DEMETRIS HAYNIE AND CURTIS YOUNG, SR.

VERSUS

TWIN OAKS NURSING HOME, INC. AND ANNIE ALFORD

NO. 17-CA-192

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 64,636, DIVISION "C"
HONORABLE J. STERLING SNOWDY, JUDGE PRESIDING

November 15, 2017

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Robert A. Chaisson

REVERSED.

SMC
JGG
RAC

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CHEHARDY, C.J.

Plaintiffs, Demetris Haynie and Curtis Young, Sr., appeal the summary judgment dismissing their suit for injuries against defendant, Twin Oaks Nursing Home, Inc. For the following reasons, we vacate and reverse the summary judgment.

Facts and Procedural History

On April 4, 2012, Annie Alford, co-defendant herein, while working as a Certified Nursing Assistant at Twin Oaks Nursing Home in LaPlace, struck her supervisor, Demetris Haynie. According to the record before us, Ms. Haynie, as the supervisor, approached Ms. Alford to instruct her to report to Ms. Haynie's office. When Ms. Haynie turned around, Ms. Alford attacked her from behind, striking her three to four times in the head and neck. When questioned by the authorities, Ms. Alford, who had been written up for prior work-related problems, reported that she "knew they were going to fire me so I gave them a damn good reason to." Ms. Haynie suffered bruises, scratches, a black eye, and soft tissue injuries.

On March 21, 2013, Ms. Haynie filed suit against Ms. Alford and their employer, Twin Oaks Nursing Home, Inc. (hereinafter "Twin Oaks") for the damages that she sustained. On July 27, 2016, Twin Oaks filed a motion for summary judgment on the basis that Twin Oaks is not vicariously liable for Ms. Alford's actions. The matter was heard on September 22, 2016 and taken under advisement. In an Order dated September 28, 2016, the trial judge granted the motion and dismissed the petition against Twin Oaks. In that Order, the trial judge opined that Ms. Haynie failed to establish that the tortious act was primarily employment rooted and that the action was not incidental to the performance of Ms. Alford's duties:

> The likelihood that a subordinate (while feeding an aged patient in the employer's cafeteria) would leave a patient and repeatedly strike her supervisor is simply not a risk fairly attributable to the performance of the employee's duties. The subordinate's duties do not include severely attacking a supervisor or any other employee. Likewise, it is not foreseeable for the employer to foresee such conduct on the job-site [*sic*] during working hours. Alford's actions were therefore not reasonably incidental to the performance of her employment.

On October 13, 2016, the trial judge issued a judgment, reiterating its earlier dismissal and declaring the judgment final under La. C.C.P. art. 1915.

On appeal, Ms. Haynie raises four assignments of error: first, the trial court erred in failing to conclude that remaining genuine issues of material fact prohibit summary judgment in this case; second, the trial court erred in determining that there were no genuine issues of material fact regarding whether the altercation at issue was employment rooted; third, the trial court erred in determining that there were no genuine issues of material fact regarding whether the altercation at issue was reasonably incidental to the performance of the employee's duties; and fourth, the trial court erred in drawing a conclusion on the predominant motive of the tortfeasor, Annie Alford. In essence, Ms. Haynie argues that this matter was not ripe for summary judgment.

Law and Discussion

Appellate courts review summary judgments *de novo* using the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Guillory v. Interstate Gas Station*, 94-1767 (La. 3/30/95), 653 So.2d 1152; *Reynolds v. Select Properties Ltd*., 93-1480 (La. 4/11/94), 634 So.2d 1180. 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).[1] Further, La. C.C.P. art. 966(D)(1)[2] provided:

> The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

La. C.C. art. 2320 provides that, "masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed." An employer is liable for a tort committed by his employee if the employee was acting within the course and scope of his employment at the time of the incident. *Baumeister v. Plunkett*, 95-2270 (La. 5/21/96), 673 So.2d 994, 996. The course of employment refers to time and place, whereas the scope of employment examines the employment-related risk of injury. *Id*.

