

HOOSIER LITIGATION BLOG

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Indiana: When Can an Employer be Liable for an Intentional Tort?

We have previously discussed the legal doctrine of *respondeat superior*. The doctrine is one of vicarious liability, whereby a person or business is held to answer for the acts of another. *Respondeat superior*—translating as “let the principal answer”—is a doctrine of agency law in which the employer of an agent—i.e. the principal—is held liable for the tortious acts of the agent. The most common principal-agent relationship is that of employer-employee. As a general rule an employer will be held liable for the actions of its employee only where the employee acts negligently *and* “within the scope of his employment.” But, of course, there are exceptions to this rule. While a finding of liability always requires that the employee act within the scope of his employment, there are instances, albeit rare, in which the employer is liable for even intentional torts.

When we discussed *respondeat superior* in the past, we looked to a federal case out of Kentucky to provide a useful illustration. There, the court discussed looked to the classic illustration of a bouncer:

One might recall, for example, the classic law school hypothetical positing the bar bouncer who injures a patron by using excessive force in removing him from the bar; the law has long recognized that in such an instance the bar owner may be held vicariously liable for the bouncer’s actions, the intentional nature of the bouncer’s actions

notwithstanding. The justification commonly advanced in support of this result is that some intentionally tortious employee acts are so closely related to the nature of the employment that no real distinction can be made for purposes of determining liability.

Today, we look to a case from the Indiana Supreme Court that provides a more concrete example: *Knighthen v. East Chicago Housing Authority*.

The *Knighthen* case began as the result of bad decisions that piled into a single horrendous act. Donnell Caldwell was a security guard at an apartment complex operated by the East Chicago Housing Authority. The Housing Authority contracted security to Davis Security Service, LLC. Before Caldwell had been hired by Davis Security to be a security guard, he had been romantically involved with Stacy Knighthen, a resident of the complex. On August 7, 2010, Caldwell was stationed in guard shack at the entrance of the complex. Knighthen asked Caldwell if she and her friend could borrow his car to drive to a liquor store. When Knighthen returned, the two began to argue over money and that she had driven the car while drunk. Caldwell told Knighthen to get out of the car and walk home. He then drove the friend home. When Caldwell returned to the shack, Knighthen was waiting. “She angrily confronted Caldwell and the two resumed arguing. . . . At some point during these events Knighthen damaged the entrance gate to the Complex. Further along in the confrontation Knighthen turned away from Caldwell and began walking home when Caldwell drew his handgun and fired a shot striking Knighthen in the back. Ultimately the gunshot injury left Knighthen paralyzed from the waist down.”

Unquestionably, Caldwell is liable—civilly and criminally—for his actions. The question, however, is whether the now paralyzed Knighthen can hold Caldwell’s employer liable and find some semblance of monetary recovery for a forever-changed life. Because the employer did not itself shoot her—as is always true when the principal is a corporation as it is a legal fiction incapable of physically shooting someone—the answer to whether Knighthen’s claim is viable turns on application of the doctrine of *respondeat superior*. The trial court determined that Davis Security was not liable and granted summary judgment; the court of appeals affirmed. The Indiana Supreme Court, however, disagreed with that conclusion.

The Indiana Supreme Court succinctly summarized the legal standard for applying the doctrine in this context:

In this case Knighthen’s negligence claim against Davis Security is premised on the doctrine of respondeat superior, under which an employer who is not liable because of its own acts can be held liable “for the wrongful acts of [its] employee which are committed within the

scope of employment.” And in order for an employee’s act to fall “within the scope of employment,” the injurious act must be incidental to the conduct authorized or it must, to an appreciable extent, further the employer’s business. This Court has observed, “an employee’s act is not within the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve any purpose of the employer.” Nonetheless, “an employee’s wrongful act may still fall within the scope of his employment if his purpose was, to an appreciable extent, to further his employer’s business, even if the act was predominantly motivated by an intention to benefit the employee himself.”

The court also noted an illustration of when an employee might be in the middle of his job but acting on his own accord:

“an employee driving a truck in the scope of employment, and who becomes irate at another motorist, leans out the truck cab, and shoots the driver whose conduct enraged him. While the shooting occurred in the midst of the employee’s duties of employment, the shooting ‘is not within the scope of employment.’”

This is essentially the same test that the court of appeals applied, but the two courts ended with different results. The key is that the Supreme Court did not conclude that Davis Security is, in fact, liable; rather, the Supreme Court held that there were factual disputes that needed to be resolved before the test could be applied. In determining whether Caldwell was acting within the scope of his employment, the court must know what precisely was the scope of his employment. There were serious disputes to that end.

The evidence from Davis Security showed that “Caldwell’s duties at [the guard shack] included traffic control for the West Calumet Complex, and he was only permitted to monitor traffic entering the complex to ensure that only tenants and other authorized individuals entered the property.” Davis Security further argued that Caldwell “was away from his post, performing unauthorized acts with a purely personal motive” and, therefore, “was not acting within the course and scope of his employment at the time of the subject shooting.” As the court recognized, “if the . . . materials presented to the trial court unequivocally showed that Caldwell had no responsibility other than traffic monitoring, then one would indeed be hard pressed to explain how shooting Knighten was somehow in furtherance of Davis Security’s business.”

