

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001635-MR

CLETHA RICHARDSON

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE WILLIAM T. JENNINGS, JUDGE
ACTION NO. 97-CI-00477

DLC, INC., d/b/a
LITTLE CAESAR'S PIZZA

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: ABRAMSON, JUDGE; HUDDLESTON AND KNOPF, SENIOR JUDGES.¹

KNOPF, SENIOR JUDGE: The issue in this appeal is whether the release of an employee from tort liability also releases the employer from vicarious liability despite a reservation in the release to the contrary. We find that the employer is released and affirm.

¹ Senior Judges Joseph R. Huddleston and William L. Knopf sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Appellant, Cletha Richardson, was injured when her vehicle was struck by another vehicle driven by James Shipley. When the accident occurred, Shipley was delivering pizzas in the scope of his employment for appellee, DLC, INC., d/b/a Little Caesar's Pizza (DLC). Richardson brought suit against Shipley in Madison Circuit Court. She later amended the complaint to include DLC. During the course of litigation, DLC dissolved making it difficult to obtain the depositions of its corporate representatives. Shipley was also unable to be located. As a result of these difficulties, Richardson settled her claim against Shipley for his insurance policy limits of \$25,000. The settlement agreement contained a release which stated:

This release does not release any claim against Little Caesar's Pizza and the undersigned expressly reserves the right to pursue any personal injury or property damage claim against Little Caesar's Pizza.

DLC concedes that this language expressly reserved Richardson's claims against it.

Richardson's claims against DLC were brought before a jury on June 20, 2005. Before opening arguments, Richardson tendered her proposed jury instructions which contained an instruction on vicarious liability. DLC objected to this instruction on the basis that Shipley had already been released from liability. The court held a hearing outside the presence of the jury and determined that the vicarious liability claim should be dismissed. The court then held an evidentiary hearing on Richardson's claim of independent negligence against DLC on the basis of their hiring and supervising practices. Richardson produced only the testimony of Shipley who had been located

prior to trial. The court granted summary judgment in favor of DLC. This appeal follows.

Richardson argues that the trial court erred by dismissing her claims against DLC because she reserved those claims when she released Shipley. The basic rule is that if an employee/agent is released from liability, then the employer/principal is thereby also released from liability based on the same acts of negligence. *Copeland v. Humana of Kentucky, Inc.*, 769 S.W.2d 67, 69 (Ky.App. 1989). The release of the employee releases the employer from vicarious liability as a matter of law despite language in the release to the contrary. *Id.* at 70. Richardson relies on language in *DeStock #14, Inc. v. Logsdon*, 993 S.W.2d 952 (Ky. 1999). *DeStock* involved an automobile accident where the plaintiff was injured by a drunken driver. The plaintiff also brought suit against the establishment that served alcohol to the driver alleging independent acts of negligence based on the dram shop statute. The injured plaintiffs settled with the driver and released him from liability. The trial court found that the plaintiff's release of the driver operated as a release of all claims against the establishment because the release of the primary tortfeasor effectuated a release of the secondary tortfeasor. The Kentucky Supreme Court held that the plaintiff's release of the driver did not release the establishment from acts of independent negligence. *Id.* at 959. The Supreme Court distinguished the case from *Copeland* because *Copeland* involved only vicarious liability and not acts of independent negligence and the *DeStock* case was only concerned with acts of independent negligence and not vicarious liability. *Id.*

We find that Richardson's reliance on *DeStock* is misplaced. *DeStock* did not involve vicarious liability. There was no agency relationship between the drunken driver and the establishment. Instead, the relationship between them was of primary and secondary liability premised on independent acts of negligence. In the present case, the trial court dismissed only the claim of vicarious liability based on the release of the employee as was proper in accordance with *Copeland*. The dismissal of the independent negligence claim was a separate issue and was granted because there was no genuine issue of material fact, not because of the release of the employee.

Accordingly, the judgment of the Madison Circuit Court is affirmed.

ALL CONCUR.

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