Filed in District Court

State of Minnesota

November 10, 2022

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF CLAY SEVENTH JUDICIAL DISTRICT

Pedro Alonzo, Aida Alonzo, Court File No. 14-CV-21-1126

Plaintiffs,

v. **ORDER GRANTING SUMMARY JUDGMENT**

Richard Menholt, Syinthia Menholt,
Menholt Farms, LLC, Menholt Farms, Inc.

Defendants.

The above-entitled matter came before the Honorable Jade Rosenfeldt, Judge of the District Court, on August 24, 2022, upon Defendants' Motion for Summary Judgment. The hearing was held via Zoom. Attorney James Hoy and Kell Bubach appeared on behalf of Plaintiffs. Attorney Michael Tomsche appeared on behalf of the Defendants.

Based upon all files, records, and proceedings herein, together with the arguments of counsel, the Court makes the following:

UNDISPUTED FACTS

This case involves an accident that occurred on October 19, 2018. Plaintiff Pedro Alonzo was operating a semi-truck and trailer owned by Johnson Farms. Alberto Lopez, a W2 employee of Braaten Farms, was operating a straight truck owned by Braaten Farms. Both trucks were being utilized to haul sugar beets. Braaten Farms is owned by Darcy Braaten, a life-long friend of Defendant Richard Menholt, as well as a neighboring farmer. On the day of the accident, Braaten Farms was hauling sugar beets for Defendant Menholt Farms (this includes Menholt Farms, LLC and Menholt Farms, Inc.), which was a regular practice each

sugar beet harvest. Mr. Lopez had worked for Braaten Farms approximately four (4) to five (5) years before the 2018 accident.

The accident occurred on 160 Avenue North, by the intersection with 110 Avenue North, near Felton, Clay County, Minnesota. Mr. Alonzo and Mr. Lopez collided when Mr. Lopez crossed the center line and the vehicles crashed head-on. Both vehicles were severely damaged, and both Mr. Lopez and Mr. Alonzo suffered serious and permanent injuries. Mr. Lopez did not have a valid driver's license at the time of the accident and had a criminal record for driving while impaired and two previous speeding tickets.

Following the accident, Plaintiffs reached a settlement with Braaten Farms and Alberto Lopez. Plaintiffs now seek to hold Menholt Farms liable alleging that Menholt Farms was negligent in its selection of an independent contractor to haul its sugar beets.[1] Menholt Farms takes the position that this action should be dismissed, as Minnesota does not recognize a claim for negligent selection of an independent contractor. Accordingly, the primary decision for the Court to make is whether Minnesota recognizes a claim of action for negligent selection of an independent contractor. If no, the Motion shall be granted. If yes, then the Court must analyze the claim in conjunction with the undisputed facts.

LAW AND ANALYSIS

A. Summary Judgment Standard

Summary Judgment is proper "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P.

[1] Plaintiffs stipulated to the dismissal of Syinthia Menholt from this action, and therefore no further discussion regarding any possible liability of Syinthia Menholt will be discussed. Also, Plaintiffs are no longer pursuing a claim that Mr. Lopez was an employee and/or agent of the Defendants, and thus any claims in this regard are dismissed.

56.01. When a motion for summary judgment is made and supported, the nonmoving party must "present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05. "Summary judgment is appropriate when reasonable persons might draw different conclusions from the evidence presented." DLH, Inc. v. Russ, 566 N.W.2d 60, 69 (Minn. 1997). The Court must not weigh evidence on a motion for summary judgment but is not required to ignore its conclusion that a particular piece of evidence may have no probative value. DLH, Inc., 566 N.W.2d at 70. All doubts and factual inferences are resolved in favor of the nonmoving party. Rochester City Lines, Co. v. City of Rochester, 868 N.W.2d 655, 661 (Minn. 2015).

If there is a genuine issue of material fact, "cross-motions for summary judgment will not obviate the need for trial of the factual questions." St. Paul Fire & Marine Ins. Co. v. National Computer Systems, Inc., 490 N.W.2d 626, 630 (Minn. App. 1992). The district court's function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist. D.L.H. Inc., 566 N.W.2d at 70. Therefore, summary judgment is not appropriate when reasonable persons might draw different conclusions from the evidence presented. Illinois Farmers Ins. Co. v. Tapemark Co., 273 N.W.2d 630, 634 (Minn. 1978).

