

The Supreme Court of the State of Louisiana

EUGENE LATOUR, II

No. 2023-CC-00262

VS.

EMANEE Q. BROCK, ET AL.

IN RE: Annett Holdings d/b/a TMC Transportation - Applicant Defendant; Applying For Supervisory Writ, Parish of Evangeline, 13th Judicial District Court Number(s) 78173A, Court of Appeal, Third Circuit, Number(s) CW 22-00618;

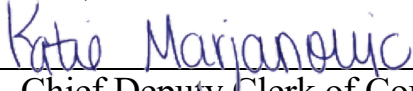
June 21, 2023

Writ application granted. See per curiam.

JLW
SJC
JTG
WJC
JBM
PDG

Hughes, J., dissents.

Supreme Court of Louisiana
June 21, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2023-CC-00262

EUGENE LATOUR, II

VS.

EMANEE Q. BROCK, ET AL.

On Supervisory Writ to the 13th Judicial District Court, Parish of Evangeline

PER CURIAM

We are called upon to decide whether an employer is entitled to summary judgment, on the ground that it is not vicariously liable for an accident caused by the wife of its employee. For the reasons that follow, we conclude summary judgment is appropriate.

UNDERLYING FACTS AND PROCEDURAL HISTORY

Annett Holdings, Inc. d/b/a TMC Transportation (“TMC”) employed Jeremy Brock. Although Mr. Brock was a Louisiana resident, TMC assigned him to its Georgia facility. While in Georgia, Mr. Brock, who was a member of the Louisiana National Guard, would drive to and from Louisiana on his off days to visit with his family and/or attend to his military obligations.

On November 28, 2018, Mr. Brock notified his manager at TMC that he had to report back to Louisiana for his military-related drill requirement. He further advised that his TMC issued vehicle was undergoing maintenance. TMC agreed to provide a rental vehicle to Mr. Brock to allow him to travel to Louisiana for drill and then return to Georgia for work.

Mr. Brock picked up the rental vehicle and drove it to his home in Louisiana on November 29, 2018. After arriving at his home, Mr. Brock and his wife, Emanee Brock, decided to go shopping and purchase groceries and other household items.

After some discussion,¹ Mr. Brock allowed his wife to drive the rental vehicle to the store.

The couple then proceeded to the store, with Mrs. Brock driving the rental vehicle and Mr. Brock as a passenger. During the trip, Mrs. Brock was involved in an accident when the rental vehicle rear-ended a vehicle driven by plaintiff, Eugene Latour, II. Following the accident, Mrs. Brock was cited for driving with a suspended driver's license due to her failure to pay a parking ticket.

Thereafter, plaintiff filed the instant suit against several defendants including TMC. Plaintiff alleged TMC was vicariously liable for the actions of Mr. Brock and his wife.

After discovery, TMC moved for summary judgment. It argued the undisputed facts established that Mrs. Brock was not its employee and it therefore could not be vicariously liable for her actions. It further contended Mr. Brock was not in the course and scope of his employment at the time he allowed Mrs. Brock to drive the rental vehicle.

Plaintiff opposed TMC's motion for summary judgment. He argued there were questions of fact as to whether Mr. Brock was on a mission for TMC at the time of the accident and whether Mr. Brock negligently entrusted the vehicle to his wife, who had a suspended license.

After a hearing, the district court denied TMC's motion for summary judgment. In oral reasons for judgment, the district court indicated it believed summary judgment was precluded "because of conflicting testimony and a mixture of fact and law analysis required to determine status."

TMC applied for supervisory review. The court of appeal denied writs.

¹ Mr. Brock claims he initially told his wife not to drive the rental vehicle but instead take their personal vehicle. However, he ultimately relented and agreed to allow her to drive the rental vehicle because it was at the end of the driveway.

Upon TMC’s application to this court, we ordered written briefing pursuant to the provisions of La. Code Civ. P. art. 966(H).² Having received briefs from both parties, we now review the district court’s ruling on the motion for summary judgment on the merits.

DISCUSSION

A ruling on a motion for summary judgment is reviewed under a de novo standard, with the appellate court using the same criteria that govern the district court’s determination of whether summary judgment is appropriate, i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Catzen v. Toney*, 2022-01261 (La. 1/18/23), 352 So.3d 972, 974; *Jones v. Whips Elec., LLC*, 2022-01035 (La. 11/22/22), 350 So.3d 846, 848; *Guidry v. Brookshire Grocery Co.*, 2019-1999 (La. 2/26/20), 289 So.3d 1026, 1027. Pursuant to La. Code Civ. P. art. 966(D)(1), the burden on the party moving for summary judgment “does not require him to negate all essential elements of the adverse party’s claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense.” *Reynolds v. Bordelon*, 2014-2371 (La. 6/30/15), 172 So. 3d 607, 610–11. When a motion for summary judgment is made and supported, an adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. La. Code Civ. P. art. 967(B); *Bufkin v. Felipe’s Louisiana, LLC*, 2014-0288 (La. 10/15/14), 171 So.3d 851, 858. Once a motion for summary judgment has been properly supported by the moving party, the failure of

² As required by the article, we permitted the parties an opportunity to request oral argument and entertained TMC’s request for argument. After careful consideration, we found oral argument was unnecessary under the undisputed facts of this case and therefore elected to exercise our discretion to consider the matter on written briefs only.

the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. *Dauzat v. Curnest Guillot Logging Inc.*, 2008-0528 (La. 12/2/08), 995 So.2d 1184, 1187 (citing *Babin v. Winn–Dixie Louisiana, Inc.*, 2000-0078 (La. 6/30/00), 764 So.2d 37, 40).

