IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JUAN M. MEYER and STATE FARM :
MUTUAL AUTOMOBILE INSURANCE :
COMPANY as subrogee of Juan M. Meyer, :
:
Plaintiffs, :

: C.A. No. 2002-06-039

v.

:
DANIELLE GUDE and UNIVERSITY OF :
DELAWARE, :
:
Defendants. :

Submitted: September 24, 2004
Decided: October 21, 2004

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DECISION AFTER TRIAL

In this civil action, Juan M. Meyer (hereinafter referred to as "Meyer") and State Farm Mutual Automobile Insurance Company, as subrogee for Meyer, (hereinafter referred to as "State Farm" or "plaintiff"), bring these proceedings to recover for damages

sustained to Meyer's vehicle as a result of a collision. On June 16, 2001, while Danielle Gude (hereinafter referred to as "Gude") was employed with the University of Delaware (hereinafter referred to as the "University" or "defendant"), she operated a University-owned vehicle that collided with Meyer's vehicle. Plaintiff alleges that the University is vicariously liable for the resulting damages caused when Gude collided with Meyer's vehicle because Gude was an agent, servant and/or employee of the University at the time of the accident. The University denies the allegation, asserting that, although Gude was employed at the time of the accident, she was operating the vehicle outside the scope of her employment and in violation of the University's Motor Pool Service (hereinafter referred to as "Motor Pool") policy.

A default judgment was entered against Gude in favor of plaintiff in the amount of $9, 228.12 on October 3, 2002. The University asserted a cross-claim against Gude in its answer of January 12, 2003. Gude failed to respond to the cross-claim and judgment for the University was entered against Gude for $2,0442.97. This is the Court's decision following trial on plaintiffs' claim against the University.

FACTS

On June 1, 2001 Gude was hired as the interim coordinator for the University's McNair Scholarship Program (hereinafter referred to as "McNair Program"). For ten weeks during the summer, students in the McNair Program are given local internships, usually under the supervision of a University faculty member. Maria Palacas, director of

the McNair Program, testified that she gave permission for Gude to drive a University-owned vehicle for any McNair-related purposes. A majority of students participating in the McNair Program do not own vehicles. Thus, it was Gude's responsibility to provide them with transportation for any McNair-related purposes, e.g. research appointments or supplies, as well as other needs, e.g. trips to the grocery store, or for medical care.

Ms. Palacas testified that she also gave Osita Omatola, a student in the McNair Program, permission to drive the vehicle so that she could commute to her off-campus internship with the News Journal Company. Ms. Palacas gave Ms. Omatola priority to drive the car for her News Journal internship, but any other time, Gude could obtain the keys from Ms. Omatola if she needed to drive the car for any McNair-related purposes. Essentially, Gude had permission to operate the vehicle anytime, day or night, for McNair-related purposes. Moreover, according to Ms. Palacas' testimony, neither Ms. Omatola nor Gude had to either seek permission from or notify anyone before driving the vehicle.

Before the McNair Program was assigned the vehicle from the Motor Pool, Ms. Palacas reviewed the Motor Pool's policies with Ms. Omatola and with Gude. Ms. Palacas testified that she met with each of them separately, and repeatedly emphasized that driving the car for personal reasons violated Motor Pool policy and was strictly prohibited. During the meeting with Gude, Ms. Palacas testified that she explained to Gude that the car could only be used for University purposes. Ms. Palacas gave Gude a copy of the Motor Pool policy and made sure that she read the University's policy on vehicle usage.

Ms. Palacas felt certain that Gude understood the policy after making Gude repeat the first point of the policy, which limited using the vehicle only for University purposes. Ms. Palacas testified she made Gude repeat this point back to her because she did not want one of her employees to violate the policy. Ms. Palacas testified that Ms. Omatola went to Motor Pool, signed a copy of the Motor Pool's policies, and obtained the keys to a white 1999 Ford Taurus station wagon. Gude and Ms. Omatola kept the car parked in a designated University service vehicle parking space located behind Kent dormitory, where Gude was living.

Gude's mother, Loetha Tyree, testified that on June 15, 2001 Gude drove the University vehicle to her home, located at 502 West 38th St. in Wilmington, Delaware and spent the night. On Jude 16, 2001 Gude drove the University vehicle with passengers Loetha Tyree and Makai Lambert, Gude's two-year-old nephew. According to Corporal Keith Mark's testimony, while Gude was driving on I-95 southbound near the Churchmans Road off-ramp, the vehicle in front of her slowed down and Gude struck it in the rear. Corporal Mark issued a traffic citation to Gude for following Meyer's vehicle too closely, in violation of § 21 Del. C. §4123(a).

Ms. Palacas testified that at approximately 10:00 p.m. that night, Gude called her at home and told her about the accident. Several days later, Ms. Palacas had a meeting with Gude, Dr. Joan Bennett and Sue Serra, where Gude admitted she violated Motor Pool policy. Although Gude was permitted to continue working with the McNair program until the end of the summer, they requested Gude's resignation as interim

coordinator of the McNair Program, and also informed her, she would lose her position with the undergraduate research program.

DISCUSSION

The only issue before this Court is whether Gude was acting within the scope of her employment at the time of the accident. In determining whether an employee is acting within the scope of his employment at the time of an incident, Delaware courts follow the Restatement (Second) of Agency, Section 228, *Nye vs. University of Delaware*, 2003WL 22176412(Del. Super); *Keating, et.al vs. Goldrick, et.al*. 2004 WL 772077(Del. Super), which provide in relevant part:

> "(1) Conduct of a servant is within the scope of employment if, but only if:
> (a) It is of a kind he is employed to perform;
> (b) It occurs substantially within the authorized time and space limits;
> (c) It is actuated, at least in part, by a purpose to serve the master, and * * *.
>
> "(2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or *too little actuated by a purpose to serve the master.*" (Emphasis added). *Coates v. Murphy*, Del. Supr., 270 A.2d 527, 528 (1970).

