

FEB 26 2026

Vermont Superior Court
Windham Unit

VERMONT SUPERIOR COURT
Windham Unit
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CIVIL DIVISION
Case No. 25-CV-01496

Paula Rosin, et al v. Zaina Mavish-Jammeh, et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 3)
Filer: Oliver Arthurs Abbott
Filed Date: July 29, 2025

A motion hearing shall be scheduled

This should be set for a one-hour oral argument.

Case Background

According to the Amended complaint, and the affidavit in the criminal case: Groundworks Collaborative is a nonprofit that runs a shelter at 81 Royal Road in Brattleboro, Vermont. On April 3, 2023, Leah Rosin- Pritchard worked as a shelter coordinator at the location. ZMJ was a resident at the shelter.

According to a staff member, in the morning of April 3, 2023, ZMJ told him that she wanted to meet with Leah in the living room. He told Leah about the request. Leah thought it was strange, but went to the living room. Within a few minutes, staff heard screaming. They ran to see what was happening and observed ZMJ attacking Leah with a small axe or hatchet. They were afraid to intervene but called the police. Police reviewed video footage of the attack. The video showed ax strikes, some use of a kitchen knife, and then repeated ax strikes by ZMJ. Police arrived at 9:30 AM. Leah was dead by the time police and emergency services arrived.

Plaintiff alleges that Z MJ had violently attacked other tenants on at least two prior occasions. Once using fists and the other with a wooden box. Allegedly these victims told groundworks that if Z MJ was allowed to remain at the shelter she would kill someone. Plaintiff maintains that there are steps that shelter operators can take to reduce the known risk of violence. Plaintiff maintains that groundworks could have removed Z MJ from the premises and made sure she did not bring weapons to the shelter. Plaintiffs allege that groundworks knew with substantial certainty that if they did not mitigate the danger that ZMJ posed, it was a substantial certainty that Z MJ would kill or seriously injure someone.

This is a civil suit which arises out of a second-degree murder charge also pending in this court. (See docket 23-CR-3231). The information and affidavit are publicly accessible, and so for purposes of a brief overview, some of the facts are drawn from that affidavit.

Leah Rosin-Pritchard was working for Groundworks at the time she was allegedly murdered by Zaaina Mahvish-Jammeh.

Subject to certain limited exceptions, Vermont's Workers' Compensation statute provides the exclusive remedy for workplace ***279** injuries. 21 V.S.A. § 622.3 The statute represents a "public policy compromise in which 'the employee gives up the right to sue the employer in tort in return for which the employer assumes strict liability and the obligation to provide a speedy and certain remedy' for work-related injuries." *Murray v. St. Michael's College*, 164 Vt. 205, 209–10, 667 A.2d 294, 298 (1995) (quoting *Lorrain v. Ryan*, 160 Vt. 202, 214, 628 A.2d 543, 551 (1993)); accord *Gerrish*, 169 Vt. at 470–71, 739 A.2d at 1197–98; *Dunham v. Chase*, 165 Vt. 543, 543, 674 A.2d 1279, 1280 (1996) (mem.) ("Under the law, employees gain an expeditious remedy [for workplace injuries] without the burden of proving fault; in exchange, employers' liability is limited.").

Mead v. W. Slate, Inc., 2004 VT 11, ¶ 11, 176 Vt. 274, 278–79, 848 A.2d 257, 260 (2004)

Plaintiff advances several theories for why this case gets around the exclusive remedy provision.

Substantial Certainty

The exclusive remedy contained in workers compensation does not bar claims for intentional injuries caused by the employer. In *Kittell v. Vermont Weatherboard, Inc.* 176 Vt. 439 (1980), the court declared that an employer would need to have a specific intent to harm the employee. Otherwise, workers compensation was the exclusive remedy.

Twenty-four years later, the court addressed the issue in *Martin Mead v. Western State*, 176 Vt. 274(2004.) There, the trial judge instructed the jury that they could find defendant employer liable if defendants had the "specific intent to injure him," but that such intent could be established in one of two ways: that defendants either "had the purpose or desire to cause him injury or that although the Defendants lack[ed] such purpose or desire they knew to a substantial certainty that their actions would bring about his injury." *Id.* ¶ 6.

The Vermont Supreme Court reversed. Justice Johnson went through multiple paragraphs analyzing how the trend in the law was to adopt "substantial certainty" as a way to establish specific intent. (See paragraphs 13 and 14). She also noted that other states had rejected invitations to adopt substantial certainty. (See paragraph 15) Justice Johnson noted that *Kittell* did not preclude adoption of substantial certainty. *Id.* ¶ 17. But the court concluded that even if the court did adopt substantial certainty, they would still reverse because the facts in the record did not support the jury's conclusion that defendants knew to a substantial certainty that their actions would result in injury to plaintiff. *Id.*

The decision indicates the Supreme Court's openness to adopt "substantial certainty," but that is all dicta because the court resolved the case on different grounds. (The facts did not support substantial certainty even if that were the standard). Five years later in *Stamp Tech, Ink, v. Lindall/ Thermal Acoustical Inc.*, 2009 VT 91, the court reversed a summary judgment. The court declined to address whether it would adopt some version of the substantial certainty exception to the exclusive remedy provision of workers compensation. Again, the court resolved the case on a narrow basis, concluding that there were disputed issues of material fact.

The court most recently addressed the issue in *Martel v. Connor Contracting Inc.* 208 Vt. 498 (2018). Again all 5 justices concluded that the facts of the case would not have supported substantial certainty. However, writing for a three justice majority, Justice Carroll wrote: Kittell remains the standard in Vermont, and specific intent under Kittell is required to prove that an injury that would otherwise be compensable through workers' compensation has not occurred accidentally and the employee may, therefore, pursue an alternate remedy. Intent to injure under Kittell is a high bar—it reaches only those instances where an employer deliberately causes an employee an injury. See Kittell, 138 Vt. at 440, 417 A.2d at 926 (requiring more than that injury be "sudden but foreseeable").
Martel v. Connor Contracting, Inc., 2018 VT 107, ¶ 14, 208 Vt. 498, 507, 200 A.3d 160, 167 (2018)

Justice Robinson's two justice dissent concurs in result, but points out that there was no need for the above paragraph because the issues could be resolved on the facts. For that reason, a future court could treat paragraph 14 of *Martel* as dicta.

The plaintiff seeks discovery on the issue of what groundworks knew of ZMH's dangerousness, and whether it can meet the "substantial certainty" threshold. That threshold is a steep climb for plaintiff.

At oral argument the parties may address the court's understanding of the current state of the law.

Dual Capacity or Dual Persona Doctrine

The plaintiff points out that this doctrine is recognized in Vermont citing *Colwell v. Allstate Ins. Co.* 2003 VT 5 ¶ 25. One can easily understand the doctrine in the following hypothetical: The doctor's appointment secretary needs medical care. The doctor botches the procedure injuring the appointment secretary. The doctor is not immune by virtue of the exclusive remedy and could be liable for malpractice, because the doctor's malpractice arose from actions taken in a non-employer capacity.

While understanding the theory, I do not understand how it applies here. What is the legal relationship distinct from the employer- employee relationship that warrants application of the doctrine? Plaintiff points out that, "homeless shelters often provide more than housing by

assisting their clientele with meals, clothing, employment, and mental health care.” (Plaintiffs objection page 7). Groundworks may have provided an array of services to its residents, but they did not provide services to Leah outside of their employment capacity nor is there any connection between those services and her death.

As pointed out by defendants, the cases cited by plaintiff establish that when there is an entity taking charge of a person with violent tendencies it has a duty to exercise reasonable care, or warn third parties who might be harmed by their charge. But the cases do not seem to indicate that a general duty to warn, circumvents the exclusive remedy provision when it comes to an employee.

