

No. 1-11-2654

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|------------------------------------|---|--------------------|
| LEON LARSON, Special Administrator |) | Appeal from the |
| of the Estate of BENJAMIN LARSON, |) | Circuit Court of |
| deceased, |) | Cook County. |
| |) | |
| Plaintiff-Appellant, |) | |
| |) | No. 09 L 007350 |
| v. |) | |
| |) | |
| MICHAEL MICHALSKI and |) | The Honorable |
| FORD MOTOR CO., |) | Kathy M. Flanagan, |
| |) | Judge Presiding. |
| Defendants-Appellees. |) | |

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

HELD: Circuit court order granting defendant employer's motion for summary judgment affirmed where there was no genuine issue of material fact that the employee was acting outside of the scope of his employment at the time that he caused a fatal car accident and thus, the employer could not be subject to vicarious liability for the employee's tortious actions pursuant to the doctrine of *respondeat superior*.

¶ 1 Decedent Benjamin Larson died after sustaining injuries in a car crash involving Michael

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Michalski, an employee of defendant Ford Motor Company (Ford). Plaintiff, Leon Larson, special administrator of Benjamin's estate, filed complaint sounding in negligence and wrongful death against both Michalski and Ford. Ford responded with a motion for summary judgment, which was granted by the circuit court.¹ Plaintiff appeals the circuit court's order, arguing that genuine issues of material fact exist as to whether Michalski was acting within the scope of his employment at the time of the accident, which preclude summary judgment. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 2

I. BACKGROUND

¶ 3 In October 2008, Michael Michalski was employed by Ford as a launch manager in its Chicago Assembly Plant. As a Ford employee, he was required to abide by Ford's Code of Corporate Conduct (Code of Conduct). In pertinent part, Ford's Code of Conduct prohibits employees from consuming alcohol while at work or while engaging in company business and regulates its employees' attendance of, and behavior at, business social events. Specifically, the relevant Code of Conduct provisions provide as follows:

"Substance Abuse [Policy]:

Substance abuse poses a threat to all of us in virtually every aspect of our lives, including the workplace. For the protection of all, it is imperative that the workplace be free from substance abuse, including use or possession of illegal or illicit drugs, and alcohol abuse. You may not use, possess, manufacture, distribute, dispense, transport,

¹ Although both Michalski and Ford were named as defendants, this appeal solely concerns Ford.

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promote, or sell illegal or illicit drugs or drug paraphernalia while on Company business or on Company premises. You are prohibited from being at work or on Company business while under the influence of, or impaired by, alcohol or illegal or illicit drugs."

* * *

"Entertainment and Social Events [Policy]:

Socializing with suppliers, dealers, and other business contacts (referred to below simply as 'suppliers') can be helpful in cultivating a good working relationship, but there are limitations on what types of entertainment and social events are acceptable. You must always remember to act in a way that promotes the Company's best interests, and that protects the Company's reputation. Social activities with business associates must be appropriate and limited. You should only accept invitations that are business-related and freely offered. You should never accept an invitation that would create an appearance of impropriety. Always follow the Company's limitations on attending supplier-paid activities.

* * *

-You may accept refreshments provided by a supplier while attending a business meeting.

-You may accept only one meal per quarter per supplier.

-You may accept only one meal per week, in total, from all suppliers.

-You may accept up to two entertainment events (such as a golf outing, or a sporting, theatrical, or cultural event) per calendar year, per supplier, provided that

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the supplier is in attendance and the event does not require extensive travel or an overnight stay."

¶ 4 On October 10, 2008, Michalski, along with four other Ford employees, attended a golf outing at Olympia Fields Country Club (Olympia Fields), which had been organized by two executives of Hercules, a tool and die vendor that had previously done business with Ford. During the golf outing and the dinner that followed, Michalski consumed a number of alcoholic beverages. Upon leaving the dinner, Michalski drove alone to Waterfront Tap, a bar he liked to frequent, where he consumed another alcoholic beverage. After leaving Waterfront Tap, Michalski began driving to his in-law's residence located near Buchanan, Michigan, where he intended to spend the weekend. In the early morning hours of October 11, 2008, Michalski was driving east-bound on the I-94 interstate highway. Sometime around 12:50 and 1 a.m., Michalski struck the back of Benjamin Larson's Dodge Intrepid. Benjamin Larson died as a result of the injuries he sustained during the collision.

¶ 5 Benjamin Larson's father, plaintiff Leon Larson, was subsequently appointed the special administrator of Benjamin's estate. In that capacity, plaintiff filed a complaint containing wrongful death and survival claims against Michalski. The complaint, in pertinent part, alleged that Michalski operated his vehicle in a negligent manner while he was under the influence of alcohol, which directly and proximately caused the car crash that resulted in Benjamin's death.

¶ 6 Plaintiff subsequently sought, and obtained, leave to file an amended complaint. In the amended pleading, plaintiff reasserted the wrongful death and survival actions against Michalski contained in the initial complaint and also sought to impose liability on Ford pursuant to the

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doctrine of *respondeat superior*. Ford's liability was premised on plaintiff's allegation that Michalski had been at a "business relationship event" where he consumed alcohol, which resulted in Michalski's intoxication and proximately caused the accident and Benjamin's death. Plaintiff further alleged that Ford negligently supervised Michalski when it "allowed" him to attend the business relationship event where he consumed alcohol.

¶ 7 After the relevant pleadings had been filed, the parties commenced discovery. Each of the attendees of the October 10, 2008, Olympia Fields golf outing were deposed, including Michalski, Lou Stefanovic, Todd Jaranowski, Gloria Georger and Bradley Beard, from Ford and Dave LaForge and Bill Heineman from Hercules.

¶ 8 In his discovery deposition, Michalski testified that at the time of the accident, he had been a Ford employee for thirty-three years. He started as a "line worker" and assembled cars, but was promoted to various supervisory positions over the years. On the date of the accident, he was a "launch manager" and was "responsible for all the launch toolings for body shop—launch tools and process and manpower allocations to come into Ford." On October 10, 2008, Michalski arrived at Ford's Chicago Assembly Plant, located at 12600 South Torrence Avenue in Chicago at approximately 5:15 a.m. Michalski's work day "normally ended [anywhere] from four o'clock until eight o'clock at night," but he characterized his job as "completely flexible." Michalski took part in several meetings that morning. Around lunch time, he received a phone call from Brad Beard, a manager in "stamping," the department responsible for molding sheet metal on Ford's cars. Beard invited Michalski to attend a golf event at Olympia Fields that afternoon with two executives from Hercules, a Ford vendor. Michalski agreed to attend, and

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explained that he participated in one to two similar golf events each year. Prior to receiving Beard's phone call, Michalski had intended to continue working at the plant and leave work around 4 p.m. He intended to leave work at that time because he had plans to drive to his in-law's house in Michigan where he was going to spend the weekend closing up their trailer and securing their boat for winter. Michalski agreed to re-arrange his plans slightly to attend the Olympia Fields golf event because he enjoyed golfing and did so "at least once a week" during the golf season.

¶ 9 Michalski left the plant somewhere around 1 p.m. and drove to Olympia Fields. He was familiar with that golf course because he had golfed there two years earlier when he had received an invitation from another Ford vendor. Michalski indicated that Ford permitted its employees to attend such social events, but limited the number of events that they could attend each year. Michalski testified that he teed-off sometime between 2:30 and 3 p.m and started to drink "after the turn." He consumed a beer at the half-way house on the golf course, which was paid for by Hercules. After Michalski finished 18 holes, he consumed another beer and then changed his clothes for dinner at the country club. He indicated that he consumed a Manhattan and another beer throughout the dinner. Michalski did not pay for his drinks or his dinner; rather, "the whole night was on the vendor." The dinner finished around 9 p.m., but Michalski testified that he remained at the table with his friends until approximately 10:30 or 11 p.m. and consumed "three to four more beers."

¶ 10 After leaving Olympia Fields, Michalski drove to Waterfront Tap, a bar located 30 to 40 minutes away. Michalski testified that he went to the bar to meet Fred Burdyk, a friend of his

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from work, but Burdyk never arrived. Michalski only drank one beer at Waterfront Tap before he left. At that time, Michalski did not think he was too impaired to operate his vehicle so he began his trip to his in-law's place in Michigan. Michalski testified that he remembered "[a]bsolutely nothing" about the crash that ensued. He nodded off and awoke in his car, which had come to a stop along the guardrail. He saw decedent's car lodged underneath a semi-truck and knew that Benjamin Larson was dead. Michalski acknowledged that he believed his blood alcohol level was above the legal limit at the time of the accident and that the alcohol in his system caused him to fall asleep and hit decedent's car. The weather conditions that night were "fine" and did not contribute to the accident. Michalski was interviewed by the Indiana State Police before he was transported to a local hospital.

¶ 11 Michalski testified that he was never disciplined by Ford after the incident and kept his job for nearly a year before he retired. Although he had a company credit card at the time of the accident, he did not use it that evening. He subsequently pled guilty on October 15, 2009, to a criminal charge stemming from the accident and was serving time in an Indiana prison at the time of his deposition.

¶ 12 Lou Stefanovic testified that in 2008, he was a manager at the Chicago Stamping Plant. In that capacity, he became familiar with various vendors and suppliers, including Hercules, the vendor that arranged the golf outing at Olympia Fields on October 10, 2008. Stefanovic indicated that he did not regularly interact with the vendors; rather, vendors such as Hercules "interface[d] primarily with Brad Beard, who [was] our engineering manager." As an employee of Ford, Stefanovic was familiar with the company's various policies, including the policies it had

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regulating employee social interactions with vendors.

¶ 13 At some point, Stefanovic learned that some representatives from Hercules were going to visit the plant on October 10, 2008, to discuss some matters with Beard and that "we were going to get a chance in the afternoon to go out and play some golf." Based on his understanding, the golf event would be considered permissible entertainment with a supplier that was covered by Ford's Code of Conduct. Stefanovic arranged for a friend of his, who had a membership at Olympia Fields, to set up tee times for people to play at the golf course. Two of the players were from Hercules and the remaining players, including Michalski, were employees of Ford. Pursuant to Stefanovic's understanding, his friend's account would be charged for the expenses incurred during the golf outing, but "Hercules would settle on his account for the day." Stefanovic did not know the amount of the charges incurred that day but testified that Ford did not assume any responsibility for the costs associated with the Olympia Fields event.

¶ 14 Stefanovic indicated that he took half of a vacation day, drove to Olympia Fields and teed-off with Michalski and a Hercules employee around "2:00 ish." Stefanovic acknowledged that he consumed alcohol that day. He had his first drink after nine holes and had one more drink at dinner after he had finished all eighteen holes. Dinner concluded after several hours. Stefanovic heard about Michalski's accident the following day.

¶ 15 Stefanovic acknowledged that he would attend off-site social events that were sponsored by vendors or suppliers, but he did not do so very often. He explained that such events "gave us an opportunity to know someone just a little bit better" but indicated that he did "not really" talk about Ford business at those events. He agreed that "it's important to know people who you do

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business with." Pursuant to his understanding, the Olympia Fields golf event "wasn't an outing.

*** [T]hey were in reviewing the sets of dies. We were going to play golf in the afternoon, and that's it." Stefanovic testified that he used vacation days to spend time with vendors and co-workers "very rarely." As a body launch manager, Stefanovic testified that Michalski did not have a "business-type" relationship with Hercules.

¶ 16 Todd Jaranowski testified that in 2008 he was employed as a Pressroom Area Manager in the Ford's Chicago Stamping Plant. In that capacity, Jaranowski was responsible for managing the supervisors, superintendents and shift managers employed at the plant. In October 2008, Jaranowski was approached by Brad Beard and invited to play golf on October 10, 2008, at Olympia Fields with two executives from Hercules. Prior to the outing, Jaranowski had never had any business or social interactions with employees from Hercules. He explained that there was no business reason for him to golf that day and indicated he was invited to play simply because he was friendly with Beard. Jaranowski spoke to his boss, Gloria Georger, and received her permission to take half of a vacation day to attend the Olympia Fields golf event. Jaranowski had attended similar golf outings at other golf courses with Ford employees and employees from various Ford vendors and explained that the vendors "generally" paid for these events.

¶ 17 Jaranowski was familiar with Ford's Code of Conduct that was applicable to all Ford employees and testified that the Olympia Fields golf event was a permissible social event for him to attend as a Ford employee. He indicated, however, that he took half a vacation day, because in his opinion, it was "not a business event." Jaranowski acknowledged, however, that developing

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social relationships with Ford vendors and suppliers ultimately served to benefit Ford.

Jaranowski arrived at Olympia Fields sometime around 1 p.m. He consumed one alcoholic beverage after playing the first nine holes. After the golf game finished, Jaranowski got ready for dinner. He guessed that he consumed a glass or two of wine during dinner, which lasted a few hours, but testified that he did not pay attention to the amount of alcohol consumed by anyone else that evening. The conversation during dinner was social and did not involve business. No work-related conversations occurred during golf either. Jaranowski did not pay for his golf game or his dinner; rather, Hercules assumed responsibility for those costs. He acknowledged that vendors frequently assumed responsibility for the costs incurred during social events where drinking occurred, but indicated that he did not think Ford "necessarily encourage[d]" such events.

¶ 18 After dinner concluded, all of the attendees left in their own cars around 8 or 8:30 p.m. Jaranowski drove directly home and did not hear about Michalski's car accident until the following morning when he received a phone call from Gloria Georger. Michalski did not appear intoxicated at the time he left Olympia Fields and Jaranowski later heard that Michalski had stopped at a bar after the dinner where he continued to drink before he caused the fatal car accident. Jaranowski could not think of any "business reason" for Michalski to drive to, or consume alcohol at, a bar. Based on his knowledge, Ford did not conduct an investigation into the circumstances surrounding Michalski's accident or change any of its policies contained in its Code of Conduct.

¶ 19 Gloria Georger, a manager at Ford's Chicago Stamping Plant, testified that she also

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attended the Olympia Fields golf outing, and that she heard about Michalski's accident the weekend that it happened. She had no knowledge of any internal investigation by Ford into the Olympia Fields event on October 10, 2008, or any potential disciplinary action that was taken by Ford with respect to Michalski. Georger acknowledged that she was familiar with Ford's entertainment and gift policies with respect to vendors outlined in its Code of Conduct and explained that as a manager, she was required to review Ford's Code of Conduct each year. Based on her knowledge of the Code of Conduct, Ford allowed its employees to interact socially with its suppliers because such social interactions can be helpful in cultivating a good working relationship. Ford's Code of Conduct also contained a policy with respect to employees' consumption of alcohol and prohibited employees from drinking on company time. Georger agreed that a golf event and a dinner that was paid for by a vendor would fall within permissible entertainment and social interactions provided for in the Code of Conduct.

¶ 20 Sometime prior to the Olympia Fields golf outing, Georger was informed that some executives from Hercules were coming to the plant to meet with Brad Beard. Beard subsequently extended an invitation to her to golf with the Hercules employees at Olympia Fields on October 10, 2008. At the time that she accepted Beard's invitation, Georger was aware that Hercules was going to be paying for golf and dinner. She explained that she used personal time to attend the event and arrived at Olympia Fields around 2 p.m. Georger was familiar with the golf course because she had attended other golf outings at Olympia Field that had also been paid for by Ford vendors. Georger did not drink any alcoholic beverages on the course, but did have a drink at the dinner that followed. Throughout the day, Georger did not remember discussing work-related

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topics with the executives from Hercules, just "personal stuff." Georger testified that as a body launch manager, Michalski would not have had any professional involvement with Hercules. She also indicated that Ford did not provide any transportation or reimbursement to any of its employees who golfed at Olympia Fields that day.

