2016 IL App (3d) 160095-U

Order filed October 13, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

LAURA VELDHUIZEN, JOHN VELDHUIZEN, individually and as husband and wife, and KRISTIN VELDHUIZEN,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiffs-Appellants,	)	Appeal No. 3-16-0095 Circuit No. 14-L-874
v.	)	
JAMES A. EPPENSTEIN and LANGLOIS ROOFING, INC., an Illinois corporation,	)	Honorable Michael J. Powers,
Defendants-Appellees.	)	Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting defendant's motion to dismiss.

¶ 2 Plaintiffs, Laura, John and Kristin Veldhuizen, appeal from the involuntary dismissal of their second amended complaint for negligence against defendant, Langlois Roofing, Inc.

(Langlois). Plaintiffs argue the trial court erred in finding no genuine issue of material fact existed as to Langlois' liability. We affirm.

¶ 3 FACTS

¶ 4 Plaintiffs filed a personal injury complaint as the result of a motor vehicle accident between plaintiffs and James A. Eppenstein, an employee of Langlois.

¶ 5 During discovery, James testified that at the time of the accident, James was employed by Langlois as a roofer. Langlois is in the business of installing and repairing commercial roofs. The day of the accident he was not scheduled to perform any work for Langlois. The vehicle James drove was owned by his girlfriend. James was also not driving anywhere at Langlois's direction or instruction. James was also not being compensated or reimbursed in any way for his travel to the Langlois office. Instead, James made a special trip to the Langlois office to obtain his paycheck because he was "broke." James always picked up his paychecks from Langlois' office. On James' way home from the office, he collided with plaintiffs' vehicle.

¶ 6 Following James' deposition, plaintiffs' obtained leave to amend their complaint to add Langlois as a defendant under a *respondeat superior liability* theory. Langlois filed a motion to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2014)). Langlois argued that it could not be liable under a *respondeat superior* theory because James was not acting within the scope of his employment when the accident occurred.

¶ 7 Accompanying Langlois' motion was the affidavit of Rende Langlois, the president of the company. Rende averred that on the day of the accident there was no requirement that Langlois employees pick up their paychecks at the office. Instead, the method of obtaining a paycheck was at the preference of the employee. Some employees obtained their paycheck from the office. Other employees had their paychecks mailed. If an employee made a special trip to

pick up a paycheck, they were not compensated for their time and did not receive reimbursement for mileage or expenses.

¶ 8 Rende's affidavit further averred that on the day of the accident, James was not scheduled to perform services for Langlois. James was not instructed to drive to the office to pick up his paycheck. After James obtained his paycheck, he was not asked by Langlois to perform any services for Langlois.

¶ 9 The trial court granted Langlois' motion to dismiss. Applying Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), the court found that there was no just reason to delay enforcement or appeal. Plaintiffs' case remains pending against James.

¶ 10 ANALYSIS

¶ 11 On appeal, plaintiffs argue that the trial court erred in granting Langlois' motion to dismiss because a genuine issue of fact exists as to whether Langlois could be liable for plaintiffs' injuries under the theory of *respondeat superior*. Stated another way, "[t]he question on appeal is '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.' " *Gilley v. Kiddel*, 372 Ill. App. 3d 271, 274 (2007) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill 2d 112, 116-17 (1993)). Because James' conduct is outside the scope of his employment, we find *respondeat superior* does not apply. Therefore, we hold the trial court properly dismissed Langlois as a defendant.

¶ 12 "Under the theory of *respondeat superior*, an employer can be liable for the torts of an employee, but only for those torts that are committed within the scope of the employment." *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007). "[A]n employee's conduct is within the scope of employment if three criteria are met: (1) it is of the kind the employee is employed

to perform; (2) it occurs substantially within authorized time and space limits; and (3) it is actuated, at least in part, by a purpose to serve the employer." *Hoy v. Great Lakes Retail Services, Inc.*, 2016 IL App (1st) 150877, ¶ 24. Plaintiff has the burden of establishing all three criteria to conclude that an employee was acting within the scope of employment. *Bagent*, 224 Ill. 2d at 165.

¶ 13 The record reveals that plaintiffs failed to satisfy any of the above criteria. First, Langlois is in the business of installing and repairing commercial roofs. James performed services for Langlois as a roofer. At the time of the accident, James was not scheduled to perform any services, but made the unilateral decision to drive to Langlois office to retrieve his paycheck. James was not compensated for driving to Langlois office to obtain his paycheck. In short, returning home from retrieving his paycheck at Langlois office does not fall within the type of work Langlois hired James to perform.

¶ 14 Second, even if James' unilateral decision fell within the type of work he was employed to perform, the accident occurred outside the authorized time and space limits of his employment. Specifically, the accident occurred *after* James obtained his paycheck. See *Krickl v. Girl Scouts, Illinois Crossroads Council, Inc.*, 402 Ill. App. 3d 1, 8-9 (2010).

¶ 15 Third, obtaining James' paycheck from Langlois' office did not serve Langlois purpose. That is, there is nothing about James' travel in his car that uniquely served Langlois purpose, despite the fact that James was driving to and from the Langlois office. James stated that he was not transporting work materials or returning a company car. James merely drove himself to the office in a personal vehicle, obtained his paycheck, and then drove home. While the parties dispute whether James only had the option to retrieve his paycheck from the Langlois office, this fact is irrelevant. "If the ultimate goal of the travel is nothing more than conveying the employee

to a regular work site, *respondeat superior* liability does not attach." *Hoy*, 2016 IL App (1st) 150877, ¶ 40 (citing *Pyne v. Witmer*, 129 Ill. 2d 351, 356 (1989)).

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.