Circuit Court for Baltimore County
Case No. C-03-CV-20-000401

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 239

September Term, 2024

JULIO FELIU, ET AL.

v.

JUAN REYES LOPEZ, ET AL.

Nazarian,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: May 20, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Juan Lopez was driving himself and two coworkers to work when his vehicle collided with another. Julio and Elenor Feliu, the driver and passenger in the other vehicle, sued Mr. Lopez for negligence. Claiming Mr. Lopez was acting within the scope of his employment, the Felius also sued his employer, J&B Fabricators, LLC ("J&B"), and his manager, Luis Manuel Mena Ayala, whose vehicle Mr. Lopez had been driving. J&B filed a motion for summary judgment, which the Circuit Court for Baltimore County granted. The Felius appeal and we affirm.

I. BACKGROUND

On January 9, 2018, Mr. Lopez left his house early in the morning to drive to work at J&B's facility in Annapolis. He picked up two coworkers at their houses and stopped at a 7-Eleven for coffee on his way. Later in his commute, his vehicle slid on a patch of black ice and stopped in the road with about a foot of the vehicle on the other side of the center line. Seconds later, the Felius' vehicle came around a curve traveling in the opposite direction and collided with Mr. Lopez's vehicle.

On January 20, 2022, the Felius filed a negligence and breach of contract suit against Mr. Lopez and Ms. Feliu's insurance provider, Government Employees Insurance Company ("GEICO"). The Felius later filed an amended complaint alleging that J&B was vicariously liable for Mr. Lopez's negligent conduct under the doctrine of *respondeat superior* and primarily liable for the negligent hiring and retention of Mr. Lopez. They also added Mr. Ayala, a manager at J&B and the owner of the vehicle that Mr. Lopez was

driving, as a defendant, alleging he was vicariously liable for Mr. Lopez's actions and primarily liable for negligent entrustment.

J&B filed a motion for summary judgment on January 20, 2021. They argued that Mr. Lopez was not acting as an agent, servant, or employee of J&B at the time of the accident and, therefore, that the company could not be held liable for his allegedly negligent actions. In support of this motion, J&B attached a transcript of Mr. Lopez's deposition, an affidavit from Thomas Bruce Burgess, the sole owner of J&B, and Mr. Burgess's answers to twenty-two interrogatories. These documents revealed that Mr. Lopez had been working as an hourly employee at J&B for ten years, performing construction-related duties (*i.e.*, operating chain link equipment, constructing cable fencing, loading trucks, etc.). He worked at J&B's facility in Annapolis and did not travel to other work sites. According to Mr. Burgess, Mr. Lopez was responsible for getting himself to work and J&B did not provide either Mr. Lopez or Mr. Ayala a vehicle, nor did they reimburse them for travel expenses. Mr. Burgess confirmed that "[t]he vehicles involved in the motor vehicle accident were not owned or operated by [J&B]" and that Mr. Lopez had "never operated a motor vehicle as a part of his employment duties and/or responsibilities with [J&B]."

During his deposition, Mr. Lopez explained that Mr. Ayala loaned his personal vehicle to him for "personal and business" use and that Mr. Ayala did not give him the vehicle for the express purpose of driving himself and his coworkers to the J&B facility. Mr. Lopez kept the vehicle at his house and said that he had replaced the tires not too long

before the accident occurred. He said Mr. Burgess was not aware that he carpooled with others and that J&B was not involved in how or with whom he traveled to the facility. He also confirmed that J&B did not reimburse him for travel expenses or compensate him for driving his coworkers and that he didn't start earning his own wages until he clocked in at the facility.

The Felius opposed J&B's motion. They argued that the record presented genuine disputes of material fact, specifically whether Mr. Lopez was acting for the benefit of J&B by driving himself and his coworkers to the facility. They claimed that on the morning of the accident, Mr. Lopez was "engaged in his regular course of business of picking up his co-workers, day laborers, at a 7-11 to perform jobs for [J&B]" and that Mr. Ayala "allowed Mr. Lopez to use the vehicle for his own personal use in exchange for . . . picking up a sufficient number of day laborers at the 7-11 and then arriving at a specific job site each morning for business purposes and solely for the benefit of [J&B]." The Felius acknowledged that generally, traveling to and from work does not fall within the scope of one's employment for liability purposes. They argued, however, that this case fell outside that rule because Mr. Ayala had loaned Mr. Lopez his vehicle "as long as it was available for business use as well" and, therefore, that it was reasonable to infer that their employer, J&B, supplied the vehicle that Mr. Lopez used to carpool to and from work. The Felius did not submit any additional evidence to support their arguments.

