



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**AARON ENGLER v. GULF INTERSTATE ENGINEERING
CV-11-0273-PR**

PARTIES:

Petitioner: Plaintiff Aaron Engler

Respondents: Defendant Gulf Interstate Engineering, Inc.

FACTS:

Ian Gray was employed by Gulf, an energy consulting company headquartered in Houston, Texas. Although he resided in Houston, in 2007 and 2008 he worked on a Gulf project in Los Algodones, Mexico, during which time he stayed in a hotel in Yuma, Arizona. He drove a rental car from Yuma to the project site in Mexico. Gulf reimbursed Gray for his travel and hotel costs, for car rental and fuel costs, and for three meals a day. Although Gulf generally did not compensate employees for time spent commuting to and from a job site, because of border-crossing delays associated with the return trip, the work day of employees participating in this project was considered finished when they returned from work to their hotel, as opposed to when they left the job site. Gulf exercised no supervision over an employee from the time he or she arrived at the hotel after work to his or her return to work the next day.

One day, Gray returned from work to his hotel at about 7:30 p.m. He later drove his rental car to a restaurant in Yuma, accompanied by another employee. The two did not perform any work until they returned to the next work day. While driving back to the hotel after dinner, Gray collided with a motorcycle driven by Engler. Engler brought a personal injury suit against Gray and Gulf, alleging that Gray was negligent in causing the accident and that Gulf was vicariously liable for Gray's conduct. Gulf moved for summary judgment, contending Gray was not acting within the "course and scope of employment," precluding imposition of vicarious liability. The trial court agreed and granted summary judgment in favor of Gulf.

After the trial court entered its order, the Arizona Court of Appeals, Division Two, held in *McCloud v. Kimbro* that an employee completing an out-of-town travel assignment is continually within the course and scope of employment; thus, respondeat superior liability attaches to conduct that occurs when the employee travels to and from a restaurant for a meal, even if he or she is off-duty, because "eating is necessarily incidental to a multiple-day assignment" and therefore serves a business purpose. 224 Ariz. 121, 125 ¶ 17, 228 P.3d 113, 117 (App. 2010). Engler moved for a new trial, arguing *McCloud* governed the facts of his case against Gulf. The trial court denied the motion, and Engler appealed.

Division One of the Court of Appeals affirmed the trial court's ruling, rejecting Division

Two's reasoning in *McCloud*. Prior to *McCloud*, no Arizona case law addressed the issue of respondeat superior liability with respect to the actions of off-duty employees engaged in out-of-town work. In finding such liability to exist, Division Two relied on a principle of workers' compensation law concerning employees assigned to travel overnight, which dictates that such workers remain within the course of employment continuously during their travel, even when eating and sleeping, except when a distinct departure on a personal errand has occurred.

Division One acknowledged that workers' compensation principles may be helpful in deciding questions of respondeat superior liability but concluded they should not be mechanically applied because the doctrine of respondeat superior promotes purposes different from those addressed by workers' compensation law.

Workers' compensation law is designed to shift the burden of loss attributed to work-related accidents from the individual employee to industry and the community as a whole. Thus, an employer is liable only to the injured employee, and compensation is awarded if the employee was injured while performing a work-related activity; to be work-related, an incident must have arisen out of and in the course of employment. Courts liberally interpret "out of and in the course of employment" in the work-related test based on policy considerations designed to prevent employees from becoming public charges during the period of disability.

Conversely, an employer's liability extends to third parties harmed by an employee's negligent conduct occurring within the scope of employment. The purpose of imposing liability in this context is to promote employers' supervision of employees, thereby helping to prevent negligent conduct from occurring. Therefore, the doctrine of respondeat superior uses the "scope of employment" standard to impose liability, a narrower standard than the "work-related" test employed in workers' compensation cases. Because of the distinct policies underlying each area of the law, Division One rejected the *McCloud* reasoning and instead applied the narrow scope of employment test espoused by Arizona courts in vicarious tort liability cases.

Under this test, an employer is vicariously liable for an employee's negligent conduct when an employee is both subject to the employer's control or right of control and acting in furtherance of the employer's business. Here, Gray was not under Gulf's control or right of control when the accident occurred. After he returned to the hotel, he could do as he wished until he began work the next day. Gulf did not tell Gray when or where to eat or when to return to the hotel after doing so. Moreover, Gray was not furthering Gulf's business when the incident took place. Although Gulf reimbursed Gray for meals, Division One concluded that his "need to eat dinner . . . was no more incidental to his employment than his need to eat dinner while not on an out-of-town assignment." Because Gray's conduct did not come within the scope of employment test, no vicarious liability could attach to Gulf.

ISSUE:

Whether an employee on an extended out-of-state work assignment is within the course and scope of his employment and subjects his employer to vicarious liability while traveling to and from a restaurant for a regular meal.

DEFINITIONS:

Respondeat superior: The doctrine of respondeat superior is based on the employer-employee relationship. It provides that an employer is legally responsible for the negligence, or lack of care, of its employee when the employee's negligence injures someone to whom the employer owes a duty of care. For respondeat superior to apply, the employee's negligent conduct must occur in the course of the employment.

Vicarious liability: Vicarious liability is a legal doctrine that assigns responsibility for an injury to a person who did not cause the injury, but who has a special legal relationship to the person who did act negligently. Legal relationships that can lead to vicarious liability include the relationship between parent and child, husband and wife, or, as in this case, employer and employee.

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