

**ALLEANER MAYFIELD,
INDIVIDUALLY AND ON
BEHALF OF HER MINOR
CHILD, DONEL MAYFIELD**

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NO. 2004-CA-0259

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COURT OF APPEAL

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FOURTH CIRCUIT

VERSUS

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STATE OF LOUISIANA

**ANDREA BAQUET, SEVEN
WARD PILOT LAND SENIOR
CENTER, INC., PAYLESS
INSURANCE AGENCIES AND
XYZ INSURANCE COMPANY**

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 94-324, DIVISION "B-15"
Honorable Rosemary Ledet, Judge**

**CHARLES R. JONES
JUDGE**

(Court composed of Judge Charles R. Jones, Judge Michael E. Kirby, and
Judge Roland L. Belsome)

William R. Mustian, III
STANGA & MUSTIAN, P.L.C.
3117 22nd Street, Suite 6
Metairie, LA 70002

COUNSEL FOR PLAINTIFF/APPELLEE

Arthur A. Morrell
3200 St. Bernard Avenue, Suite 107
New Orleans, LA 70119

COUNSEL FOR DEFENDANT/APPELLANT

**AMENDED AND AFFIRMED
AS AMENDED**

The plaintiff/appellant, Alleander Mayfield, who filed this suit individually and on behalf of her minor child, Donel Mayfield, appeals a district court judgment which awarded monetary damages of \$650,000, but dismissed one of the named defendants. We amend and affirm as amended the district court judgment.

Facts and Procedural History

This case arises out of an automobile accident which occurred on December 10, 1993. The named defendant, Andrea Baquet, had just turned onto Ursuline Street from North Rocheblave Street in Orleans Parish. Ms. Baquet was driving a 1985 Ford company van that belonged to her employer, the Seven Ward Pilot Land Center (hereinafter referred to as “Seven Ward”), also a named defendant.

As Ms. Baquet continued Southbound in the 2600 block of Ursuline Street, Donel Mayfield was playing with a large group of children on Ursuline Street, between North Dorgenois and North Broad. As Ms. Baquet passed the group of children, eyewitnesses observed that Donel was running

across the street, while looking back over his shoulder, and collided with the van. He fell under the back wheels of the van and was dragged by the vehicle for a short distance. He sustained severe injuries and later died at the Medical Center of Louisiana at New Orleans.

Ms. Mayfield filed a Petition for Damages on January 7, 1994. In the petition, Ms. Mayfield named Ms. Baquet, Seven Ward, Payless Insurance (as Seven Ward's liability insurer), and XYZ insurance Company, as Seven Ward's umbrella insurance policy carrier. Ms. Mayfield's Petition alleged that Ms. Baquet's negligence was the proximate cause of Donel's injuries and subsequent death. The petition also alleged that the defendant, Seven Ward, was also at fault, *inter alia*, for allowing Ms. Baquet to drive its van and its failure to supervise and/or instruct Ms. Baquet on how to safely operate the van.

Both Seven Ward and Payless filed Answers to the suit. Additionally, Seven Ward filed an Amended Answer and Third Party Demand that named Payless Insurance and XYZ Insurance Company. Seven Ward alleged that at the time of the accident, Seven Ward and Payless were the contractors to a "Hold Harmless and Indemnity Agreement," under which Payless agreed to indemnify Seven Ward against any claims, such as those asserted in the present suit. Additionally, Seven Ward indicated that it was also listed as an

additional insured under the policy of insurance listed by the third party defendant, XYZ Insurance Company, to Payless Insurance Agencies, and as such was entitled to a full defense and indemnity under the indemnity agreement and provisions of the insurance contract.

The case was tried on October 21, 2003. A judgment, which was rendered on October 30, 2003, awarded Ms. Mayfield damages in the amount of \$650,000, but dismissed all claims against Ms. Baquet. In its reasons for judgment, the district court only found Seven Ward negligent under the theory of *vicarious liability*, but did not enter judgment against Ms. Baquet for causing Donel Mayfield's untimely death. The defendants later filed a cross appeal challenging the district court's assignment of liability.

