Chang v. Southern California Permanente Medical Group
Court of Appeal, Second District, Division 1, California.
April 9, 2026

FACTS/PROCEDURE

On the morning of Monday, September 12, 2022, Plaintiff Kai-Lin Chang was riding his bicycle in West Hills, California. Meanwhile, Dr. Brittany Doremus was driving to work. She was a palliative care doctor employed by Southern California Permanente Medical Group ("SCPMG"). At approximately 8:40 a.m., Dr. Doremus allegedly suddenly turned her vehicle directly into plaintiff's path resulting in a collision.

Plaintiff sued Dr. Doremus' employer for negligence. Plaintiff alleged that Dr. Doremus was operating her vehicle in the course of her employment at the time of the accident and therefore SCPMG was liable for its employees' tort under the respondeat superior doctrine.

SCPMG moved for summary judgment on the grounds that Dr. Doremus was commuting to work and therefore under the "going and coming rule" she was not acting within the course and scope of her employment, exempting SCPMG from any liability. In support, SCPMG submitted Dr. Doremus' deposition testimony that:

- She worked in the office at the medical center on Mondays and Tuesdays, SCPMG permitted her to work from home half of the day on Wednesdays, and she worked with patients at the center's hospital on Thursdays and Fridays. When on-call on nights or weekends, she worked from home.
- On the morning of the accident, she left home on her way to work. She turned into a dry cleaner's to drop off her children's Halloween costumes when the accident occurred. Apart from commuting, she was not doing anything work-related at the time and did not remember making any calls beforehand. Afterwards, she called 911 then sent a group text message to coworkers telling them about the accident and requesting they cancel her appointments for the day.
- She drove her personal vehicle and SCPMG never directed her to use the vehicle.

In further support, SCPMG submitted a text message log from her wireless carrier which indicated no text messages were sent right before the accident, and then a text chain followed a few minutes after the accident with her coworkers. SCPMG also submitted a call log showing a series of calls from her husband after the accident.

In opposition, plaintiff argued the "flurry" of texts after the accident indicated she was texting with coworkers mere seconds before which created a triable issue as to whether she was acting within the scope of her employment. Plaintiff also offered a "template" of Dr. Doremus' work schedule which listed a "Team Patient Conference" on several mornings at 8:30 a.m., including the morning of the accident. However, it was not her "actual work schedule," which Plaintiff complained SCPMG had never produced as it would include patient information. He argued the template created a triable issue as to whether she was participating in such a conference at the time of the accident. Plaintiff further argued that her employment agreement indicated she could perform work remotely and SCPMG gave its physicians phones with its software installed.

Finally, Plaintiff argued that SCPMG derived an incidental benefit from Dr. Doremus' use of her personal vehicle because although she could do her job from anywhere, SCPMG required her to take on the risk of commuting to work. Plaintiff also made evidentiary objections.

The trial court ruled that there was no dispute that Dr. Doremus was commuting to work when she turned into a parking lot for a personal errand and therefore the going and coming rule clearly applied and no exception was met.

HOLDING/DISCUSSION

Summary judgement upheld. Under the doctrine of respondeat superior, an employer is liable for the tort of its employee committed within the scope of employment. However, under the going and coming rule, an employee is generally not considered to be within the scope of employment when going to or coming from her regular place of work. The theory is that in commuting the employee is not rendering service to the employer.

Exceptions apply when the trip involves an incidental benefit to the employer not common to ordinary commuting. For instance, if the use of a personal vehicle is either an express or implied condition of employment, or if the employee makes their vehicle available as an accommodation to the employer which it has reasonably come to rely on. However, an exception will not apply if the employee is on a special errand or mission for the employer.

Here, SCPMG met its initial burden to make a prima facie showing that Dr. Doremus was in her personal vehicle and engaged in an ordinary morning commute and therefore was not acting in the scope of her employment at the time of the accident. SCPMG was not required to eliminate the possibility that she was communicating with coworkers at the time. The burden then shifted to plaintiff to demonstrate a triable issue. However, his reliance on a template calendar did not establish that she attended a meeting at 8:30 a.m. that morning. Furthermore, the call and text evidence did not contradict her testimony that she was not working at the time of the accident.

Alternatively, plaintiff argued the going and coming rule did not apply at all because the home becomes a second jobsite for hybrid workers who work both in-office and at home. They are then not commuting when they travel from home to the office but merely traveling between jobsites. The Court disagreed and noted plaintiff's citation to worker's compensation case law regarding when the home may become a second jobsite were not necessarily applicable in a tort case but nevertheless did not conflict with the holding. Dr. Doremus worked at the medical center on Mondays, and therefore her home could never be deemed to be a worksite that morning. No cited authority suggested that if an employee sometimes works from home that renders the home a second worksite for all purposes even if the employee is not working from home that day.

Finally, plaintiff argued that allowing hybrid employees provided a benefit to employers. However, the Court noted that a hybrid worker is no more acting within the course of employment when commuting on in-office days than a nonhybrid worker who commutes every day. To conclude otherwise would eviscerate the rule and discourage employers allowing flexibility.