

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2024 CA 0680

VONETTA LACY, INDIVIDUALLY AND ON BEHALF OF HER MINOR
CHILD, BRELYN KEYS

VERSUS

CARLOS IBARRA, LIBERTY COUNTY MUTUAL INSURANCE COMPANY,
EXXON MOBIL CORPORATION, XYZ INSURANCE COMPANY AND
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY (AS
UNINSURED/UNDERINSURED MOTORIST CARRIER OF BRELYN KEYS)
AND STATE FARM MUTUAL AUTOMOBILE INSURANCE CARRIER (AS
MEDICAL PAYMENTS CARRIER OF BRELYN KEYS)

Judgment Rendered: OCT 22 2025

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ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER C714861

HONORABLE TIFFANY FOXWORTH-ROBERTS, JUDGE PRESIDING

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BEFORE: PENZATO, MILLER, STROMBERG, BALFOUR, AND FIELDS, JJ.

*Stromberg, J. dissents in part
Penzato, J. dissents in part for the reasons
assigned by Judge Stromberg*

FIELDS, J.

In this personal injury suit arising from an automobile accident, defendant, Exxon Mobil Corporation (Exxon), appeals the grant of the plaintiffs' motion for partial summary judgment, finding that Exxon's employee was in the course and scope of his employment at the time of the accident, and therefore, Exxon was vicariously liable. For the reasons that follow, we affirm in part, reverse in part and remand to the trial court for further proceedings.

FACTS AND PROCEDURAL HISTORY

On January 10, 2022, Vonetta Lacy, individually and on behalf of her minor child, Brelyn Keys (plaintiffs),¹ filed suit against Exxon and its employee, Carlos Ibarra, seeking damages arising out of an automobile accident that occurred on October 7, 2021.² According to the petition, Mr. Ibarra was attempting to turn left at an intersection on Florida Boulevard in East Baton Rouge Parish when he collided with a vehicle in which Ms. Keys was a passenger. Ms. Keys was allegedly injured in the collision. Pertinent to this appeal, plaintiffs alleged that Mr. Ibarra was in the course and scope of his employment with Exxon at the time of the accident; therefore, Exxon was vicariously liable for the damages caused by Mr. Ibarra's alleged negligence in failing to yield.

On June 9, 2023, Exxon moved for summary judgment seeking the dismissal of plaintiffs' vicarious liability claim against it. On October 25, 2023, plaintiffs also moved for partial summary judgment, seeking a finding that Mr. Ibarra was in the course and scope of his employment with Exxon at the time of the accident, and, as such, Exxon was vicariously liable for Mr. Ibarra's alleged negligence and

¹ On January 24, 2024, the trial court granted a motion to substitute Ms. Keys as a plaintiff in this litigation because she had attained the age of majority.

² Plaintiffs also named as defendants: Liberty County Mutual Insurance Company (the liability insurer of the vehicle driven by Mr. Ibarra); State Farm Mutual Automobile Insurance Company (as the uninsured/underinsured motorist carrier of Ms. Keys); State Farm Mutual Automobile Insurance Company (as the medical payments carrier of Ms. Keys); and XYZ Insurance Company, Exxon's liability insurer.

fault. The trial court held a hearing on the cross motions on December 12, 2023. At the conclusion of the hearing, the trial court found that Mr. Ibarra was in the course and scope of his employment at the time of the accident, and therefore, granted the plaintiffs' motion for partial summary judgment and denied Exxon's motion for summary judgment. On December 20, 2023, the trial court signed a judgment in accordance with its ruling, and designated the judgment as final pursuant to La. Code Civ. P. arts. 1911 and 1915(B).³ Exxon appeals from this judgment, asserting that the trial court erred in finding that Mr. Ibarra was in the course and scope of his employment at the time of the accident, as its sole assignment of error.

LAW AND ANALYSIS

Summary judgment procedure is favored and “designed to secure the just, speedy, and inexpensive determination of every action ... and shall be construed to accomplish these ends.” La. Code Civ. P. art. 966(A)(2). In reviewing the trial court's decision on a motion for summary judgment, this court applies a *de novo* standard of review using the same criteria applied by trial courts to determine whether summary judgment is appropriate. **Bass v. Disa Global Solutions, Inc.**, 2019-1145 (La. App. 1st Cir. 6/12/20), 305 So.3d 903, 906, writ denied, 2020-01025 (La. 11/4/20), 303 So.3d 651. After an opportunity for adequate discovery,

³ Louisiana Code of Civil Procedure article 1915(B) was recently amended by 2025 La. Acts No. 250, §3. The amendment's effective date is August 1, 2025, and specifically provides for prospective application only, clarifying the amendment does not apply to appeals and supervisory writs filed prior to this effective date. 2025 La. Acts No. 250, §6. As such, the version of La. Code Civ. P. art. 1915(B) that applies in this case is the prior version which allows the appeal of a judgment designated by the trial court as final, pursuant to La. Code Civ. P. art. 1915(B)(1).

