IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JON C. REYNOLDS and KAREN RUTH REYNOLDS, husband and wife, and the marital community comprised thereof, Respondent, v. CHRISTOPHER HAMILTON DEAN, and JANE DOE DEAN, husband and wife, and the marital community composed thereof; and Petitioner, BELLINGHAM SCHOOL DISTRICT #501, Defendant.	NO. 64078-0-I DIVISION ONE UNPUBLISHED OPINION FILED: November 22, 2010

Lau, J. — While driving his employer's van, Christopher Dean collided with Jon and Karen Reynolds' vehicle. The Reynolds sued Dean, Jane Doe Dean, the Deans' marital community, and Dean's employer, the Bellingham School District (District). The trial court granted a CR 12(b)(1) motion to dismiss claims against the District and

against Dean in his capacity as a District employee, but denied Dean's motion for summary judgment on any claim arising from his actions outside the scope of his employment. Because we conclude that the Reynolds failed to raise a genuine issue of material fact over whether Dean was acting outside the scope of his duties as a District employee at the time of the accident, we reverse the trial court's order denying Dean's summary judgment motion on the claim against him in his individual capacity.

FACTS AND PROCEDURAL HISTORY

The record reveals the following undisputed facts. On Friday, September 30, 2005, Bellingham School District Maintenance Supervisor Christopher Dean drove the District van assigned to him from Bellingham High School to Office Depot on Guide Meridian in Bellingham to research the cost of an office chair for the maintenance department secretary. Dean's job duties include obtaining supplies for 22 District facilities and require significant daily travel between sites. To make purchases for the District while at Office Depot, Dean calls his secretary, who issues a "field" purchase order number allowing Dean to charge the District account. The District does not require Dean to obtain approval before making purchases.

Dean left Bellingham High School sometime after noon and traveled north on the freeway. While driving in the exit lane to Guide Meridian, Dean saw the brake lights of the vehicle ahead of him come on abruptly, applied his brakes, and pulled over to the right as much as possible before colliding with the vehicle. Police estimated the accident occurred at 1:20 p.m.

On August 7, 2008, the Reynolds filed a notice of claim with the District as

required by RCW 4.96.020. The Reynolds filed their complaint on September 11, 2008, alleging that Dean negligently caused them injuries while "performing his duties as an employee of the Bellingham School District No. 501." Dean and the District moved to dismiss the complaint under CR 12(b)(1) for the Reynolds' failure to comply with the 60-day waiting period for filing suit against a local government entity provided by RCW 4.96.020(4).[1] The Reynolds argued that the complaint could be construed to contain an alternative theory that the accident occurred when Dean was exceeding the scope of his employment. Dean moved for summary judgment, arguing that the Reynolds failed to raise a genuine issue of material fact for trial on this proposed alternative theory. The Reynolds claimed that they had identified two genuine material issues of fact regarding Dean's credibility—(1) Dean identified the secretary as Elaine Perkins at his first deposition and then as Sharon Thomas at a later deposition and (2) Dean did not purchase a new office chair after the accident. The trial court agreed, dismissed the claims against the District and Dean in his capacity as an employee, and denied summary judgment on the claim against Dean as an individual.

A commissioner of this court granted Dean's petition for discretionary review.

ANALYSIS

Dean first contends that the trial court erred in its determination that the

[1] RCW 4.96.020(4) provides, "No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof."

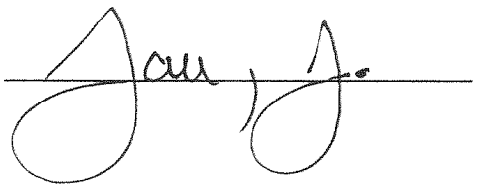
Reynolds' complaint stated a cause of action against him in his individual capacity. Even assuming, without deciding, that the trial court properly construed the complaint to include such a claim, the record reveals that Dean is entitled to summary judgment as a matter of law.

A motion for summary judgment may be granted when there is "no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c). The moving party bears the initial burden of showing the absence of an issue of material fact. Right-Price Recreation, LLC v. Connells Prairie Cmty. Council, 146 Wn.2d 370, 381-82, 46 P.3d 789 (2002). "A material fact is of such a nature that it affects the outcome of the litigation." Ruff v. County of King, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). If the moving party is a defendant who meets the initial burden, then the inquiry shifts to the party with the burden of proof at trial. Ruff, 125 Wn.2d at 703. If that party " 'fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial,' " then the court should grant the motion. Right-Price, 146 Wn.2d at 382 (quoting Young v. Key Pharms., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989)).

To overcome the presumption that Dean was acting within the scope of his employment while driving the District's van, the Reynolds had the burden to produce "competent evidence from either interested or disinterested witnesses, provided that their testimony is uncontradicted, unimpeached, clear and convincing." Amend v. Bell, 89 Wn.2d 124, 127, 570 P.2d 138 (1977). It is not sufficient to attack the credibility of

Dean's testimony regarding the scope of his employment by arguing that there are weaknesses in his testimony concerning collateral matters, such as the name of the maintenance department secretary or the ultimate resolution of her need for a chair. Amend, 89 Wn.2d at 129 (quoting Rinieri v. Scanlon, 254 F. Supp. 469, 474 (S.D.N.Y. 1966) (" '[O]pposing party may not merely recite the incantation, "Credibility," and have a trial on the hope that a jury may disbelieve factually uncontested proof.' ")).

The Reynolds fail to identify any evidence to support a reasonable inference that Dean, while employed as a maintenance supervisor tasked with obtaining supplies for other District employees, was acting outside his employment as he drove the District's van to Office Depot to research prices on a chair for another District employee. Because the Reynolds had the ultimate burden of proof on this issue, the trial court erred by denying Dean's motion for summary judgment. Accordingly, we reverse the order denying summary judgment and remand for dismissal of all claims.



WE CONCUR: