FOURTH DIVISION
March 24, 2016

No. 1-14-3854

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KATHLEEN ROGERS, as Independent Administrator of the Estate of Laura Linderborg, Deceased, Plaintiff-Appellant, v. ENTERPRISE LEASING COMPANY OF CHICAGO, LLC; ENTERPRISE RENTAL COMPANY OF CHICAGO; EAN HOLDINGS, LLC; ENTERPRISE HOLDINGS, INC.; and DAVID SOTO Defendants-Appellees, (Ana Villanueva, as Special Representative of the Estate of Jesse Medina, Deceased; Karen Simones; Buffalo Wild Wings, Inc.; Wild Five, Inc.; and Chicago Ridge, LLC; Defendants.)	)	Appeal from the Circuit Court of Cook County. No. 12 L 7034 Honorable John L. Ehrlich, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in judgment.

ORDER

¶ 1 *Held*: Dismissal of negligent-entrustment cause of action affirmed. Plaintiff could not establish express or implied permission by one defendant or proximate cause with respect to other defendant.

¶ 2 A rental-car company leased a car to David Soto, who allegedly allowed his boss to drive that car. The boss's live-in boyfriend, Jesse Medina, then drove the car while intoxicated and was

involved in a car accident that killed both him and the woman driving the other car, Laura Linderborg. The question presented here is whether either the rental-car company or Soto can be held liable to Linderborg's estate under a theory of negligent entrustment. The trial court ruled that neither defendant could be held liable and dismissed those claims. We agree and affirm.

¶ 3 Plaintiff Kathleen Rogers, as independent administrator of the estate of Laura Linderborg, brought this claim of negligent entrustment against defendants Enterprise Leasing Company of Chicago, LLC, Enterprise Rental Company of Chicago, EAN Holdings, LLC, Enterprise Holdings, Inc. (collectively, "Enterprise"), David Soto, and others. The trial court dismissed the claims against Enterprise and Soto, finding that the actions of the intoxicated driver, Jesse Medina, were not foreseeable to defendants as a matter of law.

¶ 4 With respect to Soto, dismissal was proper because nothing showed that Soto gave Medina express or implied permission to use the car, or that Soto knew or should have known that Medina was an incompetent driver. With respect to Enterprise, we find that its act of renting the car to either Soto or his boss, as a matter of law, was not the legal proximate cause of the death of plaintiff's decedent. None of plaintiff's allegations, or the evidence presented in this case, suggested that Medina's acts would have been foreseeable to Enterprise.

¶ 5 I. BACKGROUND

¶ 6 On April 10, 2012, Jesse Medina and Laura Linderborg were involved in a car crash that caused both of their deaths. Medina had been driving a rental car owned by Enterprise. Plaintiff filed a complaint against Enterprise, Soto, and defendant Katrina Scimone, Soto's boss and Medina's girlfriend, alleging that they negligently entrusted the rental car to Medina. The following facts are taken from the third amended complaint and from evidence submitted by the parties.

¶ 7 Soto originally rented the car from Enterprise. He signed a rental agreement that listed the rental period as April 2, 2012 to April 4, 2012. The rental agreement also stated that no other drivers would be permitted to use the car.

¶ 8 After renting the car, Soto, who worked with Scimone, left the car and keys at Scimone's house. Scimone did not have a driver's license at the time. According to the complaint, Soto "expressly and implicitly permitted [Scimone] to use" the rental car, despite knowing that she did not have a driver's license. He also did not tell Scimone not to let anyone else use the car.

¶ 9 On April 4, 2012, Soto informed Enterprise that he wanted to extend the rental to April 9. The complaint alleges that Enterprise "orally permitted" Soto to keep the car without executing a new rental agreement.

¶ 10 On April 9, Soto's boss, Scimone, called Enterprise and "entered into an oral agreement" to extend the rental period for two more days, until April 11. Scimone paid for the rental over the phone using her credit card. Enterprise did not require Scimone to sign a written rental agreement or otherwise restrict her use of the car. Nor did Enterprise check or request Scimone's driver's license information.

