Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00336-CV

Juana **RIOS PINA**,
Appellant

v.

SUN LOANS, INC.,
Appellee

From the 45th Judicial District Court, Bexar County, Texas
Trial Court No. 2018-CI-00017
Honorable David A. Canales, Judge Presiding

Opinion by: Rebeca C. Martinez, Chief Justice

Sitting: Rebeca C. Martinez, Chief Justice
Patricia O. Alvarez, Justice
Beth Watkins, Justice

Delivered and Filed: August 4, 2021

REVERSED AND REMANDED

This is a vicarious liability case arising from a motor-vehicle accident in San Antonio between Juana Rios Pina and Rosina Meza, who was an employee of Sun Loans, Inc. ("Sun Loans") at the time of the accident. Rios Pina appeals the trial court's judgment, arguing the trial court erred in granting summary judgment in favor of Sun Loans because genuine issues of material fact exist regarding whether Meza was acting in the course and scope of her employment for Sun Loans at the time of the accident. We reverse and remand.

BACKGROUND

Sun Loans is a multi-state consumer loan and tax service provider that regularly employed Meza as a manager at its Santa Fe, New Mexico location. Sun Loans hired the Brundage Management Company ("Brundage") to provide human-resource and manager-training services to Sun Loans at Brundage's training center in San Antonio, Texas. Sun Loans regularly sent its managers to attend these multi-day training events, which were conducted monthly. Sun Loans reimbursed employees for their travel to San Antonio, whether by plane or car, and provided lodging at a hotel near the training center. Once at the hotel, employees were expected to take a shuttle paid for by Sun Loans to and from the training center each day. If the employees missed the shuttle or opted to take another means of transportation, employees were expected to find their own way to the training center and were not reimbursed for such travel.

In 2016, Sun Loans directed Meza to travel from her regular place of employment in Santa Fe to San Antonio to attend one of the week-long manager training events to take place the week of June 7. Meza arrived in San Antonio the Monday before the training began and stayed the night at the hotel paid for by Sun Loans. On the first day of the training event, Meza elected to drive her personal vehicle to the training center rather than take the company-provided shuttle. On her way to the training center, Meza's vehicle collided with Rios Pina's vehicle. Meza and Rios Pina exchanged information and Meza proceeded to the training center.

Rios Pina filed suit against Meza and Sun Loans, alleging negligence, negligence per se, gross negligence, vicarious liability, negligent entrustment, negligent hiring, negligent qualifications, negligent vehicle monitoring and supervision, negligent retention, negligent management, negligent contracting, and negligent maintenance. Both Meza and Sun Loans filed general denials and asserted various defenses. Meza and Rios Pina settled, and Rios Pina filed a notice of nonsuit with prejudice on her claims against Meza. Sun Loans filed a traditional motion

for summary judgment on all of Rios Pina's claims. Regarding Rios Pina's vicarious liability claim, Sun Loans argued it was not vicariously liable for Meza's negligence because she was not acting within the course and scope of her employment at the time of the accident. Rios Pina responded to the summary judgment motion, asserting fact issues exist about whether Meza was in the course and scope of employment because she was on a "special mission" for Sun Loans at the time of the accident.

On June 2, 2020, the trial court granted Sun Loans' summary judgment motion and dismissed all of Rios Pina's claims. Rios Pina appealed, arguing the trial court erred in granting summary judgment on her vicarious liability claim because there is a genuine issue of material fact as to whether Meza was acting in the course and scope of her employment for Sun Loans at the time of the accident.

