IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

RICHARD DAVIS, Appellant, v. DARIN MILLIKAN and HIRE SOURCE, INC., a corporation, and JOBS 4 U, INC., d/b/a HIRE SOURCE STAFFING, Respondents.	)	No. 66666-5-I UNPUBLISHED OPINION FILED: May 23, 2011

Ellington, J. — In this loaned servant case, there is no material question of fact regarding application of the loaned servant doctrine or coworker immunity, and the trial court properly dismissed on summary judgment.

BACKGROUND

Hire Source, Inc. provides temporary contract workers for manual labor jobs. In May 2007, Hire Source provided a temporary worker, Darin Millikan, to Cadet Manufacturing Company to operate machinery in its fabricating department. Cadet instructed Millikan on how to operate a 150-ton sheet metal press and supervised his performance. Cadet reported Millikan's hours to Hire Source, which issued his paychecks and generated an invoice to Cadet.

Millikan operated the sheet metal press with Richard Davis, a permanent

employee of Cadet. The procedure was for Davis, standing on the opposite side of the press from Millikan, to insert a piece of sheet of metal into the press, after which Millikan depressed a foot pedal to stamp the metal.

On his first day, Millikan depressed the pedal and the stamp came down on Davis's hand, which was partially amputated as a result. Cadet has alleged the machine's "light curtain" should have prevented the injury but failed to do so.

Davis sued Millikan and Hire Source. On summary judgment, the court ruled that Hire Source was exempt from liability under the "loaned servant" exception to respondeat superior and that Millikan was immune from suit under the Industrial Insurance Act, Title 51 RCW.

DISCUSSION

An employer is vicariously liable for injuries caused by the negligence of its employee under the principle of respondeat superior.[1] The underlying policy is that the employer is in the best position to control the conduct of its employees and to compensate injured parties.[2]

Under the loaned servant doctrine, however, a worker in the general employ and

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[1] Brown v. Labor Ready Northwest, Inc., 113 Wn. App. 643, 646, 54 P.3d 166 (2002). To apply respondeat superior (1) the relationship must be that of employer-employee; and (2) the tort must be committed within the scope of his or her employment and in furtherance of the employer's interest. Breedlove v. Stout, 104 Wn. App. 67, 70, 14 P.3d 897 (2001) (quoting Dickinson v. Edwards, 105 Wn.2d 457, 467, 716 P.2d 814 (1986)).

[2] Rahman v. State, 170 Wn.2d 810, 818-19, 246 P.3d 182 (2011) (policy supporting vicarious liability is that employer is in position to impose workplace rules and standards); see also Vanderpool v. Grange Ins. Ass'n, 110 Wn.2d 483, 487, 756 P.2d 111 (1988) (policy underlying vicarious liability is to afford a plaintiff the maximum opportunity to be fully compensated).

pay of one employer may be "loaned" to another, in which case the worker becomes the employee of the temporary employer for that particular service.[3] Thus, under the loaned servant doctrine, Millikan was Cadet's employee when he operated the press that injured Davis. The court did not err in granting summary judgment to Hire Source.

Davis criticizes the loaned servant doctrine and this court's reliance thereon in Brown v. Labor Ready Northwest, Inc.[4] He argues the doctrine is illogical and allows temporary hiring agencies to escape responsibility. He is unimpressed by the theory that the supervising employer is in the best position to avoid negligent acts, and urges this court to apply "enterprise liability" instead of the loaned servant doctrine.[5] He relies upon cases from Alaska, Louisiana, and Kansas.[6]

But our decision in Brown was an expression of long-standing Washington common law dating to at least 1919, by which this court is bound.[7] Further, most states align with Washington on this issue, including New York, Georgia, Missouri, Arizona, Michigan, Ohio, New Mexico, Rhode Island, and Illinois.[8] Davis seeks a change in

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[3] Brown, 113 Wn. App. at 647.

[4] 113 Wn. App. 643, 54 P.3d 166 (2002).

[5] Under enterprise liability, multiple employers may be held jointly liable for their employee's negligent acts because all of the employers benefit from a shared enterprise. Whether any of those employers exercise control over the employee's conduct is irrelevant. Morgan v. ABC Mfr., 710 So.2d 1077 (La. 1998).

[6] Bright v. Cargill, Inc. and Labor Source, Inc., 251 Kan. 387, 837 P.2d 348 (1992); Morgan, 710 So.2d 1077; Kastner v. Toombs, 611 P.2d 62 (Alaska 1980).

[7] See Stocker v. Shell Oil Co., 105 Wn.2d 546, 716 P.2d 306 (1986); Novenson v. Spokane Culvert & Fabricating Co., 91 Wn.2d 550, 588 P.2d 1174 (1979); Nyman v. MacRae Bros. Constr. Co., 69 Wn.2d 285, 418 P.2d 253 (1966); Fisher v. Seattle, 62 Wn.2d 800, 384 P.2d 852 (1963); Olson v. Veness, 105 Wash. 599, 178 P. 822 (1919).

[8] See Morgan, 710 So.2d at 1081 n. 7.

Washington law. He must make his argument to the Washington State Supreme Court.

Davis also assigns error to the court's ruling that Millikan is immune from suit under the Industrial Insurance Act, which removes all cases involving industrial injuries from private controversy and the jurisdiction of the courts.[9] One exception is where injury is caused by a third party not in the same employ. In such circumstances, the injured worker may seek damages from the third party.[10]

The statutory bar to suit arises when (1) the employer has the right to control the employee's conduct in the performance of duties and (2) there is consent by the employee to this relationship.[11] Davis contends that, unless Millikan can show he consented to an employer-employee relationship with Cadet, he is subject to suit as a third party under RCW 51.24.030(1). Davis overlooks the fact that consent is irrelevant when the loaned employee is not the claimant.[12]

Affirmed.

Ellington, J.

WE CONCUR:

Dwyer, J.

Leach, A.C.J.

[9] RCW 51.04.010.

[10] RCW 51.24.030(1).

[11] Novenson, 91 Wn.2d at 553.

[12] See Brown, 113 Wn. App. at 648-49 (quoting Fisher, 62 Wn.2d at 804-05).