¶ 11 The complaint alleges that on April 10, Scimone lent the car to Medina. Using the car, Medina visited several taverns and consumed alcohol. While driving, he lost control of the car and collided with Linderborg's car, killing Linderborg and himself. According to plaintiff, Soto was aware that Scimone had lent the car to Medina, because he was present when Scimone had a telephone conversation with Medina "immediately preceding the collision."

¶ 12 Plaintiff alleged that both Soto and Enterprise had negligently entrusted the car to Scimone, who was an unlicensed driver. According to plaintiff, it was foreseeable that Scimone would lend the car to Medina, who would drive the car while intoxicated.

¶ 13 Both Soto and Enterprise moved to dismiss the third amended complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2014)). Enterprise argued that plaintiff could not prove that it had given Medina express or implied permission to use the car, as Medina "did not rent the [car] from Enterprise," and plaintiff did not allege "that Enterprise *** knew Medina or knew that Medina would be driving the *** vehicle." Moreover, Enterprise argued that plaintiff could not establish that Enterprise's entrustment of the car to Scimone was the proximate cause of Linderborg's death, as the act of renting the car "was so remote from the eventual accident" that the accident could not be considered reasonably foreseeable as a matter of law.

¶ 14 Soto argued that plaintiff could not allege that he had entrusted the car to Medina. Rather, the evidence at most showed that Soto entrusted the car to Scimone, who then entrusted the car to Medina. Soto also argued that he had no control over the rental car at the time of the accident on April 10, because his rental agreement with Enterprise had expired on April 9, at which point Scimone entered into a new, separate rental agreement with Enterprise. Finally, Soto argued that Medina's use of the car while intoxicated was not foreseeable to him as a matter of law, and thus any negligence on his part was not the proximate cause of the decedent's death.

¶ 15 Enterprise and Soto both attached Soto's deposition as evidence supporting their respective motions to dismiss. In his deposition, Soto testified that he worked for Scimone's food vending business, selling sandwiches outside of nightclubs. He rented the car on April 2, 2012 to transport equipment for the business because the chassis of his personal car was broken. About half an hour after renting it, he left the rental car at Scimone's house "[b]ecause that's where the equipment, the food, and everything we use[d] for work was stored." Soto testified that he did not necessarily expect Scimone to drive the car, but he left it there "just in case, if for some odd

reason I couldn't make it to her house. Because we would go buy like groceries. So I actually left it there so if any kind of like emergency where she needed to get food before we go, she could just take the car and go." Soto testified further that the original intention was that Soto "was going to be the driver" of the car and he "normally [took] [Scimone] to go get the food," but he conceded that he gave Scimone permission to use the car if he was unable to drive her himself. Soto agreed that he never told Scimone not to use the car, and he left the keys with her. But he knew that Scimone had used it because he "stopped by one of the locations" where she was working, and she "had the vehicle there."

¶ 16 Soto testified that he never called Enterprise to inform the company that someone else was using the vehicle. Nor did he tell Enterprise, at the time he rented the vehicle, that Scimone was planning on using the vehicle.

¶ 17 Soto testified that, on April 9—the date his rental period with Enterprise was set to expire—or possibly the day before, he called Scimone and told her that the car was due to be returned. She told him over the phone "that she had extended it a few days." That was the first time that Soto learned that Scimone had extended the rental agreement. Scimone also repaid Soto for his initial rental of the car.

¶ 18 Interrupting Soto's testimony for a moment, the Enterprise "call log" for this transaction, when Scimone extended the car rental for an additional two days until April 11, reads as follows: "RETURN DATE CHANGED TO: 4/11/12. FOR THIS TRANSACTION ON CARD NUMBER [redacted] THE CARDHOLDER NAME IS KATRINA SCIMONE BUT THE RENTER NAME IS DAVID SOTO."

¶ 19 Back to Soto's deposition testimony: Soto testified that, on the afternoon of April 10—the day of the accident—Scimone called him to ask him to work that night. Soto drove to Scimone's

house at approximately 10 pm. When he arrived at her house, the rental car was not there. He was "surprised" to find the car gone; he thought the plan was that the food would already be prepared, and he merely had to load it up in the rental car and drive to the area where they planned to sell it. When Soto went into Scimone's house, she told him that Jesse Medina had taken the car. While they were working, Scimone called Medina. He did not recall the conversation—or whether Scimone just left a message for Medina—but he testified that Scimone was upset that Medina had not returned with the rental car. Soto testified that Scimone later told him that Medina had taken the rental car to a bar to get her chicken wings.

¶ 20 Soto testified that he did not use the rental car between April 2 and April 10. In fact, between the time he left the car at Scimone's house on April 2 and the time he arrived at Scimone's house on the night of April 10 for work, he performed no work for Scimone. He did not elaborate in great detail on that point, other than to say he did not have regular work hours with Scimone and, during that eight-day period, "[s]he chose not to call me."

¶ 21 Regarding Soto's knowledge and interactions with Jesse Medina, Soto said that he did not know Medina personally, but that he understood that Medina was Scimone's boyfriend and that he was living with Scimone. Soto testified that he never gave Medina permission to drive the car. Soto testified that between April 2 (the date of the rental) and April 10 (the date of the accident), he never spoke a word to Medina.

¶ 22 Soto did not know how Medina came to be driving the car on April 10; he said that he was "not sure if [Medina] took it or if [Scimone] gave it to him." Soto also did not know whether Medina had a history of drinking or driving while intoxicated, or whether Medina had a valid driver's license.

¶ 23 Enterprise and Soto also attached an affidavit from Scimone in support of their motions to dismiss. Scimone said that she dated Medina from January 2012 until his death. She said that, during that time, she learned of nothing that would lead her to believe that Medina was an inexperienced or incompetent driver. Scimone said that Soto had rented the car in April 2012 "to travel to and from work at various food vending establishments." She said that Soto left the car at her house, but she denied ever using it.

¶ 24 Scimone claimed that, on the afternoon of April 10, Medina came to her house while she was asleep and took the rental car. She did not realize that the car was missing until later that night. She said that she called Medina, who told her "that he was lost and that he was sorry he took the car." Scimone said that she did not know he was consuming alcohol and did not know what he was doing at the time. She first learned that he had been drinking after the accident.

¶ 25 In response to the motions to dismiss, plaintiff argued that she could establish proximate cause. She noted that Enterprise should have known of both Soto's and Scimone's incompetency in relation to driving, as Soto's driver's license had previously been suspended for driving under the influence of alcohol, and Scimone had no driver's license at the time of the accident. Likewise, plaintiff said, Soto should have known that Scimone had no driver's license, as he rented the car for her and had to drive her around for work. Finally, plaintiff argued that Scimone should have known that Medina was likely to drive drunk on April 10, 2012, since she knew he was driving to a location that served alcohol and she spoke to him over the phone while he was intoxicated. Plaintiff argued that, because "each of the Defendant[s'] negligent action[s] caused the injury to [Linderborg] in combination with another cause," she could establish proximate cause as to each defendant.

¶ 26 The trial court initially denied the motions to dismiss. Defendants moved the trial court to reconsider that order, but the trial court denied those motions.

¶ 27 Defendants then requested that the trial court certify a question regarding proximate cause to this court pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010). In response to those motions, the trial court vacated its orders denying defendants' motions to dismiss and granted both motions. The court said that the Rule 308 motions had "spurred" it to continue thinking about the case and to "reanalyze" its prior rulings. The court found that plaintiff could not establish "cause in fact" because the rental contract was simply between Enterprise and Soto, not any other parties. The court further ruled that Medina's use of the car on the night of the accident was not foreseeable as a matter of law, and thus plaintiff could not establish legal proximate cause, either. Plaintiff appeals that order.