¶ 21 Bradley Beard, an engineering manager, testified that he worked with Michalski "at various times" throughout his tenure at Ford and considered him a "working friend." They had socialized about three times prior to the Olympia Fields golf outing. Sometime prior to October 10, 2008, Beard learned that Bill Heinemann and Dave Laforge, executives from Hercules, would be coming to the plant to meet with him. They asked Beard whether he and some of his associates would be interested in golfing after their meeting, and he agreed to a golf game. Beard explained that the purpose of the golf event was "just to build customer/supplier relations" and indicated that such an event was "absolutely compliant" with Ford's Code of Conduct requirements with respect to permissible employee-vendor interactions. He explained that these types of interactions with vendors helped to build trust and familiarity and ultimately benefitted Ford. Beard was familiar with Ford's Code of Conduct, because he was required to review it annually.

¶ 22 Because the invitation was initiated by Hercules employees, Beard understood that Hercules would be paying for golf and the dinner that followed. Beard then extended invitations to several other Ford employees to join him in a round of golf with the Hercules executives. Beard testified that he invited Michalski simply because he knew that Michalski enjoyed golfing. Beard explained that Michalski did not work closely with Hercules and that Michalski's presence

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at the golf event would not have benefitted Ford. Beard scheduled himself to work a half day on October 10, 2008. He spent the morning with the two Hercules employees at the plant before he left to drive to Olympia Fields. Beard started golfing sometime around 2 p.m. He had one drink after playing the first 9 holes, but did not drink anymore that day. He did not consume any alcohol at dinner and did not pay attention to what the others were drinking. Beard testified that everyone left the dinner around the same time. He confirmed that he did not pay for golf or any food and drinks that day; rather, Hercules assumed responsibility for the bill. At the time that the dinner concluded, Beard did not recall thinking that Michalski or any of the other attendees were too intoxicated to drive home. Although Michalski invited everyone to go with him to Waterfront Tap, his "favorite watering hole," no one took him up on his invitation. Beard testified that he knew of no business reason for Michalski to go to Waterfront Tap that evening. Beard heard about Michalski's accident the following day. To his knowledge, Ford's policy regarding employees attending social events with vendors and clients has not been changed.

¶ 23 Dave LaForge, Vice President of Operations of Hercules, was one of the two Hercules executives that attended the October 10, 2008, Olympia Fields golf outing. He testified that part of his job entailed developing business relationships with clients. As part of his job, LaForge would entertain clients by inviting them to play golf or by taking them out to dinners and Hercules would assume responsibility for the costs incurred during the events. LaForge explained that the purpose of these events was to generate new relationships and maintain current business relationships. LaForge testified that prior to October 2008, Hercules had a business relationship with Ford and that he and Bill Heineman scheduled a meeting with Brad Beard on

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October 8, 2008, to review prior work that Hercules had done for the company. Heineman also scheduled a golf event and dinner with Ford executives that would take place after the meeting. Although LaForge had "dealt with" Brad Beard on many occasions prior to the meeting, he had not met any of the other Ford employees who attended the golf outing that day.

¶ 24 LaForge explained the purpose of the Olympia Fields golf outing and dinner was to "have the Hercules name out there" and continue "establishing a relationship" with Ford, particularly with Brad Beard and Gloria Georger. LaForge did not have a business relationship with Michalski either prior to or after the golf outing. LaForge indicated that no business was discussed at dinner, rather he and Heineman simply socialized with the Ford employees. He did not pay close attention to what people were drinking.

¶ 25 Bill Heineman confirmed LaForge's account of the events that occurred on October 10, 2008. As the Vice President of Sales at Hercules, Heineman was responsible for maintaining existing business relationships and developing new business relationships. He explained that a big part of his job involved socializing and attending social events with current and prospective clients. During the golf season, Heineman would attend or organize golf events approximately three to five times per month. These events were paid for by Hercules.

¶ 26 He and LaForge scheduled a visit to the Ford stamping plant to discuss a project in which Hercules was involved and also extended an invitation for some Ford executives to join them for a round of golf. Heineman explained that face-to-face meetings and facility visits are helpful in building and maintaining business relationships and testified that the purpose of the Olympia Fields golf game was simply to continue "relationship building." Brad Beard was the only Ford

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executive who Heineman had interacted with prior to the event, but he explained that the golf game gave him "access to more people" who could potentially help Hercules down the road. Beard was the person who extended invitations to the other Ford employees who attended the golf event.

