STATE OF MICHIGAN

COURT OF APPEALS

DERRICK FULLER,

Plaintiff-Appellant,

v

LAIDLAW, INC., and GREYHOUND LINES, INC.,

Defendants-Appellees.

UNPUBLISHED
November 1, 2002

No. 231601
Wayne Circuit Court
LC No. 00-033672-CZ

Before: O'Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiff Derrick Fuller appeals as of right from the judgment in the amount of $250 entered by the circuit court against defendant Greyhound Lines, Inc. (Greyhound), and the court's order dismissing defendant Laidlaw, Inc. (Laidlaw), as a party to plaintiff's cause of action, and dismissing plaintiff's claims of negligence, gross negligence, and intentional infliction of emotional distress regarding Greyhound's loss of his luggage and the improper handling of plaintiff's discount ticket to travel on the bus line. We affirm.

Plaintiff traveled from Michigan to Nevada on a Greyhound bus in October 1999. Greyhound is a wholly owned subsidiary of defendant Laidlaw. During the trip, plaintiff's luggage was apparently lost and he did report the loss. In January 2000, the luggage was recovered. Plaintiff picked up the luggage at the Detroit terminal on January 16, 2000, and sent Greyhound a message that some of the luggage or property was damaged. In a letter dated January 20, 2000, plaintiff was advised to bring the luggage back for inspection by Greyhound. Greyhound alleged that plaintiff's lost luggage claim was not honored because plaintiff failed to have his luggage inspected after it was recovered; however, plaintiff alleged that an inspection was performed on the day he recovered the luggage. Plaintiff indicated that he informed an agent of the damage to his luggage and an inspection report was completed.

In October 2000, in Wayne Circuit Court, plaintiff filed the present complaint in propria persona against defendants. While not well pleaded, the complaint alleged that (1) defendants had committed negligence, gross negligence, and intentional infliction of emotional distress arising out of the luggage loss and defendants' delayed acceptance of a discount ticket, (2) defendants were strictly liable for the harm caused to plaintiff's luggage, and (3) Laidlaw was vicariously liable as the holding company of Greyhound.

Defendants moved for summary disposition, arguing that after plaintiff submitted his claim for lost luggage, the luggage was recovered and signed for by plaintiff. Defendants also argued that plaintiff failed to come to the Greyhound terminal to allow an inspection of the damaged luggage within seven days of observing the damage or loss. Additionally, defendants argued that even if there was lost or damaged property, plaintiff's claim was limited to $250 pursuant to federal and industry tariff. Defendants also maintained that plaintiff failed to allege any basis to establish jurisdiction regarding Laidlaw, which as a parent company of Greyhound, had no connection with plaintiff. Defendants requested that the court enter judgment against defendants in the amount of $250 and grant defendants' motion for summary disposition with regard to plaintiff's remaining claims.

Following a hearing on defendants' motion, the trial court ultimately concluded that defendants may have violated applicable rules and regulations; however, pertinent federal law limited plaintiff's recovery against Greyhound to $250. Additionally, the trial court granted defendants' motion to dismiss Laidlaw as a party defendant and also dismissed plaintiff's remaining claims stemming from the lost luggage claim and Greyhound's alleged failure to honor his discount ticket. Plaintiff now appeals.

Plaintiff first contends on appeal that the trial court erred when it dismissed his negligence claim and limited his recovery to $250 pursuant to an industry tariff. We disagree.

Defendant Greyhound is a motor common carrier of passengers and their baggage in interstate transportation. Pursuant to Michigan's common law, a common carrier by motor was liable as an insurer for the loss of or damage to a passenger's baggage, if such loss or damage occurred at a time when the carrier exercised complete and exclusive custody and control over the baggage. See *Blair v Pennsylvania Greyhound Lines*, 275 Mich 636, 638; 267 NW 578 (1936). However, although no Michigan cases have directly addressed this issue, it is uniformly recognized by the courts of other jurisdictions that federal law authorizing common carriers to limit their liability for loss or damage to baggage, specifically the Carmack Amendment to the Interstate Commerce Act, formerly 49 USC 20(11) and 11706(c)(3), recodified at 49 USC 14706, governs the loss or damage of shipped goods and checked passenger baggage in interstate transportation by a motor carrier and preempts state common law remedies for negligent damage to goods shipped by common carrier. See *Adams Express Co v Croninger*, 226 US 491, 505-506; 33 S Ct 148; 57 L Ed 2d 314 (1913); *Rini v United Van Lines, Inc*, 104 F3d 502, 505-506 (CA 1, 1997); *Underwriters at Lloyds of London v North American Van Lines*, 890 F2d 1112, 1115-1121 (CA 10, 1989); *Intech, Inc v Consolidated Freightways, Inc*, 836 F2d 672, 677 (CA 1, 1987); *Hopper Furs, Inc v Emery Air Freight Corp*, 749 F2d 1261, 1264 (CA 8, 1984); *Air Products & Chemicals, Inc v Illinois Central Gulf R Co*, 721 F2d 483, 487 (CA 5, 1983); *The Limited, Inc v PDQ Transit, Inc*, 160 F Supp 2d 842, 844 (SD OH, 2001); *Strike v Atlas Van Lines, Inc*, 102 F Supp 2d 599, 600-601 (MD Pa, 2000); *Main Road Bakery, Inc v Consolidated Freightways, Inc*, 799 F Supp 26, 28 (D NJ, 1992); *Philips Consumer Electronics Co v Arrow Carrier Corp*, 785 F Supp 436, 440 (SD NY, 1992), affirmed 999 F2d 537 (CA 2, 1993); *Margetson v United Van Lines, Inc*, 785 F Supp 917, 919 (D NM, 1991); *Pierre v United Parcel Service, Inc*, 774 F Supp 1149 (ND Ill, 1991); *Zabielski v Greyhound Lines, Inc*, 457 NYS2d 369, 371; 117 Misc2d 101 (1982).