¶ 28 II. ANALYSIS

¶ 29 Plaintiff claims that the trial court erred in granting defendants' motions to dismiss the complaint. Specifically, plaintiff claims she can establish her negligent entrustment cause of action because defendants could have foreseen that Scimone would loan the rental car to Medina and that Medina would operate the car while intoxicated.

¶ 30 Defendants filed their motions to dismiss pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2014)), which provides that a complaint may dismissed where the plaintiff's claim "is barred by other affirmative matter avoiding the legal effect of or defeating the claim." Our supreme court has described the "affirmative matter" a defendant must present in a section 2-619(a)(9) motion as "a type of defense that either negates an alleged cause of action completely or refutes crucial conclusions of law or conclusion of material fact unsupported by allegations of specific fact contained or inferred from the

complaint." (Internal quotation marks omitted.) *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 121 (2008). As plaintiff correctly notes, "[a] dismissal of this type resembles the grant of a summary judgment motion. For that reason, the reviewing court conducts *de novo* review and considers whether 'the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383 (1997) (quoting *Kedzie & 103rd Currency Exchange, Inc.*, 156 Ill.2d 112, 116–17 (1993)).

¶ 31 To prove negligent entrustment, a plaintiff must show that the defendant gave another person express or implied permission to use or possess a dangerous article or an instrument that the defendant knew, or should have known, would likely be used in a manner involving an unreasonable risk of harm to others. *Evans v. Shannon*, 201 Ill. 2d 424, 434 (2002). A car is not necessarily a dangerous instrumentality, but "it may become one if it is operated by someone who is incompetent, inexperienced or reckless." *Id.*

¶ 32 A negligent-entrustment case concerning the entrustment of an automobile involves "two primary considerations": (1) whether the owner of the vehicle entrusted the car to an incompetent or unfit driver; and (2) whether the incompetency was a proximate cause of the plaintiff's injury. *Id.* With these considerations in mind, we turn first to plaintiff's case against defendant Enterprise, then to plaintiff's case against defendant Soto.

¶ 33 A. Negligent Entrustment by Enterprise

¶ 34 Enterprise focuses on the second prong of the negligent-entrustment claim, arguing that plaintiff could not establish proximate cause as a matter of law. Proximate cause consists of both (1) cause in fact and (2) legal cause. *Evans*, 201 Ill. 2d at 434. Our supreme court has described the distinction between cause in fact and legal cause as follows:

> " 'Cause in fact exists where there is a reasonable certainty that a defendant's acts cause the injury or damage. [Citation.] A defendant's conduct is a cause in fact of the plaintiff's injury only if that conduct is a material element and a substantial factor in bringing about the injury. [Citation.] A defendant's conduct is a material element and a substantial factor in bringing about an injury if, absent that conduct, the injury would not have occurred. [Citation.] "Legal cause," by contrast, is essentially a question of foreseeability. [Citation.] The relevant inquiry here is whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct.' " *Id.* at 434-35 (quoting *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 258 (1999)).

¶ 35 Enterprise cites *Watson v. Enterprise Leasing Co.*, 325 Ill. App. 3d 914 (2001), in support of its argument that plaintiff cannot show legal causation in this case. In *Watson*, an individual named Milton Pillow rented a car from Enterprise for a person named Dawn Monroe. *Id.* at 916. With or without Dawn's permission, Dawn's brother-in-law took the car to a party. *Id.* at 916, 919-20. While at the party, an intoxicated 17-year-old took the keys to the rental car—either with or without Dawn's brother-in-law's permission—and got into a car accident. *Id.* at 919-20. The plaintiff, representing the estate of an individual who died in the accident, sued Enterprise under a negligent entrustment theory. *Id.* at 915-16.

