STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CW 1422

DAVID L. WHEELER, HANNAH WHEELER NICHOLS, MICHAELA G. WHEELER, AND NOAH B. WHEELER, INDIVIDUALLY, AND ON BEHALF OF CHRISTIE S. WHEELER

VERSUS

UNITED STATES FIRE INSURANCE COMPANY, MAX FREIGHT, INC., DARRELL HENDERSON, ABC INSURANCE COMPANY, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, MASSANA CONSTRUCTION, INC., STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, CHARLES E. CAMPBELL AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Judgment Rendered: JUN 13 2019

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On Supervisory Review from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 666981

Honorable Todd W. Hernandez, Judge Presiding

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BEFORE: GUIDRY, CRAIN, THERIOT, CHUTZ, AND PENZATO, JJ.

Per Curiam.

In the matter before us, defendants, Max Freight, Inc. (Max Freight) and United States Fire Insurance Company (United States Fire), moved for partial summary judgment arguing that plaintiffs could not simultaneously pursue both: (1) a negligence cause of action against an employee for which the employer, Max Freight, is vicariously liable; and (2) a direct negligent training and supervision cause of action against the employer when the employer stipulates that the employee was in the course and scope of employment when he committed the alleged negligence, which motion was denied by the district court. For the following reasons, we grant this writ, reverse the district court's ruling, and grant defendants' motion for partial summary judgment, thereby dismissing plaintiffs' negligent training, hiring, and supervision causes of action against defendants with prejudice.

On or about March 13, 2018, the heirs of Christie S. Wheeler filed suit against Darrell Henderson, Max Freight, and United States Fire, among others, for the death of Ms. Wheeler due to an automobile accident allegedly involving Mr. Henderson. At the time, Mr. Henderson was driving an 18-wheeler owned by Max Freight. Max Freight answered the petition, admitting that Mr. Henderson was in the course and scope of employment when the alleged accident occurred.[1] Max Freight also moved for partial summary judgment, asserting that because Max Freight had admitted that Mr. Henderson was in the course and scope of his employment when the alleged accident occurred, as a matter of law, plaintiffs'

[1] Well settled jurisprudence establishes that an admission by a party in a pleading constitutes a judicial confession and is full proof against a party making it. A judicial confession has the effect of waiving evidence as to the subject of the admission. *See C.T. Traina, Inc. v. Sunshine Plaza, Inc.*, 2003-1003 (La. 12/3/03), 861 So.2d 156, 159 (per curiam). Relators herein, Max Freight and United States Fire, have admitted that Max Freight's employee, Mr. Henderson, was in the course and scope of his employment at the time of this accident in their exception of no cause of action and answer to petition for damages.

claims of independent negligence (negligent hiring, training, supervision, etc.) against Max Freight should be dismissed. Plaintiffs opposed the motion.

The hearing on the motion for partial summary judgment took place on August 27, 2018, wherein the district court denied the motion for partial summary judgment. A written judgment reflecting this ruling was signed on September 24, 2018, and Max Freight, along with its insurer, United States Fire, sought supervisory review with this court.

LAW AND ANALYSIS

This is a res nova issue. Plaintiffs have argued that defendants' motion was rightfully denied for several reasons including that there is no binding jurisprudence in defendants' favor, and any federal jurisprudence that does exist conflicts or otherwise misinterprets Louisiana law which, plaintiffs maintain, recognizes two independent causes of action against an employer: one for vicarious liability stemming from the negligence of an employee, and the other for a direct negligence claim for the negligent hiring, training, or supervision of an employee, which can always be brought simultaneously.

Although plaintiffs are correct that there is no binding jurisprudence on this court regarding this issue, we find the cases cited by plaintiffs in support of their argument are not on point as, although they recognize these two independent causes of action, they do not address how the two separate causes are treated when both sound in negligence and the employer admits that the employee was in the course and scope of employment at the time of the alleged wrongdoing.

We find the reasoning provided in *Dennis v. Collins*, 15-2410 (W.D. La. Nov. 9, 2016), 2016 WL 6637973, *7, persuasive - that a negligent hiring claim against an employer is subsumed in a direct negligence claim against an employee, when course and scope are stipulated to, based at least in part on the elements of cause-in-fact and legal cause. In essence, we believe, as the *Dennis* court

reasoned, that should Mr. Henderson be found to be negligent, that finding will include the negligence of Max Freight in Mr. Henderson's hiring, training, supervision, etc. Likewise, should Mr. Henderson be found not to be negligent, then no amount of negligence on the part of Max Freight in hiring, training, or supervising Mr. Henderson, could be the cause-in-fact or legal cause of the accident that occurred.

Therefore, we find that plaintiffs cannot maintain direct negligence claims, such as negligent hiring, training, supervision, etc. against an employer while simultaneously maintaining claims against the alleged negligent employee for which plaintiffs seek to hold the employer vicariously liable after the employer has admitted that the employee was in the course and scope of employment at the time of the alleged conduct. *See Dennis*, 2016 WL 6637973, *7 and *Wilcox v. Harco International Insurance*, 16-187 (M.D. La. June 26, 2017), 2017 WL 2772088.

For the foregoing reasons, the writ is granted, the district court's September 24, 2018 judgment is reversed, and defendants, Max Freight, Inc. and United States Fire Insurance Company's motion for partial summary judgment is granted, dismissing the direct negligence claims against Max Freight, Inc. with prejudice.

WRIT GRANTED; REVERSED.