For an employer to be vicariously liable for the tortious acts of its employee, the "tortious 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 instituted by purely personal considerations entirely extraneous to the employer's interest." *Baumeister*, *supra*, at 996; *LeBrane v. Lewis*, 292 So.2d 216, 217 (La. 1974).

"An employer is not vicariously liable merely because his employee commits an intentional tort on the business premises during working hours." *Baumeister*, *supra*, at 996. "Vicarious liability will attach in such a case only if the

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[1] On July 27, 2016, when defendant's motion for summary judgment was filed, La. C.C.P. art. 966 had been amended by Acts 2015, No. 422, § 1, effective January 1, 2016.
[2] See fn. 1, *supra*.

employee is acting within the ambit of his assigned duties and also in furtherance of his employer's objective." *Id.*

In *LeBrane v. Lewis, supra,* the Louisiana Supreme Court set out four factors to consider in determining whether the employer is liable for the employee's acts: (1) whether the tortious act was primarily employment rooted; (2) whether the violence 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. *See also, Baumeister, supra,* at 996-997.

The *Baumeister* court noted, however, that all four of these factors needn't be met before vicarious liability may be found. *Id; Miller v. Keating*, 349 So.2d 265, 268 (La. 1977). 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. *Baumeister, supra,* at 997. There must additionally be at least some evidence that the intentional act was reasonably incidental to the performance of the employee's duties or that the tortious act was primarily employment rooted. *Id*. at 1000.

On *de novo* review, we find that the altercation occurred during business hours on the employer's premises while Ms. Haynie was attempting to perform her duties as the CNA supervisor for Twin Oaks, which satisfies two of the four factors to be considered in finding vicarious liability. More importantly, our *de novo* review reveals that there is at least a genuine issue of material fact regarding whether Ms. Alford's actions were primarily employment rooted or reasonably incidental to the performance of her duties.

A finding of scope of employment hinges on the predominant motive of the tortfeasing employee, whether the purpose of serving the employer's business actuated the employee to any appreciable extent. *Ermert v. Hartford Ins. Co.*, 559

So.2d 467 (La. 1990). "The fact that the predominant motive of the servant is to benefit himself or a third person does not prevent the act from being within the scope of employment." *Miller, supra,* at 269. Summary judgment may be inappropriate for determinations based on subjective facts of motive, intent, good faith, knowledge, or malice. *Jones v. Estate of Santiago,* 03-1424 (La. 4/14/04), 870 So.2d 1002, 1006.

The depositions attached to the motion for summary judgment and the opposition reveal several statements regarding Ms. Alford's attitude toward her supervisor, Ms. Haynie, which emerged from their employment at Twin Oaks. Ms. Alford stated that she felt that Ms. Haynie picked on her and felt jealous of Ms. Alford, which would indicate that the conflict was personal. Conversely, Ms. Alford also reported that she "knew they were going to fire me so I gave them a damn good reason to." Thus, we find that Ms. Haynie presented factual support sufficient to establish the existence of a genuine issue of material fact regarding whether Ms. Alford's actions were primarily employment rooted or reasonably incidental to the performance of her duties.[3]

For the purposes of La. C.C.P. art. 966, this creates a genuine issue of material fact sufficient to preclude summary judgment. *See, Felix v. Briggs of Oakwood, Inc.*, 99-721 (La. App. 5 Cir. 12/15/99), 750 So.2d 1091. We find, therefore, that the trial judge erred in granting summary judgment. Accordingly, the judgment of the trial court is hereby reversed. Costs of appeal are assessed against Twin Oaks Nursing Home, Inc.

REVERSED.

[3] *Cf. Pye v. Insulation Techs*., 97-237 (La. App. 5 Cir. 9/17/97), 700 So.2d 892, 893 (plaintiff failed to rebut defendant's evidence by submitting any evidence in opposition to defendant's motion for summary judgment).

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 15, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-CA-192

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