¶ 36 In addressing the issue of proximate cause, this court noted that the cause-in-fact portion of proximate cause had been satisfied because, "but for [Enterprise's] negligent entrustment, the car would not have been on the road and the accident would not have happened." *Id.* at 924. But with respect to legal causation, the court noted that "[t]he 'entrustment' [was], at least, two times removed." *Id.* at 925. And "the accident occurred due to a criminal act—*** driving while under the influence." *Id.* The court thus concluded that it was "not reasonably foreseeable, assuming the

car was entrusted to Dawn, that the car would be taken from her by another and then taken by another who then engaged in criminal conduct, nor is it reasonable to conclude that this is the purpose or intent of the negligent entrustment doctrine." *Id.*

¶ 37 We agree that *Watson* applies in this case. Like *Watson*, this case involves someone other than the renter of the car taking that car and driving it while intoxicated. As in *Watson*, it was not foreseeable to Enterprise that a third party might drive the rental car. The original lessee of the rental car was Soto. Enterprise had no reason to foresee that Soto's boss's boyfriend would one day operate that vehicle. Even if we assumed that the entrustment of the rental car changed from Soto to Scimone on April 9, when Scimone extended the rental contract for two days and paid for that extension with a credit card—a notion that the record does not support, as the Enterprise call log indicated that Soto remained the renter, even though someone else was paying for the extension—we would reach the same conclusion. Enterprise still had no reason to even know that Jesse Medina existed, let alone that he might drive the rental car. The undisputed evidence shows that Enterprise did not know of Medina's existence, much less that he lived with Scimone and was likely to drive the car.

¶ 38 Plaintiff attempts to distinguish *Watson* because, in this case, the driver was only one step removed from Enterprise, whereas in *Watson*, the driver was at least two steps removed from Enterprise. We find no meaningful distinction. Even if the connection between Soto and Medina was less remote than the connection between Dawn and the ultimate driver of the car in *Watson*, the rationale of *Watson* applies with equal force. Just as in *Watson*, this case involved a driver using a rental car that Enterprise had rented to someone else. Nothing suggested that Enterprise should have been aware that Medina was likely to use the car, let alone use it while intoxicated. We agree with the court's observation in *Watson* that "[t]o impose foresight on [Enterprise] under

the *** circumstances present in this case would render it liable for anyone who drove the car." *Id.* Negligent entrustment is not intended to impose strict liability. *Id.*

¶ 39 Plaintiff cites *King v. Petefish*, 185 Ill. App. 3d 630 (1989), and *Seward v. Griffin*, 116 Ill. App. 3d 749 (1983), in support of her argument that Medina's actions were foreseeable to Enterprise, but we find these cases to be distinguishable. In *King*, the defendant entrusted her car to an intoxicated 15-year-old girl at a party. *King*, 185 Ill. App. 3d at 631-32. In *Seward*, the defendant, a used-car dealer, sold a vehicle to a driver whom the defendant knew was unlicensed. *Seward*, 116 Ill. App. 3d at 753. Neither *King* nor *Seward* involved the use of a rental car at least one step removed from the rental car company by a driver of whom the company was unaware; both decisions involved defendants who directly entrusted vehicles to people whom they had reason to believe could not competently operate them.

¶ 40 Because Medina's drunk driving was not foreseeable to Enterprise as a matter of law, plaintiff cannot establish the legal-causation component of proximate cause. We affirm the trial court's dismissal of the third amended complaint as to Enterprise.

¶ 41 B. Negligent Entrustment by Soto

¶ 42 Plaintiff claims that the trial court erred in dismissing her negligent-entrustment claim against Soto, because it is at least a question of fact whether Soto could have reasonably foreseen that Medina would drive the rental car while intoxicated. Plaintiff’s argument is as follows: Soto left the car and the keys with Scimone; Scimone did not have a driver’s license; Medina lived with Scimone and his car was having mechanical problems; and there was no other operative vehicle at Scimone’s house. Thus, Soto at least implicitly entrusted the vehicle to Medina, whose negligent driving was the proximate cause of the death of plaintiff’s decedent.