STANDARD OF REVIEW

The movant on a traditional motion for summary judgment has the burden to demonstrate there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 130 (Tex. 2018). A defendant is entitled to summary judgment if at least one element of the plaintiff's claim is conclusively disproved. *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 508 (Tex. 2010). If the defendant meets these requirements, the burden then shifts to the plaintiff to produce evidence that raises a genuine issue of material fact as to the elements negated. *Pinckley v. Gallegos*, 740 S.W.2d 529, 531 (Tex. App.—San Antonio 1987, writ denied). With regard to the existence of genuine fact issues, "[w]e review summary judgments de novo, taking as true all evidence favorable to the nonmovant, and indulging every reasonable inference and resolving any doubts in the nonmovant's favor." *Barbara Techs. Corp. v. State Farm Lloyds*, 589 S.W.3d 806, 811 (Tex. 2019) (citing *Frost*, 315 S.W.3d at 508). In our review of a summary judgment, we consider

whether "reasonable and fair-minded jurors could differ in their conclusions in light of all the evidence presented." *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam).

APPLICABLE LAW

Although not directly at fault, an employer may be held vicariously liable for the negligence of an employee under the doctrine of respondeat superior. *Id.* at 757. Employer liability via respondeat superior requires (1) tortious conduct by a tortfeasor, (2) an agency relationship between the tortfeasor and the employer, and (3) commission of the tort in the course and scope of the employee's authority. *Rodriguez v. Panther Expedited Servs., Inc*., No. 04-17-00291-CV, 2018 WL 3622066, at *5 (Tex. App.—San Antonio July 31, 2018, pet. denied) (mem. op.). Meza's negligent tortious conduct and her agency relationship with Sun Loans are not at issue on appeal.

The parties dispute only the third prong—whether Meza's conduct fell within the course and scope of her employment. Whether an employee was acting within the course and scope of employment is generally a fact issue. *Arbelaez v. Just Brakes Corp.*, 149 S.W.3d 717, 720 (Tex. App.—Austin 2004, no pet.); *see GTE Southwest Inc. v. Bruce*, 998 S.W.2d 605, 618 (Tex. 1999). For an employee's conduct to be within the course and scope of employment, the conduct must be (1) within the general authority given to the employee; (2) in furtherance of the employer's business; and (3) to accomplish the object for which the employee was hired. *Arbelaez*, 149 S.W.3d at 720. Put another way, "the employee must be acting with the employer's authority and for the employer's benefit." *Painter*, 561 S.W.3d at 138–39.

An employee generally is not in the course and scope of employment while driving a vehicle to and from the employee's place of work. *Id.* at 136; *see also Mora v. Valdivia*, 595 S.W.3d 713, 724 (Tex. App.—San Antonio 2019, pet. granted, judgm't vacated w.r.m.); *Lerma v.*

Pipe Movers, Inc., No. 04-16-00739-CV, 2018 WL 1402043, at *4–5 (Tex. App.—San Antonio Mar. 21, 2018, no pet.) (mem. op.) (applying the "coming-and-going" rule to a vicarious liability action arising from a motor-vehicle accident). However, an exception to the "coming-and-going" rule in the course and scope analysis is the "special mission" exception. *Painter*, 561 S.W.3d at 136. The special mission exception states that an employee is within the course and scope of employment if the employee is on a "special mission" at the employer's direction or is otherwise performing a task to further the employer's business with the employer's express or implied approval. *Id.* A special mission involves "work or a work-related activity apart from the employee's regular job duties." *Upton v. Gensco, Inc.*, 962 S.W.2d 620, 622 (Tex. App.—Fort Worth 1997, pet. denied); *cf*. *Lerma*, 2018 WL 1402043, at *5 (stating a special mission involves a specific errand as part of the employee's duties or at the employer's request). If on a special mission, the employee is within the course and scope of employment until the mission is complete or until the employee deviates from the mission for personal reasons. *Chevron, U.S.A., Inc. v. Lee*, 847 S.W.2d 354, 356 (Tex. App.—El Paso 1993, no writ).