Prior to the accident Gude had driven the University's vehicle to Wilmington, Delaware and stayed at her mother's house over-night. At the time of the accident she was operating the vehicle, with her mother and nephew as passengers, en route to eat dinner. This was a clear violation the University's Motor Pool policies. Further, it is beyond the scope of her employment and the scope of her authority. It is also clear that

while en route to dinner with her mother and nephew, Gude's actions had no direct benefit to the McNair Program nor did they provide any overall benefit to the University.

There is no evidence that Gude performed any McNair-related tasks the night before when she drove the University's vehicle to Ms. Tyree's house in Wilmington, Delaware. Although Gude's responsibility as interim coordinator of the McNair Program gave her the authority to drive the University's vehicle at any time, day or night, during the ten-week summer internship period for McNair-related purposes, she was never authorized to use the vehicle for personal reasons.

Plaintiffs argue that the University is liable for damages on the basis of implied agency. Specifically, they argue that Gude's authority to use the vehicle on June 16, 2001 may be implied from circumstances such as Gude's wide-ranging authority to use the vehicle and that she was given limited instructions regarding any restriction on using the vehicle. However, I find this argument unpersuasive. Defendant has offered evidence through Ms. Palacas' testimony that before the McNair Program obtained the University's vehicle, she had a meeting with Gude where she not only had Gude read the University policy on Motor Pool usage, but she also gave Gude a copy of the Motor Pool policy. Further, Gude repeated to Ms. Palacas the first point of the Motor Pool policy, that the vehicle could only be used for University purposes.

Plaintiffs have not presented any evidence to support an argument that Gude could drive the University's vehicle outside of her job activities. Rather, she was given permission to drive the University's vehicle for McNair-related purposes only. If Gude needed to fulfill a task or errand that was unrelated to the McNair Program, then under no circumstances was she permitted to drive the University's vehicle. The only possible

exception to this rule, according to Ms. Palacas' testimony, would be in the case of an emergency. Plaintiffs have not presented any evidence suggesting that Gude's decision to drive with her mother and nephew as passengers en route to eat dinner was an emergency.

I find there is insufficient evidence in the record to suggest that on June 16, 2001 Gude drove the University's car to fulfill any McNair-related purpose, thus the University cannot be held liable for her actions. There is no evidence suggesting that Gude's mother, Loetha Tyree, had any connection to the McNair Program or to any other department at the University. Simply stated, Gude fulfilled no University purpose by having her mother and two-year-old nephew as passengers in the University's vehicle. As such, the I find that Gude's actions do not come within the scope of the elements set forth in Section 228(1) of Agency Restatement Second.

Further, plaintiffs have offered no evidence that puts Ms. Palacas' testimony into question, and there is no evidence in the record suggests that Gude was not given specific instructions regarding her authority to use the University's vehicle. Defendant cites *Mechell v. Palmer*, 343 A.2d 620, 621 (Del. 1975) to support its argument, however, unlike Gude, the defendant in *Mechell* was acting within the scope of his authority. Here, while Gude was given, as plaintiff argues, wide-ranging authority to use the vehicle, all of the evidence in the record clearly indicates that the vehicle could only be driven for McNair-related purposes. There is no evidence that she was given permission, even once, to use the vehicle for purposes unrelated to the McNair Program or the University. Thus, I find plaintiffs' implied agency argument unconvincing.

Second, defendants argue the University may be held liable on the basis of apparent authority. Under the law in Delaware, apparent authority is defined as that authority, which though not actually granted, the principal knowingly and negligently permits the agent to exercise or which he holds out as possessing. Thus, it is determined by indicia of authority that the principal holds out the agent as having. *Finnegan Construction Company v. Robino-Ladd Company*, 354 A.2d 142 (Del. Supr., 1976).

The focus is not upon the actual relationship, but upon the manifestations the principal creates in a third party that the alleged agent is authorized or is acting for the principal. However, "in order to establish a chain of liability to the principal based upon apparent agency, a litigant must show reliance on the indicia or authority originated by the principal and such reliance must have been reasonable." *Smith v. New Castle County Vocational-Technical School District*, 574 F. Supp. 813, 825 (D.Del. 1983).

Plaintiffs argue that under *Smith* the manifestations of authority may be made directly to a third party or to the community in general. Therefore, when the University permitted Gude to operate a vehicle that is clearly marked and registered to the University, they held Gude out to third parties as one of their authorized drivers. Therefore, plaintiffs reason that other drivers on the roadway could reasonably rely upon these outward markings that the operator was authorized.

This argument of plaintiffs is a far stretch. Because I would have to conclude that other drivers on the roadway operated their vehicle and used the road in reliance upon a representation of the University. To the contrary, the only reasonable conclusion that Meyer, or any other third parties operating vehicles on the highways of the State of Delaware, could reach by seeing Gude drive the University's vehicle are first, Gude is a

licensed driver, and second, the car is properly insured. I find that any other conclusion, particularly that the University permitted Gude to use its vehicle to take her family to dinner and can be held liable for Gude's actions, unreasonably.

Accordingly, for these reasons stated herein, I find that the University not liable and Judgment is entered for the University.

SO ORDERED this 21st day of October, 2004

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Alex J. Smalls
Chief Judge

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