MAY 16, 2000

SUPREME COURT OF LOUISIANA

99-C-3264

MICHAEL TIMMONS and WANDA TIMMONS

versus

STACIE MICHELLE SILMAN, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, PARISH OF OUACHITA

JOHNSON, J., dissenting.

Defendant, Stacie Silman, was on an errand for her employer to have the postage meter refilled at the post office in downtown Monroe. While out of the office for her employer's benefit, she decided to cash her bonus check. Defendant went to a branch of Central Bank where she regularly made deposits as part of her job and knew the bank personnel. While en route, she was involved in a motor vehicle accident with the plaintiff. The majority concludes that defendant was not within the course and scope of her employment, and thus, State Farm, as her employer's insurer, is not liable to plaintiffs for injuries arising out of the motor vehicle accident. For the following reasons, I disagree.

An employee is entitled to receive worker's compensation if disabled "by accident arising out of and in the course of his employment." La. R.S. § 23:1031. Our courts have repeatedly awarded compensation for injuries sustained by employees while away from the place of employment attending to personal needs which are incidental to the employment or which enable the employee to work better. *See e.g. Gray v. Broadway*, 146 So. 2d 282 (La. App. 2d Cir. 1962) (truck driver went home to get driver's license); *Alexander v. Insurance Co. of Pa.*, 131 So. 2d 558 (La. App. 3d Cir. 1961) (worker went home to pick up work boots); *St. Alexandre v. Texas* Co., 28 So. 2d 385 (La. App. Orl. 1946) (employee left plant to purchase soft drink); *Rigsby v. John W. Clark Co.*, 28 So. 2d 346 (La. App.1st Cir. 1946) (bookkeeper injured when he left work premises to fix hanging charged wire that created danger to others). The courts have consistently held that an employee is protected during work hours, despite minor deviations from instructions or place of work, "if what he does could reasonably be contemplated as humanly incidental to his service as an employee and does not

unreasonably increase the risk of injury." See Malone, Louisiana Workmen's Compensation Law, Sections 166-68 (1951). *Curtis Robinson v. F. Strauss & Son, Inc*., 481 So. 2d 592 (La. 1986). By that same reasoning, an innocent who is injured by an employee while within the course and scope of his employment may recover from the employer by means of vicarious liability.

The majority finds that defendant's deviation to the bank to cash her Christmas bonus check was not within the course and scope of her employment essentially because of the direction and distance (18 blocks) involved in the route. This conclusion ignores the fact that plaintiff regularly did banking at this particular branch for her employer and not some other. She knew the bank personnel at this location and did not have an account at another bank. Thus, this bank was the only bank with which she was familiar. Doing business at this branch was a habit introduced to her by doing business for her employer. It is irrational to think a person would change his regular bank due to proximity, if both are comparable in distance. I do not believe this employee's deviation to cash her Christmas bonus check was so substantial as to remove her from the course and scope of employment.

The fact that the "predominant motive of the servant is to benefit himself . . .does not prevent the act from being within the scope of employment. If the purpose of serving the master's business actuates the servant to any appreciable extent, the master is subject to liability if the act is otherwise within the service. So also, the act may be found to be in the service if not only the manner of acting but the act itself is done largely for the servant's purposes. . ." *Timmons v. Silman*, 28,139 (La. App. 2d Cir. 05/10/96), 675 So. 2d 287 (Marvin, J., dissenting) (quoting *Emhert v. Hartford Insurance Co.*, 559 So. 2d 467 (La. 1990)). In the present case, there is ample evidence to suggest that plaintiff would never have left the office on this day absent the directive to refill the postage meter. In leaving the office, plaintiff's departure from the office was a clear benefit to her employer. The personal errand is of no moment as she was still in the process of returning the meter to the office. The fact that she chose to use the branch used by her for office banking is not bad judgment, but sensible. The majority frowns on this choice and suggests had she chosen another branch located more closely to the office, a substantial deviation may not have been found. She was not required to travel any particular route, and the fact that she altered the route should not surrender her employer's liability to her or others she injured while within the course and scope of her employment. This trip was neither forbidden nor unforeseeable, as plaintiff regularly made this same trip on behalf of her employer. The fact that she left

the office to run an errand for her employer, and included a minor errand that the employer did not deem inappropriate would make this deviation not substantial. As a insubstantial deviation, the employee's accident was within the course and scope of employment and State Farm, as the employer's insurer, should be responsible for plaintiff's injuries caused by the employee defendant.