Fifth Circuit Court of Appeal
State of Louisiana

No. 25-C-235

JOSHUA MONROE

versus

AMMARI OF LOUISIANA, L.L.C. D/B/A BOULEVARD AMERICAN BISTRO

IN RE AMMARI OF LOUISIANA, L.L.C D/B/A BOULEVARD AMERICAN BISTRO APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE FRANK A. BRINDISI, DIVISION "E", No. 849-577

TRUE COPY
LINDA TRAN
DEPUTY CLERK

April 30, 2026

Panel composed of Judges Fredericka Homberg Wicker, John J. Molaison, Jr., and Timothy S. Marcel

WRIT GRANTED; JUDGMENT REVERSED; JUDGMENT RENDERED

Relator-Defendant, Ammari of Louisiana, LLC d/b/a Boulevard American Bistro, seeks supervisory review of the trial court's denial of its motion for summary judgment. For the following reasons, we grant the writ application, reverse the trial court's judgment, and, after a *de novo* review, grant summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Joshua Monroe filed suit against Boulevard seeking damages for injuries he allegedly incurred arising from a workplace altercation. On December 8, 2022, Plaintiff was working a Thursday-night shift as a bartender at Boulevard in Elmwood when he became concerned that a co-employee, Mike, was not sharing

tips in accordance with the restaurant's tip-pooling policy. Plaintiff raised the issue directly with Mike during the shift, allegedly in the presence of Boulevard's general manager. A few hours later, Plaintiff went outside for a break, and Mike followed. After a brief verbal exchange, Mike pushed Plaintiff, causing him to fall and hit his head. Boulevard immediately terminated Mike and helped Plaintiff to the hospital for medical treatment. At the hospital, Plaintiff was asked to submit to post-incident drug testing pursuant to company policy. Plaintiff refused. Boulevard subsequently terminated Plaintiff. Plaintiff claims he was fired in retaliation for reporting his concerns about Mike. Boulevard, however, maintains he was terminated for refusing required drug testing under company policy. In his petition, Plaintiff alleges that Boulevard is vicariously liable for Mike's intentional acts and further asserts claims for intentional and negligent infliction of emotional distress, negligent hiring, and whistleblower retaliation.

On August 28, 2024, Boulevard filed a motion for summary judgment seeking dismissal of all of Plaintiff's claims. In support of its motion, Boulevard submitted a statement of uncontested facts, asserting that (1) Plaintiff was a Boulevard employee; (2) Plaintiff confronted his co-employee, Mike, regarding alleged tip stealing; (3) Mike pushed Plaintiff, causing him to hit his head; (4) Plaintiff refused to submit to post-incident drug testing; and (5) Boulevard terminated Plaintiff for refusing to submit to such testing. Boulevard also submitted four exhibits, including the petition, Plaintiff's entire deposition transcript, and affidavits of two Boulevard personnel. Plaintiff timely opposed the motion but did not file a statement of disputed material facts, nor did he dispute Boulevard's statement of undisputed facts or object to any of Boulevard's exhibits.

Boulevard's motion came for hearing before the trial court on April 2, 2025, and, on May 7, 2025, the trial court issued a written judgment denying the motion in its entirety. The trial court also issued written reasons for judgment, as follows:

The motion for summary judgment was denied on the basis that an employer has an interest in its employees being honestly compensated for their labor on behalf of the employer. Thus, the dispute, although not the physical altercation, cannot be said to be beyond the employer's objective. Dickerson v Piccadilly Restaurants, Inc., 99-2633 (La. App. 1st Cir. 12-20-2000), 785 So. 2d 842. The incident at issue herein arose due to a belief that one employee was stealing tips belonging, at least in part, to another employee. Thus, the court concluded that:

1. The tortious act was primarily employment-rooted;

2. The violence was reasonably incidental to the performance of the employee's duties;

3. The act occurred on the employer's premises; and

4. The act occurred during the hours of employment.

Dickerson, supra; LeBrane v. Lewis, 292 So. 2d 216 (La. 1974).

The ruling was authorized by the exception to the worker's compensation exclusive remedy as to the employer by La. R.S. 23:1032 (B):

> Nothing in this Chapter shall affect the liability of the employer, or any officer, director, stockholder, partner, or employee of such employer or principal to a fine or penalty under any other statute or the liability, civil or criminal, resulting from an intentional act.

