2015 IL App (2d) 150166-U
No. 2-15-0166
Order filed December 11, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PATTI STARR and PATRICK KELLY,	)	Appeal from the Circuit Court
	)	of Kendall County.
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 12L27
	)	
INTERNATIONAL BROTHERHOOD	)	
OF ELECTRICAL WORKERS,	)	
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS DISTRICT SIX,	)	
and TIM COLLINS,	)	Honorable,
	)	Robert Pilmer,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment in favor of defendants when there was no genuine issue of material fact as to defendants' negligent retention or negligent entrustment of a motor vehicle.

¶ 2 Plaintiffs, Patti Starr and Patrick Kelly, appeal the trial court's grant of summary judgment in favor of defendants, International Brotherhood of Electrical Workers (IBEW International), International Brotherhood of Electrical Workers District Six (District Six), and

Tim Collins. Plaintiffs argue that genuine issues of material facts exist as to their negligent retention and entrustment claims against the defendants. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 IBEW International is an international labor organization that services affiliated local labor unions throughout the United States and Canada. IBEW International is comprised of a headquarters located in Washington, D.C. and eleven district offices that cover defined jurisdictions within the United States and Canada. District Six of IBEW International services local unions in five states, including Illinois. District Six has a vice president and representatives who advise and assist local labor unions within its jurisdiction. There is no dispute that IBEW International, which includes District Six and its representatives, is a legally separate organization from its local unions.

¶ 5 Plaintiffs filed this action not only against IBEW International, District Six, and Tim Collins (a representative of IBEW International who is assigned to District Six), but also against numerous other defendants, all of whom have either been dismissed or settled with plaintiffs. Plaintiffs' claims against IBEW International, District Six, and Collins were based on (1) direct negligence for hiring/retention of a local union member and entrustment of a motor vehicle and (2) vicarious liability. Only plaintiffs' direct negligence count is at issue in the present appeal.

¶ 6 Plaintiffs' direct negligence count alleged as follows. James Nauert was a member of IBEW Local Union 461 (Local 461), located in Aurora, Illinois. He injured plaintiffs when he crashed a Local 461 vehicle into their car while intoxicated. Previously, in 2006, Nauert had been arrested for driving under the influence (DUI) of alcohol in a Local 461 vehicle. A few weeks after the 2006 arrest, another Local 461 member sent an e-mail to IBEW International notifying it of Nauert's arrest. Because of the e-mail, IBEW International had knowledge of

Nauert's propensity to drink and drive in the Local 461 vehicle. IBEW International's constitution vested it with extensive control over its local unions. Thus, IBEW International owed plaintiffs a duty of care, and it breached this duty when it failed to remove Nauert from his position within Local 461 or otherwise restrict his driving privileges.

¶ 7 IBEW International, District Six, and Collins moved for summary judgment, and plaintiffs filed a response. The parties filed numerous exhibits, including depositions, affidavits, and documentary evidence, from which we derive the following facts.

¶ 8 A. IBEW International's Constitution

¶ 9 IBEW International's constitution contains rules for IBEW International, local unions, and officers of these entities. In essence, it explains the relationship between IBEW International and local unions, as well as the extent of IBEW International's control over them. For example, the IBEW International president is empowered to "prefer charges" against any local member who, in his or her judgment, is "violating the Constitution or working against the welfare of the [union]." The president can also remove or suspend any member of a local union for "incompetence, or for nonperformance of duties, or for failure to carry out the provisions of this Constitution and the rules herein, or the bylaws and agreements of a [local union]." Local unions are empowered to make their own bylaws and rules so long as they do not conflict with the constitution, but they must submit proposed bylaws to IBEW International for approval. All rules in the constitution are "absolutely binding" on local union officers and members. The constitution lists the various "misconduct, offenses, and penalties" that a member or officer may be penalized for committing, and it creates a trial and appeal process for any member or officer charged with committing an enumerated offense. The constitution does not contain any

provisions pertaining to vehicle policies, drinking and driving, or IBEW International's power to investigate.

¶ 10 The constitution also defines officer positions within each local union. For example, each "shall have a president, vice president, recording secretary, financial secretary, and Executive Board[.]" Local unions may also elect a business manager. The business manager is considered the "principal officer" of the local union, and he or she is responsible for "results in organizing his jurisdiction, for establishing friendly relations with employers, and for protecting the jurisdiction of the [IBEW International]." The business manager is empowered to appoint assistants who "shall work directly under him and be subject to his authority." The business manager can "discharge [assistants] at any time."

¶ 11 B. Local 461

¶ 12 Local 461 is serviced by District Six. An executive board, comprised of local members, runs the day-to-day operations. It has its own bank account, known as the "general fund." Local 461 uses the fund to pay salaries, taxes, mortgages, and all other necessary expenditures. After its members voted to approve the purchase, Local 461 bought three cars with money from the general fund. The business manager and two assistant business managers use the Local 461 vehicles.

¶ 13 Jon Vester served as the business manager between 2005 and 2010. He appointed Nauert as an assistant business manager/organizer in 2005. Vester was Nauert's direct superior, controlling and directing Nauert's day-to-day employment. As assistant business manager/organizer, Nauert worked full-time for Local 461, and he received his paychecks directly from the local union. He had access to one of the vehicles, as well as a Local 461 credit

card that he used to pay for gas, oil, and maintenance. Nauert submitted yearly reports to Vester detailing his use of the vehicle.

¶ 14 Local 461 held monthly meetings at the union hall. For the meetings, it purchased enough beer for members to drink two or three beers each.

¶ 15 C. Nauert's 2006 Arrest

¶ 16 Nauert was arrested for DUI following a Local 461 meeting in September 2006. He was driving a Local 461 vehicle home from a bar when he was arrested.

¶ 17 About two weeks after Nauert's arrest, another Local 461 member, Roy Kauffman, sent an email to District Six vice president J.F. Lohman, notifying him of the arrest. Kauffman's e-mail stated:

> "I Roy Kauffman *** would like to know the proper way to have a local brother removed from his position, I am talking about Brother James Nauert who *** on September 5th was picked up on a DUI in an International vehicle, the vehicle was towed and he was arrested. We are in the process of finding out if Brother Vester let him use our Local Attorney and who bailed him out of jail and paid for the impound fee. *** If Brother Nauert's job is to drive around and organize then he can't really fulfill his job requirements can he. [*sic*] Also Brother Nauert is a [t]eacher and other local Brothers have been told they couldn't be a teacher because of actions unbecoming of [*sic*] a teacher."

¶ 18 After receiving the e-mail, Lohman assigned Collins to investigate. In his notes, Collins indicated that he was investigating whether local union funds were used to pay for Nauert's legal expenses. Collins talked with Vester and Nauert about the incident, but he did not talk to Kauffman. Nauert told Collins that he drank "a couple beers with friends" at a local bar before

he was arrested. Both Nauert and Vester informed Collins that no Local 461 funds were used for Nauert's bail or legal services. Collins "advised Nauert that it would be difficult for the local union to justify employing him if he did not have a driver's license." Collins reported his findings to Lohman, and both agreed that no further action was warranted by IBEW International because a court date was pending.

¶ 19 At Nauert's court date, the court dismissed Nauert's DUI charges, finding that the officer lacked probable cause to make the stop. Before 2006, Nauert had no similar legal issues. Nor, apparently, did he have any other legal issues between 2006 and 2009.

¶ 20 D. Nauert's 2009 Accident

¶ 21 In July 2009, Local 461 held a picnic for its members and their families. It purchased two "half-barrels" of beer for the guests. Nauert was responsible for picking up and transporting certain supplies and equipment to the picnic, including a cotton candy machine and a snow-cone machine. Nauert drove his Local 461 vehicle to pick up the equipment, and drove the vehicle to the picnic. Although Local 461 was supposed to seek expenditure approval from IBEW International for hosting the picnic, it never did. No IBEW International or District Six employees were present or even aware of the picnic.

¶ 22 During the picnic, Vester told Nauert about a private cancer benefit to be held at James Humbers' house that evening. When the Local 461 picnic ended around 5 p.m., Nauert packed the union vehicle with the rented equipment he brought and then drove to Humbers' house. Nauert spent a few hours at Humbers' party, where he drank three "jello-shots" and a few beers. Besides Nauert and Vester, no Local 461 members were at Humbers' house, and Humbers was not affiliated with Local 461 or IBEW International. No equipment or beer from Local 461's picnic was used at Humbers' party. No representative of IBEW International or District Six was

aware that Nauert or Vester attended Humbers' benefit or that Nauert was driving a Local 461 vehicle.

