IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE UNDERWOOD,
Appellant,
vs.
DIVERSIFIED MAINTENANCE SERVICES, INC.,
Respondent.

No. 43227

FILED

DEC 20 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

George Underwood appeals from an order granting summary judgment. Underwood was injured while riding his motorcycle when Ernesto Arevalo, driving a Diversified Maintenance Services, Inc. (DMS) company van, hit him. Arevalo had driven the DMS van from the Los Angeles area to Las Vegas on personal business. Underwood settled his claims with Arevalo, and pursued this lawsuit against DMS on a theory of respondeat superior. The district court granted DMS's motion for summary judgment, finding that Underwood presented no genuine issue of material fact that Arevalo acted within the scope of his employment while driving the DMS van. Therefore, Underwood could not sustain his respondeat superior claim against DMS, and DMS was entitled to judgment as a matter of law. We agree.[1]

---

[1]In moving for summary judgment, DMS also argued that Arevalo was not its employee, but rather, he was employed by DMS, LLC, a separate and distinct company. Underwood therefore moved to amend his complaint by substituting DMS, LLC for DMS, which the district court denied. Because we conclude that Arevalo was not acting within the scope

continued on next page . . .

05-24794

We review orders granting summary judgment de novo.[2] Summary judgment is appropriate when viewing the record in a light most favorable to the non-moving party, the evidence presents no genuine issues of material fact, and the movant is entitled to judgment as a matter of law.[3] Although respondeat superior liability is generally a question of fact, the issue may be resolved as a matter of law when undisputed evidence exists concerning the employee's status at the time of the tortious act.[4]

In automobile accident cases where respondeat superior liability is based on an employee's negligence, we have held that an employee acts within the scope of employment when performing an errand for the employer or conferring a benefit on the employer at the time of the accident.[5]

. . . continued

of his employment at the time of the accident, we need not address which company was his actual employer and whether the district court erred by not permitting Underwood to amend his complaint.

[2]Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

[3]See NRCP 56(c); see also Wood v. Safeway, 121 Nev. ___, 121 P.3d 1026 (2005).

[4]Evans v. Southwest Gas, 108 Nev. 1002, 1005, 842 P.2d 719, 721 (1992) (citing Molino v. Asher, 96 Nev. 814, 818, 618 P.2d 878, 880 (1980); Connell v. Carl's Air Conditioning, 97 Nev. 436, 439, 634 P.2d 673, 675 (1981)), overruled on another ground by GES, Inc. v. Corbitt, 117 Nev. 265, 268 n.6, 21 P.3d 11, 13 n.6 (2001).

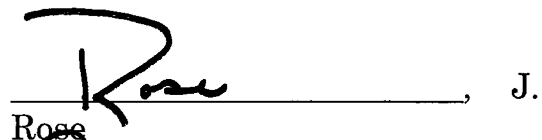
[5]See Kornton v. Conrad, Inc., 119 Nev. 123, 125, 67 P.3d 316, 317 (2003); Evans, 108 Nev. at 1006, 842 P.2d at 721; Connell, 97 Nev. at 439, 634 P.2d at 674; Molino, 96 Nev. at 817, 618 P.2d at 879-80.

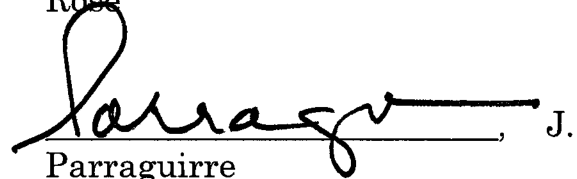
Underwood presented evidence that Arevalo typically used his personal vehicle to perform his duties for DMS. At one point, Arevalo's personal vehicle broke down and DMS gave him a company van to use. Underwood also presented evidence that Arevalo was often on call twenty-four hours a day. But the record indicates, and it is undisputed, that Arevalo was not on call when he drove the DMS vehicle to Las Vegas on personal business with he collided with Underwood. Additionally, although Arevalo had driven DMS vehicles from Los Angeles to Las Vegas in the past, these trips were for DMS' purposes and benefited DMS because the company had transferred him from Los Angeles to Las Vegas and back. Each time, Arevalo used company vehicles to move.

The evidence is uncontroverted that (1) Arevalo came to Las Vegas on a purely personal matter, (2) he did not have DMS' permission to take the van to Las Vegas, and (3) Arevalo neither conferred nor could have conferred a benefit on DMS in Las Vegas due to the distance between Las Vegas and his normal service area in Los Angeles. We therefore conclude that the district court did not err in finding as a matter of law that Arevalo was not acting within the scope of his employment at the time of the accident with Underwood. Accordingly,

We ORDER the judgment of the district court AFFIRMED.

_______________, C.J.
Becker


_______________, J.
Rose


_______________, J.
Parraguirre

cc: Eighth Judicial District Court Dept. 11, District Judge
Frederick A. Santacroce
Pyatt Silvestri & Hanlon
Clark County Clerk