A district court's designation of a judgment as final pursuant to La. Code Civ. P. art. 1915(B)(1) is not determinative. As an appellate court, we are obligated to determine whether the district court properly designated the judgment as final pursuant to La. Code Civ. P. art. 1915 and to recognize any lack of jurisdiction if it exists. **Mandeville Partnership v. A Luxury Transportation, LLC**, 2021-1450 (La. App. 1st Cir. 8/24/22), 348 So.3d 763, 769 n.9. In applying the factors set forth in **R.J. Messinger, Inc. v. Rosenblum**, 2004-1664 (La. 3/2/05), 894 So.2d 1113, 1122, we conclude that the district court properly designated the judgment as a final judgment for purposes of appeal.

a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(A)(3). Louisiana Code of Civil Procedure article 966(A)(4)(a) provides for the types of documents that may be filed in support of or in opposition to a motion for summary judgment.⁴

The mover bears the burden of proving that he is entitled to summary judgment. However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, he need only demonstrate the absence of factual support for one or more essential elements of his opponent's claim, action, or defense. La. Code Civ. P. art. 966(D)(1). If proven, the burden shifts to the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. Code Civ. P. art. 966(D)(1); **Bass**, 305 So.3d at 906.

In ruling on a motion for summary judgment, the trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. **Quereau v. Sam & Brett LLC**, 2024-0243 (La. App. 1st Cir. 10/3/24), 405 So.3d 847, 852, citing **Kasem v. State Farm Fire and Casualty Company**, 2016-0217 (La. App. 1st Cir. 2/10/17), 212 So.3d 6, 12-13. A "genuine" issue is a triable issue, which means that an issue is genuine if reasonable persons could disagree; if on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. A fact is "material" when its existence or

⁴ Louisiana Code of Civil Procedure article 966 was amended by 2023 La. Acts No. 317, §1 (eff. August 1, 2023). This court has held that the version of the Article in effect at the time of the filing of the motion for summary judgment is the applicable version of the Article to the motion. See **McKay v. Hospital Service District No. 1 of Tangipahoa Parish**, 2023-1244 (La. App. 1st Cir. 10/11/24), 405 So.3d 869, 872 n.2. Therefore, the evidentiary rules found in the pre-2023 summary judgment law are applicable to Exxon's motion, while the amended version of La. Code Civ. P. art. 966(A)(4) is applicable to plaintiffs' motion.

nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery. **Kasem**, 212 So.3d at 13, citing **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 751. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. **Quereau**, 405 So.3d at 852.

In Louisiana, the vicarious liability of employers is based on La. Civ. Code art. 2320, which states in pertinent part that “[m]asters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed.” In applying this Article, it has been held that an employer’s liability for its employee’s conduct extends only to such tortious conduct that is within the course and scope of his employment. **Orgeron v. McDonald**, 93-1353 (La. 7/5/94), 639 So.2d 224, 226; **Richey v. Miller**, 2017-0462 (La. App. 1st Cir. 3/29/18), 247 So.3d 964, 970. An employee’s conduct is within the course and scope of his employment if the conduct is of the kind that he is employed to perform, occurs substantially within the authorized limits of time and space, and is activated at least in part by a purpose to serve the employer. **Orgeron**, 639 So.2d at 226-27; **Berthelot v. Indovina**, 2021-0517 (La. App. 1st Cir. 12/22/21), 340 So.3d 119, 124-25, writ denied, 2022-00165 (La. 3/15/22), 334 So.3d 394. An employer is thereby responsible for the negligent acts of its employee when the conduct is so closely connected in time, place, and causation to the employment duties of the employee that it constitutes a risk of harm attributable to the employer’s business. **Orgeron**, 639 So.2d at 227; **Richey**, 247 So.3d at 970.

Generally, going to and from work is not an employment function for which an employer should be held liable. **Richey**, 247 So.3d at 970. The rationale of this principle is that an employee usually does not begin work until he reaches his

employer's premises. **Richey**, 247 So.3d at 970. There are, however, some exceptions to the aforementioned "going and coming rule," including when the employer provides expenses or pays the employee for transportation to and from work. See **Bova v. Butler**, 2014-0765 (La. App. 1st Cir. 12/23/14), 168 So.3d 551, 553, writ denied, 2015-0172 (La. 4/17/15), 168 So.3d 398.

The plaintiffs have the burden of proving an exception to the going and coming rule. See **Orgeron v. McDonald**, 618 So.2d 1041, 1043-44 (La. App. 1st Cir. 1993), rev'd on other grounds, **Orgeron**, 639 So.2d at 228-29. In reviewing the jurisprudence to determine whether an exception to the going and coming rule exists in this case, we have not considered workers' compensation cases involving whether an employee going to or from work is within the course and scope of his employment because different standards apply in determining liability for workers' compensation from those in a tort case involving whether an employer is vicariously liable. See **Winzer v. Richards**, 50,330 (La. App. 2d Cir. 1/13/16), 185 So.3d 876, 882 n.3; **Harris v. Hymel Store Co.**, 200 So.2d 84, 87-88 (La. App. 1st Cir. 1967).

Exxon contends that the trial court erred as a matter of law in finding that Mr. Ibarra was in the course and scope of his employment at the time of the accident, which was the basis of the court's ruling on summary judgment.⁵ It is undisputed that Mr. Ibarra was driving to work when the accident occurred. Exxon further contends that no exceptions to the going and coming rule apply in that, at the time of the accident, Mr. Ibarra was not on a special mission for Exxon, Exxon did not provide Mr. Ibarra transportation or reimburse his travel expenses, and Mr. Ibarra's only work for Exxon was performed at the Baton Rouge Polyolefins

⁵ In the appeal of a partial judgment or partial summary judgment designated as final under La. Code Civ. P. art. 1915(B), an appellant may also appeal an interlocutory judgment involving the same or related issues, such as a judgment denying a cross-motion for summary judgment. **State ex rel. Division of Administration, Office of Risk Management v. National Union Fire Insurance Co. of Louisiana**, 2010-0689 (La. App. 1st Cir. 2/11/11), 56 So.3d 1236, 1242 n.6, writ denied, 2011-0849 (La. 6/3/11), 63 So.3d 1023.

(BRPO) plant. Plaintiffs and Exxon relied on much of the same evidence to support their respective arguments, which included Mr. Ibarra's deposition testimony, Exxon's "Relocation Guidelines Synopsis" for "U.S. Domestic Moves" (Relocation Guidelines), and Mr. Ibarra's and Exxon's responses to discovery requests.

In his deposition, Mr. Ibarra testified that at the time of the accident, he was driving to work in his personal vehicle. When asked, Mr. Ibarra confirmed that Exxon did not pay any expenses for his personal vehicle, such as mileage, the note, or car insurance. Mr. Ibarra testified that at the time of the accident, he was a salaried employee at the BRPO plant in Baton Rouge, and he confirmed that all of his work occurred on-site at the BRPO plant. When Mr. Ibarra was questioned as to whether he made any stops on his way to work the morning of the accident, he replied negatively. When Mr. Ibarra was asked if he was doing anything for Exxon while he was driving to work, such as talking to anyone about work, reading emails about work, or traveling from one work site to another, he answered, "No."

Mr. Ibarra testified that he moved from Houston to Baton Rouge after he was relocated for work by Exxon from the Houston facility to the BRPO plant. In connection with this move, Mr. Ibarra testified that Exxon provided a relocation package to him that included a lump sum to cover relocation expenses.

According to Exxon's answers to the plaintiffs' interrogatories, Mr. Ibarra's "effective date of transfer to the Baton Rouge location was September 1, 2021." In connection with his relocation, Exxon made the following payments to Mr. Ibarra: August 9, 2021, Miscellaneous Expense Allowance (MEA) and Lump Sum payment; September 21, 2021, Home Sale Incentive payment; and September 27, 2021, New Home General Inspection payment and New Home Plumbing Inspection payment. After Mr. Ibarra closed on his Baton Rouge house, Exxon

paid certain expenses directly to third parties related to Mr. Ibarra's purchase of a home and shipment of his household goods. Exxon also provided Mr. Ibarra with an Additional Lump Sum payment on October 28, 2021 for temporary living due to Hurricane Ida prior to the accident.