¶ 23 Nauert left Humbers' party shortly after 9 p.m. On his way home, at about 9:30 p.m., he crashed his Local 461 vehicle into plaintiffs' vehicle, seriously injuring both plaintiffs. Nauert was arrested for DUI. A blood draw revealed that Nauert's blood alcohol concentration was 0.182 at the time of the accident.

¶ 24 Following the arrest, Kauffman again contacted IBEW International. Collins again investigated Kauffman's complaint. Collins advised Vester to immediately terminate Nauert, but Vester indicated that he was waiting for guidance from Local 461's attorney. Vester then followed the advice of Local 461's attorney and asked Nauert to resign.

¶ 25 Nauert pleaded guilty to two counts of aggravated DUI, and he was sentenced to six months' periodic imprisonment and 30 months' probation

¶ 26 E. Summary Judgment

¶ 27 Included in defendants' motion for summary judgment was the argument that plaintiffs' claims were preempted by federal labor law. The trial court granted the motion on other grounds, finding: "when applying the applicable standards, *** the facts fail to establish any negligent entrustment, negligent retention, or negligence in failing to discharge the defendant Nauert[.]" The court did not address the preemption argument. The court subsequently granted a Supreme Court Rule 304(a) (eff. Feb. 26, 2010) finding, and plaintiffs timely appealed.

¶ 28 II. ANALYSIS

¶ 29 Plaintiffs contend that the court erred in granting summary judgment, because the record establishes that defendants negligently allowed Nauert to remain employed and to operate a union vehicle after his 2006 DUI arrest. Defendants contend that plaintiffs cannot establish the

necessary elements of negligent entrustment of a motor vehicle or negligent hiring/retention of Nauert because IBEW International did not own or control the Local 461 vehicle and Nauert was not an employee of IBEW International. Alternatively, defendants argue that plaintiffs' claim is preempted by federal labor law. We note that plaintiffs asserted causes of actions against defendants for negligent entrustment of a motor vehicle and negligent hiring/retention of Nauert. Consequently, our analysis focuses on those legal theories.[1] First, we reiterate the familiar standards applicable to summary judgment and negligence. Then we will consider their application to the causes of actions of negligent entrustment and negligent hiring/retention.

¶ 30 Summary judgment is appropriate when the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2014). A reviewing court will construe the record strictly against the movant and liberally in favor of the nonmoving party. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007). Summary judgment should not be granted unless the moving party's right to judgment is clear and free from doubt. *Forsythe*, 224 Ill. 2d at 280. Summary judgment should be denied if there is a dispute as to a material fact or if the undisputed material facts could lead reasonable observers to divergent inferences. *Forsythe*, 224 Ill. 2d at 280. We review an order granting summary judgment *de novo*. *Forsythe*, 224 Ill. 2d at 280.

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[1] To the extent that plaintiffs raise other possible theories of liability, we decline to discuss them. Plaintiffs pleaded the theories of negligent entrustment and negligent hiring/retention and cannot raise new theories for the first time on appeal. *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994). Also, because we agree that defendants were entitled to summary judgment on the negligence claims, we do not reach the alternative issue of federal preemption.

¶ 31 A defendant moving for summary judgment can meet its burden of production by (1) affirmatively showing that an element of the cause of action must be resolved in its favor or (2) demonstrating that the plaintiff cannot produce evidence necessary to support his or her cause of action. *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 641 (2002). If the defendant satisfies its initial burden, the burden shifts to the plaintiff to present a factual basis that would arguably entitle it to judgment. *Fabiano*, 336 Ill. App. 3d at 641. Mere speculation or conjecture is insufficient to withstand summary judgment. *Lee v. Six Flags Theme Parks, Inc.*, 2014 IL App (1st) 130771, ¶ 61.

¶ 32 To establish negligence, a plaintiff must present facts that establish the existence of a duty of care owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately caused by the breach. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 14. Whether a duty exists is a question of law. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006). Whether a defendant breached that duty and whether the breach was the proximate cause of a plaintiff's injuries are questions of fact for a jury to decide, so long as there is a genuine issue of material fact as to those issues. *Marshall*, 222 Ill. 2d at 430.

¶ 33 A. Negligent Entrustment

¶ 34 A person may be liable for negligent entrustment of a vehicle when he or she entrusts the vehicle to another whose incompetency, inexperience, or recklessness is known or should have been known by the entrustor. *Rainey v. Pitera*, 273 Ill. App. 3d 234, 237 (1995). The two primary considerations are whether the owner entrusted his or her car to an incompetent or unfit driver and whether that incompetency was the proximate cause of the accident that injured the third party. *Pelczynski v. J.W. Peters & Sons, Inc.*, 178 Ill. App. 3d 882, 886 (1989). The negligent act of giving an automobile to an incompetent driver forms the basis of the tort.

Pelczynski, 178 Ill. App. 3d at 886. An essential element of negligent entrustment is the defendant's ownership or right to control the vehicle. *Tosh v. Scott*, 129 Ill. App. 3d 322, 323 (1984).

¶ 35 Plaintiffs concede that IBEW International did not own the Local 461 vehicle. They contend, however, that IBEW International controlled the vehicle. They also argue that IBEW International's control over Nauert and Local 461 equates to control over the vehicle. We disagree that the record establishes any degree of control by IBEW International over the Local 461 vehicle.

¶ 36 To be liable for negligent entrustment, a defendant must have the right to control the subject property. *Zedella v. Gibson*, 165 Ill. 2d 181, 186 (1995). "In essence, if the actor does not have an exclusive or superior right of control, no entrustment of the property can occur." *Zedella*, 165 Ill. 2d at 187.

¶ 37 In *Zedella v. Gibson*, 165 Ill. 2d 181 (1995), our Supreme Court held that a father did not have control over a vehicle he co-owned with his son and, thus, he could not be liable for negligent entrustment. *Zedella*, 165 Ill. 2d at 190. The father cosigned a loan for his son to purchase the car, but he did not help his son pay for it or negotiate the price. *Zedella*, 165 Ill. 2d at 189. The father arranged for his son's insurance, but the son made most of the payments. *Zedella*, 165 Ill. 2d at 189-90. The son had a superior right of control over the vehicle at the time of the accident because he lived away from the father and the son used the car "as his own vehicle." *Zedella*, 165 Ill. 2d at 190. Moreover, the fact that the father maintained control over his son's bank accounts and had the right to draw money from those accounts did not demonstrate the father's superior right of control over his son's use of the vehicle. *Zedella*, 165 Ill. 2d at 190-91.

¶ 38 If the control that the father exercised in *Zedella* was legally insufficient, IBEW International's relationship to the Local 461 vehicle that Nauert used was nonexistent. As in *Zedella*, IBEW International did not help pay for the vehicle, and no IBEW International employees were near Nauert or the vehicle on the date of the accident. Unlike in *Zedella*, however, IBEW International was not a co-owner of the Local 461 vehicle, it did not procure the insurance policy, it did not make any insurance payments, and it had no access to or control over Local 461's general fund. Finally, IBEW International never had physical control over the vehicle at any time before or after the accident. See *West v. Granny's Rocker Niteclub, Inc.*, 268 Ill. App. 3d 207, 214-15 (1994) (towing company potentially subject to liability for negligent entrustment of a vehicle that it did not own when it released an impounded vehicle under its exclusive control to two intoxicated men).

¶ 39 Nevertheless, plaintiffs rely on Kauffman's deposition testimony, in which he stated that IBEW International "owns everything." Specifically, Kauffman claimed that a former District Six "president"[2] responded to a "document" Kauffman sent to that office, in which the president allegedly stated that a business manager could not take a Local 461 vehicle "when he retired because it didn't belong to [Local] 461, it belonged to the [IBEW] [I]nternational." The document that Kauffman referred to is not in the record. Moreover, Kauffman's testimony is hearsay and may not be considered in ruling on a motion for summary judgment. See *Harris Bank Hindsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1025 (1992) ("evidence that would be inadmissible at trial may not be considered in support of or in opposition to a motion for summary judgment."). Regardless, no evidence in the record supports Kauffman's assertions.

[2] Based on our reading of the record, the eleven district offices of IBEW International do not have presidents, only vice presidents.

¶ 40 Additionally, plaintiffs rely on other deposition testimony as support for their assertion that IBEW International controlled the Local 461 vehicles. Posed with a series of hypothetical questions and fictional scenarios at their depositions, some Local 461 and IBEW International employees speculated that IBEW International could remove a local member's driving privileges. "Mere speculation is not enough to create a genuine issue of material fact sufficient to survive a motion for summary judgment." *Jordan v. Knafel*, 378 Ill. App. 3d 219, 228 (2007).

¶ 41 Accordingly, plaintiffs have failed to establish that IBEW International either owned or controlled the vehicle, and their claim for negligent entrustment fails as a matter of law.

¶ 42 B. Negligent Hiring/Retention

¶ 43 A cause of action exists against an employer for negligently hiring, or retaining in its employment, an employee it knew, or should have known, was unfit for the job so as to create a danger of harm to third persons. *Van Horne v. Muller*, 185 Ill. 2d 299, 310 (1998). To establish negligent hiring or retention, the plaintiff must establish (1) that the employer knew or should have known that the employee had a particular unfitness for the position so as to create a danger of harm to third persons; (2) the employer knew or should have known of that particular unfitness at the time of the hiring or retention; and (3) the particular unfitness proximately caused the plaintiff's injury. *Van Horne*, 185 Ill. 2d at 311. The proximate cause of the plaintiff's injury is the employer's negligence in hiring or retaining the employee, not the employee's wrongful conduct. *Van Horne*, 185 Ill. 2d at 311. A cause of action for negligent hiring or retention may exist even though the employee commits the criminal or intentional act outside the scope of employment. *Gregor v. Kleiser*, 111 Ill. App. 3d 333, 338 (1982).

¶ 44 Plaintiffs concede that Nauert was not an employee of IBEW International. Nevertheless, they argue that IBEW International's alleged control over Local 461 and Nauert vested it with

the authority to remove Nauert from his position as assistant business manager following his DUI arrest in 2006.

¶ 45 *Doe v. Boy Scouts of America*, 2014 IL App (2d) 130121, and *Doe v. Brouillette*, 389 Ill. App. 3d 595 (2009), are instructive. In *Boy Scouts of America*, the plaintiff sued the Boy Scouts of America for negligent hiring/retention after being sexually assaulted by a former executive official of an affiliated local council. *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶¶ 5, 7. The local council was a legally separate organization, but the Boy Scouts of America provided substantial assistance to the local council in hiring executives, such as providing information about candidates and conducting background checks. *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶¶ 4, 11. The court held that, as a matter of law, the Boy Scouts of America was not the executive's employer for purposes of the tort of negligent hiring and retention. *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶ 40. The evidence showed that the executive was employed by the local council and he reported to the local council, not the Boy Scouts of America. *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶ 40. The court also noted that the plaintiff failed to discuss any of the factors concerning an employment relationship in support of his argument that the Boy Scouts of America "effectively hired [the executive]." *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶ 40. These factors are: (1) the right to control the manner in which the work is performed (2) the right to discharge; (3) the method of payment; (4) whether taxes are deducted from payment; (5) the level of skill required to perform the work; and (6) the furnishing of the necessary tools, materials, or equipment. *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶ 40. No single factor is determinative, but the right to control the work is the predominant factor. *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶ 40.

¶ 46 In *Brouillette*, the plaintiff sued the Catholic Bishop of Chicago for negligent hiring and retention after he was sexually molested by a guidance counselor at a Catholic high school. *Brouillette,* 389 Ill. App. 3d at 599. The appellate court upheld the grant of summary judgment in favor of the Catholic Bishop because there was no genuine issue of material fact as to whether the guidance counselor was an agent or employee of the Catholic Bishop. *Brouillette*, 389 Ill. App. 3d at 613. The Catholic Bishop did not exercise any day-to-day control over the operations of the high school nor did it conduct daily supervision of the activities at the school. *Brouillette*, 389 Ill. App. 3d at 608. Also, the Catholic Bishop's power to discharge a teacher was limited to situations in which the teacher was not teaching in accordance with Catholic dogma. *Brouillette*, 389 Ill. App. 3d at 612. Ultimately, the Catholic Bishop's authority was "confined to the area of Catholic dogma and limited to calling for an investigation and 'influencing' a decision by the governing board." *Brouillette*, 389 Ill. App. 3d at 612.

¶ 47 Like *Boy Scouts of America*, IBEW International is a legally separate entity from Local 461, and plaintiffs do not attempt to establish an employment relationship between Nauert and IBEW International. It is undisputed that Vester appointed Nauert to his position as assistant business manager/organizer, controlled his day-to-day work, and had the authority to remove Nauert from his position at any time. Local 461 paid Nauert, gave him the vehicle, and established policies for its use. IBEW International had no involvement in originally hiring Nauert, which makes the argument of control even more attenuated than that in *Boy Scouts of America*.

