IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

WADE WILSON,	)	C/A NO. 03A01-9610-CV-00317
	)	
Plaintiff-Appellee,	)	KNOX CIRCUIT
	)	
v.	)	HON. DALE WORKMAN,
	)	JUDGE
ROBERT B. BOZEMAN,	)	
	)	
Defendant-Appellant,	)	
	)	
and	)	
	)	
BEAN STATION VOLUNTEER RESCUE SQUAD, INC., and RUTLEDGE VOLUNTEER RESCUE SQUAD, INC.,	)	
	)	AFFIRMED
Defendants/Cross-Appellees.	)	AND
	)	REMANDED

MICHAEL P. McGOVERN, Knoxville, for Plaintiff-Appellee.

BRENDA L. LINDSAY, Knoxville, for Defendant-Appellant.

RICHARD L. HOLLOW, Knoxville, for Defendants/Cross-Appellees.

OPINION

Franks. J.

In this action the original appellant Robert B. Bozeman dismissed his appeal, and plaintiff as cross-appellant, has appealed the Trial Court's directing verdicts for the remaining defendants.

The issue before us is whether the evidence, when taken in the most favorable light to plaintiff, creates a factual dispute as to whether these defendants are vicariously liable to plaintiff under the doctrine of respondeat superior.

The evidence established that these defendants co-sponsored a rodeo with Spur NS Rodeo Company, a rodeo stock company, and shared the profits from the rodeo. Defendant Bozeman was employed by Spur NS, and he was given responsibility for getting the horses ready and organizing the riders who brought the flags and colors into the arena, and he served as well as a "pick-up" rider in the arena. It is plaintiff's contentions that these defendants and Spur NS were partners, Bozeman was an employee of the partnership, the assault was within the course and scope of his employment; therefore, these defendants are jointly and severally liable under the doctrine of respondeat superior.

Assuming, without deciding, that the status of Bozeman's employment was a jury issue, we cannot agree that reasonable minds would differ on the liability of the defendants under the doctrine of respondeat superior. As this Court noted in *Tennessee Farmers v. American Mutual*, 840 S.W.2d 933 (Tenn. App. 1992), whether an employee is acting within the course and scope of his employment is generally a question of fact. But, we said:

> However, it becomes a question of law when the facts are undisputed and cannot support conflicting conclusions.

Id. at 937.

> Thus, whether an employee is acting within the scope of his employment can be reviewed as a question of law where the employee's acts are clearly beyond the

scope of his authority.

Id. at 937.

The applicable general rule often cited is set forth in *Anderson v. Covert*, 245 S.W.2d 770 (Tenn. 1952):

> That for the acts of the servant, within the general scope of his employment, while engaged in his master's business, and done with a view to the furtherance of that business and the master's interest, the master will be responsible, whether the act be done negligently, wantonly, or even wilfully.

pp. 771-2.

The undisputed evidence in this case shows that plaintiff had been drinking before coming to the rodeo, and was acquainted with Bozeman. Plaintiff characterized Bozeman as ?a good friend of mine?. Bozeman physically assaulted plaintiff and was convicted of the crime. The dispute surrounding the incident is that plaintiff contends there was no provocation for the assault,[1] and he was assaulted before he realized he was being attacked. Bozeman testified that he thought plaintiff was about to strike him, and since he was wearing a colostomy, he feared for his safety and struck the plaintiff, rendering him unconscious.

There is no evidence that Bozeman was attempting to evict the plaintiff from the rodeo, or subdue him for disorderly conduct. Plaintiff's evidence is the attack was unprovoked and Bozeman's evidence is that Bozeman feared for his own safety, and he thought the plaintiff was about to strike him. The assault was not within the so-called "zone of

[1] In a parking area reserved for rodeo participants, plaintiff put his arm around Bozeman and said Bozeman had been too critical of his daughter who was a rodeo participant.

risk" associated with the rodeo.[2] On this evidence, the assault was not within the scope of the vicarious liability rule. The assault had no real connection with the employer's business, but arose from a personal altercation. On this we believe, reasonable persons would agree.

We affirm the judgment of the Trial Court and remand at plaintiff's cost.

_____
Herschel P. Franks, J.

CONCUR:

_____
Houston M. Goddard, P.J.

_____
Charles D. Susano, Jr.

[2]The *Anderson* court said to hold the master responsible the tort must be committed in the course of employment as an incident thereof, and "done with a view to the furtherance of that business and the master's interest." *Id.* 772.