¶ 43 We hold that the dismissal of plaintiff’s claims against Soto was correct for three reasons.

¶ 44 We first reiterate the doctrine as explained in *Evans*, 201 Ill. 2d at 434. Plaintiff must show that Soto gave Medina express or implied permission to use or possess the vehicle, *and* that Soto knew or should have known that Medina would operate the rental car in a manner involving an unreasonable risk of harm to others. *Id*. Said another way, plaintiff must show that (1) Soto entrusted the vehicle to an incompetent or unfit driver and (2) this incompetency was the proximate cause of the death of plaintiff's decedent. *Id*.

¶ 45 Our first basis for affirming the trial court's dismissal under Section 2-619(a)(9) is that plaintiff, as a matter of law, cannot establish the first prong of the test for negligent entrustment—she cannot establish that Soto expressly or implicitly gave Medina permission to use the vehicle. There is no claim of express permission, nor could there be. Soto testified that, after renting the car, he drove back to Scimone's house, parked the car in the driveway, left the car and the keys there with Scimone—and did not visit the house again until the night of the accident, April 10. He did not speak with Medina during that window of time, nor did he even visit Scimone's house during that time. He first learned about Medina driving the car when he arrived at Scimone's house and saw that the rental car was missing, at which time Scimone told him that Medina had taken it. Obviously, Soto could not have given Medina express permission to do something when he did not even know it was happening until after the fact. Plaintiff does not claim otherwise.

¶ 46 Nor has plaintiff alleged or provided facts sufficient to demonstrate implied permission by Soto. "Generally, implied permission can be inferred from a course of conduct of the parties, their relationship, or from the behavior of the parties in specific circumstances." *Bishop v. Morich*, 250 Ill. App. 3d 366, 369 (1993). Here, plaintiff did not allege any facts demonstrating a course of conduct or relationship between Soto and Medina. Soto had rented the car to use in

conjunction with his and Scimone's work. Medina was simply Scimone's boyfriend. Soto had no relationship with him whatsoever.

¶ 47 At most, plaintiff could show that Soto left the rental car and keys at Scimone's house, where Medina lived. Plaintiff says that these facts are sufficient, that Soto should have known that Medina would drive the car, because Scimone did not have a license, and there was no other working car at that house at that time. But even if we drew that favorable inference, plaintiff still could not prevail. It is well-settled that simply leaving a car and its keys available to an incompetent driver does not constitute implied permission. See, *e.g.*, *Rainey v. Pitera*, 273 Ill. App. 3d 234, 237 (1995) ("[T]his court has repeatedly held that making keys available does not alone create implied permission."); *Bishop*, 250 Ill. App. 3d at 370 ("[L]eaving car keys where a teenager can get them does not imply permission to use them."); *Johnson v. Ortiz*, 244 Ill. App. 3d 384, 387 (1993) (no implied permission even if incompetent driver, who lived with defendant at time of accident, "knew where the keys to the car were kept"). Without any prior course of conduct or relationship between Soto and Medina, the mere act of leaving keys at Scimone's house cannot prove implied permission to Medina to use the car as a matter of law.

¶ 48 Plaintiff's allegation that Soto "did not expressly or implicitly *prohibit* [Scimone] from allowing the use of the vehicle by other drivers including [Medina]" does not translate to implied permission. (Emphasis added.) The mere fact that Soto did not tell Scimone that no one else could drive the car does not mean that he gave implied permission to let anyone drive the car.

¶ 49 While plaintiff did allege that, on April 10, Soto learned that Medina had taken the car after Scimone, in Soto's presence, called Medina, that fact does not translate to implied permission to use the car any more than it would suggest express permission. And even assuming that Soto's silence could be taken as acquiescence to Medina's use of the car, plaintiff did not

allege that Soto's acquiescence was in any way communicated to Medina. We fail to see how Soto's learning that Medina was driving the rental car, after the fact, could be interpreted as implied permission to continue using the car when nothing suggested that Medina heard of Soto's acquiescence.