Aware that #2 above (the violence was reasonably incidental to the performance of the employee's duties) is antithetical to the employer's interests, the court also notes that "it is not necessary that all four factors be met in order to find liability." Barto v. Franchise Enterprises, Inc., 588 So. 2d 1353 (La. App. 2nd Cir. 1991), writ denied 591 So. 2d 708 (La. 1992). Barto was cited in Watkins v. International Service Systems, (La. App. 2nd Cir. 6-16-99), 741 So. 2d 171, writ denied 749 So. 2d 640 (La. 1999). Watkins noted that an employer can be vicariously liable for the intentional act of its employee. It must be within the course and scope of employment which refers to time and place as herein. Although an employee's stealing tips from other employees is partially a private matter, it is not "entirely extraneous to the employer's interest" in seeing that its employees are fairly and fully compensated for their labors. Watkins.

Referring to § 1032 (B)'s exception, the court relied on Cole v. State Department of Safety and Corrections, 01-2123 (La. 9-4-02), 825 So. 2d 1134 and Caudle v. Betts, 512 So.2d 389 (La. 1981), in denying the motion.

Further, the court did not address each claim of plaintiff seriatum as the linchpin of plaintiff's claim is vicarious liability: the other claims would

> be considered on their merits vel non contingent upon the claim proceeding to trial on the vicarious liability theory. (Plaintiff voluntarily withdrew his claims of negligent hiring).

Boulevard timely filed a notice of intent and thereafter timely filed this writ application. To properly consider this writ application, we assigned the case for briefing by the parties and heard oral arguments in accordance with La. C.C.P. art. 966(H). *See e.g., Zibilich v. Shingledecker*, 24-443 (La. App. 5 Cir. 1/29/25), 405 So.3d 1125, 1127, *reh'g denied* (Feb. 10, 2025).

LAW AND ANALYSIS

On review before this Court, the issue is whether the trial court properly denied Boulevard's motion for summary judgment. We review summary judgment *de novo*, applying the same criteria as the trial court—whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Longo v. 700B8, LLC*, 24-1262 (La. 2/19/25), 400 So.3d 913, 914, *reconsideration denied*, 24-1262 (La. 5/20/25), 409 So.3d 212. *De novo* review generally "involves examining the facts and evidence in the record, without regard or deference to the judgment of the trial court or its reasons for judgment." *Neville v. Redmann*, 22-175 (La. App. 5 Cir. 12/31/22), 356 So.3d 568, 577 (quoting *Cutrone v. Eng. Turn Prop. Owners Ass'n, Inc.*, 19-896 (La. App. 4 Cir. 3/4/20), 293 So.3d 1209, 1216), *writ denied*, 23-126 (La. 4/4/23), 358 So.3d 861.

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, and is favored and shall be construed to accomplish these ends. La. C.C.P. art. 966(A)(2); *Millet v. Moran Foods, LLC*, 23-227 (La. App. 5 Cir. 3/13/24), 384 So.3d 1074, 1076. A party may move for summary judgment on all or part of the relief requested; La. C.C.P. art. 966(A)(1); and summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even if it does not dispose of the entire case as to that party or parties. La. C.C.P. art. 966(E).

After an opportunity for adequate discovery, a motion for summary judgment "shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). If the movant will not bear the burden of proof at trial, then the movant's burden on summary judgment "does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out the absence of factual support for one or more essential elements of the adverse party's claim, action, or defense." La. C.C.P. art. 966(D)(1); *Longo*, 400 So.3d at 914–15. In response to the movant's well-pled motion, the burden shifts to the plaintiff to produce factual support sufficient to establish the existence of a genuine issue of material fact. La. C.C.P. art. 967(B); *Millet*, 384 So.3d at 1076.

The determination of whether a genuine issue of material fact exists requires reference to the substantive law applicable to that case. *Hacienda Holding Co., LLC*, *v. Home Bank*, 20-189 (La. App. 5 Cir. 12/30/20), 309 So.3d 435, 445 (citing *Stephens v. S. Sweeping Servs.*, 03-826 (La. App. 5 Cir. 11/25/03), 862 So.2d 197, 199). The plaintiff "may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial." *Longo*, 400 So.3d at 915 (citing La. C.C.P. art. 967(B)). Once the movant has properly supported a motion for summary judgment, "the failure of the [plaintiff] to produce evidence of a material factual dispute mandates the granting of the motion." *Id.* (citing *Dauzat v. Curnest Guillot Logging Inc.*, 08-528 (La. 12/2/08), 995 So.2d 1184, 1187).

Assignments of Error

In five assignments of error, Boulevard asserts that the trial court erred in denying summary judgment with regard to claims of: (1) negligence, brought and pursued in violation of La. R.S. 23:1032; (2) intentional infliction of emotional

distress; (3) whistleblower retaliation; (4) intentional acts of non-party co-employees; and (5) vicarious liability for non-party co-employees.

Boulevard argues the trial court erred in denying summary judgment *in toto* without assessing each individual claim. The trial court's written reasons for judgment focus solely on whether the intentional tort exception applied to limit the workers' compensation exclusive remedy. In denying the motion in its entirety, the trial court found genuine issues of material fact exist as to whether the tortious act was primarily employment rooted. The trial court concluded that it did not need to address each claim because "the linchpin of plaintiff's claim is vicarious liability."

We address each of Boulevard's assignments of error below, grouped together by claim type.

Louisiana Whistleblower Statute – Retaliation Claims

Plaintiff alleges that he was wrongfully terminated by Boulevard in retaliation for reporting ("whistleblowing") his concerns that Mike was stealing tips. In his petition, Plaintiff specifies the claim is "retaliation for whistleblowing 'theft,' 'simple assault,' and 'simple battery' under La. Rev. Stat. Ann.§§ 14:67, 14:38, and 14:35." To obtain whistleblower status for retaliatory firing, the Louisiana Whistleblower Statute, La. R.S. 23:967(A), provides, in pertinent part, that:

> An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law:
>
> (1) Discloses or threatens to disclose a workplace act or practice that is in violation of state law.
>
> (2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law.
>
> (3) Objects to or refuses to participate in an employment act or practice that is in violation of law.

La. R.S. 23:967(A). This statute protects employees from retaliation for reporting or refusing to participate in illegal workplace practices. *Ricalde v. Evonik*

Stockhausen, LLC, 16-178 (La. App. 5 Cir. 9/22/16), 202 So.3d 548, 552, *writ denied*, 16-1923 (La. 12/16/16), 212 So.3d 1170.[1] The statute, however, targets only serious employer conduct that violates the law. *Id.*[2] This requires the plaintiff to establish "an *actual* violation of state law, not just a good faith belief that a law was broken." *Id.*[3] Moreover, the plaintiff must establish that the employer—not merely its employees—violated state law. *See Richardson v. Axion Logistics, LLC*, 780 F.3d 304, 306 (5th Cir. 2015); *see also Dillon v. Lakeview Reg'l Med. Ctr. Auxiliary, Inc.*, 11-1878, 2012 WL 2154346, at *5 n.8 (La. App. 1 Cir. 6/13/12), *writ denied*, 12-1618 (La. 10/26/12), 99 So.3d 651.

Thus, in order to prevail on his claim for whistleblower retaliation, Plaintiff must establish that: (1) Boulevard itself—not merely its employee—actually violated Louisiana law through a prohibited workplace act or practice; (2) Plaintiff advised Boulevard of the violation; (3) Plaintiff then refused to participate in the prohibited practice or threatened to disclose the practice; and (4) Plaintiff was terminated as a result of his refusal to participate in the unlawful practice or threat to disclose the practice. *See Kelly v. Dept. of Veterans Affs.*, 21-1605, 2022 WL 4232421, at *4 (La. App. 1 Cir 9/14/22); *Hale*, 886 So.2d at 1215–16. "Failure to put forth evidence to satisfy any of these elements must result in a summary judgment in favor of [the defendant]." *Hale*, 886 So.2d at 1215–16.

As stated above, summary judgment "shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to

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[1] In support, this Court cited to *Hale v. Touro Infirmary*, 04-03 (La. App. 4 Cir. 11/3/04), 886 So.2d 1210, 1214, *writ denied*, 05-103 (La. 3/24/05), 896 So.2d 1036.

[2] In support, this Court cited to *Fondren v. Greater New Orleans Expressway Comm'n*, 03-1383 (La. App. 5 Cir. 4/27/04), 871 So.2d 688, 691.

[3] In support, this Court cited to *Ross v. Oceans Behav. Hosp. of Greater New Orleans*, 14-368 (La. App. 5 Cir. 11/25/14), 165 So.3d 176, 180, *writ denied*, 15-05 (La. 3/27/15), 161 So.3d 648 (emphasis in original). *See also Stevenson v. Williamson*, 547 F. Supp. 2d 544 (M.D. La. 2008), *aff'd*, 324 Fed. Appx. 422 (5th Cir. 2009) (stating that, to establish a claim under La. R.S. 23:967, an employee "must prove that his employer committed an actual violation of state law").

material fact, and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). As the mover, Boulevard bears the burden of proof of its motion; however, since Boulevard will not bear the burden of proof at trial, it needs only point out that there is an absence of factual support for one or more elements essential to Plaintiff's claim. La. C.C.P. art. 966(D)(1). Here, Boulevard has pointed out that there is an absence of factual support for an element essential to Plaintiff's whistleblower retaliation claim, to-wit: an actual violation of state law by Boulevard. Plaintiff alleges only that his co-employee, Mike, violated the law (*i.e.,* stealing tips and assault/battery)—he makes no allegation that Boulevard itself violated any law. The burden then shifted to Plaintiff to provide factual support for this essential element of his whistleblower claim.

Upon *de novo* review, we find that, as to his whistleblower retaliation claim, Plaintiff has failed to produce factual support sufficient to show that he will be able to meet his evidentiary burden of proof at trial, and further, that no issue of material fact exists. Therefore, Boulevard is entitled to summary judgment as a matter of law on Plaintiff's whistleblower retaliation claim. La. C.C.P. art. 966(D)(1). As stated above, while Plaintiff must prove Boulevard violated a state law, he has failed to even make such an allegation, much less present evidence to prove it. There is no evidence here that Plaintiff ever encountered a violation of the law by Boulevard. Additionally, even if Plaintiff did allege such a violation by Boulevard, there is still no evidence that Plaintiff ever threatened to disclose the violation to a third-party, nor did he provide the information to a public body or refuse to participate in an illegal act or practice. Plaintiff did not file a statement of disputed material facts, nor did he dispute Boulevard's statement of undisputed facts or object to any of Boulevard's exhibits.

Plaintiff's own deposition testimony, which Boulevard attached as an exhibit to its summary judgment motion, evidences the lack of support for his whistleblower

claim. Asked about his claim that Boulevard retaliated against him for reporting Mike, Plaintiff responded: "I don't necessarily believe I was fired for reporting Mike." Seeking to clarify the claim, the following exchange occurred:

> Q. In your lawsuit, you allege that you were terminated because -- as retaliation for reporting Mike. Why is it you believe that now?
>
> A. I don't necessarily believe I was fired for reporting Mike.
>
> Q. Your allegations are (reading document,) "Defendant retaliated against Plaintiff by wrongfully terminating his position for reporting bartender Mike for his illegal actions." Why do you believe that?
>
> A. I don't know.

Pl. Dep. Tr. 81:7–19.

We find that Plaintiff failed to meet his burden of proof that Boulevard committed an actual violation of state law. Boulevard was therefore entitled to judgment as a matter of law. Accordingly, the trial court erred in denying Boulevard's motion for summary judgment as to Plaintiff's whistleblower retaliation claim. Thus, as it relates to Plaintiff's whistleblower claim, we grant Boulevard's writ, reverse the trial court's judgment, and render summary judgment in favor of Boulevard.

Workers' Compensation Exclusive Remedy – Negligence Claims

Plaintiff asserts multiple negligence-based claims against Boulevard, including negligent infliction of emotional distress and negligent hiring.[4] Boulevard moved for summary judgment on these claims, arguing that La. R.S. 23:1032 provides Plaintiff's exclusive remedy through workers' compensation. Under Louisiana law, the Workers' Compensation Act is the exclusive remedy for employees injured in the course and scope of employment. La. R.S. 23:1032(A)(1).

[4] In his opposition to Boulevard's motion for summary judgment, Plaintiff conceded that his negligent hiring claim was "not applicable to the facts of this case," and stated that he would "voluntarily dismiss it." No dismissal appears in the record before us. We therefore consider the claim in our review.

Accordingly, an employee may not maintain a tort action against an employer for a work-related injury absent the intentional act exception. *Brightbill v. Circuit Grand Bayou, LLC*, 21-578 (La. App. 5 Cir. 5/11/22), 342 So.3d 127, 135.

In interpreting La. R.S. 23:1031, the Louisiana Supreme Court has held that "compensation shall be an employee's exclusive remedy against his employer for an unintentional injury covered by the act, but that nothing shall prevent an employee from recovering from his employer under general law for an intentional tort." *Caudle v. Betts*, 512 So.2d 389, 390 (La. 1987) (citing *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981)); *Young v. Doe*, 11-49 (La. App. 5 Cir. 5/24/11), 67 So.3d 632, 634. Louisiana courts have consistently held that an employee's negligence-based claims "are barred as a matter of law by the Louisiana Workers' Compensation Act, which provides the exclusive remedy for any claim of negligence against an employer." *Oramous v. Military Dep't*, 05-3677, 2007 WL 1796194, at *9 (E.D. La. June 18, 2007) (citing La. R.S. 23:1032 and *Deshotel v. Guichard Operating Co.*, 03-3511 (La. 12/17/04), 916 So.2d 72, 75); *Bourgeois v. Curry*, 05-211 (La. App. 4 Cir. 12/14/05), 921 So.2d 1001, 1012 (finding that "the Louisiana Workers' Compensation Law preempts any causes of action . . . sounding in negligence"); *Hirst v. Thieneman*, 04-750 (La. App. 4 Cir. 5/18/05), 905 So.2d 343, 352 (granting defendant's summary judgment as to plaintiff's negligence claims, holding that "Louisiana law unambiguously states that workers' compensation is the exclusive remedy available to an employee for negligence claims against employers").

In its motion for summary judgment, Boulevard established that Plaintiff was an employee of Boulevard acting within the course and scope of his employment at the time of the alleged incident. Plaintiff alleged as much in his petition for damages, and Boulevard conceded it in its motion. Plaintiff's employment status was therefore undisputed. Boulevard argued that Plaintiff's negligence-based claims were barred as a matter of law by the workers' compensation exclusive remedy

provision. Plaintiff failed to establish a genuine issue of fact showing that Boulevard was not entitled to the exclusive remedy protection of La. R.S. 23:1032. Indeed, Plaintiff did not substantively address Boulevard's argument regarding his negligence-based claims in either his opposition to the summary judgment or his response to the writ application, relying instead on the generalized assertion that the intentional act exception precluded summary judgment. While the intentional act exception may bear on certain claims, *i.e.,* intentional ones, it does not preclude summary judgment on claims sounding solely in negligence.

Our *de novo* review of the record reveals no genuine issue of material fact that Plaintiff, as Boulevard's employee, is subject to the workers' compensation exclusive remedy provision for claims arising from non-intentional acts during his employment, and Boulevard is entitled to summary judgment as a matter of law. Plaintiff's negligence-based claims are independently and categorically barred by La. R.S. 23:1032. Accordingly, the trial court erred in denying Boulevard's motion for summary judgment as to Plaintiff's negligence claims. Thus, as it relates to Plaintiff's negligence-based claims—including negligent infliction of emotional distress and negligent hiring—we grant Boulevard's writ, reverse the trial court's judgment, and render summary judgment in favor of Boulevard.

Workers' Compensation Intentional Tort Exception

Plaintiff's remaining claims sound in intentional tort. As discussed above, these claims are not subject to the workers' compensation exclusive remedy provision as they fall under the intentional act exception. *See* La. R.S. 23:1032(B). In his petition, Plaintiff alleges his co-employee, Mike, committed the intentional torts of assault and battery against him and that Boulevard is vicariously liable for his actions. Plaintiff also alleges a claim for the intentional infliction of emotional distress. That Plaintiff can sue Boulevard for these claims, does not mean Boulevard is vicariously liable for them. We address each claim in turn below.

1. Assault & Battery

Under Louisiana Civil Code article 2320, "employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed." "There are two essential elements for liability under article 2320: (1) the existence of an employer-employee relationship and (2) the tortious act of the employee was committed during the course and scope of the employment by the employer sought to be held liable." *Lagrange v. Boone*, 21-560 (La. App. 3 Cir. 4/6/22), 337 So.3d 921, 925 (quoting *Maze v. Grogan*, 96-1413 (La. App. 1 Cir. 5/9/97), 694 So.2d 1168, 1170), *writ denied*, 22-738 (La. 6/22/22), 339 So.3d 1185. Boulevard does not contest the existence of an employer-employee relationship. We therefore address the second vicarious liability element.

Under Louisiana law, vicarious liability for intentional torts is governed by the standard articulated in *LeBrane v. Lewis*, 292 So.2d 216 (La. 1974). There, the Louisiana Supreme Court considered when tortious conduct is within the course and scope of employment. *Id.* The Court promulgated the following factors:

(1) Whether the tortious act was primarily employment rooted;
(2) Whether the act was reasonably incidental to the performance of the employee's duties;
(3) Whether the act occurred on the employer's premises; and
(4) Whether it occurred during the hours of employment.

