STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0038

Lauren Strahan,
Appellant,

vs.

Josh Boone,
Respondent,

Prime Comms Retail, LLC,
Respondent,

AT&T Mobility II, LLC,
Respondent.

Filed June 30, 2025
Affirmed
Schmidt, Judge

Blue Earth County District Court
File No. 07-CV-22-2978

Daniel J. Bellig, Joseph A. Gangi, Farrish Johnson Law Office, Chtd., Mankato, Minnesota; and

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Josh Boone, Mankato, Minnesota (pro se respondent)

Gerardo Alcazar, G. Tony Atwal, Norton Rose Fulbright US LLP, Minneapolis, Minnesota (for respondent Prime Comms Retail, LLC)

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Brent M. Rubin (pro hac vice), Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas, Texas (for respondent AT&T Mobility II, LLC)

Considered and decided by Schmidt, Presiding Judge; Connolly, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Lauren Strahan appeals a district court's order granting summary judgment to respondents AT&T Mobility II, LLC (AT&T), and Prime Comms Retail, LLC (Prime), an authorized AT&T retailer. Strahan also challenges the district court's order limiting her expert testimony. We affirm.

FACTS

On March 24, 2020, Strahan went to a Prime retail store to trade in her cell phone and Prime employee respondent Josh Boone assisted her. Strahan gave her old phone to Boone, who assisted in transferring data—such as applications, music, and photographs—to her new phone. Strahan then left the store with her new phone, leaving her old phone behind. Unbeknownst to Strahan, and without her permission, Boone kept several photos of Strahan that were on her old phone.

On May 29, 2020, at 12:49 a.m., Boone used the photos of Strahan from her old phone to create a fictitious profile on Bumble, a dating application. Boone created the profile at his home, on his home internet network, while using his personal email address.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Strahan found out about the fake dating profile, confirmed Boone was behind it, and reported the matter to the Mankato police. After being charged, Boone pleaded guilty to nonconsensual dissemination of private sexual images in violation of Minnesota Statutes section 617.261, subdivision 1 (2022).

Strahan sued Boone, Prime, and AT&T, and retained Robert Corrado to provide expert testimony. As to Strahan's claims against Boone, the district court entered a default judgment against Boone after he failed to answer the complaint. The district court awarded damages to Strahan, against Boone, in the amount of $850,000. Final judgment was entered on November 14, 2024.

As to Strahan's claims against AT&T and Prime, the district court granted their motions for summary judgment and limited Corrado's expert testimony because it lacked sufficient foundation. The district court determined that AT&T and Prime were not vicariously liable because AT&T was not Boone's employer, and Boone's conduct was not within the scope of his employment with Prime.

DECISION

Strahan challenges the district court's order limiting her expert's testimony and the district court's order granting summary judgment in favor of AT&T and Prime on two counts of her complaint: vicarious liability and respondeat superior. We address each argument in turn but start with AT&T's argument that Strahan's appeal should be dismissed as untimely.

I. Strahan's appeal is timely.

AT&T argues that Strahan's appeal should be dismissed as untimely because the district court entered judgment on its summary judgment order in favor of AT&T on September 6, 2024, and Strahan did not file her notice of appeal until after the deadline. AT&T's argument is not persuasive.

In a case involving multiple claims or parties, the district "court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon [1] an express determination that there is no just reason for delay and [2] upon an express direction for the entry of judgment." Minn. R. Civ. P. 54.02. If an order contains the rule 54.02 language, a party may appeal from the final partial judgment on that order "within 60 days of the entry of the judgment." Minn. R. Civ. App. P. 104.01, subd. 1. *See also* Minn. R. Civ. App. P. 103.03(a) (allowing appeal "from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02"). If the order does not include language that articulates "an express determination that there is no reason for delay[,]" that order "does not become final, regardless of its designation," until entry of a final judgment adjudicating all claims. *Pederson v. Rose Coop. Creamery Ass'n*, 326 N.W.2d 657, 660 (Minn. 1982).