The evidence from Knighten introduced doubt into the Davis Security’s

evidence and suggests that Caldwell's duties exceeded traffic monitoring. Davis Security had a contract with the Housing Authority that suggests that Caldwell's duties were more expansive. In relevant part, the contract called for:

3. SECURITY OFFICER SERVICES TO BE PROVIDED. [Davis Security] shall provide security services as determined by [Housing Authority] and under the terms and conditions set forth in this agreement as follows:

1. [Davis Security] shall assign its security officers to provide theft prevention and detection service. [Davis Security] shall staff the premises as necessary to effectively protect the premises.

2. The security officers shall be properly and thoroughly trained to accomplish at least the following: to deter or minimize the risk of loss due to theft of property by their employees, or visitors; to deter or mitigate the risk of loss due to the unruly, threatening, or disruptive conduct of persons present on the premises; to investigate, and conduct inquiries into any known or suspected occurrences of any such loss . . . [Davis Security]'s Officers shall perform these services in a lawful manner.

In addition to the contract, there was a memorandum of understanding signed at the same time as the contract that called for armed security at the guard booth from 6 pm to 6am every day.

Mind you, part of the dispute was whether Caldwell should have had a gun when he was on duty. As the court noted, if all Caldwell was required to do is monitor traffic, then "it is not readily apparent why" he would need to be armed. Thus, if he was to be armed, it would suggest that his duties exceeded merely monitoring traffic. "Caldwell's supervisor testified . . . that even though the contract required Davis Security to have an armed employee at the guard shack, the supervisor instructed Caldwell that he should not be armed." But Caldwell had answered "no" to an interrogatory in which he was asked whether he was ever warned, instructed, or provided policies indicating that he should not carry a firearm. Perhaps more damning for Davis Security, was that five months before, it had sent a notification to Caldwell that his handgun permit had expired. That notification included a warning:

It is company policy that all employees working sites that require the carrying of a weapon be properly licensed and that their employee file has such documentation for verification. Please be advised if such

documentation is not received by this office . . . you will not be allowed to carry a weapon and may be possibly removed from your work schedule.

Of course, this does not *say* that Caldwell was to carry a weapon, but it clearly implies it.

The court explained why it mattered whether Caldwell was required to be armed:

If, as Davis Security alleges, it prohibited Caldwell from possessing a handgun while serving as a security guard then that fact would certainly undermine the notion that he used his handgun in furtherance of his employer's business. On the other hand if Caldwell were required to be armed on duty, then the use of his firearm could very well have been necessary. The record shows that an apparently intoxicated Knighten was at least engaged in disruptive conduct while present on the premises. In fact she damaged the gate to the Complex at some point. Whether Caldwell fired his weapon in an effort "to deter or mitigate the risk of loss," as a result of Knighten's behavior or whether Caldwell—in his words—"did not fire [his] gun in any official capacity, or as a security guard at the West Calumet Complex," are questions that must be resolved by the factfinder.

The final factual dispute was whether Caldwell "had left his post" despite being required to remain in the guard shack at all times. The court, looking back to the contract between Davis Security and the Housing Authority recognized that there were apparently some circumstances in which Caldwell "out of necessity would have to abandon his post at the guard shack." One such circumstance was "to deter or mitigate the risk of loss due to the unruly, threatening, or disruptive conduct of persons present on the premises; to investigate, and conduct inquiries into any known or suspected occurrences of any such loss" Remember, Knighten had damaged the entrance gate.

Due to these disputes, the court concluded that this was not a case that could be resolved through summary disposition and must be determined by the factfinder—i.e. the jury.

Let's be clear, the court most certainly did not condone the actions of Caldwell. As I said, there's no question that Caldwell is both liable for the shooting. What is at issue here is the singular question of whether *respondeat superior* allows liability to attach. This case appears to be right on the periphery of when the

doctrine could apply for the criminal acts of an employee. Honestly, even assuming the facts most favorable to Knighten—that Caldwell was allowed to leave the guard shack, that his job included protecting the gate, and that he was required to carry a gun—I am surprised that the Indiana Supreme Court unanimously reversed this decision.

In the end, the key to understanding this case is that Indiana puts a great deal of faith into the jury process. In the 1980s, federal courts drastically changed their approach to summary judgment, thereby removing a great many cases from the jury process. Indiana, however, has rejected that change and still disfavors summary judgment. In the end, what the Indiana Supreme Court did here is follow long-held precedent: “It is well established that whether an employee’s actions were within the scope of employment is a question of fact to be determined by the factfinder.”

Join us again next time for further discussion of developments in the law.

Sources

- [*Knighten v. E. Chicago Hous. Auth.*](#), ---N.E.3d---, No. 45S04-1512-CT-686, 2015 WL 8159137 (Ind. Dec. 8, 2015) (Rucker, J.).
- [*Knighten v. E. Chicago Hous. Auth.*](#), No. 45A04-1312-CT-632, 2014 WL 4536360, 20 N.E.3d 605 (Ind. Ct. App. Sept. 12, 2014) (Garrard, S.J.), [*vacated*](#), No. 45S04-1512-CT-686, 2015 WL 8159137 (Ind. Dec. 8, 2015).
- [*Booker v. GTE.net LLC*](#), 214 F. Supp. 2d 746, 749-50 (E.D. Ky. 2002), [*aff’d*](#), 350 F.3d 515 (6th Cir. 2003).
- Colin E. Flora, [*Employer Liability: Respondeat Superior Doctrine*](#), HOOSIER LITIG. BLOG (Apr. 26, 2013).

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