B. Negligent Selection of an Independent Contractor

The Minnesota Supreme Court has not expressly adopted the tort of negligent selection. See Larson v. Wasemiller, 738 N.W.2d 300, 306 (Minn. 2007) (adopting the closely related tort of negligent credentialing); see also Russ v. XPO Logistics, LLC, 2022 WL 3371132, 15 (D. Minn. August 16, 2022) (noting that the case law in Minnesota on negligent selection is sparse). The District Court of Minnesota, when confronted with the issue of whether the

Minnesota Supreme Court would recognize the tort of negligent selection of an independent contractor, concluded it would. See Soto v. Shealey, 331 F.Supp. 3d 879 (Minn. 2018).

When determining whether Minnesota recognizes a particular cause of action, the Minnesota Supreme Court "look[s] to the common law and any statutes that might expand or restrict the common law." Larson, 738 N.W.2d at 303. More specifically, when deciding whether to recognize a common law tort, the Minnesota Supreme Court looks to "(1) whether the tort is inherent in, or the natural extension of, a well-established common law right, (2) whether the tort has been recognized in other common law states, (3) whether recognition of a cause of action will create tension with other applicable laws, and (4) whether such tension is out-weighed by the importance of additional protections that recognition of the claim would provide to injured persons." Id. at 304. Also, the Minnesota Supreme Court "relie[s] on the Restatement of Torts to guide [its] development of tort law in areas that [it has] not previously had an opportunity to address. Id. at 306.

The tort or negligent selection of an independent contractor is analogous to the tort of negligent hiring in an employer/employee relationship, which is a recognized tort under Minnesota law. Id. at 305-06. Second, several states recognize the tort of negligent selection. Basic Energy Servs., L.P. v. Petroleum Res. Mgmt., Corp., 343 P.3d 783, 790 (Wyo. 2015) (stating that a survey of other jurisdictions reveals that the theory of negligent hiring in the context of independent contractors has gained broad acceptance) (citing cases from several jurisdictions). Courts across the country have widely adopted the rule that an employer of an independent contractor may be liable to one injured as a result of the contractor's fault where it is shown that the employer was negligent in selecting a careless or incompetent person with whom to contract. Id. (citations omitted). Third, the Court cannot identify how recognition of

the tort of negligent selection of an independent contractor will create tension with other applicable laws. Fourth, section 411 of the Restatement recognizes the tort of negligent selection of an independent contractor. Restatement (Second) of Torts § 411. Accordingly, this Court concludes Minnesota recognizes a claim for negligent selection of an independent contractor or that it will do so when confronted with the issue on appeal.

C. Plaintiffs Claim for Negligent Selection

Having concluded that a claim for negligent selection of an independent contractor is a viable cause of action in Minnesota, this Court must next decide whether there remains a genuine dispute of material fact as to whether Menholt Farms is liable to the Plaintiffs for negligent selection of the independent contractor – Braaten Farms/Mr. Lopez. The Restatement on this topic provides:

> An employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor (a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done, or (b) to perform any duty which the employer owes to third persons.

Restatement (Second) of Torts § 411.

In the instant matter, it is undisputed that Menholt Farms hired Braaten Farms for several years for purposes of driving truck during sugar beet harvest. In other words, Menholt Farms, for years preceding the 2018 accident in this case, employed Braaten Farms to drive truck for sugar beet harvest. There is no evidence in the record to suggest that Menholt Farms failed to use reasonable care to employ Braaten Farms as an independent contractor. In fact, the evidence is that this relationship existed for several years without issue. Plaintiffs, however, seek to impose liability on Menholt Farms for the claimed negligence of Braaten Farms hiring Mr. Lopez – a person without a valid driver's license and prior driving infractions. This is one

step too far removed. Menholt Farms hired Braaten Farms to drive truck during beet harvest. The tort of negligent selection of independent contractor does not extend to the independent contractor's alleged negligent hiring of employees. Simply put, the circle of liability must close at the hiring of the independent contractor. If not, and if the liability extends to the independent contractor's hiring of employees then why even contract with an independent contractor and instead just hire your own employees? The liability requested by the Plaintiffs does not meet the criteria of negligent hiring of an independent contractor nor are there any material fact issues suggesting negligence by Menholt Farms in hiring Braaten Farms as an independent contractor. Accordingly, summary judgment is GRANTED.

ORDER

1. Defendants' Motion for Summary Judgment is hereby **GRANTED**.
2. Plaintiffs stipulated to the dismissal of Syinthia Menholt from this action. Plaintiffs are no longer pursuing a claim that Mr. Lopez was an employee and/or agent of the Defendants, and thus any claims in this regard are dismissed. Accordingly, this Order disposes of the remaining claim of action and therefore this matter is dismissed with prejudice.

Dated: November 10, 2022

BY THE COURT:

Jade M. Rosenfeldt
Judge of District Court

LET JUDGMENT BE ENTERED ACCORDINGLY.