VERMONT SUPERIOR COURT
Orleans Unit
247 Main Street
Newport VT 05855
802-334-3305
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 23-CV-01666

Marnie Willis v. Charles Brown, et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss as Plaintiff failed to State a Claim of Negligence against VT Catholic Charities (Motion: 1)
Filer: Thomas C. Nuovo
Filed Date: May 04, 2023

The motion is GRANTED.

The present matter is a claim for negligence arising from a personal injury suffered by Plaintiff Marnie Willis while staying at a rental property at the behest of her employer. Defendant Vermont Catholic Charities, Plaintiff's employer, has filed a motion to dismiss under V.R.C.P. 12(b)(6) based on the theory that Plaintiff is precluded from seeking damage in negligence against her employer under the exclusivity rule of the Vermont Workers' Compensation Act. 21 V.S.A. § 622. Plaintiff opposes this motion based on the limited factual record available.[1]

Standard of Review

A motion to dismiss is a limited remedy intended to test the legal principles of the claim and not the facts or circumstances, which at this stage of the litigation may not be fully developed or discovered. *Fleurrey v. Dep't of Aging & Indep. Living*, 2023 VT 11, ¶ 4. For the purposes of this motion, the Court must take the facts in a well-pled complaint as true and draw all reasonable inferences in Plaintiff's favor. Id. This last statement is subject to some exceptions including public records, documents referenced in the complaint, as well as the legal interpretation that the Court need not accept as true conclusory allegations or legal conclusions. *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, ¶ 28.

[1] The negligence claims against Defendants Charles and Rosemary Lalime Brown are not implicated by the present motion, and the Brown defendants did not participate in the briefing of this motion and issue.

Factual Background

In the present case, Plaintiff's complaint lays out a straightforward set of facts. Plaintiff was, at all relevant times, employed by Defendant Vermont Catholic Charities (hereinafter "VCC"). Plaintiff worked as a maid at the Michaud Manor, a residential care facility in Derby Line, Vermont that is owned and operated by VCC. In early 2020 with the outbreak of COVID, VCC considered Plaintiff to be an essential employee, and VCC directed her to continue to report to work at Michaud Manor and continue to provide services to the residents.

Sometime on or before early April 2020, VCC contracted with Defendants Charles Brown and Rosemary Lalime Brown to rent a residential property owned by the Browns and located at 284 Miller Way in Newport, Vermont. This property is also located on Lake Memphremagog, and it has an open, wooden staircase leading from the house and yard down to the shore of the lake. VCC assigned and directed Plaintiff and at least one other VCC employee to live at this property during the COVID-19 pandemic to isolate and protect them as part of the Michaud Manor workforce and to safeguard the Manor's residents from COVID-19 exposure. The Complaint is silent as to whether Plaintiff received instructions from VCC or directly from the Browns about the 284 Miller Way property. It is also silent as to who managed the property on a day-to-day basis.

On April 24, 2020, around 9pm, Plaintiff went from the house down to the lakeshore to enjoy the view. As Plaintiff went to return to the house, she stepped onto the first tread of the staircase. This tread broke, and Plaintiff fell through and injured her left ankle to such a degree that she had to struggle up the stairs and had to be taken to North Country Hospital immediately thereafter.

Plaintiff notes that there were no warning signs posted anywhere on the property about the stairs, no instructions to stay away from the stairs or lakefront area, and no obvious signs of danger. The implication is that Plaintiff did not see any reasonable warning signs or indicia that would have stopped her from using the stairs or would have indicated the latent danger in the defective tread prior to her fateful step. Based on her injury and this lack of warning or notice about the danger, Plaintiff has filed the present negligence action seeking to recover from the Defendants for their failure to either warn, repair, or take other measures that would have prevented her from falling though the staircase.

Legal Analysis

Defendant VCC's motion to dismiss is centered on 21 V.S.A. § 622, which states that if a claim for personal injury falls under the purview of the workers' compensation system, the provisions and remedies of the workers' compensation act are the sole and exclusive source of recovery. See also 21 V.S.A. § 618 ("If a worker receives a personal injury by accident arising out of and in the course of employment by an employer subject to this chapter, the employer or the insurance carrier shall pay compensation in the amounts and to the person hereinafter specified.").