The circuit court held a hearing on April 26, 2021. J&B explained that they didn't compensate Mr. Lopez for driving his coworkers or reimburse him for travel expenses,

they had not required or authorized a specific mode of transportation by which Mr. Lopez must travel to work, and he did not travel to job sites as a part of his job responsibilities. Accordingly, they argued, there was no genuine dispute: Mr. Lopez was not acting within the scope of his employment while driving to work and the court should grant their motion for summary judgment. The Felius countered that a genuine dispute existed because Mr. Lopez was driving his supervisor's car, he received "payment" for driving his coworkers to work in the form of permission to use the car for personal and business purposes, and he was acting for J&B's benefit by transporting his coworkers to the facility. To support this argument, they claimed J&B's workers did not live on a bus line and were low wage earners who "don't always have vehicles," facts that, as the court pointed out, did not appear in the submitted documents. The court also highlighted the Felius' allegation that Mr. Lopez drove to the 7-Eleven to pick up day laborers for J&B, which misrepresented Mr. Lopez's deposition testimony that he picked up his coworkers from their houses then stopped at a 7-Eleven for coffee. The Felius conceded that Mr. Lopez picked his coworkers up at their homes then drove to a 7-Eleven but claimed the analysis remained the same: "The fact that Mr. Lopez [was] driving his supervisor's car and that he [got] to drive that car for his personal business and . . . work related [business] puts this implicitly, if not expressly, in the course and scope of his employment."

The court granted J&B's motion for summary judgment and dismissed all claims against J&B. The Felius later dismissed the claims against GEICO and settled with Messrs. Lopez's and Ayala's insurance company, State Farm Insurance Company ("State Farm").

On March 20, 2024, the court entered a final order affirming its grant of J&B's motion for summary judgment, releasing Messrs. Lopez and Ayala of liability in their individual capacities but not as agents, servants, or employees of J&B, and releasing State Farm and GEICO.

The Felius filed a notice of appeal on April 3, 2024. We include additional facts in the Discussion as necessary.

II. DISCUSSION

The Felius present multiple questions for our review that we condense into a single question: Did the circuit court err in granting J&B's motion for summary judgment?[1]

[1] The Felius phrased the Questions Presented as follows:

> 1) Did the Circuit Court for Baltimore County err as a matter of law by granting Defendant J&B Fabricators, LLC Motion for Summary Judgment by failing to submit questions of fact and inferences that can be drawn from the agreed upon facts for determination to a jury? Specifically, whether Juan Lopez was engaged in the course and scope of his employment with J&B Fabricators at the time of the accident, whether it could be inferred that Juan Lopez was acting in his capacity as an employee at the time that he was picking up his coworkers utilizing his manager's car to accomplish that task?
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> 2) Whether the Circuit Court for Baltimore County committed an error of law in refusing to find that the Defendants were engaged in activities that would fall within the exception to the going and coming rule, specifically that the activities of Juan Lopez served a dual purpose to benefit the employer and a personal interest of transporting his coworkers and that Juan Lopez was acting in the course and scope of his employment by implied direction when his manager

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Under Maryland Rule 2-501, a court shall grant summary judgment "if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). A fact is "material" if "'the resolution of [that fact] will somehow affect the outcome of the case.'" *Romeka v. RadAmerica II, LLC*, 485 Md. 307, 330 (2023) (*quoting USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 174 (2011)). "A genuine dispute of material fact exists only when there is evidence upon which a reasonable jury could base a verdict in favor of the non-moving party." *Peacock v. Debley*, 261 Md. App. 540, 556 (2024).