The Relocation Guidelines pertaining to U.S. Domestic Moves such as Mr. Ibarra's explained the MEA benefit he received, stating: "A non-accountable [MEA] will be provided to you. In order to reduce administrative burden, you do not need to submit receipts for individual expenses, and no further accounting is required for expenditures related to the MEA." The Relocation Guidelines further stated: "The MEA is not a bonus; rather, it is intended to off-set various costs associated with your move not covered by the relocation guidelines[.]" The Relocation Guidelines then provided examples of MEA-covered expenses, including automobile registration, drivers' licenses, and "[m]ileage during interim living." According to the Relocation Guidelines, the MEA was a one-time payment calculated based on monthly salary.

The Relocation Guidelines also explained the "Lump Sum Payment to Assist with Relocation Expenses" that Mr. Ibarra also received, stating that it was "intended to offset expenses such as home selection trip, related dependent care expenses, en route travel, final trip, and interim living at the new work location." The lump sum amount was designed to cover the following listed expenses of interim living: "[t]ransportation (e.g., airfare or mileage, car rental, parking, taxi, train fare, tolls, etc.);" lodging, meals, laundry; other incidentals; and return trips to the old work location by the employee. The lump sum amount was tax assisted and calculated based on the new location and the number of eligible dependents.⁶

⁶ An "Equity Statement" was also attached to plaintiffs' motion for partial summary judgment and opposition to Exxon's motion, showing the calculations of Mr. Ibarra's relocation payments, including *per diem* allocations for the period of 09/01/21 through 10/12/21, during which time, Mr. Ibarra was considered to be in "interim living."

After a *de novo* review of the evidence presented in support of and in opposition to the motions for summary judgment, we find genuine issues of material fact exist regarding whether, at the time of the collision, Mr. Ibarra was in the course and scope of his employment with Exxon, such that neither plaintiffs nor Exxon are entitled to judgment as a matter of law. Specifically, genuine issues of material fact exist regarding whether Exxon provided expenses or paid Mr. Ibarra for transportation to and from work, which is a recognized exception to the going and coming rule. See Bova, 168 So.3d at 553. Although Exxon relies on Mr. Ibarra's deposition testimony to support its argument that no mileage or expenses for transportation were paid, Exxon's own Relocation Guidelines casts doubt on that argument by showing that payments are routinely made to relocating and "interim living" employees, like Mr. Ibarra, encompassing mileage and other expenses involving transportation.

Therefore, Exxon's assignment of error has merit in so far as the trial court erred in finding that Mr. Ibarra was in the course and scope of his employment and in granting the plaintiffs' motion for partial summary judgment. Because questions of material fact exist, we find the trial court properly denied Exxon's cross motion for summary judgment.

CONCLUSION

For the foregoing reasons, we reverse that part of the trial court's December 20, 2023 judgment granting Vonetta Lacy and Brelyn Keys' motion for partial summary judgment finding that Carlos Ibarra was in the course and scope of his employment with Exxon Mobil Corporation at the time of the accident. In all other respects, the judgment is affirmed. Appeal costs are equally assessed to the plaintiffs, Vonetta Lacy and Brelyn Keys, and the defendant, Exxon Mobil Corporation.

AFFIRMED IN PART, REVERSED IN PART, REMANDED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

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VONETTA LACY, INDIVIDUALLY AND ON BEHALF OF HER MINOR
CHILD, BRELYN KEYS

VERSUS

CARLOS IBARRA, LIBERTY COUNTY MUTUAL INSURANCE
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COMPANY (AS UNINSURED/UNDERINSURED MOTORIST CARRIER
OF BRELYN KEYS) AND STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY (AS MEDICAL PAYMENTS CARRIER OF
BRELYN KEYS)

JS
STROMBERG, J., dissents in part.

I agree with the majority's reversal of that part of the trial court's judgment granting the plaintiffs' partial summary judgment. However, I respectfully dissent from that part of the majority's ruling affirming the trial court's denial of Exxon's motion for summary judgment, as I would find that Exxon met its burden of proving that Mr. Ibarra was not in the course and scope of his employment at the time of the accident.

The general rule is that an employee, in going to and from work, is not considered as acting within the course and scope of his employment so as to render the employer liable to third persons for the employee's negligence. **Berthelot v. Indovina**, 2021-0517 (La. App. 1 Cir. 12/22/21), 340 So.3d 119, 125, writ denied, 2022-00165 (La. 3/15/22), 334 So.3d 394. The following exceptions to the going and coming rule have been recognized: when an employer provides the transportation used by the employee to go to and from work; when the employer provides expenses or wages for the time spent traveling in the vehicle; or when the operation of the vehicle is incidental to the performance of some employment

responsibility. **Awanbor v. Williams**, 2025-0054 (La. App. 1 Cir. 8/4/25), ___ So.3d ___, ___.

In this case, the plaintiffs had the burden of proving special circumstances that took Mr. Ibarra's travel to work out of the purview of the general rule of no vicarious liability and caused the travel to be so closely related to the employment that Exxon was deemed to have control of the travel. See Liberty Mutual Fire Insurance Co. v. Harris, 2022-0429 (La. App. 1 Cir. 11/4/22), 355 So.3d 628, 634-35, writ denied, 2022-01747 (La. 2/7/23), 354 So.3d 671; **Orgeron v. McDonald**, 618 So.2d 1041, 1043-44 (La. App. 1 Cir. 1993), rev'd on other grounds, 93-1353 (La. 7/5/94), 639 So.2d 224, 228-29. Thus, on Exxon's motion for summary judgment, Exxon bore the burden of pointing out an absence of factual support for the plaintiffs' claim that Mr. Ibarra was in the course and scope of his employment at the time of the accident. See La. C.C.P. art. 966(D)(1). Thereafter, the plaintiffs were required to produce factual support sufficient to establish that they would be able to satisfy their evidentiary burden at trial. See La. C.C.P. art. 966(D)(1). The facts were undisputed in this case.

While the plaintiffs alleged that Mr. Ibarra was performing work for Exxon and/or that his drive was a duty of his employment at the time of the accident, these exceptions do not apply as Mr. Ibarra's actual job duties as a salaried employee were performed at the BRPO plant, his fixed place of employment. Mr. Ibarra was not performing work for Exxon while commuting to work in his personal vehicle. The plaintiffs' contention that Mr. Ibarra was "Interim Living" for his relocation to Baton Rouge to work for Exxon while receiving payments for relocation expenses placed his commute to work within the course and scope of his employment has no merit. During his relocation to Baton Rouge, Exxon had no control as to Mr. Ibarra's choice

as to the duration or location of housing before his purchase of a permanent home, nor did Exxon have any control over Mr. Ibarra at the time of the accident.

For an employee to be in the course and scope of employment while traveling to and from work based on the exception that the employer provides expenses or wages for the employee's time spent traveling in the vehicle, the employer must either provide the transportation or reimburse the employee the actual mileage and expenses incurred going to and from work. See **Winzer v. Richards**, 50,330 (La. App. 2 Cir. 1/13/16), 185 So.3d 876, 881; **Woolard v. Atkinson**, 43,322 (La. App. 2 Cir. 7/16/08), 988 So.2d 836, 839-41. The two lump sum relocation payments made to Mr. Ibarra by Exxon before he relocated to Baton Rouge had no relation to actual travel expenses he incurred traveling to work the day of the accident. Instead, the two payments were intended to offset costs associated with the move and interim living. See **Winzer**, 185 So.3d at 881, 883; **Woolard**, 988 So.2d at 839-41. The Relocation Guidelines did not require Mr. Ibarra to provide Exxon with reimbursement forms for his miscellaneous expenses, including transportation expenses, or to submit a further accounting for these expenses. The payments that Mr. Ibarra received after he moved to Baton Rouge were paid to cover expenses related to the sale of his home in Texas and as an additional lump sum payment for temporary living expenses due to Hurricane Ida. The trial court erred in interpreting the relocation payments as mileage payments which placed Mr. Ibarra in the course and scope of his employment. See **Winzer**, 185 So.3d at 881, 883; **Woolard**, 988 So.2d at 839-41.

Based on a *de novo* review of the evidence offered in support of and in opposition to the motions for summary judgment, I find that no genuine issues of material fact exist as to whether Mr. Ibarra was acting in the course and scope of his employment. Plaintiffs failed to present sufficient evidence to prove that they would

be able to meet their evidentiary burden at trial. Under these circumstances, I believe that Exxon met its burden of proving that Mr. Ibarra was not in the course and scope of his employment at the time of the accident, and the trial court erred in interpreting the Relocation Guidelines as a basis for considering that Mr. Ibarra was in the course and scope of his employment while driving to work at his new, fixed jobsite. Accordingly, I would reverse that part of the judgment denying Exxon's motion for summary judgment and would render judgment in favor of Exxon, granting Exxon's motion for summary judgment and dismissing the plaintiffs' suit against Exxon with prejudice. I agree with the majority's reversal of the plaintiffs' motion for partial summary judgment, but for the reasons given above, I would reverse, finding the plaintiffs failed to meet their burden of proving that Mr. Ibarra was in the course and scope of his employment when the accident occurred.

For these reasons, I respectfully dissent in part.