[Cite as *Parrett v. Univ. of Cincinnati Police Dept.*, 2001-Ohio-1844.]

IN THE COURT OF CLAIMS OF OHIO

MONTY PARRETT, etc., et al.	**:**	
Plaintiffs	**:**	**CASE NO. 99-12014**
v.	**:**	**DECISION**
UNIVERSITY OF CINCINNATI POLICE DEPARTMENT	**:**	**Judge Fred J. Shoemaker**
Defendant	**:**	

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The issues in this case were bifurcated and a trial was scheduled on the sole issue of liability. However, as a result of an April 12, 2001, pretrial conference, the parties were granted leave to submit the case on joint stipulations of fact supported by trial briefs. The matter is now before the court for determination.

Defendant (the University) employed Ralph L. Trost (Ralph) as a police officer. At all times relevant hereto, Ralph acted within the course and scope of his University employment. On October 26, 1997, the University participated in a Law Enforcement Expo at the Eastgate Mall. Ralph was present at the Expo. The University owned a motorcycle that had been taken to the mall for the Expo. Ralph was responsible for returning the motorcycle to its garage.

On October 26, 1997, at approximately 8:30 a.m., Ralph telephoned his brother, Terry A. Trost (Terry) and asked him to bring his truck and trailer to the mall at approximately 6:00 p.m. to transport the University motorcycle back to its garage. Although Terry was employed by the Miami Township, Ohio, Police

Department and had planned to attend the Expo, he was not employed by the University.

At approximately 4:45 p.m., while en route to the mall, Terry was involved in an accident. Terry's negligent operation of his truck proximately caused the accident and injuries to plaintiff.[1] After being notified of the accident, Ralph drove the motorcycle to the garage. The University had no formal policy for transporting motorcycles, and no University trucks or trailers were used for transporting motorcycles.

Plaintiffs contend that Terry was acting as an employee of the University, because he was solicited to aid in the performance of duties that were within the course and scope of Ralph's University employment. As authority for their position, plaintiffs rely primarily on *Calhoun v. Middletown Coca-Cola Bottling* (1974), 43 Ohio App.2d 10. In that case, a delivery driver employed by Middletown Coca-Cola Bottling recruited a teenager to help make deliveries. The teenager was injured while aiding in the deliveries. The Butler County Court of Appeals held that where an employee invites a non-employee to assist him in performing work for his employer, the employer is liable under the doctrine of *respondeat superior* for injuries caused by the negligence of the individual hired by the employee, even though the employer's general directions prohibit such an invitation.

In response, the University contends that *Calhoun* offers plaintiffs no support because that case involved express authority rather than apparent authority. Furthermore, the University argues that the doctrine of apparent authority is not

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[1] "Plaintiff" will be used throughout this decision to refer to plaintiff, Monty Parrett.

applicable against the state or against undisclosed principals.

In *Calhoun*, *supra*, the court stated:

> Preliminarily, we note that the pertinent law of Ohio leaves open any precise definition of the terms 'scope' or 'course' of employment, that is: 'The expression 'scope of employment' cannot be accurately defined, because it is a question of fact to be determined according to the peculiar facts of each case.' *Rogers v. Allis-Chalmers Mfg. Co.* (1950), 153 Ohio St. 513, 526. Generally, it is well said that: '*** [T]he servant's conduct is within the scope of his employment if it is of the kind which he is employed to perform, occurs substantially within the authorized limits of time and space, and *is actuated*, at least in part, *by a purpose to serve the master*. ***'
>
> The theory advanced by the defendant seeks to focus on the unauthorized hiring of the victim Calhoun as a dispositive fact insulating Coca-Cola from liability. Yet its own vigorous cross-examination of the victim clearly established both that Calhoun's sole reason for being at the site of the injury was in response to the servant's request, and in furtherance of the master's business. *** We are thus led to the proposition that the status of an injured third party vis-a-vis the master cannot -- as a matter of law -- block the application of respondeat superior where the act complained of arises as here, within the scope of the servant's employment. (Emphasis added.)

Id. at 13-14.

The three factual differences between *Calhoun* and the case *subjudice* are: 1) the teenager driver injured in *Calhoun* was hired by the employee, whereas here, Terry received no compensation for transporting the trailer; 2) the defendant in

Calhoun was a private party rather than a state agency; and 3) in _Calhoun_, the injured party was the teenage driver, whereas here, a third-party was injured by the driver's negligence. Despite these factual differences, the court finds that the _Calhoun_ decision compels a judgment in favor of plaintiffs.

Applying the rational of _Calhoun_ to the facts of the instant case, the court finds that Ralph believed he was authorized to request another to transport the trailer and that, in so doing, it was for a purpose to serve the master, to-wit: the University.

The University's argument that all hiring authority is vested solely in the University's Board of Trustees has no merit. If the Board of Trustees was required to hire every the University employee, its members would be serving full-time with little time for major problems and policies. The facts in each case are determinative of when the board's intervention is required, otherwise this is a delegable power.

Further, the University's argument that it can only be bound by employees and agents who act within the scope of express authority is without merit. The general rule that the state cannot be estopped by mistakes of its agents is grounded upon the rule of law that the agency doctrine of apparent authority does not apply to agents of the state. However, this is a general rule and in this case, based on the stipulated facts, the court finds that it is not applicable.

Judgment shall be rendered for plaintiffs on the liability issue and the case will be set for trial on the issue of damages.

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FRED J. SHOEMAKER
Judge

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Plaintiffs	**:**	**CASE NO. 99-12014**
v.	**:**	**JUDGMENT ENTRY**
University OF CINCINNATI POLICE DEPARTMENT	**:**	**Judge Fred J. Shoemaker**
Defendant	**:**	

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This case was submitted to the court on the sole issue of liability. The court has considered the evidence, and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiffs in an amount to be determined after the second phase of the trial dealing with the issue of damages. The court shall issue an entry in the near future scheduling a date for the trial on the issue of damages.

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FRED J. SHOEMAKER
Judge

Entry cc:

Kathleen D. Mezher — **Attorney for Plaintiffs**
1241 Nagel Road
Cincinnati, Ohio 45255-3101

Randall W. Knutti — **Assistant Attorney General**
65 East State St., 16th Fl.
Columbus, Ohio 43215

FJS/cmd

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