STATE OF MICHIGAN

COURT OF APPEALS

AMANDA LEE MESAROS, NANCY LEE MESAROS, and MARK MESAROS,

Plaintiffs-Appellants,

v

CENTIMARK CORPORATION,

Defendant-Appellee,

and

JOSE DE-JESUS CASILLAS,

Defendant.

UNPUBLISHED
January 4, 2002

No. 225548
Wayne Circuit Court
LC No. 98-808263-NI

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant Centimark's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The trial court apparently granted defendant's motion pursuant to MCR 2.116(C)(10). A motion brought under that rule tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

An employer is liable to a third party for an employee's negligent acts if the negligence occurred within the scope of employment. *Rogers v J B Hunt Transport, Inc*, 244 Mich App

* Circuit judge, sitting on the Court of Appeals by assignment.

600, 605; 624 NW2d 532 (2001). Course of employment, as used in worker's compensation law, MCL 418.301(1), is not the same as scope of employment used for the purpose of determining vicarious liability, *Crilly v Ballou*, 353 Mich 303, 324, 326; 91 NW2d 493 (1958), and thus the parties and trial court erred in relying exclusively on worker's compensation law to determine this issue.

The general rule is that an employer is liable for an employee's negligent operation of a motor vehicle, regardless of who owns the vehicle, if the employee was acting within the scope of his employment. 6 Blashfield, Automobile Law & Practice (3d ed), § 252.2, pp 52-53. Generally speaking, the phrase "scope of employment" when used relative to an employee means while engaged in the service of the employer or while about the employer's business. *Brinkman v Zuckerman*, 192 Mich 624, 627; 159 NW 316 (1916). Thus, an employee driving to or from work is not acting in the scope of his employment unless the employer provides the employee with a vehicle in order that the employee can facilitate the employer's business. Blashfield, *supra*, §§ 253.33-253.34, pp 166-170. Similarly, the employer can be held liable for an employee's negligent driving after working hours if the employer created the necessity for the employee's travel and derived a special benefit from the trip. *Romeo v Van Otterloo*, 117 Mich App 333, 338; 323 NW2d 693 (1982), overruled on other grounds by *Millross v Plum Hollow Golf Club*, 429 Mich 178, 198; 413 NW2d 17 (1987). Thus, the employer can be held liable where the employee is driving his own car on a business trip, *Long v Curtis Publishing Co*, 295 Mich 494; 295 NW 239 (1940), where the employee is driving his own car to a mandatory business meeting, *Ten Brink v Mokma*, 13 Mich App 85; 163 NW2d 687 (1968), or where an employee is driving his own car to deliver the day's receipts to the employer after work, *Kester v Mattis, Inc*, 44 Mich App 22; 204 NW2d 741 (1972).

In this case, it was undisputed that defendant Casillas was driving home after completing the day's work when he was involved in the accident in which plaintiffs were injured. There is no evidence that he was going to make any special stops in furtherance of defendant's business, such as dropping off roofing supplies at a job site en route, that he was on-call for emergency repairs and could be diverted to a job while driving home, or that he was doing anything at all in furtherance of defendant's business. Therefore, reasonable minds could not differ in concluding that Casillas was not acting in the scope of his employment while driving home and the trial court properly granted defendant's motion. Although the court applied the wrong law in its ruling, this Court will not reverse where the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham