

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 22, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2017AP74

Cir. Ct. No. 2015CV124

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

MARANDA A. LAFROMBOIS,

PLAINTIFF-APPELLANT,

DEAN HEALTH PLAN, INC.,

INVOLUNTARY-PLAINTIFF,

v.

MARK A. REISEN,

DEFENDANT,

**GANNETT SATELLITE INFORMATION NETWORK, INC. AND STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Manitowoc County:

GARY L. BENDIX, Judge. *Affirmed.*

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Maranda A. Lafrombois appeals from an order granting summary judgment to Gannett Satellite Information Network, Inc. For the reasons that follow, we affirm.

¶2 This case arises from a motor vehicle accident that occurred on November 27, 2014. Lafrombois was a passenger in a vehicle that was hit by a truck owned and driven by Mark A. Reisen. At the time of the accident, Reisen was delivering newspapers on behalf of Gannett, a corporation that provides newspaper publishing services. Lafrombois sued Gannett on the theory that it was vicariously liable for Reisen's allegedly negligent driving.

¶3 Gannett filed a motion for summary judgment, arguing that it was immune from liability because Reisen was acting as an independent contractor at the time of the accident. Lafrombois responded with her own motion for summary judgment, arguing that Reisen was acting as a servant of Gannett. Ultimately, the circuit court agreed with Gannett and granted summary judgment in its favor. This appeal follows.

¶4 We review a grant of summary judgment de novo, using the same methodology as the circuit court. *See Estate of Sheppard ex rel. McMorrow v. Schleis*, 2010 WI 32, ¶15, 324 Wis. 2d 41, 782 N.W.2d 85. Summary judgment is

proper if there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. *Id.*; WIS. STAT. § 802.08(2) (2015-16).¹

¶5 An employer may be vicariously liable for another person’s actions if a master/servant relationship exists between them. See *Kerl v. Dennis Rasmussen, Inc.*, 2004 WI 86, ¶18, 273 Wis. 2d 106, 682 N.W.2d 328. A “master” is “a principal who employs an agent to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service.” *Id.*, ¶19 (citation omitted). Conversely, a “servant” is “one employed to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other’s control or right to control.” *Id.*

¶6 An employer is generally not liable for the actions of an independent contractor. See *Kettner v. Wausau Ins. Cos.*, 191 Wis. 2d 723, 736, 530 N.W.2d 399 (Ct. App. 1995); *Mueller v. Luther*, 31 Wis. 2d 220, 229, 142 N.W.2d 848 (1966). An “independent contractor” is “one ‘who contracts with another to do something for him but who is not controlled by the other nor subject to the other’s right to control with respect to his physical conduct.’” *Romero v. West Bend Mut. Ins. Co.*, 2016 WI App 59, ¶40, 371 Wis. 2d 478, 885 N.W.2d 591 (citation omitted).

¶7 Accordingly, the most important factor in determining whether a person is a servant or an independent contractor is the degree to which the employer retains the right to control the details of the work. See *Pamperin v.*

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

Trinity Mem'l Hosp., 144 Wis. 2d 188, 199, 423 N.W.2d 848 (1988) (“The right to control is the dominant test in determining whether an individual is a servant.”); *Snider v. Northern States Power Co.*, 81 Wis. 2d 224, 232, 260 N.W.2d 260 (1977) (“The most important single criterion in determining whether a person is an independent contractor is the degree to which the owner, rather than the independent contractor, retains the right to control the details of the work.”).

¶8 Here, Reisen was delivering newspapers on behalf of Gannett pursuant to a written contract. The contract described Reisen’s status as an “independent contractor,” who was paid based upon the number of newspapers that he delivered. Although the contract obligated Reisen to deliver newspapers by a specified time each day, it left “the means, method, and control of the activities” to his discretion. Thus, Reisen was free to deliver newspapers “in any order or sequence and by whatever manner, means, method or mode [he] chose[.]”

¶9 Based upon the foregoing, the circuit court concluded that Reisen was acting as an independent contractor at the time of the accident. Lafrombois contends that this conclusion was erroneous, as other facts suggest that Reisen was acting as a servant instead. Lafrombois points to various obligations in the contract that affected Reisen’s work.² She also notes that Reisen was accountable for his performance, as Gannett would contact him regarding delivery errors/missed deadlines and could deduct his pay or terminate him.

² For example, Reisen was required to (1) maintain delivery information and provide it to Gannett upon request to ensure that it had accurate circulation records; (2) use advertising bags when directed by Gannett to do so; (3) inspect newspaper vending machines and keep them clean and in working order; and (4) remove unclaimed copies of newspapers from subscriber locations. Reisen was also prohibited from inserting foreign materials into newspapers without prior approval from Gannett.

¶10 We are not persuaded by LaFrombois’ arguments. To begin, limited control over certain aspects of a job does not rewrite an independent contractor relationship. *See, e.g., Mueller*, 31 Wis. 2d at 226 (the limited inspection and supervision of delivery trucks and their drivers by an employer were insignificant and did not destroy/impair the character of independent contractor); *Bond v. Harrel*, 13 Wis. 2d 369, 376, 108 N.W.2d 552 (1961) (the requirements to use certain forms and to report sales daily were not sufficient control over the details of work to make a magazine salesman a servant of an employer). Moreover, the ability to hold an independent contractor accountable for a job is unremarkable and does not create a master-servant relationship.

¶11 In the end, on this record, we are satisfied that Reisen retained and exercised the right to control all significant details of the work of delivering newspapers. Accordingly, we conclude that he was an independent contractor at the time of the accident and that the circuit court properly granted summary judgment in Gannett’s favor.³

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

³ To the extent we have not addressed an argument raised by LaFrombois on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