¶ 50 Viewing the facts in the light most favorable to plaintiff, we see nothing to suggest that any of Soto's conduct or statements could be taken by Medina as permission to use the rental car. The absence of any evidence of express or implied permission, by itself, is fatal to plaintiff's claim against Soto.

¶ 51 A second basis for affirming the dismissal as to Soto is that, even if plaintiff could somehow demonstrate that Soto impliedly entrusted the car to Medina, she cannot demonstrate that the entrustment was negligent. Entrusting a car to another person is not a *per se* negligent act. If it were, a rental-car company would be strictly liable for any accident involving one of its cars; indeed, anyone who ever loaned a car to another would be strictly liable for any accident that ensued. A defendant's entrustment of a vehicle to another is negligent only if the defendant entrusts the automobile "to one who the [defendant] *knows or should know* is incompetent, inexperienced, or reckless." (Emphasis added.) *Zedella v. Gibson*, 165 Ill. 2d 181, 186 (1995). So liability will attach, for example, if someone entrusts her car to an intoxicated teenager (see *King*, 185 Ill. App. 3d at 631-32, 642) or to someone he knows does not have a driver's license (see *Seward*, 116 Ill. App. 3d at 753, 755). But liability will not attach if one entrusts a car to someone where "nothing *** would have red-flagged [the driver] as an unlicensed, incompetent or reckless driver." *Evans*, 201 Ill. 2d at 436.

¶ 52 Plaintiff made no allegations and presented no evidence that anything would have "red-flagged" Medina as an unlicensed, incompetent or reckless driver. Even if we could infer that

Soto permitted Medina to drive the rental car, Soto testified that he barely knew Medina and knew nothing of his personal habits or his driving record. There is no evidence in the record that Soto had reason to believe that Medina was an incompetent driver or one who was likely to drive under the influence of alcohol. We would add that, as far as we can discern from the record, Medina had a driver's license and a clean driving record.

¶ 53 While plaintiff notes that Scimone lacked a driver's license, Scimone's lack of a license has nothing to do with Soto's alleged entrustment of the car to *Medina*. As Medina was the party who incompetently operated the rental car, plaintiff had to show that Soto was negligent in entrusting the car to Medina, not Scimone. Scimone's lack of a driver's license, a fact repeated throughout plaintiff's briefs, is a red herring.

¶ 54 Plaintiff next argues that if Soto did not know anything about Medina's driving history, he should have. We see no reason to impose on Soto a duty to inspect Medina's driving record. See, *e.g.*, *id.* at 436-37 (declining to impose duty on customer of car detailing business to check driving records of car detailer's employees). To do so would require any individual who loaned a car to a friend or acquaintance to check the driving records of anyone that friend or acquaintance lived with—an untenable proposition, to say the least. See, *e.g.*, *id.* at 438 (finding no duty to inspect driving records of car detailer's employees because such duty "would have far-reaching consequences, logically extending to every person who takes his or her vehicle for repair or servicing, and requiring that commercial and private car owners alike police the hiring practices of businesses with whom they deal"). And even assuming that Soto should have inquired into Medina's driving record, Soto would not have found anything suggesting that Medina was an

incapable driver—as we noted above, Medina appeared to be a licensed driver with a clean driving record. We affirm the trial court's dismissal on this ground as well.[1]

¶ 55 Third and finally, even if plaintiff tried to proceed simply on the theory that Soto entrusted the vehicle to Scimone, dismissal would still be proper as to Soto. As we have noted above more than once, plaintiff must establish that Soto entrusted the vehicle to an incompetent driver, and that this incompetency was the proximate cause of the death of plaintiff's decedent. *Evans*, 201 Ill. 2d at 434. If plaintiff proceeded under the theory that the entrustment was only to Scimone, she could establish that the vehicle was entrusted to an incompetent driver—because Scimone was unlicensed—but she could not establish that this incompetency was the proximate cause of the accident, because Scimone was not the driver of the rental car at the time of the accident. Scimone's unfitness to drive had nothing to do with Medina's operation of the car while intoxicated.

