

MAY 16, 2000

SUPREME COURT OF LOUISIANA

99-C-3264

MICHAEL TIMMONS and WANDA TIMMONS

versus

STACIE MICHELLE SILMAN AND STATE
FARM FIRE AND CASUALTY COMPANY AND
STATE FARM MUTUAL AUTO INSURANCE

ON WRIT OF CERTIORARI
TO THE COURT OF APPEAL,
SECOND CIRCUIT,
PARISH OF OUACHITA

KNOLL, Justice*

The writ before us concerns whether an employee's deviation from an employment related errand is so substantial as to render her deviation outside the course and scope of employment. During the deviation, a multi-vehicle accident occurred between Stacie Michelle Silman (Silman), Michael Timmons, and Bobby Hamilton (Hamilton)¹ in the intersection of 18th Street and Stubbs Avenue in Monroe, Louisiana. In addition to filing suit against Silman and her motor vehicle insurer for injuries arising out of the accident, Michael Timmons and his wife, Wanda, (the Timmonses) filed suit against the insurer of Silman's employer, State Farm Fire and Casualty Insurance Company (State Farm), alleging that Silman's employer was vicariously liable for the damages arising out of Silman's fault. The trial court and court of appeal held that Silman's deviation was not in the course and scope of her

* Marcus, J., not on panel. See La. S. Ct. R. IV, Part 2, § 3.

¹ Hamilton was not made a party to this litigation.

employment, concluding that at the time of the accident she was on a personal errand unrelated to her employment. After a careful review of the record and applicable law, we conclude that the lower courts were correct in finding that Silman was not within the course and scope of her employment due to her substantial deviation from her employment duties. Accordingly, we affirm the lower courts.

Facts

Silman had been employed by attorney Catherine Stagg (Stagg) as a clerical assistant in Monroe, Louisiana for six months. As part of her duties as a clerical assistant, Silman ran errands, including traveling to the downtown post office to pick up the firm's mail and get postage for the firm's postage meter and also to the Central Bank located on the corner of North 18th Street and Stubbs Avenue to make firm deposits.

During an office Christmas luncheon on the day of the accident, Silman received her Christmas bonus check from Stagg. Shortly after returning to the office from lunch, Stagg instructed Silman to go to the post office and refill the firm's postage meter, and expected her to return with the filled meter. This task would require Silman to either walk or drive her car southwest four blocks to Monroe's downtown branch of the United States Post Office. Silman, using her personal vehicle to go to the post office, refilled the firm's postage meter and put it in her car. Rather than return to the firm, she then decided to embark on a personal errand and proceeded to the bank to cash her Christmas bonus check. On her way to the bank, she passed within one or two blocks of the firm without stopping to return the postage meter, and traveled northeast eighteen blocks beyond her place of employment. There was a branch of Central Bank located between the post office and her place of employment, but Silman

was unaware of its location and did not use this branch bank. Before she reached the bank, Silman made a left turn in the path of an oncoming car in the intersection of North 18th Street and Stubbs Avenue and was thrust into Michael Timmons's car as he sat at the traffic light on Stubbs Avenue.

Procedural History

The Timmonses filed suit against Silman, her automobile liability insurer, and Stagg's insurer, State Farm.² The Timmonses claimed that Silman was in the course and scope of her employment with Stagg at the time of the accident, and, therefore, Stagg was vicariously liable. State Farm filed a motion for summary judgment on the issue of Stagg's vicarious liability, alleging Silman's deviation to the bank was not within the course and scope of her employment with Stagg. The trial court granted State Farm's motion for summary judgment, dismissing it from the litigation, and the court of appeal affirmed. Timmons v. Silman, 28,139 (La. App. 2 Cir. 5/10/96), 675 So. 2d 287. On a writ of certiorari to this Court, we granted the Timmonses' application, vacated and set aside the lower courts' judgments, and remanded the matter for a trial stating that genuine issues of material fact remained precluding summary judgment. Timmons v. Silman, 96-1724 (La. 10/11/96), 680 So. 2d 661.

After the case was remanded and transferred to another division of the district court, the Timmonses moved for summary judgment on the same issue regarding whether Silman was in the course and scope of her employment with Stagg at the time of the accident. The trial court granted the Timmonses' motion and it was State Farm who then applied to the Second Circuit for relief. The appellate court granted State Farm the relief it requested, that is, a denial of the Timmonses' summary judgment

² Silman and her automobile liability insurer have been dismissed from this suit after a settlement between them and the Timmonses.

motion, and remanded the case to the trial court for a trial on the merits.

After a bench trial, the court dismissed State Farm finding that Stagg was not vicariously liable as Silman was not in the course and scope of her employment at the time of the accident due to her personal deviation. The court of appeal affirmed. Timmons v. State Farm Fire & Cas. Ins. Co., No. 30,036 (La. App. 2 Cir. 5/29/97) (unpublished opinion). We granted certiorari to determine the correctness of the lower courts' judgments. Timmons v. Silman, 99-3264 (La. 2/4/00), ___ So. 2d ___, 2000 La. LEXIS 380.

Law and Discussion

Under Louisiana law, an employer is answerable for the damage occasioned by its servants in the exercise of the functions in which the servant is employed. La. Civ. Code art. 2320. Specifically, an employer is liable for its employee's torts committed if, at the time, the employee was acting within the course and scope of his employment. Baumeister v. Plunkett, 95-2270 (La. 5/21/96), 673 So. 2d 994, 996. An employee is acting within the course and scope of his employment when the employee's action is "of the kind that he is employed to perform, occurs substantially within the authorized limits of time and space, and is activated at least in part by a purpose to serve the employer." Orgeron v. McDonald, 93-1353 (La. 7/5/94), 639 So. 2d 224, 226-27. An employee may be within the course and scope of his employment yet step out of that realm while engaging in a personal mission. See Denis Paul Juge, Louisiana Workers' Compensation § 8:8, at 8-59 (2nd ed. 1999).

The mere fact that an employee is performing a personal errand while on an employment related errand does not automatically compel the conclusion that the deviation removes the employee from the course and scope of employment.

Generally, “[a]n identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial.” 1 Larson’s Workers’ Compensation Law § 17-1 (emphasis added); see also Malone & Johnson, 13 Louisiana Civil Law Treatise, Workers’ Compensation § 174, at 405 & n.1.

Silman was clearly within the course and scope of her employment when she traveled to the post office to refill the firm’s postage meter. This is not disputed. After the business errand was completed, Silman deviated from the business route to go to the bank, and, on her way to the bank, the accident in question occurred. In determining whether Silman’s deviation to the bank was substantial or insubstantial, we will look at all the facts and circumstances of the deviation, including such illustrative factors as when and where, in relation to the business errand, the employee deviates from the employment related errand and commences with his personal errand, the temporal and spacial boundaries of the deviation, the nature of the employee’s work, the additional risks created by the deviation, and the surrounding circumstances. See 1 Larson’s Workers’ Compensation Law § 17.06. This list of considerations is non-exhaustive, and a court should carefully consider all the facts unique to the case before it. When considering the foregoing factors, the trial court’s findings of fact are entitled to great deference and should not be disturbed unless those findings are manifestly erroneous or clearly wrong. Baumeister, 673 So. 2d at 998.

In examining the when and where of a deviation, it is generally held that “[w]hen an employee deviates from the business route by taking a side-trip that is clearly identifiable as such, the employee is unquestionably beyond the course of employment while going away from the business route and toward the personal objective.” 1

Larson's Workers' Compensation Law § 17.03[1], at 17-14 (emphasis added). In this case, Silman was on her way to the bank at the time of the accident, i.e., she was "going away from the business route and toward the personal objective." The Timmonses argue that because Silman retained the postage meter in her possession when she went to Central Bank, Silman had not completed her employment errand. Although we find this aspect of the deviation not controlling, it can be a persuasive factor if there is evidence of a linking relationship between the postage meter and the deviation. If not, then the mere presence of the postage meter in Silman's car could justify almost any deviation and in turn would untenably lead to the exposure of the employer to untold, unrelated risks of employment. To accept the Timmonses' argument would make an employer the insurer of all accidents arising out of an employee's personal errands absent a linking relationship. Here, Silman had completed her employment errand with the exception of returning to the office with the postage meter. Her deviation was only incidental to, and not as a result of or related to, the employment errand. The fact that Silman had completed her errand for her employer and passed up the place of employment to deviate for a personal errand weighs heavily against finding the deviation within the course and scope of employment.

In turning to the temporal aspect of the deviation, there is no evidence in the record as to the duration of the deviation. However, since we know that Silman was going out of her way for eighteen blocks in her automobile and there is nothing in the record to suggest any intervening occurrences, we assume that the time it took her to deviate to the bank would not have been an overly extended amount of time. This aspect would weigh in favor of Silman's deviation being within the course and scope of employment since the deviation was of relatively minor duration. However, more

than a short duration for the personal errand is needed to justify a deviation falling within the course and scope of employment, *i.e.*, weighing all of the factors that increase the risks of exposing the employer to vicarious liability.

Regarding the spacial element, Silman's deviation took her out of downtown Monroe and to an area approximately eighteen blocks away from her employment. These eighteen blocks were on the other side of her employment and in the opposite direction from the post office. She passed within a block or two of her employment on her way to Central Bank, and, instead of terminating her employment errand as expected by Stagg, she kept driving past the law office and on to her personal destination. The Timmonses argue, however, with some persuasion, that eighteen blocks is not a great distance. While we recognize that eighteen blocks is not a great distance, it is significantly farther than the post office, which was only four blocks away from the office. Having come so close to her place of employment, yet traveling eighteen blocks in the other direction, weighs against Silman's deviation being deemed insubstantial. Had Silman visited the branch of Central Bank located between her office and the post office, we would be presented with a closer set of facts favoring an insubstantial deviation regarding the temporal and spacial elements. There is no bright-line rule in determining what is a substantial or insubstantial deviation. See Malone & Johnson, 13 Louisiana Civil Law Treatise, Workers' Compensation § 174, at 406. This determination is a fact driven inquiry made on a case-by-case basis.

Focusing on the nature of the employee's work, part of Silman's employment duties included going to the post office and the bank for Stagg. However, on this particular occasion Silman was not instructed, or expected, to go to the bank for Stagg. Silman's motivation for going to the bank that day was purely personal, in that she unilaterally decided to cash her Christmas bonus check while on an errand to the

post office for Stagg. The Timmonses argue that Silman's employment led her to the 18th Street branch of Central Bank as that was the bank where she took care of the firm's financial needs. Specifically, Silman had no checking account and knew of no other bank in the Monroe area where she could cash her check, save this one, and her knowledge of it arose from her employment. When she went to this bank on firm business, she would cash her payroll check at this time or, if she had no business banking that day, she would go to that branch after she got off work and cash her check. This was the first time she had made a special trip solely to cash her check. However, contrary to the Timmonses' assertions, the fact that she went to this branch of Central Bank to attend to firm business on a number of occasions is irrelevant. At the time of her deviation, Silman had no firm business to attend to at the bank. Instead, she traveled to the bank during her working hours for purely personal reasons without Stagg's permission, instruction, or knowledge, and beyond Stagg's expectations. Essentially, the Timmonses argue that since Silman was accustomed to using this bank because of her employment, this somehow makes her deviation employment related. We fail to see how familiarity with this particular bank through employment related errands, with nothing more, would cause this deviation for a personal reason to fall within the course and scope of employment.

“If the incidents of the deviation itself are operative to producing the accident, this in itself will weigh heavily on the side of non-compensability.” 1 Larson's Workers' Compensation Law §17.06[1], at 17-33. At oral arguments the parties spoke about the elevated risks inherent in the intersection at 18th Street and Stubbs Avenue, an intersection that Silman would not have traveled through had she returned to the office after filling the postage meter. However, since the parties failed to put on evidence regarding the additional risks created by the deviation, we are unable to

consider this aspect of the deviation. Nonetheless, the record makes clear that at the time of this accident Silman had completed her employment related mission of refilling the meter and, instead of terminating the mission as her employer expected, she unilaterally decided to deviate on to a personal errand wholly unrelated to the business task. While the business errand required that Silman travel only four blocks, her personal errand required that she travel an additional eighteen blocks in the opposite direction. The accident occurred while she was attempting to cash her check. Clearly, her personal deviation dwarfed the business portion of the trip, such that it no longer can be said that it was a circumstance of her employment. Thus, the record supports the finding that it was the incidents of her personal deviation itself that were operative to producing this accident. As such, this factor weighs heavily against finding the deviation within the course and scope of the employment.

This case does not present this Court with a question of the reasonableness of Silman's unilateral decision to deviate to the bank. Stagg implied in her deposition that, although she ordinarily would not have minded, she "probably" would not have allowed Silman to cash her check on this day because the office was busy preparing to close for the Christmas holidays. However, that an employee would not have been fired, or even reprimanded, for their deviation is not the determinative factor. The focus of the Court is the determination of whether the deviation is substantial or insubstantial rather than whether it is reasonable. While the reasonableness of a deviation can have some bearing on this determination, it is not the controlling factor. A reasonable determination would militate against Silman's deviation being employment related, since it would have been more reasonable for her to have stopped at the bank branch that was located just off the route to the post office rather than to have traveled eighteen blocks past her place of employment.

In essence, Silman decided to deviate from her assigned errand of four blocks and unilaterally extended her trip eighteen blocks by going to the bank to cash her bonus check and thereby substantially increased the risk of exposing her employer to vicarious liability with no corresponding benefits received by her employer. We have examined numerous factors that demonstrate how this deviation was substantial in nature in relation to the employment related errand, and thereby elevated the risk of exposing Stagg to vicarious liability. The very nature of these factors being positively answered and showing a substantial deviation demonstrates that Silman exposed her employer to risks which were not inherent in her employment. Because Silman exposed her employer to the risk of liability as she unilaterally decided to perform a personal errand after she essentially completed her employment errand and came within a block or two of her place of employment, we find that Silman was not within the course and scope of her employment. Thus, we find no manifest error in the lower courts' finding of no vicarious liability on the part of Stagg. Accordingly, State Farm, as Stagg's insurer, has no responsibility to the Timmonses for their injuries arising out of the accident.

Decree

For the foregoing reasons, the judgments of the lower courts, finding State Farm Fire and Casualty Insurance not liable to Michael and Wanda Timmons for the injuries arising out of a motor vehicle accident between Michael Timmons and Stacie Silman, are affirmed.

AFFIRMED