In essence, plaintiff alleges TMC is vicariously liable for the actions of its employee, Mr. Brock, who negligently entrusted the rental vehicle to his wife. TMC contends it is entitled to judgment as a matter of law because the undisputed facts demonstrate Mrs. Brock was not its employee and Mr. Brock was not in the course and scope of his employment at the time of the accident.

In *Baumeister v. Plunkett*, 1995-2270 (La. 5/21/96), 673 So.2d 994, 996, we summarized the law relating to vicarious liability as follows:

The law in this area is clear that an employer is liable for a tort committed by his employee if, at the time, the employee was acting within the course and scope of his employment. *Orgeron v. McDonald*, 93–1353 (La. 7/5/94), 639 So.2d 224, 226. The course of employment test refers to time and place. *Benoit v. Capitol Manufacturing Co.*, 617 So.2d 477, 479 (La. 1993). The scope of employment test examines the employment-related risk of injury. *Id.*

According to Louisiana Civil Code article 2320, “[m]asters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed.” **In fact, this Court has held that in order for an employer to be vicariously liable for the tortious acts of its employee the “tortious conduct of the [employee must be] so closely connected in time, place, and causation to his employment duties as to be regarded as a risk of harm fairly attributable to the employer’s business, as compared with conduct instituted by purely personal considerations entirely extraneous to the employer’s interest.”** *Barto v. Franchise Enterprises, Inc.*, 588 So.2d 1353, 1356 (La.App. 2d Cir. 1991), *writ denied*, 591 So.2d 708 (1992) (quoting *LeBrane v. Lewis*, 292 So.2d 216, 217, 218 (La. 1974)). [emphasis added].

In the instant case, the undisputed facts establish that at the time of the accident, Mr. Brock had left TMC’s premises in Georgia and returned to his home

in Louisiana. He did not travel to Louisiana for any work-related purposes; instead, he did so in order to participate in military training related to his service in the Louisiana National Guard. His actions at the time of the accident were purely personal because his intent was to travel to the store with his wife to purchase groceries and other household items. These facts indicate Mr. Brock's actions were not taken in furtherance of his employer's interests.

Nonetheless, plaintiff emphasizes Mr. Brock's use of a vehicle rented by TMC in order to travel to Louisiana. Plaintiff asserts this fact raises the question of whether TMC benefited from Mr. Brock's use of the rental vehicle, because it would allow him to return to the jobsite in Georgia more quickly than if he were required to rely on alternative transportation.

We see no merit to this argument. The jurisprudence has long recognized that an employee's use of a company car or truck does not give rise to vicarious liability where the employee's trip is personal. *See Johns v. Hunt Lumber Company, Inc.*, 250 So.2d 543, 549 (La. App. 2d Cir. 1971) (explaining that an employee's use of a company truck to go the grocery store "was strictly a personal mission and of no benefit to his employer . . ."). Similarly, the mere fact the employer may receive an indirect benefit from the employee's use of a company vehicle does not place the employee within the course and scope of employment when the employee is on a purely personal mission. *See Keen v. Pel State Oil Co.*, 332 So.2d 286, 291 (La. App. 2d Cir. 1976) ("[t]he fact that an employee can make it to work faster in a car than by bus or some other means of transportation likewise does not bring the trip within the course and scope of employment"); *see also Zambrano v. State Farm Mut. Auto. Ins. Co.*, 2019-0769 (La. App. 4 Cir. 8/12/20). ____ So.3d ____ ("even though G&T may have received an incidental benefit from the advertising on Rivera's truck, this is too tenuous to place Rivera in the course and scope of his employment at the time of the accident."). Thus, even assuming TMC received some indirect or

incidental benefits from Mr. Brock's use of the vehicle rented by TMC, these benefits are not sufficient to place him in the course and scope of his employment at the time of the accident.

Finally, plaintiff submits there are questions of fact as to whether Mr. Brock was negligent in entrusting the use of the rental vehicle to his wife when he knew she had a suspended license. We see no reason to reach this issue in the context of the instant case, as it is not relevant to the question of TMC's vicarious liability. As we have explained, the undisputed evidence demonstrates Mr. Brock was on a personal mission at the time of the accident and was not in the course and scope of his employment. Therefore, any discussion of whether Mr. Brock might be liable to plaintiff under a negligent entrustment theory is not germane to the question of whether TMC is entitled to summary judgment.

In sum, we find TMC has satisfied its burden on summary judgment by establishing the absence of factual support for an essential element of plaintiff's vicarious liability claim. Plaintiff has not produced any evidence of a material factual dispute. Summary judgment in favor of TMC is therefore mandated.

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the district court is reversed and summary judgment is granted, dismissing the claims of plaintiff, Eugene Latour, II, against Annett Holdings, Inc. d/b/a TMC Transportation with prejudice.