¶ 27 Although no business discussions occurred during the golf game or at dinner, Heineman characterized the day as successful for Hercules because he and LaForge were "able to meet some more people that could maybe be a good addition to [their] contact list." After dinner concluded that evening, Heineman testified that he was provided with a bill, which he paid by personal check. He was then reimbursed for the expenses by Hercules. Heineman indicated that he did not have a professional relationship with Michalski either before or after the October 8, 2008, golf outing. Based on Heineman's understanding of Michalski's job responsibilities at Ford, Michalski would not have had the ability to hire Hercules to complete any projects for Ford.

¶ 28 Upon completing the aforementioned discovery, Ford filed a motion for summary judgment, arguing that "no reasonable person could conclude from the evidence that Michalski was acting within the course and scope of his employment at the time of the October 11, 2008 automobile accident" due to the fact that "Michalski's accident occurred long after his normal working hours, during a trip unrelated to his work at Ford, while he was driving to his mother-in-law's house in Michigan." Accordingly, Ford contended that there was no genuine issue of material fact that the company could be held vicariously liable for Michalski's actions.

¶ 29 Plaintiff filed a response, urging the trial court to deny Ford's motion for summary

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judgment. In his response, plaintiff argued that Michalski was acting within the scope of his employment when he attended the Olympia Fields golf outing because the event was designed to strengthen the business relationship between Ford and Hercules. Because Michalski became intoxicated at the event while acting within the scope of his employment and his intoxication caused the accident that resulted in decedent's death, plaintiff maintained that Ford could be held vicariously liable for the accident.

¶ 30 The trial court, in a written order, granted Ford's motion for summary judgment, finding that there was no genuine issue of material fact that Michalski was acting outside the scope of his employment at the time of the accident and thus, Ford could not be subject to vicarious liability under the doctrine of *respondeat superior*. The court explained:

"The golf dinner outing was not sponsored by Ford and Michalski was not required to attend as part of his duties. Hercules sponsored the event for its' [*sic*] employees and invited certain Ford employees in order to strengthen Hercules' relationship with Ford. However, Michalski was not one of the Ford employees with which Hercules sought to develop a relationship. He was, instead, invited by a Ford co-worker, Brad Beard, in order to play golf. While arguably Ford could benefit from contacts that its' [*sic*] employees made at the golf/dinner event, Hercules is the company that would benefit from the event. In light of the facts here, the golf/dinner event would not be considered as part of Michalski's employment. However, even if some question of fact could be raised as to the golf/dinner, no such question of fact could be raised as to Michalski's acts after he left the dinner. After Michalski left the event, he went to a bar to

have a drink. Although he intended to meet a co-worker there, he never showed up and Michalski drank alone. When he left the bar, Michalski did not go home, but instead left for a trip to Michigan to his in-laws' home. Thus, Michalski was not acting in the course or scope of his employment at the time of the accident. Further, there is no evidence to support a claim for negligent supervision or hiring on the facts and circumstances here. Accordingly, summary judgment in favor of Ford would be appropriate."

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, plaintiff contends that the circuit court erred in granting Ford's motion for summary judgment because Michalski was acting within the scope of his employment at the time of the accident. Plaintiff argues Ford's Code of Conduct expressly permitted its employees to attend social events, such as the Olympia Fields golf outing, with Ford vendors and that Michalski's participation in the event ultimately served to benefit Ford. Plaintiff also argues that "every ounce of alcohol consumed by Michalski leading up to the fatal crash was done in furtherance of [Ford's] business" and that Ford's alcohol policy does not immunize Ford from being subject to liability for Michalski's accident or decedent's death. Accordingly, plaintiff maintains that the circuit court's order must be reversed.