Id. All four factors need not be present for liability to be imposed on an employer. *Baumeister v. Plunkett*, 95-2270 (La. 5/21/96), 673 So.2d 994, 996–97. "The particular facts of each case must be analyzed to determine whether the employee's tortious conduct was within the course and scope of his employment." *Id.*

The intentional conduct of the employee must be so closely connected in time, place, and causation to his employment duties as to be regarded as a risk of harm fairly attributable to the employer's business as compared with conduct motivated by personal considerations entirely extraneous to the employer's interest. *Id.* Louisiana courts have consistently held that intentional torts such as assault, battery,

and intentional infliction of emotional distress are outside the course and scope of employment when they arise from personal disputes, personal animosity, or purely personal motivations, even if the acts occur at the workplace or during work hours. *Baumeister*, 673 So.2d at 999.

In its motion for summary judgment, Boulevard argues that Mike's alleged tip theft and the assault and battery of Plaintiff were motivated by personal gain, did not further Boulevard's objectives, and were outside the ambit of his employment. Conversely, Plaintiff argues that the fair distribution of customer tips is essential to Boulevard's operations and therefore makes Mike's assault and battery of him employment rooted.

In *Watkins* v. *International Service Systems,* 32,022 (La. App. 2 Cir. 6/16/99), 741 So.2d 171, *writ denied*, 99-2129 (La. 10/29/99), 749 So.2d 640, the court found the employer was not vicariously liable for the employee's intentional battery of his supervisor after the supervisor informed the employee of his suspension pending an investigation into the theft of radios. In that case, although the battery occurred before the employee had clocked out from his shift and while at his place of work, the court found that the employee's janitorial duties did not include stealing radios and kicking his supervisor. Moreover, the court found that the employee's battery did not further the employer's objectives, and the battery was not a risk of harm fairly attributable to the employer's business as a janitorial service.

In the instant case, accepting the allegation that Mike stole tips that were supposed to be shared equally among the staff as true, Plaintiff fails to demonstrate the benefit received by Boulevard so as to bring the theft within the ambit of his employment. Likewise, Plaintiff fails to demonstrate how the alleged tip theft furthered the interests of Boulevard.

An employer cannot be held vicariously liable for the wanton criminal activities of an employee which are clearly not in furtherance of the employer's

interest in any manner. Plaintiff has failed to establish a genuine issue of material fact that Mike's actions against him, for which he seeks to hold Boulevard vicariously liable, were employment rooted. He submitted no evidence to satisfy his burden on summary judgment. As to this cause of action, therefore, Boulevard was entitled to judgment as a matter of law, and the trial court erred in denying its motion. Thus, as it relates to Plaintiff's claims of vicarious liability for Mike's assault and battery, we grant Boulevard's writ, reverse the trial court's judgment, and render summary judgment in favor of Boulevard.

2. Intentional Infliction of Emotional Distress

To recover for intentional infliction of emotional distress, the plaintiff must prove: (1) extreme and outrageous conduct; (2) specific intent to cause emotional distress or reckless disregard; and (3) severe emotional distress suffered by the plaintiff. *White v. Monsanto Co.*, 585 So.2d 1205, 1209 (La. 1991). "The plaintiff's burden is a heavy one." *Pelitire v. Rinker*, 18-501 (La. App. 5 Cir. 4/17/19), 270 So.3d 817, 831, *writ denied*, 19-793 (La. 9/17/19), 279 So.3d 378 (citing *Scamardo v. Dunaway*, 96-1036 (La. App. 5 Cir. 4/29/97), 694 So.2d 1041, 1042, *writ denied*, 97-1395 (La. 9/5/97), 700 So.2d 517). "Conduct which is merely tortious or illegal does not rise to the level of being extreme or outrageous." *Id.* (citing *Nicholas v. Allstate Ins. Co.*, 99-2522 (La. 8/31/00), 765 So.2d 1017).