¶ 56 For all of these reasons, dismissal of the claims against Soto was proper.

¶ 57 C. Rule 191(b)

¶ 58 Finally, we briefly address plaintiff's suggestion that, had the trial court granted her a continuance to take additional discovery, she could have defeated the motions to dismiss. Plaintiff notes that she filed an affidavit pursuant to Illinois Supreme Court Rule 191(b) (eff. Jan. 4, 2013), asking for a continuance in order to obtain testimony from "various persons whose testimony was necessary to glean material facts." Plaintiff argues that, if she had been given an

[1] We acknowledge that the trial court did not dismiss the third amended complaint based on her failure to satisfy the first prong of the negligent-entrustment doctrine. But we may affirm the trial court's judgment on any basis in the record, even if it was not considered by the trial court. *Moody v. Federal Express Corp.*, 368 Ill. App. 3d 838, 841 (2006). The issue was raised below by Soto and was argued in the parties' briefs before this court.

opportunity to do so, she could have uncovered facts that would contradict the evidence presented by defendants.

¶ 59 But plaintiff has not provided us with an adequate record to review the trial court's decision to deny her a continuance for additional discovery. We have no report of proceedings or written order explaining the trial court's rationale in denying the motion. In fact, the page in the record plaintiff cites in support of the notion that the trial court even denied her motion is an order setting a briefing schedule on the motions to dismiss. That order makes no mention of the Rule 191(b) motion. While the decision to set a briefing schedule on the motion to dismiss could be taken as an implicit denial of the Rule 191(b) motion, that meaning is not clear to us from the incomplete record, nor is the trial court's reasoning for any such ruling. Where an appellant fails to furnish a complete record of proceedings on appeal, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* Here, without any adequate record of the trial court's ruling on the Rule 191(b) motion, we presume that the trial court's denial of that motion was correct.

¶ 60 The absence of an adequate record is particularly problematic in this case because, when deciding whether the trial court erred in denying a Rule 191(b) motion, we apply an abuse-of-discretion standard of review. *Crichton v. Golden Rule Insurance Co.*, 358 Ill. App. 3d 1137, 1150 (2005). We will find that a trial court abused its discretion only where its ruling is arbitrary, fanciful, or where no reasonable person would take the view adopted by the trial court. *Id.* But we cannot determine the reasonableness of the trial court's decision without a record of its reasons for denying the motion.

¶ 61 Moreover, plaintiff has forfeited review of the denial of the Rule 191(b) motion by failing to adequately present it on appeal. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) states that an appellant's argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." And "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." *Id.* In other words, we will not consider "[i]ll-defined and insufficiently presented issues." *In re Marriage of Kiferbaum*, 2014 IL App (1st) 130736, ¶ 21.

¶ 62 As we noted above, plaintiff has failed to cite to any order or ruling in the record that clearly demonstrates that the trial court denied the Rule 191(b) motion, much less the reasons for that denial. Nor does plaintiff cite any relevant authority discussing the standards for the award or denial of such a motion. In fact, it is not even clear whether plaintiff seeks to raise the denial of the Rule 191(b) motion as a separate contention of error on appeal: the only reference to the motion is contained under a section of plaintiff's brief that otherwise discusses proximate cause. "This court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented ([citation]), and it is not a repository into which an appellant may foist the burden of argument and research." (Internal quotation marks omitted.) *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010). We decline to reach the propriety of the trial court's purported denial of the motion for additional discovery when both the record and plaintiff's brief lack sufficient clarity.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the trial court's dismissal of the third amended complaint as to both Enterprise and Soto.

¶ 65 Affirmed.