In *Nova University, Inc. V. Wagner*, 491 So. 2d 1116 (1986), Defendant ran a facility for troubled delinquent boys. Due to the lack of security, two of the boys escaped and came upon a four-year-old and six-year-old. They beat the two children killing one and leaving the other with serious permanent injuries. The court found that defendant could be liable for negligently failing to supervise the boys. But the two victim children were not employees of defendant, so it is hard to say how that finding helps this plaintiff.

Mitchell v. Longacre, 147 A.D. 567 (2017) is one of those decisions which assumes familiarity with the underlying decision from the trial court. What little can be gleaned from it is that a homeless shelter has a duty to other residents and visitors when it knows one of its residents has a propensity for violence.

Stora v. City of New York, 117 A.D. 3d 557, again involved an action by a resident of a shelter shot by another resident, and addresses the issue of whether the shelter has a minimum duty to provide security at the premises.

The cases cited by plaintiff would support a theory of liability if Leah were another resident or guest. The plaintiff’s premises liability theory seems to suffer the same fate. In *Garrity v. Manning*, 164 Vt. 507 (1996), plaintiff was injured on ice in the employer’s parking lot. He sued the employer’s president and majority stockholder (who was the one who sanded the parking lot) individually. The Vermont Supreme Court affirmed the trial court summary judgment decision that the exclusive remedy provision in the workers compensation statute precluded suit.

I do not see any case which explains how dual capacity, or premises liability circumvents the exclusive remedy when applied to the facts in this case. I am giving plaintiff an opportunity at oral argument to connect the dots for me.

The Common Benefits Clause Argument

Plaintiff argues that the justification for workers compensation rests on the quid pro quo premise that employees and their dependents receive benefits without having to prove fault. While their recovery is more limited, it is a certain benefit without the litigation risk and hazards

of a civil suit. The employer must pay for the injury but has a certain amount that they will need to pay the employee or his dependents. The plaintiff points out that the quid pro quo is absent where there is a complete denial of any benefits associated with loss of companionship when an employee dies. Plaintiff argues that "the quid pro quo that justifies the act," is lost and therefore the exclusivity protection for the employer should be removed. Plaintiff points to *Lorrain v. Ryan*, 160 Vt. 202 (1993), as support for their position.

Lorrain was six years prior to the Supreme Court's exhaustive analysis of the Common Benefits Clause, Article 7, in *Baker v. State of Vermont*, 170 Vt. 194 (1999) In *Samaha v. Scott's Construction*, 543 F. Supp 2d 341 (2008), Judge Sessions analyzed a similar argument and facts to this case. Applying *Baker* Judge Sessions found that:

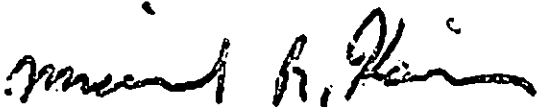
The exclusivity provision is not over-inclusive as applied to the facts of this case. Although *Samaha* has tried to analogize this case to *Lorrain*, the facts are distinguishable. In *Lorrain*, the Vermont Supreme Court held that it was arbitrary and irrational to apply the exclusive remedy provision in cases where spouses sought to sue third parties. *Lorrain*, 628 A.2d at 551. The Court ruled that next of kin may bring claims against third parties because the third-parties are outside the employer-employee relationship. *Id.* at 551. Immunizing third parties from negligence claims would serve no public purpose. *Id.* at 551. In this case, Mr. Lavigne's death occurred as part of the employer-employee relationship. Immunizing SCI serves a public purpose. It ensures that the workers' compensation system is not undermined by a series of exceptions allowing for common-law recovery against employers.

Samaha v. Scott's Const., Inc., 543 F. Supp. 2d 341, 349 (D. Vt. 2008)

On the last page of the decision, Judge Sessions points out that other states have denied challenges to the exclusivity provision under their versions of the equal protection clause.

A U.S. District Judge's decision is persuasive rather than binding authority. At this point the undersigned finds the analysis very persuasive and is giving plaintiff an opportunity to address it in oral argument.

We will set the case for a one-hour oral argument.



Michael R. Kainen
Superior Court Judge
Pursuant to V.R.E.F. 9(d)(1)(D).

Electronically Signed February 26, 2026 8:17 AM