; N.J.S.A. 39:6B-1.

[4] N.J.S.A. 39:10-1 to -38.

[5] The rule is the same for administrative regulations with the force of law. See Braitman v. Overlook Terrace Corp., 68 N.J. 368, 383-85 (1975).

[6] Sobiech also argues, incorrectly, that the initial permission rule applies to Andrews's vicarious liability. However, this rule only applies in the insurance coverage context to extend coverage under the vehicle owner's policy to any permissive user. See Matits v. Nationwide Mut. Ins. Co., 33 N.J. 488, 496-97 (1960).

[7] Coronel relies on Keystone Ins. Co. v. Atlantic Chrysler Plymouth, Inc., 167 N.J. Super. 353 (Law Div. 1979), to argue that he was a customer of Andrews and the step-down clause for customers is invalid; however, Keystone is no longer good law. See Rao v. Universal Underwriters Ins. Co., 228 N.J. Super. 396, 408 n.3 (App. Div. 1988).