

The Supreme Court of the State of Louisiana

**BENJAMIN FOX, INDIVIDUALLY; ON
BEHALF OF MINOR CHILDREN E.F.; N.F.;
HOLLY FOX, INDIVIDUALLY; ON BEHALF
OF MINOR CHILDREN E.F.; N.F.**

No. 2022-CQ-00980

VS.

NU LINE TRANSPORT, L.L.C.

IN RE: Benjamin Fox, individually; on behalf of minor children E.F.; N.F. -
Applicant Plaintiff; Holly Fox, individually; on behalf of minor children E.F.; N.F.
- Applicant Plaintiff; Certified Question, United States Court of Appeals for the
Fifth Circuit Number(s) 20-30716;

October 04, 2022

Dismissed. See per curiam.

JBM
JLW
JDH
SJC
JTG
WJC
PDG

Supreme Court of Louisiana
October 04, 2022

Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-CQ-00980

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E.F.; N.F.; HOLLY FOX, INDIVIDUALLY; ON BEHALF OF MINOR
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VS.

NU LINE TRANSPORT, L.L.C.

On Certified Question from the United States Court of Appeals
For the Fifth Circuit

PER CURIAM

On June 22, 2022, the United States Court of Appeals for the Fifth Circuit
certified the following question to this court:

Under Louisiana law, can plaintiffs, Benjamin and Holly Fox, individually and on behalf of their minor children EF and NF, simultaneously maintain (1) a direct negligence claim against Nu Line for negligent hiring, training, and supervision of its employee Simon Brumfield and (2) a negligence claim against Brumfield for which Nu Line could be held vicariously liable under *respondeat superior*, (3) after Nu Line has stipulated that Brumfield was in the course and scope of employment when the alleged negligence occurred?

Shortly after the certified question was filed, we rendered our opinion in *Martin v. Thomas*, 2021-01490 (La. 6/29/22), --- So. 3d ----, 2022 WL 2339095. *Martin* held a plaintiff may pursue both a direct negligence cause of action and a vicarious liability cause of action against an employer even if the employer stipulates that the employee was in the course and scope of employment at the time of the injury.

In reliance on *Martin*, the United States Court of Appeals for the Fifth Circuit issued a per curiam opinion on August 31, 2022, which provides, in pertinent part:

Martin answers our certified question in the affirmative.

Therefore, because *Martin* confirmed that the district court's *Erie* guess in denying Nu Line's motion for

summary judgment was correct, we AFFIRM the district court and REMAND for further proceedings.

In light of this action, no further consideration by this court is necessary.

DECREE

For the reasons assigned, the certified question filed by the United States Court of Appeals for the Fifth Circuit is dismissed.