To defeat a motion for summary judgment, the opposing party must "identify with particularity each material fact as to which it is contended that there is a genuine dispute" and provide written statements under oath that support those contentions. Md. Rule 2-501(b). Supporting documentation must contain "such facts as would be admissible in

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allowed him to use the vehicle for business purposes.

3) Does the free transportation exception to the going and coming rule utilized in workers' compensation analysis equally apply to tort liability claims when alleging respondeat superior and actions occurring in the scope of one's employment?

J&B phrased the Questions Presented as follows:

1) Should Appellants' arguments in their brief be considered by this Court despite numerous procedural deficiencies?

2) Did the circuit court err when it granted J&B's Motion for Summary Judgment?

evidence," Md. Rule 2-501(c); "mere general allegations or conclusory assertions which do not show facts in detail and with precision will not suffice to overcome a motion for summary judgment." *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 139 (2007).

We review a decision granting summary judgment *de novo*. *See Barclay v. Briscoe*, 427 Md. 270, 281 (2012) (citation omitted). "'[W]e independently review the record to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to a judgment as a matter of law.'" *Id.* (*quoting Charles Cnty. Comm'rs v. Johnson*, 393 Md. 248, 263 (2006)). In doing so, we view the facts "'in the light most favorable to the non-moving party,'" in this case, the Felius, "'and construe any reasonable inferences that may be drawn from the facts against the moving party,'" in this case, J&B. *Romeka*, 485 Md. at 331 (*quoting Rhoads v. Sommer*, 401 Md. 131, 148 (2007)).

The Felius argue that the court erred in granting J&B's motion for summary judgment because there was a genuine dispute about whether Mr. Lopez was acting within the scope of his employment when the car accident occurred. J&B counters that no such dispute exists because they proved, through Mr. Lopez's deposition and Mr. Burgess's affidavit and answers to interrogatories, that Mr. Lopez was not acting within the scope of his employment at the time of the accident and that the Felius provided no evidence to the contrary.[2] We agree with J&B.

[2] J&B argues first that we should dismiss this appeal because the Felius failed to cite to the record or include sufficient legal argument and authority in support of their position as required under Maryland Rule 8-504(a). *See* Md. Rule 8-504(c) (we can dismiss an

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Under the doctrine of vicarious liability or *respondeat superior*, "'an employer is ordinarily responsible for the tortious conduct of his employee committed while the [employee] was acting within the scope of the employment relationship.'" *Barclay*, 427 Md. at 282–83 (*quoting Embrey v. Holly*, 293 Md. 128, 134 (1982)); *see also Dhanraj v. Potomac Elec. Power Co.*, 305 Md. 623, 627 (1986) ("'[A] master is liable for the acts which his servant does with the actual or apparent authority of the master, or which the servant does within the scope of his employment, or which the master ratifies with the knowledge of all the material facts.'" (*quoting Globe Indemnity Co. v. Victill Corp.*, 208 Md. 573, 580 (1956))). An act falls within the scope of employment if the employee committed that act "'in furtherance of the employer's business[,] and [the employer] authorized'" the act. *Barclay*, 427 Md. at 283 (*quoting S. Mgmt. Corp. v. Taha*, 378 Md. 461, 481 (2003)). Whether a particular act falls within the scope of employment typically is a question of fact for a jury to decide. *Id.* When there's "'no conflict in the evidence relating to the question and but one inference can be drawn therefrom,'" however, it becomes a question of law for the court to decide. *Id.* (*quoting Sheets v. Chepko*, 83 Md. App. 44, 47 (1990)).

Courts apply the doctrine of *respondeat superior* less strictly in the context of an employee's commute to and from work. *Id.* at 283–84 (citation omitted). Employees are

appeal for noncompliance with Rule 8-504(a)). We agree that the Felius' brief is noncompliant in substantial ways, and counsel are admonished to comply with the Rules in future matters before this Court. Nevertheless, we are able to understand and answer each of the Felius' contentions with the limited citations provided and prefer to resolve the issues on the merits rather than noncompliance with the Rules.

