

Circuit Court for Montgomery County
Case No.: 485437V

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2111

September Term, 2023

ALLEGRA HEMPHILL, *et al.*

v.

BATTLES TRANSPORTATION, INC.

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 11, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Allegra Hemphill, individually and as personal representative of the Estate of Vivian Hemphill, appellants, appeals from the dismissal, with prejudice, of her complaint against Battles Transportation, Inc. by the Circuit Court for Montgomery County. The sole issue for our review is whether the court erred in dismissing the complaint for failure to state a claim. For the following reasons, we shall reverse and remand for further proceedings.

BACKGROUND

In April 2018, Allegra and Vivian Hemphill,¹ were injured in a motor vehicle accident when they were rearended at a stoplight by a driver who worked for Battles. Three years later, the Hemphills sued the driver, personally, and Battles in the Circuit Court for Montgomery County. Their original complaint alleged two counts: (1) “Recklessness, Carelessness, [and] Negligence”; and (2) “Liability.” Both claims related only to the driver in his personal capacity. The original complaint did not contain any allegation of wrongful conduct by Battles or claim that it was vicariously liable for the driver’s misconduct.

The court issued a scheduling order setting a pretrial conference for September 23, 2021. The order included the following language: “Deadline: pleading amendment to be determined at pretrial.” Ahead of the conference, the Hemphills indicated, in their pretrial statement, that their pleadings did not require any amendments.

¹ Vivian Hemphill passed away while this case was proceeding in the circuit court. Allegra Hemphill, as personal representative of her estate, was substituted in her place under Maryland Rule 2-241. Allegra Hemphill noted this appeal both individually and in her capacity as personal representative.

The Hemphills never served the driver and so, on November 28, 2022, moved to dismiss him from the case. They attached, as an exhibit to that motion, an amended complaint raising the same two counts as noted above, reworded slightly to assert, in essence, a claim that Battles was vicariously liable for the driver’s misconduct. The motion also detailed the changes that had been made to the amended complaint. It did not, however, expressly request the court’s leave to amend the complaint.²

On August 16, 2023, Battles moved for summary judgment, arguing that the Hemphills did not allege, in the original complaint, any claim against Battles for which relief could be granted. The Hemphills opposed and, a few days later, refiled their amended complaint. Battles moved to strike the amended complaint because the court had not granted the Hemphills leave to file it. The court held a hearing on October 3 and held the motions *sub curia*. The next day, the Hemphills filed a second amended complaint stating more clearly and explicitly claims for *respondeat superior* and vicarious liability against Battles. The company again moved to strike the new amended complaint because the court had not granted the Hemphills leave to file it.

The court granted Battles’ motions, struck the Hemphills’ amended complaints, and dismissed the case with prejudice. The Hemphills moved for reconsideration. The court denied their motion, and this appeal timely followed.

² An unsigned hearing sheet for December 2, 2022, indicates that the court granted, without prejudice, the Hemphills’ oral motion to dismiss the driver and determined their written motion was moot as a result. On May 1, 2023, the court entered a signed, written order granting, without prejudice, the Hemphills’ oral motion to dismiss the driver made at the December 2, 2022, hearing. It does not mention the Hemphills’ written motion.

STANDARD OF REVIEW

Although Battles’ motion was captioned as one for summary judgment, it argued that the Hemphills had failed to plead a claim for which relief could be granted. It therefore was functionally a motion to dismiss. *See Hill v. Hill*, 118 Md. App. 36, 44 (1997) (“Under Maryland law, when motions . . . are considered by a trial judge, it is the *substance* of the pleading that governs its outcome, and not its *form*.” (emphasis original)). The circuit court’s order denying reconsideration also indicates that it applied the standard governing motions to dismiss rather than those for summary judgment. *See Tavakoli-Nouri v. State*, 139 Md. App. 716, 730–31 (2001). We will therefore review its decision to determine whether it was legally correct in dismissing the Hemphills’ complaint. *See id.* at 725.

DISCUSSION

“Under the doctrine of *respondeat superior*, an employer is vicariously liable for a tort committed by its employee while acting within the scope of [their] employment[.]” *Women First OB/GYN Assocs., L.L.C. v. Harris*, 232 Md. App. 647, 657 (2017). Thus, to plead a cause of action against an employer for an employee’s tortious conduct, a complaint must allege that the employee committed the acts “while [they] w[ere] acting within the scope of the employment relationship.” *Barclay v. Briscoe*, 427 Md. 270, 282 (2012) (cleaned up). Put differently, it must allege “the acts must have been in furtherance of the employer’s business and authorized by the employer.” *Id.* at 283 (cleaned up).

