

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
MISSISSIPPI

Vaughn Kelly, Sr. v. Kroger Limited Partnership I, CAC Operations
LLC, and Nolan Booth

Kelly · No. 3:24-cv-11-MPM-JMV · Decided June 15, 2026

SUMMARY

The court limits plaintiff Vaughn Kelly, Sr.’s negligence claims against Kroger at trial to Kroger’s alleged conduct on April 20, 2023, excluding claims based on Kroger’s earlier hiring of CAC Operations LLC. The court discusses the uncertainty under Mississippi law concerning negligent hiring of an independent contractor, the physical-harm limitation in Restatement (Second) of Torts § 411, and the evidentiary limitations concerning post-incident allegations about CAC’s towing practices.

CASE DETAILS

COURT	United States District Court for the Northern District of Mississippi
WRITING FOR THE COURT	Michael P. Mills
JURISDICTION	United States District Court for the Northern District of Mississippi
DECIDED	June 15, 2026
DOCKET	3:24-cv-11-MPM-JMV
DISPOSITION	other
PROCEDURAL POSTURE	The district court acted sua sponte to determine the status of plaintiff's negligent hiring claim against Kroger before trial.
STANDARD OF REVIEW	Not applicable; the court issued a sua sponte case-management and trial-limitation order.
PRECEDENTIAL VALUE	Unpublished district court order; limited persuasive value.
PARTIES	Vaughn Kelly, Sr. v. Kroger Limited Partnership I, CAC Operations LLC, Nolan Booth

TOPICS

- negligent hiring
- negligence
- hearsay
- relevance
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff had sufficient legal and factual support to pursue a negligent hiring claim against Kroger for selecting CAC as its independent towing contractor.
2. Whether plaintiff's negligence claims against Kroger should be limited at trial to Kroger's conduct in requesting the tow on April 20, 2023, rather than Kroger's earlier decision to hire CAC.
3. Whether online articles concerning CAC's later towing practices were hearsay as to CAC and irrelevant to Kroger's hiring decision, subject to the possible use of non-hearsay subsequent-bad-acts evidence under Federal Rule of Evidence 404(b).

HOLDINGS

1. Plaintiff failed to provide the necessary factual or legal support for a negligent hiring claim against Kroger, and the claim may not proceed at trial.
2. Plaintiff's negligence claims against Kroger are limited at trial to alleged negligent conduct by Kroger on April 20, 2023, and may not be based on Kroger's decision to hire CAC months earlier.
3. The online articles relied upon by plaintiff were hearsay as to CAC and irrelevant to Kroger's hiring decision because they were published after the April 2023 incident and after Kroger hired CAC; however, non-hearsay evidence of subsequent bad acts may potentially be admissible to show intent under Federal Rule of Evidence 404(b).

KEY QUOTATIONS

“Regardless of whether this is plaintiff’s preference or not, this court concludes that his negligence claims against Kroger in this case should, in fact, be limited at trial to his claims that Kroger acted negligently on April 20, 2023, and not to its hiring decision months earlier.” (Unpaginated order)

“It is clear to this court that plaintiff has failed to provide the necessary factual or legal support for such a negligent hiring claim against Kroger, and he will therefore be limited at trial to his negligence claims against Kroger based on its actions on April 20, 2023.” (Unpaginated order)

FACTUAL BACKGROUND

Kroger selected CAC as its exclusive towing provider and, on April 20, 2023, called CAC to tow Kelly's vehicle. Kelly sought to support a negligent hiring claim with evidence concerning CAC's towing practices in other cities and states, including online articles published after the incident and after Kroger hired CAC. The court found that the evidence did not adequately establish that Kroger knew or should have known of the alleged misconduct when it made the hiring decision and that the claim presented substantial legal and factual uncertainties.

PROCEDURAL HISTORY

Kelly asserted negligence claims arising from Kroger's request that CAC tow his vehicle, including a negligent hiring theory based on Kroger's selection of CAC as its exclusive towing provider. The court previously

continued the case to permit additional discovery concerning CAC's towing practices after plaintiff sought to introduce online articles about CAC. On its own motion, the court concluded that plaintiff lacked sufficient legal and factual support for negligent hiring and limited the claims that could proceed against Kroger at trial to negligence based on Kroger's conduct on April 20, 2023.

DISPOSITION

other

CASES CITED

- United States v. Webb, 625 F.2d 709, 710 (5th Cir. 1980)
- United States v. Myers, 550 F.2d 1036, 1044 n. 10 (5th Cir. 1977)
- United States v. Peterson, 244 F.3d 385, 392-93 (5th Cir. 2001)

OPINION

Kelly

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION
VAUGHN KELLY, SR. PLAINTIFF
VS. CIVIL ACTION NO. 3:24-cv-11-MPM-JMV
KROGER LIMITED PARTNERSHIP I,
CAC OPERATIONS LLC,
AND NOLAN BOOTH DEFENDANTS
ORDER