Here, the order granting summary judgment in favor of AT&T did not certify entry of a final partial judgment pursuant to rule 54.02. Although the order contains the language "PARTIAL JUDGMENT SHALL BE ENTERED IMMEDIATELY," the district court did not make an "express determination that there is no just reason for delay" or direct the entry of a final judgment. Minn. R. Civ. P. 54.02; Minn. R. Civ. App. P. 104.01, subd. 1. Thus,

partial judgment entered on the order granting summary judgment was not an immediately appealable final partial judgment. *Pederson*, 326 N.W.2d at 660.

The district court entered a final judgment as to all claims and all parties on November 14, 2024. Strahan filed her notice of appeal within 60 days on January 8, 2025. Strahan's appeal is timely. We therefore turn to the merits of her appellate arguments.

II. The district court did not err in its summary-judgment rulings.

Strahan argues the district court erred in granting summary judgment to AT&T and Prime. In reviewing a summary judgment, we view "the evidence in the light most favorable to the party against whom summary judgment was granted." *Fahrendorff ex rel. Fahrendorff v. N. Homes, Inc.*, 597 N.W.2d 905, 909-10 (Minn. 1999). We review de novo whether the district court erred in its application of the law. *Id.* at 909.

Under respondeat superior, "an employer is vicariously liable for the torts of an employee committed within the course and scope of employment." *Id.* at 910 (quotation omitted). An employer may be "liable for even the intentional misconduct of its employees when (1) the source of the attack is related to the duties of the employee, and (2) the assault occurs within work-related limits of time and place." *Id.* (quotations omitted).

A. The district court did not err in granting AT&T summary judgment.

In granting summary judgment to AT&T, the district court reasoned that holding AT&T liable for "torts committed by non-employees . . . is beyond the scope of the doctrine of vicarious liability or respondeat superior." Strahan argues the district court erred because "Boone was a servant of Prime's partner AT&T, which acted as a master of the [Prime] store and those who worked there." Strahan's argument is unpersuasive.

Strahan cites a Minnesota Supreme Court decision, which held that a hospital could be held vicariously liable for the acts of an independent contractor physician that were performed within the scope of his service. *See Popovich v. Allina Health Sys.*, 946 N.W.2d 885, 895 (Minn. 2020). But *Popovich* is distinguishable.

In *Popovich*, the vicarious liability theory was premised on a physician's role as an apparent agent of the hospital. *Id.* at 890-91. The supreme court distinguished the concepts of respondeat superior and apparent authority: "respondeat superior requires the element of control, while apparent authority does not." *Id.* at 891. Although Strahan presented arguments that AT&T was liable under respondeat superior, she failed to present facts that would support the application of respondeat superior here—that AT&T controlled Boone's actions such that liability extended to AT&T.

The *Popovich* decision is also distinguishable because Strahan's claim is evaluated under a different standard as compared to the claims asserted in *Popovich*. The plaintiff in *Popovich*, asserting a medical-malpractice claim under a theory of apparent authority, needed to prove "(1) the hospital held itself out as a provider of emergency medical care; and (2) the patient looked to the hospital, rather than a specific doctor, for care and relied on the hospital to select the personnel to provide services." *Id.* at 898. In contrast, Strahan, a plaintiff asserting a claim of intentional tortious conduct by an employee under a vicarious liability theory, must show "(1) the source of the attack is related to the duties of the employee, and (2) the assault occurs within work-related limits of time and place." *Fahrendorff*, 597 N.W.2d at 910 (quotations omitted). Thus, *Popovich* has no bearing on Strahan's claims against AT&T.

Strahan also argues that the district court's order ran afoul of *Frankle v. Twedt* because "[e]mployment in terms of pay is not necessary to the creation of a master and servant relation." 47 N.W.2d 482, 488 (Minn. 1951). We disagree.

Frankle holds that employment is not necessary to the creation of a master/servant relationship in instances where "no greater degree of direct supervision would have existed if plaintiff had employed a regular full-time [employee]." *Id.* Here, Strahan produced no facts to demonstrate that AT&T exerted any control over Boone himself. As the district court determined, AT&T allowing Prime to "engage in branding and signage that would lead a reasonable person to mistakenly believe that the store was owned by AT&T" is not sufficient to invoke vicarious liability.

