06/21/02 "See News Release 052 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 01-C-2297

J. Jude QUEBEDEAUX and Wendy Quebedeaux

versus

The DOW CHEMICAL COMPANY and John Dandridge, Reliance Insurance Co. and Dorinco Reinsurance Co.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL FIRST CIRCUIT, PARISH OF IBERVILLE

KNOLL, JUSTICE.

Following a fistic encounter between two employees at work, both were terminated by their employer for breaking company policy prohibiting fighting in the workplace. Thereafter, plaintiff filed the present intentional tort suit against the fellow employee with whom he fought and against the employer, alleging the employer is vicariously liable not only for his personal injuries from the fight, but also for lost wages and benefits, and general damages for his termination as a result of the fight. It is undisputed that the employer is vicariously liable for the damages caused by the personal injuries resulting from the fight. What is disputed and the issue that provoked this writ is whether the employer is vicariously liable for any damages arising out of the employee's termination. Finding the employment-at-will doctrine bars recovery of these damages, we reverse the lower courts' damage awards and remand this matter to the court of appeal to reconsider damages in accordance with the views expressed in this opinion.

FACTS AND PROCEDURAL HISTORY

Julice Jude Quebedeaux and John Dandridge were employed by Dow Chemical Company (Dow) as operators in the polyethylene (plastic) extrusion

area. On August 28, 1992, while at work, a heated verbal argument ensued between the two men over Mr. Quebedeaux's delay in transferring the processed plastic pellets from one storage unit to another. After numerous profanities were exchanged, Mr. Dandridge walked over to where Mr. Quebedeaux was seated and grabbed him by the neck, causing Mr. Quebedeaux to fall to the floor. As a result, Mr. Quebedeaux allegedly sustained scratches to his neck and injuries to his elbow, hip, and leg. None of Mr. Quebedeaux's injuries necessitated medical attention.

Several days later, Mr. Quebedeaux and Mr. Dandridge presented his version of the facts to an Employee Review Committee, which recommended termination of both employees. After considering the committee's recommendation, Dow terminated Mr. Quebedeaux and Mr. Dandridge for violating its policy prohibiting fighting in the workplace.[1]

---

[1]Dow's written policy provided as follows:

> **PERSONAL CONDUCT**
>
> Certain limitations on personal behavior are necessary in every organization to ensure orderly and safe operations. Although good conduct derives directly from common sense and good judgment, it is helpful to list as reminders some of the rules that most vitally affect employee welfare.
>
> Below are certain acts or items which will normally result in termination:
>
> . . . .
>
> --Fighting
>
> . . . .
>
> The following acts or items will normally result in disciplinary action and possibly termination:
>
> . . . .
>
> --Excessive use of profane and abusive language

Pl. Exh. 11. Mr. Quebedeaux's separation notice from Dow shows he was discharged (fired) on September 8, 1992 for "violation of company policy." Pl. Exh. 12.

Thereafter, Mr. Quebedeaux and his wife, Wendy Quebedeaux, (plaintiffs) filed suit against Mr. Dandridge and Dow.[2] In their petition for damages, plaintiffs sought recovery of the following alleged damages caused by Mr. Dandridge's intentional act: (1) physical pain and suffering; (2) mental anguish resulting from the altercation and subsequent termination; (3) past lost wages; and (4) future lost wages. Plaintiffs also sought damages for Mrs. Quebedeaux's alleged loss of consortium. In their petition, plaintiffs contended Dow is vicariously liable for the damages caused by its employee, Mr. Dandridge, through the legal doctrine of *respondeat superior*.

After a two day trial, the jury rendered a verdict in favor of plaintiffs, finding that Mr. Dandridge committed a battery upon Mr. Quebedeaux and that Dow was vicariously liable for the intentional tort. The jury awarded Mr. Quebedeaux $48,500 in general damages; $45,000 in past lost earnings and benefits; $50,000 in future lost earnings; and $80,000 in future lost benefits.

The jury further found Mrs. Quebedeaux suffered a loss of consortium and awarded her $15,000 in general damages. The jury attributed 35% of the fault to Mr. Quebedeaux and 65% of the fault to Mr. Dandridge. Accordingly, a judgment was signed awarding Mr. Quebedeaux $145,275 plus interest and costs, and Mrs. Quebedeaux $9,750 plus interest and costs.

Dow appealed the judgment to the First Circuit, which affirmed.[3] *See Quebedeaux v. Dow Chemical Co.*, 00-0465 (La.App. 1st Cir. 05/11/01), 809 So.2d 983. We granted Dow's writ application to address a perceived conflict between the employment-at-will doctrine and an employee's right to sue his

---

[2]In an amended petition, two of Dow's insurers, Reliance National Insurance Company and Dorinco Reinsurance Company, were added as defendants. Neither is before the court.

[3]Mr. Dandridge did not appeal the district court's judgment. Thus, the judgment is final as to him.

employer in tort for intentional acts committed by his co-employee while in the course and scope of employment.[4] *See Quebedeaux v. Dow Chemical Co.*, 01-2297 (La. 11/21/01), 801 So.2d 1080.

DISCUSSION

Dow concedes Mr. Dandridge committed the intentional tort of battery upon Mr. Quebedeaux and thus the exclusivity provisions of the Louisiana Workers' Compensation Act do not preclude plaintiffs' tort suit against Dow. *See* LSA-R.S. 23:1032(B); *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981). Moreover, Dow concedes Mr. Dandridge was in the course and scope of his employment when the battery occurred. But Dow disputes the extent of its vicarious liability.[5] Specifically, Dow admits it "is responsible for the recoverable damages sustained by plaintiff as a result or consequence of any physical injury caused by the battery."[6] However, Dow contends it is not vicariously liable for general damages or lost wages or benefits resulting from terminating Mr. Quebedeaux; Dow argues the employment-at-will doctrine bars it from being vicariously liable for damages resulting from termination.