This cause comes before the court on its own motion, addressing the status of plaintiff's negligent hiring claim against Kroger, based upon its decision to hire CAC as its exclusive towing provider. It seems clear that CAC acted as an independent contractor, rather than an employee of Kroger, in this case, and this court's research suggests that Mississippi law relating to claims for negligence in hiring an independent contractor is very much unclear. The primary authority in this context appears to be Section 411 of the Restatement Second of Torts, which provides that: An employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor (a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done, or (b) to perform any duty which the employer owes to third persons. Restatement (Second) of Torts § 411 (1965). However, this court has been unable to find any Mississippi cases adopting section 411, and plaintiff cited no such authority in his summary judgment briefing. [Docket entry 115]. Even if this court were to assume that the Mississippi Supreme Court would adopt section 411 in an appropriate case, liability only

exists under that section for “physical harm” caused by the contractor’s actions. This would not seem to encompass what happened in this case and does not appear to cover plaintiff’s claim for emotional distress damages. Moreover, the comments to § 411 provide that: The employer of a negligently selected contractor is subject to liability under the rule stated in this Section for physical harm caused by his failure to exercise reasonable care to select a competent and careful contractor, but only for such physical harm as is so caused. In order that the employer may be subject to liability it is, therefore, necessary that harm shall result from some quality in the contractor which made it negligent for the employer to entrust the work to him. Thus, if the incompetence of the contractor consists in his lack of skill and experience or of adequate equipment but not in any previous lack of attention or diligence in applying such experience and skill or using such equipment as he possesses, the employer is subject to liability for any harm caused by the contractor’s lack of skill, experience, or equipment, but not for any harm caused solely by the contractor’s inattention or negligence. Restatement (Second) of Torts § 411 (1965). Based upon these standards, this court can discern a number of weaknesses in plaintiff’s proof relating to his negligent hiring claim. First, it seems quite unlikely that a Horn Lake retail establishment either knew or should have known of the existence of the sort of prosecutions which CAC has faced in relation to its towing practices in other cities and states. Even if this court were to (generously) assume otherwise, this case involves Kroger’s decision on April 20, 2023 to call CAC and request that it tow plaintiff’s vehicle.¹ In this court’s view, Kroger’s actions in this regard are the ones regarding which its negligence (or lack thereof) in this case should be judged, and not highly speculative evidence regarding a hiring decision made months previously. This is particularly true considering the numerous legal uncertainties and limitations which exist in this context. In light of the above uncertainties and limitations, this court frankly believes that plaintiff himself should wish to proceed against Kroger based solely upon the much clearer, and stronger, negligence theory which is available to him. Regardless of whether this is plaintiff’s preference or not, this court concludes that his negligence claims against Kroger in this case should, in fact, be limited at trial to his claims that Kroger acted negligently on April 20, 2023, and not to its hiring decision months earlier. In so concluding, this court emphasizes that 1) plaintiff has only been able to develop additional evidence relating to CAC’s towing practices as a result of this court’s indulgence and leniency and 2) this court’s decision to give plaintiff additional time in this regard was largely based on its concerns, specific to CAC, that this company not be permitted to whitewash its past and falsely present itself as a reputable company to jurors. [Docket entry 164 at 2-4]. These same concerns do not exist with regard to Kroger. As will be recalled, this court continued this case last April so that additional discovery could be performed relating to CAC’s towing practices. [Docket entry 164]. This court did so after plaintiff sought to introduce at trial online articles which, while inadmissible hearsay

as to CAC, made very disturbing allegations regarding its business practices. For example, in describing CAC's (doing business as A1 Towing & Hauling) towing practices, one article stated that: Predatory towing practices appear to have reached an absurd and violent conclusion as arrests and lawsuits stack up around the Memphis, Tennessee, area, with agents of local towing company A1's Towing & Hauling reportedly stealing trucks and attacking drivers. For months now, reports of A1's towing practices involving armed agents booting and towing trucks, even with the driver in the cab, have steadily streamed out of Memphis. See <https://www.overdriveonline.com/regulations/article/15635856/truckers-carjacked-roughed-up-by-a1-towing-in-memphis-report>. Crucially, however, this article, like another relied upon by plaintiff, was published in October, 2023: several months after the April, 2023 incident in this case and a year after Kroger decided to hire CAC.² Thus, this online evidence is hearsay as to CAC and irrelevant as to Kroger.³ That being the case, if this case had gone to trial last April as scheduled, plaintiff would have clearly lacked evidence to support his negligent hiring claims against Kroger, and this court's decision to give plaintiff additional time in this regard was, once again, expressly based on its concerns specific to CAC, not Kroger. Moreover, this court's continuance was based on its concerns regarding the overriding interests of justice and not based on a belief that plaintiff had earned a wholesale excusal of his failure to sufficiently develop, in a timely manner, proof in support of each of his claims. The above considerations further inform this court's decision that it should not excuse the numerous legal and factual uncertainties which remain with regard to plaintiff's negligent hiring claim against Kroger. It is clear to this court that plaintiff has failed to provide the necessary factual or legal support for such a negligent hiring claim against Kroger, and he will therefore be limited at trial to his negligence claims against Kroger based on its actions on April 20, 2023. This, the 15th day of June, 2026. /s/ Michael P. Mills

UNITED STATES DISTRICT JUDGE

NORTHERN DISTRICT OF MISSISSIPPI

2 <https://wreg.com/news/local/shelby-county-da-dismisses-several-cases-involving-a1s-employees/> 3 As noted previously, however, the Fifth Circuit has made it clear that even evidence of bad acts occurring after the relevant events in a lawsuit may be used to show a defendant's intent under FRE 404(b). See *United States v. Webb*, 625 F.2d 709, 710 (5th Cir. 1980); *United States v. Myers*, 550 F.2d 1036, 1044 n. 10 (5th Cir. 1977); *United States v. Peterson*, 244 F.3d 385, 392– 93 (5th Cir. 2001). Thus, non-hearsay evidence of subsequent bad acts by CAC is potentially admissible under 404(b).