¶ 48 As in *Brouillette*, IBEW International's authority to act is limited to the area of labor issues or calling for an investigation. The IBEW International president can prefer charges against a member who is "violating the constitution or working against the welfare of [IBEW

International]." The president can also remove or suspend a local member for incompetence, nonperformance of duties, or failure to carry out the provisions of the constitution or bylaws of a local union. All deponents unequivocally testified that Nauert was a good worker, and no evidence in the record suggests that he was incompetent, failed to perform his duties, failed to carry out the provisions of the constitution, or otherwise violated the constitution. Indeed, the constitution does not contain any provisions concerning drinking and driving, and all enumerated offenses in the constitution involving alcohol focus on its consumption at job sites or at the union hall. Additionally, the president of Local 461 testified in his deposition that being arrested for DUI in a union vehicle is not considered misconduct under the constitution. The vice president of District Six similarly testified in his deposition that IBEW International has no authority to remove an employee for driving a local union vehicle while drunk. As mentioned, plaintiffs' reliance on certain deposition testimony to support a contrary inference is mere speculation, because the testimony at issue was given in response to a series of hypothetical questions that were not based on facts in the record. Furthermore, once Collins "advised" Local 461 to terminate Nauert after the accident in question, Local 461 disregarded Collins and instead followed the advice of its own counsel in asking Nauert to resign.

¶ 49 Moreover, even if IBEW International could discharge Nauert for driving a Local 461 union vehicle while drunk, the evidence in the record fails to show that IBEW International knew or should have known of Nauert's alleged unfitness. To support their argument that IBEW International should have known about Nauert's alleged propensity to drink and drive, plaintiffs argue that Collins should have interviewed Kauffman or Craig Rehkopf, the two complaining members in 2006, or looked at the 2006 arrest report. Kauffman stated in his affidavit that he

had personal knowledge of Nauert's propensity to drive the union vehicle while drunk.[3] Both Kauffman and Rehkopf, however, acknowledged in their depositions that all information they had about Nauert was secondhand. Kauffman even admitted that his statements were based on what others had told him and on "who [Nauert] hung out with." Neither Kauffman nor Rehkopf had ever seen Nauert intoxicated. Vester and Local 461's president both similarly testified in their depositions that they had never seen Nauert intoxicated and that they had no knowledge that Nauert had operated the Local 461 vehicle while intoxicated before his 2006 arrest. Also, the 2006 arrest report does not contain any information that suggests that Nauert had a propensity to drink and drive. Thus, the evidence fails to show that IBEW International knew, or should have known, that Nauert was likely to drive the Local 461 vehicle while drunk.

¶ 50 Plaintiffs assert that IBEW International failed to adequately investigate Nauert's 2006 DUI arrest. Plaintiffs imply that, had the investigation been adequate, IBEW International would have fired Nauert. The record, however, shows that the only complaint IBEW International was asked to investigate was whether union funds were used to pay for Nauert's legal expenses. IBEW International resolved that question, determining that union funds were not used. Under the circumstances, there is no basis for plaintiffs' claim that the investigation was less than complete.

¶ 51 Furthermore, negligent hiring and retention cases have a rigorous standard of proximate causation. *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶ 43. Proximate cause is an essential element which must be proved, and liability attaches only where there is a demonstrated connection between plaintiffs' injuries and the fact of employment. *Bates v. Doria*, 150 Ill. App.

[3] Rehkopf testified that he too signed an affidavit alleging personal knowledge of Nauert's drunken driving, but it does not appear in the record.

3d 1025, 1031 (1986). Although an employer may be liable if the employee commits the tortious act outside the scope of employment, such liability will arise only where: (1) the employee is on the employer's premises or is using the chattel of the employer, and (2) the employer has reason to know of the need and opportunity to exercise control over the employee. *Boy Scouts of America*, 2014 IL App (2d) 130121, ¶ 43.

¶ 52 Even if IBEW International could have discharged Nauert for his DUI arrest in 2006, to say that his retention proximately caused plaintiffs' injuries is a step too far. Nauert was not on IBEW International's premises at the time of the accident or using its chattel. The accident that injured plaintiffs occurred three years after Nauert's 2006 DUI arrest, and the 2006 charges were dismissed. The 2009 accident happened after 9 p.m. on a Saturday night while Nauert was driving home from a private party. No evidence suggests that IBEW International was able to control Nauert's actions during working hours, let alone during his free time.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the trial court's grant of summary judgment in favor of defendants.

¶ 55 Affirmed.