On the other hand, plaintiffs argue the employment-at-will doctrine does not shield Dow from vicarious liability for the damages caused by its employee, Mr. Dandridge. They assert the doctrine merely prevents an employee from suing for wrongful discharge. Thus, alleging their claim is not for wrongful discharge,

---

[4]We granted Dow's writ application only to address whether the employment-at-will doctrine bars an employer's vicarious liability for damages arising out of the termination of an employee under the circumstances of this case.

[5]Vicarious liability is liability for the tortious act of another person. *See* Dan B. Dobbs, The Law of Torts, § 333, at 905 (2001). Vicarious liability is most often imposed on an employer for the torts of its employee committed in the course and scope of employment. At common law, the Latin phrase *respondeat superior* ("let the master answer") denotes this type of liability. *Id.*; Frank L. Maraist & Thomas C. Galligan, Jr., Louisiana Tort Law, § 13-2, at 308-09 (1996). In Louisiana, this concept is codified. *See* LSA-C.C. art. 2320; LSA-R.S. 9:3921.

[6]Dow's Brf. at 9.

plaintiffs maintain the employment-at-will doctrine is inapplicable. We disagree.

The employer-employee relationship is a contractual relationship. As such, an employer and employee may negotiate the terms of an employment contract and agree to any terms not prohibited by law or public policy. When the employer and employee are silent on the terms of the employment contract, the civil code provides the default rule of employment-at-will. *Cf. Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 281 (Iowa 1995) ("[T]he doctrine of employment at-will is merely a gap-filler, a judicially created presumption utilized when parties to an employment contract are silent as to duration."). This default rule is contained in LSA-C.C. art. 2747.[7]

Under LSA-C.C. art. 2747, generally, "an employer is at liberty to dismiss an employee at any time for any reason without incurring liability for the discharge." *See Williams v. Delta Haven, Inc.*, 416 So.2d 637 (La.App. 2nd Cir. 1982). However, this right is tempered by numerous federal and state laws which proscribe certain reasons for dismissal of an at-will employee. For instance, an employee cannot be terminated because of his race, sex, or religious beliefs.[8] Moreover, various state statutes prevent employers from discharging an employee for exercising certain statutory rights, such as the right to present workers' compensation claims.[9] Aside from the federal and state statutory exceptions, there

---

[7]LSA-C.C. art. 2747 states:

> A man is at liberty to dismiss a hired servant attached to his person or family, without assigning any reason for so doing. The servant is also free to depart without assigning any cause.

[8]*See* 42 U.S.C.A. § 2000e *et seq.* (prohibits discrimination by both private and governmental employers in all aspects of employment based on race, religion, sex, color, or national origin); 42 U.S.C.A. § 1981 (prohibits discrimination based on race); LSA-R.S. 23:301 *et seq.* (prohibits intentional discrimination in terms or conditions of employment based on race, color, creed, religion, sex, national origin, disability, age, and sickle cell trait).

[9]*See* LSA-R.S. 23:1361 (prohibits retaliation against workers' compensation claimants).

are no "[b]road policy considerations creating exceptions to employment at will and affecting relations between employer and employee." *See Gil v. Metal Service Corp.*, 412 So. 2d 706, 708 (La.App. 4th Cir. 1982).

In this case, plaintiffs do not deny Dow's allegation that Mr. Quebedeaux was an at-will employee. Nor do they allege Mr. Quebedeaux's termination was contrary to law. Thus, Dow was free to terminate Mr. Quebedeaux without incurring liability for the discharge. However, plaintiffs, nevertheless, argue Dow is vicariously liable for the damages arising out of Mr. Quebedeaux's termination because "but for the fight" plaintiff would not have been fired. We reject this argument and hold the employment-at-will doctrine bars vicarious liability for damages arising out of termination of an employee under the circumstances of this case. We find victim compensation, which is one of the primary policies supporting vicarious liability, must give way to the employment-at-will doctrine, which furthers broader societal policies, such as maintaining a free and efficient flow of human resources. We also observe that, if we were to accept plaintiffs' argument, employers would be placed in the precarious position of having to retain combatant employees following workplace fights to avoid vicarious liability for any damages arising out of termination. Such a result would unfairly hamstring employers from making sensible business decisions. *See Rooney v. Tyson*, 697 N.E.2d 571, 580 (N.Y. 1998) ("We have noted that the 'original purposes of the employment-at-will doctrine were to afford employees the freedom to contract to suit their needs and to allow employers to exercise their best judgment with regard to employment matters.'"). However, we underscore that our holding is limited. An employee may still apply general principles of tort law to hold his employer vicariously liable for other damages arising out of an

intentional tort committed by his co-employee. *See Jones v. Thomas*, 426 So.2d 609, 612 (La. 1983) ("We further conclude that application of general tort law may make the employer vicariously liable for the intentional acts of the injured employee's coemployee.").

DECREE

For the foregoing reasons, we reverse and set aside that portion of the lower courts' judgments pertaining to plaintiffs' damage awards, and remand this matter to the court of appeal to determine the proper quantum for plaintiffs' damages, consistent with the views expressed in this opinion.

DAMAGE AWARDS REVERSED AND CASE REMANDED.