

TORTS I COURSE REVIEW EXERCISE

Prof. Bell

NOTE: During our course review, during our last class, we will first discuss the questions (if any) that you have sent to be beforehand (with your tentative answers, naturally). We will then analyze the negligence issues raised by the facts of the case quoted at length below (but edited for clarity and brevity). After our class discussion, you can read the reported case for the court's own analysis. Although the case's holding with regard to sovereign immunity was overturned in *United States v. Olson*, 546 U.S. 43, 44 (2005), the Supreme Court had no occasion to critique the lower court's discussion of negligence law.

Hines v. United States, 60 F.3d 1442 (9th Cir. 1995)

[p. 1445] OPINION

BEEZER, Circuit Judge:

In this Federal Tort Claims Act action, we must decide whether the United States can be held liable for its alleged negligence in issuing a permit to a bulk mail delivery driver who, while driving a mail truck under the influence of drugs and alcohol, ran a stop light and crashed into a car resulting in the deaths of two passengers, Lesley Hines and her daughter Alexis.

Lesley Hines' husband, Kevin Hines, and Cathy Zampa, guardian ad litem for Hines' surviving daughter Stephanie Hines (collectively "Hines") appeal the district court's grant of summary judgment in favor of the United States. We have jurisdiction over this timely appeal pursuant to 28 U.S.C. § 1291. Because we conclude that after trial the United States may be subject to liability, we reverse.

I

Kevin and Lesley Hines along with their two daughters Stephanie and Alexis were involved in a deadly automobile accident on the morning of April 13, 1992. While driving through an intersection in Sacramento, California, their car was struck by a truck and trailer transporting bulk mail under contract for the United States Postal Service ("Postal Service"). The truck had run a stop light. Tragically, Lesley Hines and Alexis Hines died as a result of the collision; Kevin Hines and Stephanie Hines suffered serious injuries, but survived.

The driver of the truck, William Smith, was arrested at the accident scene. Subsequent investigation revealed that Smith had been drinking alcohol and had recently used cocaine. Investigators determined that Smith had been at fault for the collision.¹

Smith was employed as a driver for a company known as A.C. Wright ("Wright"), a government contractor transporting mail in bulk between various California cities and Sacramento under contract with the Postal Service. Wright had hauled bulk mail for the Postal Service pursuant to government contracts for over a decade.

Smith had been hired by Wright in early 1992. Pursuant to Management Instruction Number PO-530-89-03, the Postal Service was "required" to screen all employees of transportation contractors to determine their fitness to be drivers of bulk mail trucks. If a driver had a specific number of convictions for listed violations, he or she was disqualified from obtaining the necessary permit. One such disqualifying item was "any driving conviction involving the use of drugs, [p. 1446] alcohol, or any other controlled substances" within the past three years.

On March 19, 1992, the Postal Service issued a temporary permit allowing Smith to drive bulk mail trucks. The "required" screening was not conducted. At the time, the Postal Service did not know that Smith's driving record contained a conviction for reckless driving within the past three years or that the offense was alcohol related.

Hines brought an action against the United States pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671-2680. He presented several different theories of recovery, including that Wright should be considered a government employee rather than an independent contractor; that the Postal Service had breached the duty it undertook to Hines to screen drivers operating trucks hauling mail; and that the Postal Service negligently entrusted the vehicle to Smith. The United States moved for summary judgment on all claims, which the district court granted.

Hines then moved for reconsideration pursuant to Federal Rule of Civil Procedure 60(b), arguing that recent California court decisions had raised a triable question regarding the United States' vicarious liability as a common carrier for the actions of Smith. The district court denied the motion. Although Hines did not appeal the denial of his motion for reconsideration in his notice of appeal, he argues the vicarious liability theory of recovery in his brief on appeal.

II

We review de novo a district court's grant of summary judgment. *Jesinger v. Nevada Fed. Credit Union*, 24 F.3d 1127, 1130 (9th Cir. 1994).

III

[Discussion of vicarious liability of U.S. deleted.]

¹ Smith was later convicted of gross vehicular manslaughter and driving under the influence.

IV

Hines next contends that the Postal Service had a duty, based on the Postal Service's own "Management Instruction," to screen drivers for contract mail carriers, and it failed to screen Smith; thus, the United States acted negligently by breaching its duty. The United States responds that it did not owe a duty to Hines under the Instruction to screen Wright's drivers for driving safety or competency and, in any case, the failure to screen Smith was not a cause of the accident. . . .

[*1448] Notwithstanding our determination that Wright and Smith are not federal employees, the United States can still be subject to FTCA liability if its own employees acted negligently. *Logue v. United States*, 412 U.S. 521, 532-33, 37 L. Ed. 2d 121, 93 S. Ct. 2215 (1973); 28 U.S.C. § 1346(b). The extent of the government's duty of care in an FTCA case is determined by reference to state law; in this case, California law. *Cameron v. Janssen Bros. Nurseries, Ltd.*, 7 F.3d 821, 825 (9th Cir. 1993). [It was on this point that the S.Ct. reversed.]

The Postal Service established a "Management Instruction" for the purpose of "screening transportation contractors and contract employees" to determine their fitness for transporting mail. An administrative official is responsible for reviewing the driving record of the contractor's drivers to ensure that they do not have any "disqualifying factors" before the official issues a temporary permit. If a driver's record contains "any driving conviction involving the use of drugs [or] alcohol," the driver is disqualified.

The Postal Service concedes that it did not review Smith's driving record prior to issuing him a temporary permit. Hines argues that such a review would inexorably have led to Smith's disqualification. The Postal Service disagrees, as did the district court, for two reasons: first, that the Postal Service did not have a duty to screen the driving records; second, even if the Postal Service had a duty and had conducted screening, Smith would not have been disqualified.

. . .

[For our review, try to predict how the court did analyze—or at least, should have analyzed—the issues of duty, carelessness, cause in fact, and proximate causation.]