The present matter is complicated by two factors. The first is that the incident took place outside of Plaintiff's normal workplace, Michaud Manor. The second is that it is unclear what the precise relationship between Plaintiff, Defendants Brown, and Defendant VCC is. At this stage, the Court can only rely upon Plaintiff's Complaint, which leaves the nature of the relationship between the parties somewhat vague.

With those issues in mind, the Court begins its analysis with the foundational concepts of workers' compensation, namely its general rule of exclusivity. As the Vermont Supreme Court has noted:

> Vermont's workers' compensation statute guarantees workers a remedy for a work place injury, see 21 V.S.A. § 618, and injured workers carry a reduced burden of proof. See *Bishop v. Town of Barre*, 140 Vt. 564, 572, 442 A.2d 50, 53 (1982) (claimant entitled to benefits upon showing that injury was suffered by accident arising out of employment, and need not prove employer's negligence). The amount of recovery is fixed, however, and the statute provides the exclusive remedy for work place injuries:
>
> * * *
>
> Thus, "[w]orkers' compensation law represents a public policy compromise in which 'the employee gives up the right to sue the employer in tort in return for which the employer assumes strict liability and the obligation to provide a speedy and certain remedy' for work-related injuries." *Murray v. St. Michael's College*, 164 Vt. 205, 209–10, 667 A.2d 294, 298 (1995) (quoting *Lorrain v. Ryan*, 160 Vt. 202, 214, 628 A.2d 543, 551 (1993)).
>
> There is, however, an exception to the general rule that the workers' compensation statute provides the exclusive remedy for work place injuries:
>
> > Where the injury for which compensation is payable under the provisions of this chapter was caused under circumstances creating a legal liability to pay the resulting damages in some person other than

> the employer, the acceptance of compensation benefits or the commencement of proceedings to enforce compensation benefits shall not act as an election of remedies, but the injured employee ... may also proceed to enforce the liability of such third party for damages in accordance with the provisions of this section.
>
> 21 V.S.A. § 624(a). This exception may, under certain circumstances, apply to an employer if the employer was acting in the capacity of a co-employee in negligently causing the accident. See *Dunham v. Chase*, 165 Vt. 543, 544, 674 A.2d 1279, 1281 (1996) (mem.).

Gerrish v. Savard., 169 Vt. 468, 470–71 (1999).

Given the broad and generally exclusive nature of the workers' compensation act over workplace injuries, the Court's analysis begins with the first question of whether Plaintiff's injury should be considered a workplace injury. To that analysis, the Court must look to whether the injury (a) arose out of and (b) occurred in the course of her employment. 21 V.S.A. § 618; *Miller v. IBM*, 161 Vt. 213, 214 (1993).

An injury arises out of employment "if it would not have occurred but for the fact that the conditions and obligations of the employment placed claimant in the position where claimant was injured." *Shaw v. Dutton Berry Farm*, 160 Vt. 594, 599 (1993) (quoting 1 LARSON, WORKERS' COMPENSATION LAW § 6.50 (1990)) (emphasis in original). In the present case, there is a strong argument that "but for" VCC's requirement that Plaintiff stay at the284 Miller Way property, she would not have walked on the staircase. It was VCC's direction that put Plaintiff at the property, and given the facts, it is not beyond the required chain of causation. As the Vermont Supreme Court has noted, the "but for" test of this prong is not a limited proximate cause analysis, but it is broader positional-risk analysis. *Miller*, 161 Vt. at 214 (noting the overruling of an earlier proximate cause test under this prong for the more liberal position-risk analysis of *Shaw*). Under this test, VCC's directions for Plaintiff to live at the property led directly to Plaintiff's exposure to the faulty staircase. Id. As such, the Court concludes that Plaintiff's injury arose out of her employment.

This moves the analysis to the second question of whether the injury arose in the course of Plaintiff's employment. The Vermont Supreme Court has held that this "in the course of" analysis is closely related to the "arising out of" analysis:

> Ordinarily, if an injury occurs during the "course of employment," it also "arises out of it," unless the circumstances are so attenuated from the condition of employment

> that the cause of the injury cannot reasonably be related to the employment. Even if the worker's activity leading to the injury is not work per se, the causal connection is not necessarily broken. As there are no hard and fast rules to determine when an injury "aris[es] out of employment," the outcome of each case is determined only after taking all the facts and circumstances into account.

Shaw 160 Vt. at 598. One of the well-established exceptions referenced by the *Shaw* Court is whether the individual is staying at a hotel, travelling, or acting effectively off-the-clock and in a personal capacity. It is here that the case law is somewhat jumbled and offers different outcomes depending on the facts and nuanced circumstances.

