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The Illinois Supreme Court Rejects the So-Called "McHaffie Rule"

BY: Patrick E. Foppe

Illinois law has long recognized holding an employer directly liable for negligently hiring, retaining, and training or supervising its employee who causes injury to another. *See e.g., Mueller by Math v. Community Consol. School Dist.*, 54, 287 Ill.App.3d 337, 341 (Ill. 1st Dist. 1997).

The Illinois Supreme Court has previously found that:

> "[a]n employer's direct liability for negligent hiring and retention is distinct from its *respondeat superior* liability for the acts of its employees. Under a theory of negligent hiring or retention, the proximate cause of the plaintiff's injury is the employer's negligence in hiring or retaining the employee, rather than the employee's wrongful act."

Van Horne v. Muller, 185 Ill.2d 299, 311 (Ill. 1998). The same is true for a claim of negligent training or supervision. *Vancura v. Katris*, 2008 WL 5423357, 10 (1st Dist. 2008). By contrast, a negligence claim brought under a *respondeat superior* theory is based upon an employer's vicarious liability for the wrongful acts of its employees. *Id.*

Under prior Illinois law, if *respondeat superior* liability was admitted, a plaintiff was not generally permitted to proceed on its action for direct negligence against the employer, unless there is a claim for willful and wanton conduct on behalf of the employer. *Gant v. L.U. Transport, Inc.*, 770 N.E.2d 1155 (Ill. 1st Dist. 2002); *Ledesma by Ledesma v. Cannonball, Inc.*, 182 Ill. App. 3d 718 (Ill. 1st Dist. 1989); *Lockett v. Bi-State Transit Authority*, 94 Ill. 2d 66 (Ill. 1983). This is what has been recognized by many other states and commonly referred to as the "*McHaffie* rule" (the leading Missouri Supreme Court decision that held where an employer admits *respondeat superior* liability, separate actions against the employer are generally foreclosed).

On April 21, 2022, the Illinois Supreme Court in *McQueen v. Green*, 2022 IL 126666, held that plaintiffs may pursue separate claims for negligent hiring, negligent supervision, and negligent retention against a trucking company/employer for the employer's conduct in failing to reasonably hire, supervise or retain an employee, even when the trucking company/employer admits vicarious liability for its truck driver/employee.

The Illinois Supreme Court found the McHaffie rule as "policy driven and not well-founded."

In reaching its holding, the Illinois Supreme Court in *McQueen* departed from prior precedent regarding the *McHaffie* rule. Rather, the Illinois Supreme Court concluded there was "no reason why a plaintiff should be precluded from seeking to hold an employer vicariously liable for its employee's negligence, as well as directly liable for its own negligence, separate and apart from its employee's conduct." *Id.* ¶ 45. The Court reasoned that: "[a] potentially meritorious cause of action should not be barred simply because the employer acknowledges vicarious liability for its employee's misconduct in a separate cause of action." *Id.* Ultimately, the Illinois Supreme Court rejected the justifications for the *McHaffie* rule as "policy driven and not well-founded." *Id.* ¶ 46.

Further, the Illinois Supreme Court in the *McQueen* case found that it was proper for the trial court to have instructed the jury with Illinois Pattern Instruction 50.01, but to strike the last sentence. *Id.* ¶ 49. Illinois Pattern Instruction (Civil) 50.01 states:

> "The defendants are sued as principal and agent. The defendant [principal's name] is the principal and the defendant [agent's name] is [his] [its] agent. If you find that the defendant [agent's name] is liable, then you must find that the defendant [principal's name] is also liable. However, if you find that [agent's name] is not liable, then you must find that [principal's name] is not liable."

The *McQueen Court* found that the notes on use for Illinois Pattern Instruction (Civil) 50.01 add that:

> "[i]f by the pleadings and evidence there is an issue of fact as to the liability of the principal for his own acts independent of acts of the agent, then a separate instruction appropriate to such independent basis of liability should also be used and the last sentence of this instruction should be modified or stricken accordingly."

In addition, the Illinois Supreme Court in the *McQueen* case concluded that the jury's finding that the employee was not negligent while holding the employer negligent did not result in inconsistent verdicts given that the jury could reasonably have concluded that the trucking company demonstrated utter indifference toward the safety of others, whereas the driver did not. The Illinois Supreme Court upheld the award of $163,000 in compensatory damages and $1 million in punitive damages.

As a result, Illinois courts will now allow plaintiffs to bring both a vicarious liability claim and a direct negligence claims against trucking companies. This will have a significant impact on how trucking cases are brought in Illinois and may expose trucking companies to further liability. Thus, trucking companies and their counsel should pay close attention to how this new law will impact their cases.

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