¶ 34 Ford responds that the circuit court correctly granted its motion for summary judgment because there was no genuine issue of material fact that Michalski was "far removed from the scope of his employment at the time of the accident." Ford argues that Michalski was employed as a launch manager and that "golf and dinner [and drinking] were not activities" that he was

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hired to perform. Although plaintiff suggests that Michalski's participation in Olympia Fields golf event served to benefit the company, Ford contends that Michalski did not have any involvement with tool and die suppliers like Hercules in his capacity as a launch manager and thus, he had no need to establish a relationship with Hercules because such a relationship would not benefit Ford. In addition, Ford emphasizes that immediately prior to the accident, Michalski had left Olympia Fields and consumed additional alcohol at Waterfront Tap before he began his trip to Michigan. It argues that "Michalski's visit to the Waterfront Tap after leaving the country club that Friday evening, coupled with the circumstances surrounding Michalski's travel to Michigan after leaving the bar, establish that he was not acting within the scope of his employment at the time he caused the collision."

¶ 35 Summary judgment is appropriate when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c)(West 2006). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A genuine issue of fact exists where the material relevant facts in the case are disputed, or where reasonable persons could draw different inferences and conclusions from undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). Although summary judgment has been deemed a “drastic means of disposing of litigation” (*Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)), it is nonetheless an appropriate mechanism to employ to expeditiously dispose of a

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lawsuit when the moving party's right to a judgment in its favor is clear and free from doubt (*Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001)). A trial court's ruling on a motion for summary judgment is subject to *de novo* review. *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009).

¶ 36 As a general rule, a person injured as a result of the negligence of another party must seek his or her remedy from the person who directly and proximately caused the injury; however, "[t]he relation of employer and employee is an exception to this general rule." *Bagent v. Blessing Care Co.*, 224 Ill. 2d 154, 163 (2007). Pursuant to the doctrine of *respondeat superior*, an employer can be held liable for the negligent, willful, malicious, and even criminal acts of its employees if those acts were committed within the scope of the employee's employment. *Bagent*, 224 Ill. 2d at 163-64; *Alms v. Baum*, 343 Ill. App. 3d 67, 71 (2003). Although "[n]o precise definition has been accorded the term 'scope of employment,'" (*Pyne v. Witmer*, 129 Ill. 2d 351, 359-60 (1987), quoting *Sunseri v. Puccia*, 97 Ill. App. 3d 488, 493 (1981)), it is well-established that Illinois courts look to the Second Restatement of Agency (Restatement) for guidance to determine whether an employee's negligent or tortious acts were committed within the scope of his employment (*Bagent*, 224 Ill. 2d at 164; *Rodman v. CSX Intermodal, Inc.*, 405 Ill. App. 3d 332, 336 (2010)). The Restatement identifies three criteria to be used in making this determination, and provides as follows:

"(1) Conduct of a servant is within the scope of employment, if but only if:

- (a) it is of the kind he is employed to perform;
- (b) it occurs substantially within the authorized time and space limits;

(c) it is actuated, at least in part, by a purpose to serve the master,

* * *

(2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master." Restatement (Second) of Agency § (1958).

¶ 37 Each of the three criterion identified in the Restatement must be satisfied to support a finding that the employee was acting within the scope of his employment when he committed a negligent act. *Bagent*, 224 Ill. 2d at 165. Ultimately, "[w]hether an employee was acting within the course of the employment depends on the employment contract and the nature of the relationship, which must exist at the time of and in respect to the particular facts out of which the injury arose. Plaintiff has the burden of showing the contemporaneous relationship between the tortious act and the scope of employment." *Id.*, citing *Pyne*, 129 Ill. 2d at 360. Although "[a]n unbroken line of precedent holds that summary judgment is generally inappropriate when scope of employment is at issue" (*Rodman*, 405 Ill. App. 3d at 335), when the facts of the case are such that no reasonable person could conclude that the employee was acting within the scope of his employment when he committed a tortious act, summary judgment in favor of the employer is proper (*Bagent*, 224 Ill. 2d at 171).