Viewing the evidence in a light most favorable to Strahan, there are no genuine issues of material fact, and the district court properly granted summary judgment to AT&T on Strahan's claims of vicarious liability and respondeat superior.

B. The district court did not err in granting Prime summary judgment.

Strahan argues the district court improperly granted summary judgment in favor of Prime because "Boone's acts were 'connected with and immediately grew out of' his employment with Prime[.]" We disagree.

Strahan seeks to hold Prime liable for Boone's intentional conduct. An employer may be held liable for "the intentional misconduct of its employees when (1) the source of the harm is related to the duties of the employee and (2) the harm occurs within work-related limits of time and place." *Yath v. Fairview Clinics, N. P.*, 767 N.W.2d 34, 47 (Minn. App. 2009); *see also Marston v. Minneapolis Clinic of Psychiatry & Neurology,*

Ltd., 329 N.W.2d 306, 311 (Minn. 1982). The district court, here, granted summary judgment to Prime on the second factor because Boone's conduct of creating the fictitious profile "was beyond the work-related limits of time and place."

Citing *Fahrendorff* and *Marston*, Strahan argues that the district court misapplied the law because the test for vicarious liability "boils down to a but-for test, asking whether the ultimate conduct would not have occurred but for his employment." Strahan's argument misses important pieces from both cases.

In *Fahrendorff* and *Marston*, the fact that the actors' conduct would not have occurred "but for" their statuses as employees was one factor among several. In *Marston*, the supreme court considered (1) the fact that the wrongful acts in question were committed during work hours at the office, (2) the foreseeability of the wrongful acts, and (3) whether the wrongful acts could have taken place "but for" the actor's status as an employee. 329 N.W.2d at 311. The supreme court considered a similar set of factors in *Fahrendorff*, including the foreseeability of the wrongful acts. 597 N.W.2d at 910-12. The court in *Fahrendorff* also emphasized the importance of the fact that assaults in *Marston* took place during or after regular appointment hours and at the psychiatrist's office. *Id.* at 910.

Applying the *Marston* factors, we first note, as the district court did, that "Boone's act of creating the fictitious profile was done in the middle of the night, while Prime was closed, while Boone was at his home, using his personal email and internet service, over two months after he had contact with [Strahan]." Boone's misconduct was not done within the work-related limits of time and place.

Second, Strahan has not shown Boone's actions were foreseeable. Our decision is guided by *Yath*. In *Yath*, employees accessed a patient's medical file and disseminated private information about the patient on a fake MySpace account. 767 N.W.2d at 37-39. The employees obtained the patient's information through their jobs, but the MySpace account was not created at the clinic or using the clinic's devices. *Id.* at 38-39. We held that the medical clinic could not be held vicariously liable because the dissemination of private information on a fake MySpace account was not foreseeable. *Id.* at 48.

Like the plaintiff in *Yath*, Strahan asks this court to hold that the defendants' actions were foreseeable because dissemination of private information is a generally known problem. *Id.* at 48. We rejected this argument in *Yath* because plaintiff presented no admissible evidence to show that the conduct at issue was foreseeable. *Id.*

Similarly, Strahan has produced no admissible evidence to demonstrate that the alleged harm—premised on Boone's creation of the fake Bumble profile—was foreseeable by Prime. Boone created the Bumble profile in his own home, on his own device, sixty-six days after he had contact with Strahan at the store, and at a time of day that Prime was closed for business. As the district court properly concluded—and consistent with our decision in *Yath*—it was not foreseeable that Prime could be held responsible for Boone's acts that occurred so far outside the work-related limits of time and place.

Strahan argues that the "public discussion of the misuse of private materials put the entire public, including Prime and AT&T, on notice" about the dissemination of private material on websites. Strahan contends that the doctrines of vicarious liability and respondeat superior should be expanded because "[t]he modern post-*Yath* era where

catfishing, revenge porn, and other abuses of private information on-line run rampant require that the risk shift to the employers . . . as they are in a better position to oversee and implement safeguards that prevent employees and agents from acquiring information[.]" But "the task of extending existing law falls to the supreme court or the legislature," not to this court. *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987).