Since the inception of workers' compensation laws, courts from other jurisdictions have looked upon injuries that occur to employees either in a hotel or travelling to a hotel for business as being generally outside the scope of workers' compensation. See *Workmen's Compensation: Death or Injury while Travelling as Arising Out of and in the Course of Employment*, 20 ALR 319, §§ II, V (1922) (supplemented by 49 ALR 454; 63 ALR 469; and 100 ALR 1053). The primary exception cited in these reports is a 1921 decision by the Minnesota Supreme Court. *Stansberry v. Monitor Stove Co.*, 183 N.W. 977 (Minn. 1921). In *Stansberry*, the Minnesota Supreme Court affirmed the conclusion that a travelling salesman who perished in a hotel fire was acting in in the course of his employment. Id. at 977. The Court found the important facts to be (1) that his staying at the hotel was an obligation and part of his employment, and (2) that he had to furnish his employer with (a) a list of cities on his itinerary (b) the names of the hotels where he would be staying, and (c) how long he was to be at each hotel. Id. The Court found that these elements of control along with the fact that he was caring for their products at the time of his death were sufficient to establish the necessary elements to establish workers' compensation coverage. The Minnesota Supreme Court found this control and mandatory travelling for the benefit of the employer to be consistent with a number of early workers' compensation decisions, including one where a servant who was staying at a hotel in between his shift and perished in an overnight fire incurred his injuries within the meaning of the act. Id. at 978 (citing *Chitty v. Nelson*, 2 B. W. C. C. 496).[2]

The holding of *Stansberry*, particularly with its emphasis on control and placement of the employee at a particular time and place to further the interests of the employer, appears to be

[2] B.W.C.C. is the abbreviation for Butterworths' Workmen's Compensation Cases, British Reporters series collecting workers compensation cases throughout the United Kingdom beginning in 1907 and forward. *Chitty* case is undated in the *Stansberry* citation.

consistent with the Vermont Supreme Court's later decision in *Shaw*. *Shaw*, 160 Vt. at 598-99. In that case, the plaintiff was working at a farm, which provided on-site housing, when he was stabbed by his roommate. Id. at 595. Both were off-duty and in their private bunkhouse room at the time. Id. The Commissioner of Labor and Industry initially denied the claim but made two findings. Id. at 598. First the Commissioner found that the bunkhouse arrangement was provided by the employer and provided a mutual benefit to employee and employer, and Shaw was at this location at the time of his injury. Id. Second, the Commissioner found that while he was in the bunkhouse, Plaintiff was not engaged in activity that benefited the employer or fostered goodwill for the employer. Id. For the second reason, the Commissioner denied the claim as falling outside the course of employment. Id.

The Vermont Supreme Court expressly rejected this analysis for two reasons. First, the Court found these findings confused the two separate elements of arising out of employment and in the course of employment. Id. at 598-99. Under the Supreme Court' s analysis, the findings of mutual benefit, by the Commission, put the bunkhouse location into the course of employment and satisfied this element. Id. at 598. The Court then analyzed the second finding under the "arising out of employment prong," and expressly rejected the Commissioner's "activity-based" analysis as it undermined the liberality of workers' compensation act. Id. Instead, the Court adopted the positional-risk analysis and found the incident fit within the act.

This reasoning was carried over and clarified by the Supreme Court's *Miller* case. *Miller*, 161 Vt. at 215-16. In *Miller*, the Court adopted a restated version of the course of employment test from *Marsigli Estate v. Granite City Auto Sales*, Inc., 124 Vt. 95, 98-99 (1964) by interpreting its formulation of being "on duty" in very broad terms:

> *Marsigli* formulated a general rule that injury arises in the course of employment "when it occurs within the period of time when the employee was on duty at a place where the employee may reasonably be expected to be while fulfilling the duties of [the] employment contract." Id. But the definition of "duty" cannot be so strictly construed as to permit compensation only if an employee was actually engaged in a job-related activity. An employer's duty to indemnify for harm "attend[s] the [employee] for incidental trips across the premises, to and from [the] working place, for purposes not strictly connected with the [employer's] business." Id. (emphasis added). Even before the enactment of workers' compensation statutes, "under principles of common law, the law afforded the worker some latitude in releasing the servant from the confines of his work bench." Id. As noted in *Shaw*, a broad view of

> what constitutes "employment" best furthers the remedial purposes of workers' compensation legislation.

Miller, 161 Vt. at 215-16. This broad scope of "duty" means that even if an employee wanders away from the work space or takes a detour from work but remains within the general scope of work, they are still fulfilling the duties of their employment contract and are within the course of their employment.

Taking the reasoning of *Stansberry* and its notion of control along with the more specific holdings of *Shaw* and *Miller*, the Court finds that Plaintiff's injury, in regard to VCC, arose from and in the course of her employment. VCC directed Plaintiff to reside at the 284 Miller Way residence where the injury occurred. This re-location, moreover, was not simply a by-product of a work-related activity, like a stay in a hotel might be considered for an employee taking a work-related trip. Staying at the property was intimately part of Plaintiff's work in that it was to keep Plaintiff healthy and COVID-free to ensure that VCC did not lose her services and that she did not accidentally infect the vulnerable residents at the home. Being at the rental home was integral to her job and beneficial to VCC in a manner that follows the facts of *Shaw*. Notwithstanding the fact that she was taking a short stroll by the lake, Plaintiff was still fulfilling her employment duties as she was at the property and remaining quarantined from the general public for the VCC's benefit. As such, Plaintiff's injuries fall squarely within the terms and conditions of 21 V.S.A. § 618, and the exclusivity provisions of 21 V.S.A. § 622.

Given this conclusion, the Court still needs to review whether the facts support a claim under the exception to the exclusivity rule under 21 V.S.A. § 624. It is important to note that this provision only applies when a co-employee is acting in a capacity outside that of the employer. "[T]hat is, he must not be performing a nondelegable duty of the employer and must not be exercising 'managerial prerogatives.'" *Garger v. Desroches*, 2009 VT 37, ¶ 4.

In this case, there is no evidence that the employer or officer or co-employer was acting beyond their role as employer. Plaintiff's brief focuses on the ambiguity of how the relationship between VCC and the Defendants Brown worked, but there is no evidence that even if VCC was providing oversight and care of the rental property and controlling the site that it would have been outside their scope of activity as an employer. Similar to the employer in *Shaw*, VCC, if it was taking an active oversight and management role of the property, was acting as an employer who was

providing safe and convenient housing to its employees. The property was not open to the general public, and there is no evidence to support an inference that VCC took any steps in securing the property and working with its owners that fell outside of its limited and focused interests. As such, it does not matter for the purposes of this analysis to pin down the precise balance in management between VCC and the Browns. VCC was acting in its employer and management capacity to provide a safe workplace under any iteration. See also *Garrity v. Manning*, 164 Vt. 507, 513 (1996) (adopting the so-called Wisconsin Rule that the duty to provide a safe workplace is a nondelegable duty that belongs to the employer alone).

Based on this analysis, the Court does not find any facts in Plaintiff's complaint that would support a reasonable inference that VCC or any of its agents triggered 21 V.S.A. § 624.

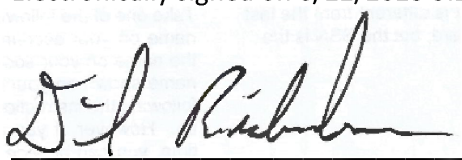
ORDER

Based on the foregoing, the Court finds that Plaintiff's injuries, at least in regard to VCC, arose out of and in the course of her employment, and therefore, under 21 V.S.A. §§ 618 and 622, the workers' compensation act is exclusive remedy. As a result, VCC must be dismissed as a party and any claims against VCC must be made through the workers' compensation process. The Court further finds no basis for an exception under 21 V.S.A. § 624 that applies to VCC. Therefore, there is no exception or additional basis to keep VCC as a party in the present negligence action based on the facts as alleged in Plaintiff's complaint. Therefore, Defendant Vermont Catholic Charities' Motion to Dismiss is **Granted**. Defendant Vermont Catholic Charites are hereby **Dismissed** under V.R.C.P. 12(b)(6) and 21 V.S.A. § 622 from the present action. Based on these findings and conclusions, Plaintiff may file a workers' compensation claim against Defendant Vermont Catholic Charities.

Finally, nothing in this decision limits or affects Plaintiff's claims against the Browns who remain as defendants to the present negligence claims.

So Ordered.

Electronically signed on 6/22/2023 3:27 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge