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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0479**

Zoila Salguero,
Appellant,

vs.

Elvis Perez Hernandez, et al.,
Respondents.

**Filed November 12, 2024
Affirmed
Schmidt, Judge**

Washington County District Court
File No. 82-CV-23-4085

Samuel H. Dilley, Robichaud, Schroepfer & Correia, P.A., Minneapolis, Minnesota (for appellant)

Matthew M. Johnson, Robert E. Kuderer, Caleb T. Nigrin, Erickson, Zierke, Kuderer & Madsen, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Schmidt, Presiding Judge; Ross, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant trustee challenges the summary-judgment dismissal of her wrongful-death claim against respondent employer and respondent coemployee. Appellant argues the district court erred by (1) determining that she did not properly plead a claim under the Minnesota No-Fault Automobile Insurance Act (No-Fault Act), Minn. Stat. §§ 65B.41-.71 (2022); (2) granting summary judgment to respondent coemployee because she could not

establish the personal-duty requirement essential for recovery in tort against a coemployee under the Minnesota Workers' Compensation Act, Minn. Stat. §§ 176.001-.862 (2022); and (3) granting summary judgment to respondent employer because she could not establish a means of imputing vicarious liability to respondent employer. We affirm.

FACTS

Respondent JC Fence is a business that installs commercial and residential fencing. JC Fence employed respondent Elvis Perez Hernandez since the company's inception. Hernandez's duties included transporting fencing materials to worksites by truck and attached trailer. JC Fence also employed decedent Mario Enrique Solorzano Salguero.¹

On March 15, 2021, five JC Fence employees—including Hernandez, Mario, and JC Fence's owner—were installing a fence at a construction worksite. The owner asked Hernandez to move a truck and attached trailer that the company used to transport fencing materials by repositioning it to allow the employees to work on the fence more easily.

While Hernandez moved the truck, a rear trailer tire ran over a metal stake, dislodging the trailer's light cables. The owner saw the cables dislodge and told Hernandez to stop. Hernandez stopped, turned the engine off, exited the truck, and joined the owner and Mario at the rear of the trailer. The owner instructed Mario to go underneath the trailer to check if the cables had become loose. Mario did so and confirmed that the cables were loose. The owner said to continue working on the fence and that the cables could be fixed later. The owner then turned his back to the trailer.

¹ Given the same last name of the trustee who sued on behalf of the decedent's next-of-kin, we refer to the decedent as Mario throughout the opinion.

Hernandez and Mario stood about five feet from the trailer on the passenger side. Hernandez told Mario that Hernandez planned to move the truck a little to the left. When Hernandez reentered the truck, Mario was still standing in the same place. Hernandez started the truck, checked the rearview and both sideview mirrors, then slowly started to move the truck forward with the windows down and the radio off. Hernandez then heard the owner yell “stop” because the trailer had run over Mario. Unbeknownst to Hernandez and the owner, Mario had crawled back under the trailer after Hernandez had reentered the truck. Hernandez stopped the truck and the owner pulled Mario from under the trailer. Mario was transported to the hospital where he died from his injuries that same day.

Zoila Salguero (Salguero), as trustee for Mario’s next of kin, sued JC Fence and Hernandez for wrongful death. The complaint did not include specific counts, beyond alleging: “Pursuant to Minnesota Statutes section 573.02 subdivision 1, Plaintiff maintains this action, as Trustee for the Next of Kin of Decedent, for the grossly negligent acts and/or omissions on the part of the Defendants that directly caused the resulting injuries and death to Decedent.” The complaint did not cite the No-Fault Act as a basis for liability.

JC Fence and Hernandez moved for summary judgment, arguing that Salguero could not overcome coemployee immunity in the Workers’ Compensation Act for Hernandez and thus there could be no vicarious liability for JC Fence. Salguero opposed the motion, contending that fact issues existed as to Hernandez’s gross negligence, her wrongful-death claim should proceed under the Workers’ Compensation Act, and her claim should also proceed under the No-Fault Act.

The district court granted respondents' summary-judgment motion, determining that Salguero (1) failed to properly plead the No-Fault Act theory in her complaint; (2) could not establish the personal-duty requirement required to recover under the Workers' Compensation Act against coemployee Hernandez; and (3) could not establish vicarious liability for JC Fence. The court dismissed the action and entered judgment.

Salguero appeals.

DECISION

Salguero challenges the summary-judgment ruling in respondents' favor. "We review a district court's summary judgment decision de novo." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.*

Salguero raises three arguments in asking this court to reverse the summary-judgment dismissal of her wrongful-death claim. She argues that the district court erred in determining: (1) she did not plead the No-Fault Act in her complaint to give notice to respondents of that theory of liability; (2) the coemployee immunity provision of the Workers' Compensation Act barred her claim because Hernandez owed no personal duty to Mario; and (3) she could not establish a means of imputing vicarious liability on JC Fence. We address each argument in turn.

I. The district court correctly determined that Salguero failed to plead the No-Fault Act in her complaint.

Salguero argues that the district court erred in determining she failed to sufficiently plead the No-Fault Act to give respondents notice of that theory of liability. In a notice-pleading state like Minnesota, “[p]laintiffs may plead their case by way of a broad general statement which may express conclusions rather than, as was required under code pleading, by a statement of facts sufficient to constitute a cause of action.” *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021) (quotation omitted); *see also* Minn. R. Civ. P. 8.01 (“A pleading which sets forth a claim for relief . . . shall contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought[.]”). While “absolute specificity in pleading is not necessary,” the information in the complaint must sufficiently put the opposing party on notice of the claims against it. *Halva*, 953 N.W.2d at 500 (quotation omitted).

Salguero asserts that one basis for her wrongful-death action against Hernandez is under a No-Fault Act theory. Salguero argues that she did not need to mention or cite the No-Fault Act in her complaint because the general references to the motor-vehicle accident sufficiently put respondents on notice of her No-Fault Act theory. We disagree.

Although it is true that Salguero did not need to specifically cite the No-Fault Act, the complaint gave respondents no notice of her novel no-fault theory. Broad references to a motor-vehicle-versus-pedestrian collision are not enough. Such allegations give rise to a general negligence claim or—given the allegations against Hernandez of gross negligence—a workers’ compensation claim against the coemployee.

The complaint also did not plead the additional element that a tort threshold was met, as required to assert a valid claim under the No-Fault Act. *See Nemanic v. Gopher Heating & Sheet Metal, Inc.*, 337 N.W.2d 667, 669 (Minn. 1983) (“The tort threshold is an additional element of the negligence action [in a No-Fault Act claim] which must be pleaded[.]”); *see also* Minn. Stat. § 65B.51, subd. 3. While death is a tort threshold and Salguero’s complaint does allege that Mario died because of a motor-vehicle incident, these broad allegations do not sufficiently plead a No-Fault Act claim.

Moreover, Salguero cited no cases to the district court—or to this court on appeal—that would authorize a no-fault theory within the context of these employment-specific facts. Salguero’s attorney agreed during oral argument that appellant could not find *any* analogous case holding that appellant’s No-Fault Act theory was authorized by statute or that the complaint’s general allegations were sufficient. By asserting a new theory that had not been previously addressed by any court, the general allegations were not sufficient to put respondents on notice of this novel theory. Given the lack of any notice in the complaint,² we agree with the district court that Salguero did not properly plead a No-Fault Act theory or claim.

² Salguero’s attorney admitted at oral argument that the first time he raised this no-fault theory was in response to respondents’ motion for summary judgment.

II. The district court did not err in determining that Hernandez owed Mario no personal duty because he was acting in the scope of his employment at the time of the incident.

Salguero argues the district court erred in granting summary judgment to Hernandez on her Workers' Compensation Act claim. Under the Workers' Compensation Act, an employer is required to compensate an injured employee for injuries incurred within the scope of employment regardless of the employer's fault. Minn. Stat. § 176.021, subd. 1. Minnesota's workers' compensation system is "based on a compromise between employees and employers and involves 'a mutual renunciation of common law rights and defenses by employers and employees alike.'" *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005) (quoting Minn. Stat. § 176.001).

The Workers' Compensation Act generally precludes an injured employee from bringing an action for damages against a coemployee. Minn. Stat. § 176.061, subd. 5(e). But a plaintiff may bring an action against a coemployee if the coemployee caused the injury through gross negligence or intentionally inflicted the injury. *Id.*

Appellant's argument that Hernandez does not qualify for the statutory coemployee immunity is premised on a gross-negligence theory. This theory requires Salguero to show:

1. the coemployee had a personal duty toward the employee, the breach of which resulted in the employee's injury, and that the activity causing the injury was not part of the coemployee's general administrative responsibilities; and
2. the injury arose from gross negligence on the part of the coemployee.

Stringer, 705 N.W.2d at 754 (quotation omitted). The district court ruled against Salguero because she could not establish the personal-duty requirement.

We review de novo whether a personal duty exists. *Id.* at 755. “To have a personal duty to the injured employee, the coemployee must have (1) taken direct action toward or have directed another to have taken direct action toward the injured employee, and (2) acted outside the course and scope of employment.” *Id.* at 757 (citation omitted). To determine whether a coemployee acted outside of his or her “course and scope of employment,” the Minnesota Supreme Court has held:

“Scope of employment” is defined as “the field of action in which a servant is authorized to act in the master-servant relationship.” Black’s Law Dictionary 1374 (8th ed. 2004). “Course of employment” refers to “[e]vents that occur or circumstances that exist as a part of one’s employment; esp., the time during which an employee furthers an employer’s goals through employer-mandated directives.” *Id.* at 378. Under the workers’ compensation system, we have said that course of employment refers to the time, place, and circumstances of the incident causing the injury.

Id. at 758. Based on the supreme court’s definition, the district court determined that Salguero cannot establish the personal-duty requirement because Hernandez acted in the course and scope of his employment when driving the truck and attached trailer.

Salguero argues that Hernandez’s actions were outside the scope of his employment for three reasons: (1) JC Fence is in the business of installing fences, not fixing or operating trucks; (2) the scope of Hernandez’s employment did not include running over a coworker with a truck; and (3) Hernandez’s actions violated JC Fence’s and Occupational Safety and Health Administration (OSHA) rules. Salguero’s arguments are unpersuasive.

First, while Salguero accurately notes that JC Fence’s business is to install fencing, Hernandez acted within the course and scope of his employment by driving a truck owned

by JC Fence. Hernandez regularly drove the truck to and from worksites to transport fencing materials and was authorized to do so by the business owner. And even if driving the truck was not explicitly within Hernandez's defined duties, this activity was "related to the employee's duties" because the work was "in furtherance of the employer's business." *Stringer*, 705 N.W.2d at 761 (quotation omitted). On the day of the incident, JC Fence's owner undisputedly directed Hernandez to reposition the truck and trailer before the incident occurred. That JC Fence is in the fencing business does not negate that operating the truck and trailer was within the course and scope of Hernandez's employment.

Second, Salguero's argument that running over a coworker with a truck was outside the scope of Hernandez's employment is misguided. The consideration is not whether the injury was within the course and scope of employment, but whether the "incident causing the injury" was within the course and scope of employment. *Id.* at 758. Fatally running over a coworker with a truck would never be within an employee's work duties. But the incident causing the injury—driving the truck and trailer—was within the course and scope of Hernandez's employment.

Third, Salguero's argument that Hernandez violated a rule of JC Fence by failing to check the area before moving the truck finds no support in the record. Instead, the undisputed facts demonstrate that Hernandez checked the rearview and both sideview mirrors before moving the truck. Additionally, unlike an employee performing a prohibited act—which falls outside the scope of employment—performing an authorized act in a prohibited manner falls within the scope of employment. *Lange v. Minneapolis-Saint Paul Metro. Airports Comm'n*, 99 N.W.2d 915, 918 (Minn. 1959); *Stringer*,

705 N.W.2d at 761. Here, Hernandez’s employer authorized him to operate the truck. Even if Hernandez moved the truck in a prohibited manner, that does not support that Hernandez acted outside the course and scope of his employment.

Salguero also cites to an OSHA violation issued to JC Fence for failing to use a locking device to disconnect the power while Mario was inspecting the truck. But the company, not Hernandez, was cited for an OSHA violation. And, again, even if Hernandez acted in a prohibited manner by failing to use a locking device, he was performing an authorized act in the scope of his employment when moving the truck. *Id.*

The district court correctly determined that Hernandez acted within the course and scope of his employment when the incident occurred. Hernandez did not, therefore, have a personal duty to Mario and is immune from liability under the workers’ compensation statute. Because we affirm the district court’s summary-judgment order on the grounds that no personal duty exists, we do not reach the question of gross negligence.³

Affirmed.

³ We also reject Salguero’s vicarious liability theory against the employer. Salguero’s exclusive remedy against the employer is within the Workers’ Compensation Act. Minn. Stat. § 176.031 (“The liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee, personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death.”).