Applying existing precedent and viewing the evidence in the light most favorable to Strahan, we conclude that the district court did not err when it found that Strahan failed to show Boone's actions were foreseeable.

III. The district court did not abuse its discretion in limiting the expert's testimony.

Strahan argues the district court abused its discretion when it limited Corrado's testimony because his opinion had sufficient foundation and that "any criticism of that foundation would go to the opinion's weight, not admissibility." We disagree.

"[A]dmissibility of an expert opinion rests within the sound discretion of the trial court and will not be reversed unless it is based on an erroneous view of the law or it is an abuse of discretion." *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760 (Minn. 1998). Expert testimony is admissible if, among other factors, the expert's opinion has foundational reliability. *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). The district court has "considerable discretion" in determining whether the expert's opinion has sufficient foundational reliability. *Gross*, 578 N.W.2d at 760-61 (quotation omitted).

"When determining whether expert testimony has a reliable factual foundation, the question is whether the facts upon which an expert relies for an opinion are supported by

the evidence." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 56 (Minn. 2019) (quotation omitted). An expert's opinion rests on insufficient factual foundation if "(1) the opinion does not include the facts and/or data upon which the expert relied in forming the opinion, (2) it does not explain the basis for the opinion, or (3) the facts assumed by the expert in rendering an opinion are not supported by the evidence." *Id.* (quotation omitted).

The district court considered Corrado's testimony that it was foreseeable that Boone would improperly keep Strahan's photos. The court, however, excluded the expert's testimony about it being foreseeable that Boone would use Strahan's photos to make a fake Bumble account. The district court reasoned:

> Corrado provides the basis for his opinion through citing to several online news articles. However, a review of those examples significantly undermines Corrado's opinion that it was foreseeable that Boone would keep Strahan's digital images and then use them in a deceptive and public manner. First, of the examples cited by Corrado, all but one occurred after Boone misused Strahan's digital images. Second, none of the incidents described in the online articles involved an employee using any photo to deceive, misrepresent, or use the photos in any manner that created a false or fictitious use of the photos.
>
> In other words, Corrado's opinion is not undermined by the failure to include the facts and/or data upon which the expert relied in forming the opinion. More significantly, Corrado's opinion is self-defeating because it *did include the data relied upon*, and *that data does not support the opinion* rendered. Similarly, Corrado's opinion is not undermined by the failure to explain the basis for the opinion. More significantly, Corrado's opinion is self-defeating because it *did explain the basis of the opinion*, and *that explanation does not support the opinion* rendered. As a result, to the extent that Corrado opines that it was foreseeable that Boone would use Strahan's digital images in a deceptive and public manner, that opinion is precluded as lacking foundation reliability.

(footnote omitted). The district court's reasoning is sound and well within its "considerable discretion[.]" *Gross*, 578 N.W.2d at 760-61 (quotation omitted).

Strahan argues the district court erred in determining that the articles cited in Corrado's report were the only basis for his opinion. Strahan contends that the expert also "relied on his experience working 16 years of retail in the telecommunications industry[.]" But this argument draws inferences that are not supported by the record. Corrado's report contains one paragraph that discussed employee misuse of customer information:

> The circumstances of Ms. Strahan's case are not without precedent within the industry and telecommunications enterprises are well aware of the risks associated with devices traded in by customers. A cursory internet search reveals a number of articles in the media of sensitive customer information being stolen or misused by retail employees within the telecommunications industry. Some of the provided examples have been litigated, and of those litigated, one particular case involved AT&T.

(footnotes omitted). The report included no information about how his expertise—independent of the articles he found in a "cursory internet search"—led him to the conclusion that creating a fake profile outside of the workplace should have been foreseeable. Within its wide discretion, the district court determined that the internet articles do not establish a sufficient factual foundation to offer the opinion that it was foreseeable for Prime to predict that Boone would create a fake account—outside the work-limits of time and place—using Strahan's photo. The district court acted within its discretion in limiting Corrado's testimony. *Gross*, 578 N.W.2d at 760-61.

Affirmed.