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United States District Court,
W.D. Oklahoma.
Ronald B. BRYSON, an individual, Plaintiff,
v.
SIERRA METALS, INC., a foreign company, and Ignacio Muñoz, Jr., an individual, Defendants.

No. CIV–12–839–C.
March 25, 2013.

Jack L. Stipe, James A. Belote, Stipe Law Firm, Oklahoma City, OK, Hardin R. Ramey, Rachael A. Varughese, Ramey Law Firm, Dallas, TX, for Plaintiff.

Brad Leslie Roberson, Gerard F. **Pignato**, Paul M. Kolker, **Pignato** & Cooper PC, Oklahoma City, OK, for Defendants.

ORDER

ROBIN J. CAUTHRON, District Judge.

***1** This case arises out of a 2010 motor vehicle accident on an Oklahoma highway. Plaintiff, Ronald B. Bryson, alleges that a tractor-trailer driven by Defendant Ignacio Muñoz, Jr. ("Muñoz"), and owned by Defendant Sierra Metals, Inc. ("Sierra Metals"), made an unsafe lane change and collided with Plaintiff's vehicle, causing Plaintiff to suffer multiple injuries. Plaintiff asserts three theories of liability against Sierra Metals: (1) common law negligence through the doctrine of respondeat superior; (2) the tort of negligent hiring, entrustment, or supervision ("negligent hiring"); and (3) negligence in maintaining the tractor-trailer driven by Muñoz. Defendant Sierra Metals now moves to dismiss Plaintiff's second cause of action based on its stipulation.

Oklahoma law generally recognizes a cause of action for negligent hiring. *Jordan v. Cates*, 1997 OK 9, 935 P.2d 289, 292. Unlike vicarious liability, the tort of negligent hiring is a direct liability claim that targets the employer's own negligence in unreasonably hiring or retaining an unsuitable employee, rather than imputing the employee's negligence. However, "the mere fact that negligent [training] is a recognized and independent cause of action under Oklahoma law is immaterial to the question concerning under what circumstances it may be maintained in a given lawsuit." *Avery v. Roadrunner Transp. Servs., Inc.*, Case No. CIV–11–1203–D, 2012 WL 6016899, at *3 (W.D.Okla. Dec. 3, 2012). In *Jordan*, the Oklahoma Supreme Court concluded that the tort of negligent hiring is not available where an employer has stipulated to vicarious liability. 1997 OK 9, ¶ 16, 935 P.2d at 293. According to the court, if an employer stipulates to liability under the respondeat superior doctrine, "any other theory for imposing liability on the employer [becomes] unnecessary and superfluous." *Id.* Thus, Sierra Metal argues that *Jordan* precludes Plaintiff's negligent hiring claim as a matter of law.

Plaintiff offers several counter-arguments, none of which the Court finds persuasive. First, Plaintiff contends that he has pled the necessary elements for a direct liability claim. However, Plaintiff's satisfaction of *Twombly's* [FN1] requirements does not impact whether Oklahoma law permits Plaintiff to bring a negligent hiring claim in this particular case. This rationale likewise dooms Plaintiff's reliance on public policy and the general availability of pleading alternative theories of liability under Fed.R.Civ.P. 8. *See Avery*, 2012 WL 6016899 at *3 ("Rule 8 is a pleading standard and the fact that a plaintiff may plead claims in the alternative is immaterial to whether a defendant is subsequently entitled to judgment as a matter of law on any one particular claim.")

FN1. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Next, Plaintiff argues that Defendant's stipula-

tion was not sufficient to invoke *Jordan* because Defendant agreed that "[a]gency [was] not in dispute" (Def.'s Answer, Dkt. No. 22, at 5), rather than invoking the scope of employment language from *Jordan.* However, the principal is the same, as the agency stipulation is still an admission that any finding of negligence by Muñoz will attach to Sierra Metals. Plaintiff additionally asserts that even if Defendant stipulated to vicarious liability, dismissal remains inappropriate because *Jordan* and its progeny, *N.H. v. Presbyterian Church,* 1999 OK 88, 998 P.2d 592, only apply to intentional torts. This Court finds this distinction artificial, as have several other federal judges interpreting *Jordan.* [FN2] *See, e.g., Avery,* 2012 WL 6016899 at *3 ("Although the lawsuit giving occasion for the Oklahoma Supreme Court ... involved a [battery], there is no indication that the rule derived therefrom would not also apply to negligence actions. Furthermore, the underlying rationale of *Jordan* ... applies equally well to negligence actions as it does to cases involving intentional torts."). [FN3]

FN2. The Court notes that Judge Miles–LaGrange issued an Order on April 8, 2005, disagreeing with this interpretation of *Jordan* in *Ramiro v. J.B. Hunt Transport Servs., Inc.*, Case No. CIV–04–1033–M. The Judge concluded that the language in *Jordan's* syllabus referencing the underlying battery demonstrates the Oklahoma Supreme Court's intention to limit its holding to only intentional torts. However, the Court agrees with later orders rejecting that approach. "[V]iewing the syllabus 'in light of the circumstances of the case,' this Court reaches the opposite conclusion and finds no such distinction or requirement in *Jordan."* *Avery,* 2012 WL 6016899 at *3 (*citing Eckels v. Traverse,* 1961 OK 139, 362 P.2d 683, 686). Had the Oklahoma Supreme Court intended to limit *Jordan's* holding to intentional torts, it would have expressed that in the body of its opinion. Instead, although the court clearly "limited [its holding] to those situations where the employer stipulates that liability, if any, would be under the respondeat superior doctrine," it did not simultaneously limit its holding only to intentional torts. *See, e. g., Jordan,* 1997 OK 9, ¶ 16, 935 P.2d at 293.

FN3. *See also Chamberlain v. Thomas,* Case No. CIV–11–1430–HE, *1 (W.D.Okla. Sept. 24, 2012); *Simpson v. Kaya,* Case No. CIV–10–1093–D, 2012 WL 3518037, *3 (W.D.Okla. Aug. 15, 2012); *Landreville v. Joe Brown Co., Inc.,* Case No. CIV–08–171–KEW, 2009 WL 1437801, *3 (E.D.Okla. May 21, 2009).

***2** Finally, the Court rejects Plaintiff's arguments regarding punitive damages and federal motor vehicle regulations as unavailing. Despite Plaintiff's contention that *Jordan* did not address punitive damages, the *Jordan* court expressly held that "[b]ecause vicarious liability can include liability for punitive damages, the theory of negligent hiring and retention imposes no further liability on employer." 1997 OK 9, ¶ 16, 935 P.2d at 293; *see also Landreville,* 2009 WL 1437801 at *4. Additionally, not only do none of the safety regulations Plaintiff cites provide for a private right of action, "the limitation on actions imposed by *Jordan* remains as the controlling authority on this claim." *Id.* at *3.

Accordingly, Defendant Sierra Metal's Motion to Dismiss Plaintiff's second cause of action (Dkt. No. 24) is hereby GRANTED.

IT IS SO ORDERED.

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