IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Maria D. Padilla,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 7118
	)	
Caroline Ujvari and Ryan C. Weber,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment is proper if there exists no question of material fact and the moving party deserves judgment as a matter of law. In this case, there exists no evidence of an employer-employee relationship between the defendants to support a *respondeat superior* cause of action. In contrast, there is a substantial question as to whether one defendant negligently entrusted the use of his vehicle to the other defendant who has a history of driving infractions. For those reasons, the defendant's summary judgment motion is granted, in part, and denied, in part.

Facts

In January 2009, Caroline Ujvari had her license suspended after being convicted of driving while intoxicated. In July 2009, Ujvari was involved in a motor vehicle collision and was convicted for driving on a suspended license. In July 2013, Ujvari was convicted of failing to provide clear distance in a vehicle collision. In November 2013, Ujvari was convicted of driving 53 miles per hour in a 35-mile-per-hour speed zone and for driving on a suspended license. In 2015, Ujvari was convicted of driving 86 miles per hour in a 65-mile-per-hour speed zone. In July 2016, Ujvari was convicted of driving 52 miles per hour in a 35-mile-per-hour speed zone.[1]

On November 12, 2019, a car driven by Ujvari struck Maria Padilla who was walking in a crosswalk at the intersection of West Grand and North Damen Avenues. At the time of the collision, Ujvari was driving back to work using the car leased to her fiancé, Ryan Weber, with his permission.

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[1] This court will not consider Ujvari's 2021 conviction for driving 95 miles per hour in a 70-mile-an-hour speed zone because the conviction occurred after the collision at issue.

On September 15, 2021, Padilla filed a three-count, second-amended complaint. Count one presents a cause of action for negligence against Ujvari. Count two is a negligence cause of action directed against Weber under the *respondeat superior* doctrine. Count three is a negligent entrustment cause of action against Weber. On August 8, 2022, Weber filed a motion seeking summary judgment as to counts two and three. The parties fully briefed the motion.

Analysis

The Code of Civil Procedure authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). A plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004).

Weber's argues first that count two—*respondeat superior*—must be dismissed because there existed no employer-employee relationship between Weber and Ujvari. Padilla responds that there existed at least some relationship between Ujvari and Weber to support a *respondeat superior* claim. According to Padilla, the income Ujvari received from her work went to pay Weber's living costs, including rent and utilities. As Ujvari was on her way to work when the accident occurred, her driving was work related.

Under the doctrine of *respondeat superior*, or vicarious liability, an employer may be liable for an employee's torts committed within the scope of the employment. *McQueen v. Green*, 2022 IL 126666, ¶ 37 (citing *Adames v. Sheahan*, 233 Ill. 2d 276, 298 (2009)); *see generally* Restatement (Second) of Agency § 219. The employee's liability is imputed to the employer, and the plaintiff need not establish the employer's malfeasance. *Sperl v. Henry*, 2018 IL 123132, ¶ 27. An employer's liability extends to negligent, willful, malicious, and even criminal acts of its employees within the scope of employment. *Adames*, 233 Ill. 2d at 298 (2009).

The record does not support Padilla's conclusion that Weber employed Ujvari at the time she was driving back to work and struck Padilla. Even if Padilla is correct that Ujvari and Weber had shared economic interests, that mere fact does not establish, let alone infer, that Weber employed or controlled Ujvari's conduct at the time of the collision. In short, absent an employer-employee or principal-agent relationship between Ujvari and Weber, the *respondeat superior* cause of action in count two must fail.

Weber next argues that the record does not support the cause of action for negligent entrustment contained in count three. The Supreme Court has explained that there are two primary considerations in a negligent entrustment analysis: "(1) whether the owner of the vehicle entrusted the car to an incompetent or unfit driver, and (2) whether the incompetency was a proximate cause of a plaintiff's injury." *Evans v. Shannon*, 201 Ill. 2d 424, 434 (2002) (citing *Taitt v. Robinson*, 266 Ill. App. 3d 130, 132, (5th Dist. 1994)). To establish negligent entrustment, a plaintiff must show that one defendant gave another express or implied permission to use a dangerous instrument that "they knew, or should have known, would likely be used in a manner involving an unreasonable risk of harm to others." *Norskog v. Pfiel*, 197 Ill. 2d 60, 84-85 (2001) (citing Restatement (Second) of Torts § 308; *Zedella v. Gibson*, 165 Ill. 2d 181 (1995)).

Ujvari's extensive driving record raises a substantial question of material fact as to her competency to drive safely. In 2009 and 2013, Ujvari failed to comprehend that a suspended license meant that she could no longer drive a car; apparently that made no difference to her. Although Ujvari's conviction for driving while intoxicated will likely not come into evidence because it is more than 10 years old, Weber knew of the conviction and still allowed her to drive his car. Ujvari's involvement in a 2009 collision may have been a fender bender, according to Weber, but the accident's implication is far greater because Ujvari was driving on a suspended license. It is an open question as to whether Ujvari has a disregard for the law given her 2013 conviction for speeding while driving on a suspended license. Ujvari has other convictions for speeding in disregard for posted speed limits. Her conduct appears unrepentant.

In the face of this record, Weber argues that there is no proximate causation between Ujvari's incompetency for driving and Padilla's injury. Weber's reply brief states that Padilla has failed to explain how Ujvari's past speeding incidents proximately caused Padilla's injury. That argument overlooks the obvious: Ujvari permitted the car to be in motion despite Padilla's presence in a marked crosswalk. That the car was moving at all means it was "speeding" given the danger a moving car poses to a pedestrian in the street. The only safe speed for a car when confronting a pedestrian is

no speed. In sum, there remains a question of material fact as to whether Weber negligently entrusted Ujvari to drive his car given her long record of driving infractions.

Conclusion

For the reasons presented above, it is ordered that:

1. Weber's summary judgment as to count two is granted;
2. Count two is dismissed with prejudice; and
3. Weber's summary judgment as to count three is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JAN 18 2023

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