The parameters of the special mission exception require a fact-intensive analysis. *Painter*, 561 S.W.3d at 136. An employee's use of a company vehicle, travel to a temporary jobsite, or reimbursement by the employer for the cost of travel, do not, by themselves, implicate the special mission exception. *Lerma*, 2018 WL 1402043, at *4. Likewise, the distance to a temporary job site is not dispositive. *See SeaBright Ins. Co. v. Lopez*, 465 S.W.3d 637, 644 (Tex. 2015) (holding decedent was within course and scope of employment at time of accident where employer's business "called for employing specialized, non-local work crews in constantly changing, remote locations on temporary assignments"). We have recognized atypical assignments at the employer's direction, along with one or more of the above factors, when acknowledging the existence of a special mission. *See Am. Cas. Co. of Reading, Pa. v. Bushman*, 480 S.W.3d 667,

675 (Tex. App.—San Antonio 2015, no pet.) (holding employee's travel to an alternate work site in a different city to perform a week-long assignment outside his normal job duties at the behest of his employer satisfied the special mission exception to the coming-and-going rule); *see also Zurich Am. Ins. Co. v. McVey*, 339 S.W.3d 724, 727 (Tex. App.—Austin 2011, pet. denied) (holding employee was in the course and scope of his employment at the time of the accident because the trip from Austin to Houston in a company-owned truck for a multi-day conference "was an atypical overnight [assignment] to a relatively distant location outside his day-to-day work area.").

ANALYSIS

Sun Loans argues Meza was not in the course and scope of employment because she was driving to work at the time of the accident and was not otherwise engaged on any business for Sun Loans, thereby falling within the parameters of the coming-and-going rule. Sun Loans additionally argues the special mission exception is inapplicable because (1) Meza drove from the hotel to the training in her personal vehicle instead of taking the company's shuttle, (2) she was not reimbursed or otherwise compensated for her method of travel from the hotel to the training, and (3) Sun Loans did not direct her route from the hotel to the training.

Rios Pina does not challenge whether Sun Loans met it initial burden to establish that Meza was not within the course and scope of her employment; therefore, we review whether Rios Pina met her burden to produce evidence raising a genuine issue of material fact as to the course and scope element. *See* TEX. R. CIV. P. 166a(c); *Painter*, 561 S.W.3d at 130. In her response to Sun Loans' summary judgment motion, Rios Pina attached the deposition transcripts of Meza and Sun Loans' representative, Valerie Tolhurst. This evidence showed that: (1) Sun Loans regularly employed Meza as a manager at Sun Loans' Santa Fe, New Mexico, location; (2) Sun Loans directed Meza to travel from Santa Fe to San Antonio—a distance of approximately 700 miles; (3)

the purpose of this travel was to attend a multi-day, mandatory, manager-training event, which was separate from Meza's regular duties; (4) Meza would not have been in San Antonio at the time of the accident but for the required training; (5) the collision occurred while Meza was en route to the training center; and (6) Sun Loans reimbursed Meza for her travel to San Antonio, paid for her hotel, which was selected by Sun Loans, paid her ordinary wages for the training, and paid her a per diem for her breakfast and lunch.

We hold this evidence raises a genuine issue of material fact as to whether Meza was on a special mission for Sun Loans at the time of the accident. *See Upton*, 962 S.W.2d at 622 (stating a special mission involves work or work-related activity apart from regular job duties); *see also Bushman*, 480 S.W.3d at 675 (stating employee's travel to conduct a week-long training of a new vehicle dispatcher in a different city satisfied the special mission exception to the coming-and-going rule); *Chevron*, 847 S.W.2d at 356 (holding employee acted within the course and scope of employment when he traveled from a hotel to a mandatory seminar in different city at his employer's direction). Indulging every reasonable inference and resolving all doubts in Rios Pina's favor, we conclude the evidence presented raises a genuine issue of material fact about whether Meza was on a special mission, and thus within the course and scope of her employment with Sun Loans, at the time of the accident. Therefore, summary judgment was inappropriate on Rios Pina's vicariously liability cause of action.

CONCLUSION

We reverse the trial court's judgment and remand the case to the trial court for further proceedings consistent with this opinion.

Rebeca C. Martinez, Chief Justice