In *White v. Monsanto*, the Louisiana Supreme Court discussed the intentional infliction of emotional distress cause of action, explaining that "the conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Pelitire*, 270 So.3d at 831 (*citing White*, 585 So.2d at 1209). The Court further opined that the intent element requires a showing that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct. *White*,

585 So.2d at 1209. Moreover, the distress suffered must be such that no reasonable person could be expected to endure it, and liability arises only where the mental suffering or anguish is extreme. *Id.* at 1210. This tort is disfavored and narrowly construed. Liability attaches only to conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency," and it does not extend to mere insults, indignities, threats, annoyances, or other trivialities. *Id.* at 1209; *Nicholas*, 765 So.2d at 1022. Louisiana courts have consistently held that even harsh, unfair, or insensitive employer conduct does not constitute extreme and outrageous behavior absent truly atrocious circumstances. *Nicholas*, 765 So.2d at 1026; *Beaudoin v. Hartford Acc. & Indem. Co.*, 90-863 (La. App. 3 Cir. 2/12/92), 594 So.2d 1049, 1051.

Plaintiff in this action alleges that Boulevard's conduct surrounding a workplace assault by a co-employee caused him emotional distress. Particularly, Plaintiff avers that management exercised poor judgment in arranging transportation for medical treatment, permitted a non-medical representative to accompany him to the hospital, and sought a drug and alcohol screen unrelated to his immediate injury. In assessing outrageousness, courts may consider the full factual context of the behavior or conduct, including the plaintiff's medical vulnerability and the defendant's position of authority. *White*, 585 So.2d at 1210. In our *de novo* review of the record, we observe the record does not contain evidence that Boulevard directly delayed or interfered with medical treatment to Plaintiff for a reported workplace injury. Rather, the evidence shows that Plaintiff voluntarily eloped from the hospital after being asked to provide a bodily fluid sample for drug testing. Accordingly, we find Plaintiff fails to demonstrate a genuine issue of material fact to establish that Boulevard's conduct was either extreme or outrageous.

Plaintiff also fails to satisfy the intent element. Intentional infliction of emotional distress liability requires proof that the defendant desired to inflict severe

emotional distress or knew such distress was substantially certain to result. *White*, 585 So.2d at 1209. The conduct or behavior must be more than conduct amounting to negligence, poor judgment, or even reckless indifference to meet this stringent requirement. *Nicholas*, 765 So.2d at 1026. In this case, the petition contains no facts suggesting that Boulevard acted with such intent or subjective awareness. Further, Plaintiff presents no evidence in opposition to summary judgment which could be inferred as Boulevard's intent to cause emotional distress.

Finally, Plaintiff fails to allege facts establishing emotional distress of the requisite severity. The distress must be "so severe that no reasonable person could be expected to endure it." *White*, 585 So.2d at 1210. Generalized allegations of fear, anxiety, humiliation, or upset are insufficient, as are pleadings lacking allegations of medical or psychological treatment, debilitating emotional consequences, or lasting trauma. *Moresi v. Dep't of Wildlife & Fisheries*, 567 So.2d 1081, 1096 (La. 1990). Absent such proof, courts routinely reject intentional infliction of emotional distress claims even where the defendant's conduct is objectionable. *Nicholas*, 765 So.2d at 1024–25. The record of this matter does not contain evidence demonstrating that Boulevard's conduct following the incident resulted in Plaintiff experiencing severe emotional distress.

On *de novo* review, we find the record does not contain evidence of conduct or a pattern of behavior that was extreme, intentionally or recklessly inflicted, and productive of severe emotional harm. Because Plaintiff has failed to establish outrageous conduct, the requisite intent, or severe emotional distress, no genuine issue of material fact exists as to the intentional infliction of emotional distress claim, and dismissal is warranted. Boulevard was therefore entitled to judgment as a matter of law, and the trial court erred in denying its motion. Thus, as it relates to Plaintiff's claims for intentional infliction of emotional distress, we grant Boulevard's writ,

reverse the trial court's judgment, and render summary judgment in favor of Boulevard.

DECREE

For the foregoing reasons, we grant the writ application, reverse the trial court's judgment, and, after a *de novo* review, render summary judgment in favor of Boulevard.

Gretna, Louisiana, this 30th day of April, 2026.

FHW
JJM
TSM

SUSAN M. CHEHARDY
CHIEF JUDGE

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JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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MELISSA C. LEDET
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **04/30/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-C-235

E-NOTIFIED
24th Judicial District Court (Clerk)
Honorable Frank A. Brindisi (DISTRICT JUDGE)
Matthew W. Tierney (Relator)
Christopher A. Minias (Respondent)
Karl E. White (Respondent)

MAILED
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