

SUPREME COURT OF TENNESSEE

Houghton v. Aramark Educational Resources, Inc.

90 S.W.3d 676 (Tenn. 2002) · Decided November 22, 2002

SUMMARY

The Tennessee Supreme Court answered a certified question concerning whether Tennessee Department of Human Services regulations governing child care centers impose vicarious liability on a licensee for an employee's criminal acts committed outside the scope of employment. The court distinguished *Gleaves v. Checker Cab Transit Corp.* and held that references to a licensee's "ultimate responsibility" in definitional regulations do not, absent fault by the licensee, impose such liability.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	William M. Barker, J.; Frank F. Drowota, III, C.J.; E. Riley Anderson, J.; Adolpho A. Birch, Jr., J.; Janice M. Holder, J.
JURISDICTION	Tennessee
DECIDED	November 22, 2002
DISPOSITION	other
PROCEDURAL POSTURE	The Tennessee Supreme Court accepted a certified question of Tennessee law from the United States District Court for the Middle District of Tennessee under Tennessee Supreme Court Rule 23.
STANDARD OF REVIEW	Interpretation of statutes and administrative regulations presents a question of law; the court applied principles of statutory construction, including strict construction of enactments in derogation of the common law.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion answering a certified question of state law; precedential.
PARTIES	John Houghton, Melissa Houghton, Jane Doe v. Aramark Educational Resources, Inc.

TOPICS

- statutory interpretation
- administrative law
- vicarious liability
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Tennessee Department of Human Services regulations governing the licensing and operation of day-care centers impose vicarious liability on a licensee for an employee's criminal acts occurring outside the scope of employment and absent fault by the licensee.
2. Whether the rationale of *Gleaves v. Checker Cab Transit Corp.* extends to the Tennessee day-care licensing regulations, particularly the regulations' designation of the licensee as having 'ultimate responsibility' for the facility.

HOLDINGS

1. The applicable Tennessee Department of Human Services regulations do not, absent fault on the part of the licensee, provide a basis for vicarious liability for an employee's criminal acts occurring outside the scope of employment.
2. The statutorily imposed vicarious-liability rationale of *Gleaves* does not extend to the Tennessee Department of Human Services rules governing the licensing of day-care centers.

KEY QUOTATIONS

“In the absence of direct language to the contrary, we find that the deliberate use of the term “ultimate responsibility” cannot reasonably be construed as being legally synonymous with unlimited vicarious liability.” (681-682)

“We conclude that applicable DHS regulations do not, in the absence of fault on the part of a licensee, provide a basis for vicarious liability for the criminal acts of an employee that occur outside the scope of employment.” (682)

FACTUAL BACKGROUND

Aramark operated a Nashville-area day-care facility where the Houghtons enrolled their infant daughter. Daniel Towery, an Aramark employee who assisted and supervised children, was later convicted of child rape and aggravated sexual battery involving children at the facility; he denied abusing Jane Doe. The Houghtons sought to impose liability on Aramark for Towery's acts, which the federal district court determined occurred outside the scope of his employment.

PROCEDURAL HISTORY

The Houghtons sued Aramark in Tennessee state court on theories including respondeat superior, negligent hiring and supervision, and statutory liability arising from alleged sexual abuse of their daughter by an Aramark employee. They voluntarily nonsuited that action and filed a subsequent suit in federal district court. In response to Aramark's motion for partial summary judgment, the federal district court certified to the Tennessee Supreme Court whether the rationale of statutorily imposed vicarious liability in *Gleaves* applied to Tennessee day-care licensing regulations.

DISPOSITION

other

CASES CITED

- Gleaves v. Checker Cab Transit Corp., 15 S.W.3d 799 (Tenn. 2000)
- Owens v. State, 908 S.W.2d 923 (Tenn. 1995)
- State v. Sliger, 846 S.W.2d 262 (Tenn. 1993)
- Ezell v. Cockrell, 902 S.W.2d 394 (Tenn. 1995)
- Cardwell v. Bechtol, 724 S.W.2d 739 (Tenn. 1987)
- Jordan v. Baptist Three Rivers Hospital, 984 S.W.2d 593 (Tenn. 1999)
- Lavin v. Jordon, 16 S.W.3d 362 (Tenn. 2000)
- Consumer Advocate Div. v. Greer, 967 S.W.2d 759 (Tenn. 1998)
- Swafford v. Harris, 967 S.W.2d 319 (Tenn. 1998)