responsible for getting themselves to work and generally are not "advancing the employer's interests" while doing so. *Oaks v. Connors*, 339 Md. 24, 32 (1995). An employer will not be liable for their employee's negligent driving, even if the employee was acting in furtherance of their employer's business, "'unless the [employer] expressly or impliedly consent[ed] to the use of the automobile, and . . . had the right to control the [employee] in its operation,'" or "'the use of the automobile was of such vital importance in furthering the [employer's] business that his control over it might reasonably be inferred.'" *Dhanraj*, 627–28 (*quoting Henkelmann v. Ins. Co.*, 180 Md. 591, 599 (1942)). "The 'right to control' concept is key" such that the "'doctrine may only be successfully invoked when an employer has either 'expressly or impliedly, authorized the [employee] to use his personal vehicle *in the execution of his duties*, and the employee is in fact engaged in such endeavors at the time of the accident.'" *Oaks*, 339 Md. at 31 (*quoting Dhanraj*, 305 Md. at 628).

The Maryland cases applying this doctrine support J&B overwhelmingly. In *Dhanraj*, for example, Potomac Electric Power Company ("PEPCO") required their employee, Mr. Sandy, to attend a training at an off-site location. 305 Md. at 625. PEPCO did not provide transportation or compensation for the extra travel, though Mr. Sandy received a travel allowance under his union contract for the mileage between his usual place of work and the training site with no reference to his mode of transportation. *Id.* Mr. Sandy drove himself and his coworker to the training site using his personal vehicle. *Id.* He got into a car accident and the other driver, Mr. Dhanraj, sued him for negligence and sued PEPCO under the doctrine of *respondeat superior*. *Id.* at 626. PEPCO filed a motion

for summary judgment that the court granted. *Id.* In affirming that ruling, our Supreme Court explained that even if Mr. Sandy had been acting within the scope of his employment while attending the training, the "mere travel to and from the facility was no more within the scope of his employment than was his travel to and from his usual job site" to perform his usual duties. *Id.* at 628. The Court concluded as well that Mr. Sandy's travel allowance did not invoke the doctrine of *respondeat superior*:

> The allowance paid [Mr.] Sandy had no direct tie to the training facility. He received it because he was traveling out of his base zone and would have been entitled to the allowance no matter why he was going beyond his base zone to report to work. There was no consent, express or implied, by PEPCO to the use of [Mr.] Sandy's automobile as the means of transportation to the training facility; PEPCO was not concerned with how he got there or how he got home at the close of the workday. [Mr.] Sandy was entitled to the same allowance had he traveled in his own car, or as a passenger in another's car, or hired a taxicab, or walked, or even if he stayed for the six weeks in a nearby motel. He used his automobile by his own choice and for his personal convenience; he was under no instruction, direction or duty to use it. The expense of the operation of the automobile was not borne by PEPCO, and PEPCO had no right of control over [Mr.] Sandy in regard to it. The allowance paid did not represent maintenance of the automobile, nor was it based on the expense of its operation. In short, he could travel to and from the facility as he pleased, by any means or route he chose. PEPCO's only concern was that he take the course, not how he got there.

Id. at 630. Because PEPCO could not be held vicariously liable for Mr. Sandy's negligent driving, summary judgment for PEPCO was appropriate. *Id.* at 631; *see also Oaks*, 339 Md. at 32–33 (summary judgment for employer appropriate where employee was required to have vehicle, but employer didn't supply, pay for, or specify which vehicle to use or

what route to take, employee didn't perform duties while traveling, didn't earn wages until punched in at work sites, and vehicle wasn't vital to employer's business); *Barclay*, 427 Md. at 291–92 (summary judgment for employer appropriate where employee wasn't required to have or drive personal vehicle to work, employer didn't pay for travel/maintenance expenses, and vehicle wasn't vital to employer's business).