¶ 38 Here, to support his argument that Michalski was acting within the scope of his employment at the time of the fatal accident, plaintiff focuses exclusively on Michalski's attendance at the Olympia Fields golf event and his consumption of alcohol there hours before the collision. However, based on the evidence, we are unable to conclude that the Olympia

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Fields golf outing or his alcohol consumption during the event was conduct of the kind that Ford employed Michalski to perform. It is undisputed that at the time of the accident, Michalski was an employee of Ford and worked as a launch manager at Ford's Chicago Assembly Plant, a position which required him to assume responsibility for all launch tools, the assembly process, and the allocation of manpower at the plant. Essentially, Michalski "put cars together." As a launch manager, Stefanvoic, Georger, and Beard all confirmed that Michalski did not have business relationships with tool and die vendors like Hercules, and both Hercules executives testified that they never had a business relationship with Michalski either before or after the Olympia Fields event. Moreover, Beard stated that he did not invite Michalski for any business reasons, but simply because he knew Michalski enjoyed golfing.

¶ 39 Despite this testimony, plaintiff suggests that the Olympia Fields event fell within the scope of Michalski's employment because it was "conduct specifically sanctioned by Ford and was in furtherance of Ford's business interests." Although Ford's Code of Conduct expressly permits employees to attend social events with vendors, Michalski was not required to attend the golf game. He had no business reason to attend the event; rather, he explained that he went simply because he enjoyed golfing, not to benefit Ford. Even if Michalski's attendance at a vendor-sponsored social event could be considered to fall within the scope of Michalski's employment with Ford, his consumption of alcohol and his intoxication were undisputably well outside the scope of his duties as a launch manager. Ford's Code of Conduct expressly forbids its employees from ingesting alcohol "while on Company business or on Company premises," and from "being at work or on Company business while under the influence of, or

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impaired by, alcohol." Although not dispositive, we note that the limitations and prohibitions that an employer places upon its employees is an important factor to consider when determining whether an act undertaken by an employee was incidental to, or fell properly within the scope of, his employment. See, e.g., *Bagent*, 224 Ill. 2d at 168 ("The employer's prohibition accentuates the limits of the employee's permissible action and, hence, supports a finding that the prohibited act is entirely beyond the scope of employment").

¶ 40 Despite plaintiff's focus on the Olympia Fields event, we note that for purposes of this appeal, the relevant question is whether Michalski was acting within the scope of his employment at the time of the *accident*. *Alms*, 343 Ill App. 3d at 77. Here, it is undisputed that the collision occurred sometime between 12:50 and 1 a.m. on October 11, 2008, hours after the Olympia Fields event had concluded. After leaving Olympia Fields, Michalski stopped at one of his favorite bars where he continued drinking, before he began to make his way to his in-law's residence in Michigan to spend the weekend. There was no business reason for Michalski to stop at Waterfront Tap or to drive to Michigan and the accident did not occur within a time or at a place where Michalski would reasonably be fulfilling his duties as Ford's launch manager. It is clear that at the time of the accident, Michalski was not acting within the scope of his employment. See, e.g., *Alms*, 343 Ill. App. 3d at 78 (finding there was no genuine issue of material fact that a volunteer was acting outside the scope of his employment when he caused a vehicle accident after he left a work meeting, went to a nearby bar and consumed alcohol because the volunteer's decision to stop for a drink after the work meeting "severed any connection to" his employer). Although summary judgment is generally inappropriate when scope of employment

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is at issue, where as here, no reasonable person could conclude from the evidence that Michalski was acting within the scope of employment at the time that he caused the fatal car accident, we uphold the circuit court's judgment granting of summary judgment in favor of Ford. See, e.g., *Bagent*, 154 Ill. 2d at 171-72; *Alms*, 343 Ill. App. 3d at 77-78.²

¶ 41

III. CONCLUSION

¶ 42 Accordingly, the judgment of the circuit court is affirmed.

¶ 43 Affirmed.

² We note that plaintiff included a negligent supervision claim against Ford in his complaint. However, given that plaintiff does not raise any arguments with regard to the merit of this claim on appeal, we need not address it in our disposition. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Points not argued [on appeal] are waived"). We note, however, that there is no evidence that Ford was aware that Michalski had a problem with alcohol or that he was prone to excessive alcohol consumption. See, e.g., *Pyne*, 129 Ill. 2d at 356