

STATE OF MICHIGAN  
COURT OF APPEALS

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ALEXIS DANIELS,

Plaintiff-Appellant,

v

JANET PETROSKY-CLARK and CONSUMER  
SOURCE, INC., f/k/a HAAS PUBLISHING  
COMPANIES, INC.,

Defendants-Appellees.

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UNPUBLISHED  
December 15, 2009

No. 288403  
Oakland Circuit Court  
LC No. 2007-081118-NI

Before: Talbot, P.J., and O’Connell and Davis, JJ.

O’CONNELL, J. (*dissenting*).

I respectfully dissent.

The trial court found, and the evidence establishes, that on the morning of June 27, 2005, defendant Petrosky-Clark was merely driving to work when this accident occurred. Under the facts in this case, driving to and from work does not implicate the doctrine of respondent superior. I would affirm the decision of the learned trial court.

On the morning of the accident, defendant Petrosky-Clark had just left her home, which was located near 12 Mile Road in Southfield. She was traveling west on 12 Mile Road to her employer’s place of business, which is located approximately nine miles away, near the intersection of 12 Mile Road and Haggerty Road. Petrosky-Clark testified she was going to work when the accident occurred. The circuit court found that there was no genuine issue of material fact that Petrosky-Clark was “merely driving to work at the time of the accident,” and that there was “no evidence of any sales work done on the date of the collision before the collision took place.” Nothing in this record supports plaintiff’s theory that Petrosky-Clark was acting within the course of her employment when the automobile accident occurred. Any conclusion that this is the case is based on speculation, innuendo, and conjecture.

I would affirm the well-reasoned decision of the trial court.<sup>1</sup>

/s/ Peter D. O'Connell

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<sup>1</sup> The majority states,

A performance review conducted after the accident required Petrosky-Clark, “until further notice,” to “start her day in the office and end her day in the office to follow up with her work.” As plaintiff argues, a jury could infer from this evidence that, before the performance review, Petrosky-Clark was not required to begin and end her workday in defendant’s office.

Unfortunately, this is not a correct statement of the law. Subsequent remedial measures are not admissible to prove or disprove any fact at issue in this case. MRE 407.