In this case, Mr. Lopez was commuting to his regular work site—in fact his *only* work site—when the accident occurred. Mr. Ayala allowed Mr. Lopez to use his personal vehicle for "personal and business" needs but didn't require Mr. Lopez to use that vehicle to commute to work or to drive his coworkers to J&B's facility. J&B didn't provide Mr. Lopez with a vehicle or reimburse him for travel expenses, and they didn't know Mr. Lopez carpooled with his coworkers, let alone require him to do so. Mr. Lopez didn't start earning his own wages until he punched in at the work site and his work duties (operating construction equipment) didn't require the use of a vehicle. These facts, supported by testimony and written statements under oath, indicate that Mr. Lopez "was not about [J&B's] business" when the accident occurred, *Dhanraj*, 305 Md. at 628–29, and that Mr. Ayala's personal vehicle was not "'of such vital importance in furthering [J&B's] business that [their] control over it might reasonably be inferred.'" *Id.* at 627–28 (*quoting Henkelmann*, 180 Md. at 599).

The Felius argue that cases like *Dhanraj*, in which the employee drove their *own* vehicle, are distinguishable from this case because Mr. Lopez was driving his *supervisor's* vehicle and was transporting his coworkers to the facility. They claim that one could infer

reasonably from these facts that Mr. Ayala, and by extension, J&B, provided the vehicle to Mr. Lopez so that he could drive his coworkers to the facility and that J&B benefited from Mr. Lopez doing so. Mr. Lopez's sworn testimony contradicts this argument, though:

> Q. Did Mr. [Burgess] know that you were picking up the coworkers to travel to the job site?
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> A. No. He's just the boss. He doesn't know how we get the employees going to a job site. We just have to report to work.
>
> Q. So do you get paid extra for driving your coworkers to different job sites.
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> A. No. The company has nothing to do if I was even to arrive with my coworkers or not.
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> * * *
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> Q. Would your employer reimburse you gas mileage or gas money for bringing coworkers to and from the site?
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> A. No. Let me repeat myself. No, the company has nothing to do, you know, to give a ride to my coworkers. If I go to my car, if I pick them up or not, that has nothing to do with the company.
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> * * *
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> Q. [D]id [Mr. Ayala] give you the use of the car so that you could get employees to the job site?
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> A. No, he didn't give me with that reason the vehicle, because it wasn't the policy as well. He let me use the vehicle because I didn't have a vehicle at that time, and my coworkers, they didn't have a vehicle neither, so because they was living in the area I would pick them up on the way to work.

Mr. Burgess also confirmed that Mr. Lopez was responsible for getting himself to work, that J&B had never provided vehicles to either Mr. Lopez or Mr. Ayala, and that J&B has never "asked or authorized [Mr. Lopez] to operate his vehicle, or any other vehicle on behalf of J&B." The Felius did not submit any evidence to refute these sworn statements. And it would not be reasonable to infer from the undisputed facts laid out in

Mr. Lopez's deposition and Mr. Burgess's affidavit and interrogatory answers that Mr. Ayala loaned his car to Mr. Lopez for the express purpose of driving his coworkers to J&B's facility or that either Mr. Ayala or J&B intended to benefit from Mr. Lopez's use of Mr. Ayala's personal vehicle.

Finally, the Felius ask us to apply the dual-purpose and free transportation exceptions to the workers' compensation version of the "going and coming rule," a rule that limits an employer's liability for injuries that occur during an employee's commute to or from work. *See Schwann Food Co. v. Frederick*, 241 Md. App. 628, 652–53 (citations omitted). Like the Court in *Dhanraj* and *Barclay*, we decline to rely on cases and principles arising under the Workers' Compensation Act to determine an employer's tort liability in the *respondeat superior* context. *See Dhanraj*, 305 Md. at 630–31 (refusing to apply special mission exception); *Barclay*, 427 Md. at 288–89 n.10 (same, and noting the "different policy reasons underlying the Workers' Compensation Act and the doctrine of *respondeat superior*").

The record establishes no other "special circumstances" proving that Mr. Lopez was "not only commuting to . . . work, but additionally, [was] using [Mr. Ayala's] personal vehicle, as authorized by [J&B], to engage in the execution of his duties on behalf of [J&B]." *Barclay*, 427 Md. at 288. There is, therefore, no genuine dispute about whether Mr. Lopez was acting within the scope of his employment at the time of the accident. J&B cannot be held vicariously liable for Mr. Lopez's negligent acts under the doctrine of

respondeat superior, and the circuit court granted J&B's motion for summary judgment correctly.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANTS TO PAY COSTS.