Here, the original complaint does not allege that the driver was acting within the scope of the employment relationship at the time of the accident. To be sure, it alleges he worked as a driver for Battles and that “he was talking on the telephone to his employer”

at the time of the accident. But there it does not allege he was on-duty at the time. Indeed, the original complaint alleges he was driving his own vehicle, rather than one provided by Battles. Under those circumstances, the doctrine of *respondeat superior* can “be properly invoked [only] if the [employer] has, expressly or impliedly, authorized the [employee] to use [their] personal vehicle in the execution of [their] duties, and the employee [wa]s in fact engaged in such endeavors at the time of the accident.” *Barclay*, 427 Md. at 284 (cleaned up) (last alteration original). Because the original complaint does not allege that Battles authorized the driver to use his personal vehicle or that he was executing his employment duties, it fails to state a claim for which Battles could be held liable.

Our analysis does not end there, however, because the Hemphills contend that the trial court should have permitted them to amend their complaint. We agree.

Although the original complaint did not adequately plead a claim against Battles, the Maryland Rules allow amendments to pleadings “when justice so permits.” Md. Rule 2-341(c). The liberal allowance of amendments is permitted “to prevent the substantial justice of a cause from being defeated by formal slips or slight variances.” *Tabor v. Balt. City Pub. Schs.*, 138 Md. App. 747, 753 (2001) (cleaned up). To be sure, “[a]n amendment should not be allowed if it would result in prejudice to the opposing party.” *Id.* at 754. But a trial court should also “refrain from overlooking the principle that leave to amend should be generously granted.” *Id.* (cleaned up). Indeed, our Supreme Court has indicated that it is a “rare situation” in which granting leave to amend is not warranted. *Hall v. Barlow Corp.*, 255 Md. 28, 40–41 (1969).

Here, the Hemphills tried to amend their complaint on November 28, 2022, when they attached their first amended complaint to their motion to dismiss the driver from the case. The body of their motion identified the changes that had been made to the amended complaint. Although they did not clearly request “leave to amend,” it is clear that the Hemphills sought to amend the complaint to solely allege that Battles was vicariously liable for the driver’s tortious conduct. Battles was, therefore, at least aware of the Hemphills’ intended claim more than eight months before moving for dismissal.

The Hemphills then filed the same amended complaint in response to Battles’ motion to dismiss. And after the hearing on that motion, the Hemphills filed a second amended complaint that more explicitly alleges a claim for vicarious liability against Battles. Again, although they did not clearly request “leave to amend,” it is clear that the Hemphills sought leave to amend to remedy any defects in their complaint that might warrant dismissal.

It is true, as the trial court acknowledged, that “[n]o different [procedural] standards apply when parties appear *pro se*.” *Gannt v. State*, 241 Md. App. 276, 302 (2019) (cleaned up). It is also true, however, that Maryland courts “generally liberally construe [filings] by *pro se* litigants.” *Simms v. Shearin*, 221 Md. App. 460, 480 (2015). What is more, “nothing in [Rule 2-341] precludes the court from permitting leave to amend on its own initiative.” *Higginbotham v. Pub. Serv. Comm’n of Maryland*, 171 Md. App. 254, 276 (2006) (quoting Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 205 (3d ed. 2003)). And in the end, “the real question is whether justice has not been done, and our review of

the exercise of [the] court’s discretion [is] guided by that concept.” *Tabor*, 138 Md. App. at 753 (cleaned up).

Here, the Hemphills twice tried to remedy the defects in their original complaint. The only issue with either amended complaint identified by Battles and the trial court was that the Hemphills did not explicitly request leave to amend. But Battles was served with the first amended complaint months before moving for dismissal and would not have been prejudiced by the trial court accepting it, or, for that matter, the second amended complaint filed after the final motions hearing. Justice has not been done by allowing the Hemphills’ cause to be defeated by the “formal slip[.]” of not explicitly requesting leave to amend. *Id.* (cleaned up). Especially when “nothing . . . preclude[d] the court from permitting leave to amend on its own initiative.” *Higginbotham*, 171 Md. App. at 276 (quoting *Niemeyer & Schuett, supra*, at 205). Thus, in our view, it was an abuse of discretion to refuse the Hemphills the opportunity to amend. Accordingly, we reverse the judgment. On remand, the trial court shall accept the Hemphills’ second amended complaint as filed on October 4, 2023.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.