Savaikie v. Kaiser (2020) 2020 DJDAR 7447

Agreements between an employer and its volunteer that volunteer would drive personal vehicle found insufficient to establish the "required-vehicle exception" necessary to impose liability upon the defendant-employer.

FACTS: Ralph Steger drove his own vehicle to provide volunteer pet therapy to a Kaiser patient at an assisted living facility. Following the therapy session, Steger stopped at a bank. On the way home after leaving the banks, Steger struck and killed pedestrian Wyatt Savaikie in a crosswalk. Savaikie's parents (P) then sued and settled with the city, county and a local utility. Kaiser (D) was subsequently added to the action by Savaikie, who alleged that Kaiser was vicariously liable for Steger's negligence.

PROCEDURAL POSTURE: The trial court granted Kaiser's motion for summary judgement, holding that the "going and coming rule" applied and that no evidence supported application of the "required use exception" under the circumstances of the case.

- The trial court concluded that Kaiser was insulated from liability for Steger's negligence under California's "going and coming rule" because Steger had finished volunteering for the day and was driving home at the time of the accident.
- Finding that the evidence showed that "Steger was not prohibited from using another means of transportation" to travel to and from therapy sessions, the trial court rejected Savaikie's argument that the "required vehicle use exception" applied.

HOLDING: <u>The Second District Court of Appeal affirmed the trial court's judgement for Defendant.</u>

DISCUSSION: Acknowledging that the existence of an express or implied requirement is typically a question of fact for the jury, the court on appeal found that in this case the question was properly decided as a matter of law. In support of its conclusion, the court in *Savaikie* pointed to an absence of direct or circumstantial evidence from which it could reasonably be inferred that Kaiser in fact *required* Steger to use his own vehicle when performing volunteer work.

On appeal, Savaikie argued that deposition testimony from Steger and Kaiser's director of volunteer services, in addition to other evidence, was sufficient to create a triable issue of fact as to the applicability of the vehicle use exception. The Second District Appellate Court disagreed. It held that Savaikie could not show Kaiser required Steger's exclusive use of his personal car for pet therapy. Even if Steger could not necessarily utilize other available modes of transit to transport his dog, the court reasoned that Kaiser neither stopped Steger from using any mode of transportation, nor required Steger *to use* any one particular mode of transportation, including his personal vehicle.

The *Savaikie* court relied on Code of Civil Procedure section 437c, which permits courts to consider "all inferences reasonably deducible from the evidence." The court also cited *Pierson v. Helmerich & Payne Industrial Drilling Co.* (2016), which stated the rule that a triable issue of fact exists where "conflicting inferences can reasonably be drawn from the evidence." Applying this rule, the Second District Appellate Court concluded that the evidence in this case simply did not "support the inferences appellants want[] the [] court to draw."

The court conceded that evidence did show that Kaiser likely assumed - even relied on - Steger's ongoing use of his personal car. For example, Kaiser checked the liability insurance of volunteers who used their own vehicles, and Kaiser had previously offered to reimburse Steger for his mileage (though he declined the offer). Savaikie also showed that Steger was responsible for "provid[ing] the therapy dog and transport[ing] the dog to the therapy session."

However, even assuming the evidence to be as damning as Savaikie portrayed it to be, the court explained that that evidence *still* would not support a "reasonable inference" that Kaiser required Steger's use of his personal vehicle. The court added that Savaikie's "evidence viewed as a whole [was] no more compelling than when considered item by item."

In the final analysis, even the most favorable interpretation of the evidence in *Savaikie* could not overcome the undisputed fact that Kaiser permitted Steger to use "other methods of transportation, such as Uber or Lyft."