Ms. Mayfield now appeals to this court challenging only the portion of the district court judgment which dismissed all of the claims against Ms. Baquet.

Law and Discussion

The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. Keller v. Allison, 2003-1644, (La.App. 4 Cir. 6/23/04), 879 So.2d 344, 346, *writ denied*, 2004-1837 (La. 10/15/04), 883 So.2d 1063,

citing Cosse v. Allen-Bradley Co., 601 So.2d 1349, 1351 (La.1992).

Under the provisions of La. Civ. Code Art. 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.”

Additionally, in Nicholson & Loup, Inc. v. Woodward, Inc., 596 So.2d 374, 398 (La. App. 4 Cir. 1992), this court determined that:

[i]n any case involving employee/employer vicarious liability, the employer and the employee are solidarily liable with one another as a matter of law for the damages caused by the employee's negligence, although the liabilities are based on different sources. Narcise v. Illinois Central Gulf Railroad Co., 427 So.2d 1192, 1194 (La.1983). The employee's liability is based on his personal act or omission, while the employer's liability is based on his relationship to the negligent employee. *Id.*

In the case at bar, Ms. Baquet was driving a company van and was actively in the course and scope of her employment at the time of the fatal accident.

In Louisiana, owners of motor vehicles are ordinarily not personally liable for damages which occur while another is operating the vehicle. Friday v. Mutz, 483 So.2d 1269, 1271 (La.App. 4th Cir.1986). Exceptions to this rule occur only when the driver is on a mission for the owner of the vehicle, when the driver is an agent or employee of the owner, and when the owner is himself negligent in entrusting the vehicle to an incompetent driver. *Id.*

Harris v. Hamilton, 569 So.2d 1, 3 (La.App. 4 Cir.1990).

While it is undisputed that Seven Ward, as Ms. Baquet's employer, would be found negligent under the theory of vicarious liability, this fact alone does not relieve or absolve Ms. Baquet, the employee, of any personal liability for the damages suffered by Ms. Mayfield, nor is Ms. Baquet relieved of her liability in causing Donel Mayfield's death. In its written reasons for judgment, the district court concluded:

Based on the testimony of the witnesses to the accident and the medical evidence, the record supports a finding that the decedent was struck by the van driven by Alleaner [sic] Baquet. By her own admission, Ms. Baquet saw the decedent, Donel Mayfield, along with other children playing in or near the street when she turned onto Ursulines Street from Rocheblave Street. Ms. Baquet also testified that she was working for the defendant, Seven Ward Pilot Land Senior Citizen [sic], Inc. at the time of the accident and the van was owned by them.

From the medical evidence the Court reasonably concludes that Ms. Baquet was driving at an excessive rate of speed, failed to see what she should have seen, and failed to take proper precautions for the safety of others under the circumstances, constituting negligence pursuant to Article 2315. The Court also finds Ms. Baquet's negligence caused the decedent's fatal

injuries.

Thus, by Ms. Baquet's own admission at trial, the district court concluded that she was aware that children were in the vicinity and she had a duty to exercise due care, which unfortunately, she did not. Pursuant to La. R.S. 32:214, "every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a highway."

We therefore conclude that Ms. Mayfield's assignment of error has merit. While we agree and find that the portion of the district court's judgment against Seven Ward was reasonable, we disagree with the portion of the district court judgment which dismissed Ms. Baquet, with prejudice. We find that Ms. Baquet was negligent in causing Donel Mayfield's death through her negligent operation of her employer's vehicle.

Decree

For the above and foregoing reasons, the district court's judgment is amended to reflect that Andrea Baquet be cast in judgment, due to her negligent operation of her employer's vehicle, for solidary liability purposes.

In all other respects, the judgment is affirmed.

**AMENDED AND AFFIRMED
AS AMENDED**