In accordance with the Carmack Amendment, the National Bus Traffic Association duly filed its National Baggage Tariff limiting a bus carrier's liability for lost luggage.[1] Rule 5 of the tariff provides that luggage liability for free baggage (i.e., baggage transported for a passenger for which no additional charge is paid by the passenger) is limited to $125 for a discount ticket and to $250 for a full fare adult ticket. In accordance with industry regulations, notice of the limitations of liability was printed on plaintiff's ticket receipt and baggage claim check.

We conclude that the trial court did not err in finding that Greyhound's liability was limited to $250 pursuant to the National Baggage Tariff. Plaintiff does not dispute that he traveled to Reno, Nevada, on a discount ticket,[2] and at the hearing on defendants' motion for summary disposition, plaintiff conceded that the amount of his recovery was limited to $250, although he apparently insisted that he was nonetheless entitled to pursue other remedies because Greyhound did not follow the time regulations of the tariff in processing his claim. Plaintiff has provided no law showing that a failure to comply with the timing requirements would abrogate the monetary limits of the tariff. Consequently, as previously noted, federal law preempts the state common law; thus, plaintiff is not entitled to pursue other tort-based remedies for the full value of his loss. 49 USC 14706; see also *Adams Express Co, supra* at 505-506; *The Limited, Inc, supra* at 844.

In so concluding, we further note that plaintiff received reasonable notice regarding Greyhound's limited liability regarding lost baggage. Plaintiff conceded that by virtue of his membership in the Roadmiles program, he was not a first-time traveler on a Greyhound bus; thus, he should have been aware of Greyhound's limitations on liability conspicuously set forth on the tickets and baggage claim checks. Moreover, plaintiff's itinerary indicated that extra coverage could be purchased for baggage. Accordingly, the trial court properly granted summary disposition in favor of defendants and limited plaintiff's recovery to the terms of the tariff as a matter of law. See, generally, *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999).

Next, plaintiff claims that the trial court erred in dismissing his claims of intentional infliction of emotional distress stemming from his allegations that he was denied the right to use a public transportation bus system after defendants failed to honor his discount ticket and, further, in light of the purportedly callous and improper procedures used by defendants regarding the handling of plaintiff's luggage.

To establish a prima facie case of the tort of intentional infliction of emotional distress, a plaintiff must prove four elements: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Haverbush v Powelson*, 217 Mich App 228, 233-234; 551 NW2d 206 (1996). Liability for such a claim has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to

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[1] National Baggage Tariff No. 78-1109 and National Baggage Tariff No. 91-397. See, generally, Interstate Commerce Commission regulations set forth in 49 CFR 1005 *et. seq*., as adopted by the successor Federal Highway Administrator at 49 CFR 370 *et. seq*.

[2] Because plaintiff traveled on a discount ticket from Detroit to Reno, Nevada, he was actually entitled to only $125, not $250.

go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. *Id.* at 234. A plaintiff must allege more than mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). Whether a defendant's conduct reasonably may be regarded as so extreme and outrageous as to permit recovery is a question of law for the trial court. *Id.* at 92. However, where reasonable minds may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability. *Id*.

Here, plaintiff failed to aver facts to establish that Greyhound's conduct – either the loss of the baggage or its employees' behavior at the ticket counter – was so outrageous that the alleged conduct would compel a person to exclaim, "Outrageous!" *Doe, supra* at 91. Therefore, the trial court properly granted summary disposition regarding plaintiff's intentional infliction of emotional distress claim. *Maiden, supra*.

We find no merit in plaintiff's remaining claims that the trial court erred when it concluded that he was not entitled to damages for pain and suffering for lost property, see *Daley v LaCroix*, 384 Mich 4, 12; 179 NW2d 390 (1970), or that defendants' "ultrahazardous" conduct warrants a finding that defendants were strictly liable for plaintiff's harm when defendants failed to process his lost baggage claim in a timely fashion. Plaintiff has failed to provide any authority supporting his proposition that the untimely processing of his baggage claim constitutes an inherently dangerous activity. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, or give issues cursory treatment with little or no citation of supporting authority. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998).

Finally, we conclude that the trial court did not err in dismissing Laidlaw as a party to plaintiff's claims. In order for plaintiff to prevail against Laidlaw as the parent company of Greyhound, plaintiff had to demonstrate that Greyhound was a mere instrumentality of its parent by establishing the following: (1) control by the parent to such a degree that the subsidiary has become its mere instrumentality; (2) fraud or wrong by the parent through its subsidiary; and (3) unjust loss or injury to the claimant. *Maki v Copper Range Co*, 121 Mich App 518, 524-525; 328 NW2d 430 (1982). Here, plaintiff has not provided any documentary evidence to establish that Laidlaw had sufficient control over Greyhound to warrant piercing the corporate veil. Moreover, assuming arguendo that plaintiff had established a genuine issue of material fact regarding the control element, plaintiff has failed to provide any evidence that Laidlaw's control was exercised in such a manner as to defraud or wrong him, which resulted in an unjust injury or loss. *Id.* at 525. Accordingly, the trial court properly concluded that Greyhound was the real party involved in plaintiff's claim and dismissed Laidlaw from plaintiff's suit.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra