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Torts—Narrowing the Window: Refining the Personal Duty Requirement for Coemployee Liability under Minnesota's Workers' Compensation System

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CASE NOTE: TORTS—NARROWING THE WINDOW: REFINING THE PERSONAL DUTY REQUIREMENT FOR COEMPLOYEE LIABILITY UNDER MINNESOTA'S WORKERS' COMPENSATION SYSTEM—*STRINGER V. MINNESOTA VIKINGS FOOTBALL CLUB, LLC*

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I. INTRODUCTION

Workers' compensation statutes were first enacted in the United States during the early twentieth century.[1] Minnesota

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1. 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 2.07 (2006) [hereinafter LARSON'S WORKERS' COMPENSATION LAW].

enacted its first workers' compensation statute in 1913.[2] These statutes established a mechanism for compensating victims of work-related injuries.[3] Such injuries, on occasion, may appear to arise as a result of a coemployee's actions.[4] In such cases, an often problematic issue is the question of when, if ever, in a workers' compensation system the injured employee should be allowed to recover from the coemployee.[5] The Minnesota Supreme Court directly confronted this issue in *Stringer v. Minnesota Vikings Football Club, LLC*.[6]

In deciding *Stringer*, the court faced an intersection of common-law tort liability and Minnesota's system of workers' compensation.[7] In its decision, the court added a requirement to the existing test for determining when a coemployee may be liable for another employee's injuries.[8] The new requirement is that in order for a coemployee to owe a personal duty to the injured employee, the coemployee must also have "acted outside the course and scope of employment."[9] *Stringer* suggests that the window for coemployee liability will continue to be very narrow.[10]

This note first examines the historical development of coemployee liability under Minnesota's workers' compensation system.[11] It then outlines the facts of *Stringer* and details the court's decision.[12] Next, it provides an analysis of the *Stringer* decision.[13]

2. Act of Apr. 24, 1913, ch. 467, 1913 Minn. Laws 675 (codified at MINN. STAT. §§ 176.001–.862 (2004)).

3. Paul Raymond Gurtler, *The Workers' Compensation Principle: A Historical Abstract of the Nature of Workers' Compensation*, 9 HAMLINE J. PUB. L. & POL'Y 285, 285 (1989).

4. *See, e.g.*, Meintsma v. Loram Maint. of Way, Inc., 684 N.W.2d 434 (Minn. 2004) (employee sustained injuries from "birthday spankings" given by coemployees); Ackerman v. Am. Family Mut. Ins. Co., 435 N.W.2d 835 (Minn. Ct. App. 1989) (employee killed when struck by coemployee's vehicle); Kohler v. State Farm Mut. Auto. Ins. Co., 416 N.W.2d 469 (Minn. Ct. App. 1987) (employee passenger injured in vehicle accident allegedly resulting from coemployee driver's negligence).

5. *See generally* 6 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, § 111.03 (discussing varying jurisdictional approaches to accommodating common-law tort liability against coemployees in workers' compensation systems).

6. 705 N.W.2d 746 (Minn. 2005).

7. *Id.* at 748.

8. *Id.* at 757–58. *See also infra* Part III.

9. *See Stringer*, 705 N.W.2d at 758.

10. *See id.*

11. *See infra* Part II.

12. *See infra* Part III.

13. *See infra* Part IV.

This note concludes that *Stringer's* addition to the test for coemployee liability is grounded in well-established precedent and that the addition is important for maintaining the integrity of Minnesota's workers' compensation system.[14]

II. HISTORY

A. Origins of Workers' Compensation Law

The emergence of workers' compensation law coincided with the rise of industrialization in nineteenth-century Europe.[15] With mechanization and the pressures for greater and faster production during the early industrial era came a marked increase in workplace injuries.[16] Employees injured at the workplace typically sought to recover directly from their employers.[17]

Under the system of common-law tort liability, injured employees could not easily recover for work-related injuries from their employers.[18] Injured employees had difficulty because employers were entitled to three potent defenses: contributory negligence, the fellow servant exception to vicarious liability, and assumption of risk.[19] Armed with these defenses, employers were

14. *See infra* Parts IV, V.

15. Gurtler, *supra* note 3, at 286–87.

16. *See id.*

17. *See* 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, § 2.03 (explaining the early remedies available to employees who suffered injuries at the workplace).

18. THE MINNESOTA WORKERS' COMPENSATION DESKBOOK, § 2.1 (Jay T. Hartman & Thomas D. Mottaz eds., 3d ed. 2001). Generally, an injured employee's only cause of action was based on the employer's alleged negligence. Gurtler, *supra* note 3, at 286. An employer would typically only be found negligent if the employee could demonstrate that the employer failed in some manner to provide reasonably safe equipment or machines in the workplace. *Id.*

19. 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, § 2.03. These three common-law defenses for employers were known as the "unholy trinity" defenses. Gurtler, *supra* note 3, at 287 (citing W. KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 80 (5th ed. 1984)). Under the contributory negligence defense, an injured employee could not recover from his employer if the employee was negligent in any manner, regardless of whether the employer was negligent. *Id.* at 286. Under the fellow servant defense, an injured employee could not recover from his employer if the employer could demonstrate that a fellow employee's negligence caused the injury at issue. *Id.* Under the assumption of risk defense, an injured employee could not recover from his employer if the employee was free to avoid a potentially dangerous workplace (regardless of the employee's knowledge). *Id.* at 286–87.

rarely required to compensate employees for work-related injuries.[20]

As the number of work-related injuries increased, the need for a more equitable system of compensating injured employees became greater.[21] Faced with the imbalance between the rights of employers and the rights of employees, efforts emerged to strengthen the rights of injured employees.[22] Courts mounted early reform efforts, but the task of reform was ultimately led by legislation.[23] In 1884, Germany enacted the first workers' compensation law, and soon thereafter Great Britain enacted workers' compensation legislation in 1897.[24]

These early workers' compensation acts established what would become the fundamental principles of workers' compensation law.[25] Workers' compensation is based on a compromise between employers and employees.[26] The general quid pro quo is that employees are guaranteed compensation from their employers for any work-related injuries regardless of fault, and in exchange for providing such compensation, employers cannot be held liable in common-law actions brought by employees concerning work-related injuries.[27] In effect, employees can work

20. *See* Gurtler, *supra* note 3, at 286–87.

21. MINNESOTA WORKERS' COMPENSATION DESKBOOK, *supra* note 18, § 2.1.

22. *See* 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, § 2.04.

23. *Id.* In general, the courts attempted to limit the scope and effect of the "unholy trinity" defenses. *See id.* But these efforts had little impact. *Id.* Perhaps the most significant advancement in employee rights forwarded by the courts was the adoption of the vice-principal rule. Gurtler, *supra* note 3, at 287. This rule prevented employers from delegating their common-law duties, such as providing a reasonably safe workplace, to an injured employee's coemployee. *Id.*

24. *See* Gurtler, *supra* note 3, at 288–92; 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, §§ 2.05–.06. There is perhaps no single reason why Germany and Great Britain ultimately developed and enacted workers' compensation legislation during the last years of the nineteenth century. But in each instance, it appears that placating an increasingly discontented workforce by expanding employee rights and the emerging perception that taking greater care for workers was in fact good business were particularly significant. *See* Gurtler, *supra* note 3, at 288–92; 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, §§ 2.05–.06.

25. *See* Gurtler, *supra* note 3, at 290–91.

26. *See* 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, § 1.03 (explaining the basic principles of workers' compensation systems).

27. Karst v. F.C. Hayer Co., 447 N.W.2d 180, 183–84 (Minn. 1989); MINNESOTA WORKERS' COMPENSATION DESKBOOK, *supra* note 18, § 1.1. However, employers are not exempt from common-law tort liability to injured employees if the employer willfully or intentionally injured the employee. *See* Gunderson v. Harrington, 632 N.W.2d 695, 702 (Minn. 2001) (citing Boek v. Wong Hing, 180 Minn. 470, 472, 231 N.W. 233, 234 (1930) (recognizing the intentional injury

without worry that they will not be compensated for work-related injuries, while employers can operate without worry of being subject to burdensome personal injury lawsuits for every incidence of work-related injury. There is thus incentive for employees and employers alike to support a workers' compensation system.

B. Workers' Compensation Law in Minnesota

The model of workers' compensation law that developed in Europe was adopted throughout the United States during the early twentieth century.[28] The compromise between employees and employers at the heart of European workers' compensation systems also formed the foundation of workers' compensation law in the United States.[29] This compromise is the fundamental basis of Minnesota's Workers' Compensation Act (the Act) as adopted in 1913.[30]

Once enacted, the provisions of the Act became the exclusive remedy for victims of work-related injuries.[31] But following implementation of the Act, issues of coemployee liability quickly arose.[32] In such cases, the question was when, if ever, an employee should be allowed to recover for work-related injuries from a

exception in Minnesota)).

28. *See* Gurtler, *supra* note 3, at 292–93 (discussing the historical development of workers' compensation law in the United States); 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, §§ 2.07–.08 (detailing the emergence of workers' compensation law in the United States). Among the first states to explore and then enact workers' compensation legislation were Connecticut, Illinois, Montana, New Jersey, Ohio, and Wisconsin. Gurtler, *supra* note 3, at 293. By 1920, virtually every state had adopted some form of workers' compensation legislation. 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 1, § 2.07.

29. *See* Gurtler, *supra* note 3, at 292–93.

30. *See* Act of Apr. 24, 1913, ch. 467, 1913 Minn. Laws 675 (codified at MINN. STAT. §§ 176.001–.862 (2005)); *see also* Wicken v. Morris, 527 N.W.2d 95, 99 (Minn. 1995) (citing Boryca v. Marvin Lumber & Cedar, 487 N.W.2d 876, 879 n.3 (Minn. 1992)); Foley v. Honeywell, Inc., 488 N.W.2d 268, 271 (Minn. 1992).

31. MINNESOTA WORKERS' COMPENSATION DESKBOOK, *supra* note 18, § 2.1.

32. *See, e.g.*, Behr v. Soth, 170 Minn. 278, 212 N.W. 461 (1927). In *Behr*, both plaintiff and defendant were firemen employed by the city of Albert Lea. *Id.* at 279, 212 N.W. at 461. En route to a fire, plaintiff, who was riding on a fire truck, and defendant, who was driving another vehicle to the fire, collided at a street intersection. *Id.* At issue was whether plaintiff could recover workers' compensation from the city *and* personal injury damages from defendant. *See id.* at 283, 212 N.W. at 463. The Minnesota Supreme Court held that plaintiff could elect to receive either workers' compensation or personal injury damages, but plaintiff could not receive both. *Id.* For a discussion of *Behr* in *Stringer*, see *infra* Part III.

coemployee under the workers' compensation system.[33]

In 1975, the Minnesota Supreme Court faced the issue of coemployee liability in *Dawley v. Thisius*.[34] At issue in *Dawley* was whether the estate of an employee who was killed during the course of his employment could bring a negligence action against the general manager of the decedent's employer.[35] The court noted that although the Act provided the exclusive remedy for work-related injuries, injured employees may in certain circumstances bring a negligence action against a coemployee for the coemployee's negligence in causing the injuries.[36]

Thus, the narrower question in *Dawley* was in what specific circumstances of negligence should an injured employee be allowed to recover against a coemployee.[37] The court held that a coemployee will not be liable for an employee's work-related injuries unless the injuries were the result of the coemployee's breaching a "personal duty" to the employee.[38] In order for a personal duty to exist, the court explained that the coemployee

33. *See, e.g.*, *Behr*, 170 Minn. at 280–84, 212 N.W. at 461–63. Workers' compensation law is premised on the notion that the cost of work-related injuries to employees should be absorbed by employers (e.g., through workers' compensation insurance) and passed along to consumers in the price of the product. Arens v. Hanecy, 269 N.W.2d 924, 926 (Minn. 1978) (citing Eicholz v. Shaft, 166 Minn. 339, 342, 208 N.W. 18, 19 (1926)). The general concern associated with allowing coemployee liability is that it essentially shifts the costs of work-related injuries from the employer and the consumer to the coemployee, which defeats the purposes of a workers' compensation system. *See Wicken*, 527 N.W.2d at 99; Peterson v. C.W. Kludt, 317 N.W.2d 43, 48 (Minn. 1982).

34. 304 Minn. 453, 456, 231 N.W.2d 555, 557 (1975). In *Dawley*, plaintiff's husband died from injuries he suffered at his workplace after he fell into a dip tank filled with a caustic detergent solution. *Id.* at 453, 231 N.W.2d at 556. Plaintiff brought a negligence action against the general manager of her husband's employer for damages stemming from her husband's death. *Id.* at 454, 231 N.W.2d at 556. Plaintiff claimed that defendant, who had overall responsibility for the day-to-day operations at her husband's workplace, failed to provide a safe work environment. *Id.* at 454, 231 N.W.2d at 556–57.

35. *Id.* at 455–56, 231 N.W.2d at 557. *See supra* note 34 and accompanying text.

36. *Dawley*, 304 Minn. at 455, 231 N.W.2d at 557 (citing *Behr*, 170 Minn. at 278, 212 N.W. at 461).

37. *See id.* at 455–56, 231 N.W.2d at 557.

38. *Id.* at 456, 231 N.W.2d at 557. The court explained the "personal duty" requirement: "A co-employee may be held liable when, through personal fault as opposed to vicarious fault, he breaches a duty owed to plaintiff . . . . He must have a personal duty towards the injured plaintiff, breach of which has caused plaintiff's damage." *Id.* Further, the court explained that the breach of the duty must be based on "personal fault" and cannot arise out of the coemployee's "general administrative responsibility for some function of his employment . . . ." *Id.*

must have taken direct action toward the employee or have directed others to do so.[39] The court ultimately held in favor of defendant, explaining that providing a safe workplace is a duty of the employer, not a general manager.[40] Therefore, the defendant never owed a "personal duty" to the plaintiff's husband.[41]

Following *Dawley*, the Minnesota Legislature addressed the issue of coemployee liability.[42] In 1977, the Minnesota Legislature created the Workers' Compensation Study Commission (WCSC) to formulate possible changes to the Act that might reduce the increasing costs of workers' compensation.[43] The WCSC's findings and recommendations, based on nearly two years of study, were taken under consideration by the 1979 Minnesota Legislature.[44]

During the 1979 extra session, the legislature adopted a series of amendments to the Act based on the WCSC's report.[45] The 1979 amendments represented perhaps the most sweeping changes made to the Act since its adoption in 1913.[46] Among the numerous reforms, the legislature outlined a narrow window in which coemployee liability may exist.[47] Specifically, the legislature added

39. *Id.* The court explained that "[t]he acts of negligence for which a co-employee may be held liable must be acts constituting direct negligence toward the plaintiff, tortious acts in which he participated, or which he specifically directed others to do." *Id.* (citing Steele v. Eaton, 285 A.2d 749 (Vt. 1971)).

40. *Id.* at 456, 231 N.W.2d at 557. The court further noted that while providing a safe workplace is an employer's duty, "the Workmen's Compensation Act precludes an action against the employer for its alleged breach of duty." *Id.* at 456, 231 N.W.2d at 558. Under the Act, in such circumstances where an unsafe workplace causes injury to an employee, the employer is obligated to pay workers' compensation to the injured employee. *See* MINNESOTA WORKERS' COMPENSATION DESKBOOK, *supra* note 18, § 1.1.

41. *Dawley*, 304 Minn. at 456, 231 N.W.2d at 558.

42. *See* Jay Y. Benanav, *Workers' Compensation Amendments of the 1979 Minnesota Legislature*, 6 WM. MITCHELL L. REV. 743, 743 (1980); Note, *The Minnesota Workers' Compensation Study Commission: Its Impact upon the 1979 Amendments*, 6 WM. MITCHELL L. REV. 783, 783 (1980).

43. Note, *supra* note 42, at 786. Throughout the early 1970s, the cost of workers' compensation for employers, particularly in terms of workers' compensation insurance, increased significantly. *Id.* A major reason for the cost increases was a series of legislative actions that greatly increased workers' compensation benefits for injured employees. *Id.* at 787 n.15. Such costs had increased so much for Minnesota employers in comparison to neighboring states that these increases became a "business climate" issue during the 1978 elections. *Id.* at 786.

44. *See id.* at 791.

45. Act of June 7, 1979, ch. 3, 1979 Minn. Laws Ex. Sess. 1256 (codified at MINN. STAT. § 176.061, subdiv. 5(c) (2004)); *see* Benanav, *supra* note 42, at 744.

46. *See* Benanav, *supra* note 42, at 744.

47. *See* Act of June 7, 1979, ch. 3, § 31, 1979 Minn. Laws Ex. Session 1256,

language that barred coemployee liability unless an employee's work-related injuries were the result of a coemployee's "gross negligence."[48] In narrowing the window in which coemployee liability may exist, the legislature followed the WCSC rationale that freely allowing coemployee liability for mere simple negligence would defeat the integrity and purposes of the workers' compensation system.[49]

In 1995, the Minnesota Supreme Court again confronted the issue of coemployee liability in *Wicken v. Morris*.[50] Similar to *Dawley*, at issue in *Wicken* was whether the estates of two employees who were killed during the course of their employment could bring a negligence action against the production manager of the decedents' employer.[51] In analyzing this issue under Minnesota workers' compensation law, the court recognized that its analysis must take into account the precedent of *Dawley* and the 1979 amendment to the Act.[52]

In deciding *Wicken*, the court established a two-prong test for determining when a coemployee may be liable for an employee's

1272 (codified at MINN. STAT. § 176.061, subdiv. 5(c) (2004)); Benanav, *supra* note 42, at 764.

48. Act of June 7, 1979, ch. 3, § 31. The added language concerning coemployee liability read as follows: "A co-employee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the co-employee or was intentionally inflicted by the co-employee." *Id.* The coemployee liability amendment enacted by the 1979 Minnesota Legislature remains in effect and has not been modified. *See* MINN. STAT. § 176.061, subdiv. 5(c) (2004).

49. Benanav, *supra* note 42, at 764. In its report to the legislature, the WCSC explained that allowing an employee injured at his workplace to sue a coemployee "for negligence and receive a portion of any recovery which is less than the total workers' compensation benefits due, and all of the excess, while the employer is reimbursed from the recovery for any workers' compensation benefits paid . . . tends to shift tort liability from employer to fellow employee in a manner never intended by the workers' compensation system." *Id.* (quoting MINNESOTA WORKERS' COMPENSATION STUDY COMMISSION, A REPORT TO THE MINNESOTA LEGISLATURE AND GOVERNOR, 41 (1979)).

50. 527 N.W.2d 95, 98 (Minn. 1995). In *Wicken*, plaintiffs' husbands were killed as a result of an explosion while, as part of their employment, they were attending a fire intended to dispose of a blasting agent manufactured by their employer. *Id.* at 97. Plaintiffs brought a negligence action against the production manager of their husbands' employer for damages stemming from their husbands' deaths. *Id.* Plaintiffs claimed that the production manager breached a personal duty owed to his coemployees—plaintiffs' husbands. *Id.* Plaintiffs specifically alleged that the production manager, in his haste to complete the fire, fraudulently obtained a permit to allow the fire. *Id.*

51. *Id.* at 98.

52. *Id.*

work-related injuries.[53] The first prong, adopted from *Dawley*, is that the coemployee must have breached a personal duty to the employee.[54] The second prong, adopted from the 1979 amendment to the Act, is that the employee's injuries must have arisen from the coemployee's gross negligence.[55]

Under this test, the court held in favor of defendant, explaining that plaintiffs failed to show that defendant breached a personal duty to the decedents.[56] In holding in favor of defendant, the court emphasized the importance of maintaining the integrity of Minnesota's workers' compensation system.[57] Here, the court was particularly concerned about the consequences of allowing coemployee liability when the coemployee took no direct action toward the injured employee.[58] *Wicken's* two-prong test was the existing framework for determining coemployee liability when *Stringer* commenced in 2001.

III. THE *STRINGER* CASE

A. Facts

Korey Stringer, a football player for the Minnesota Vikings, died of heat stroke on August 1, 2001 during the Vikings' summer training camp.[59] The training camp began on Monday, July 30, 2001.[60] The weather for the first week of training camp was

53. *Id.*

54. *Id.* As the court explained the first prong of its test for coemployee liability, "First, the injured employee must establish that the co-employee had a personal duty toward the employee, the breach of which resulted in the employee's injury, and that the activity causing the injury was not part of the co-employee's general administrative responsibilities." *Id.* (citing Dawley v. Thisius, 304 Minn. 453, 455, 231 N.W.2d 555, 557 (1975)).

55. *Id.* The court explained the second prong of its test for determining coemployee liability by directly quoting the 1979 amendment to the act. *Id. See* MINN. STAT. § 176.061, subdiv. 5(c) (1992). *See also supra* note 48.

56. *Wicken*, 527 N.W.2d at 99.

57. *Id.*

58. *Id.* As the court explained, "To hold otherwise, permitting co-employee liability when harm results however indirectly from the carrying out of administrative obligations incident to work responsibilities would eviscerate the fundamental purpose of the workers' compensation laws." *Id.*

59. Stringer v. Minn. Viking Football Club, LLC, 705 N.W.2d 746, 748 (Minn. 2005). The 2001 Vikings' summer training camp was held in Mankato, Minnesota. *Id.*

60. *Id.* at 749.

predicted to be abnormally hot and humid.[61] During the evening of Sunday, July 29, the night before training camp began, Vikings players attended a team meeting at which they were warned about overexertion in high heat and were instructed to stay well hydrated during the upcoming practices.[62]

The first day of camp, July 30, 2001, was a day of high heat and humidity.[63] During the course of the afternoon practice on July 30, Stringer vomited three times.[64] After vomiting for the third time during practice, Stringer was brought by Vikings head athletic trainer Charles Barta to an on-field medical trailer to "cool down" and "take it easy."[65] Already in the trailer were Fred Zamberletti, coordinator of Vikings medical services, and Paul Osterman, an assistant trainer.[66] Stringer was given fluids and was instructed to rest but was never medically examined.[67]

The second day of camp, July 31, 2001, was another day of high heat and humidity.[68] During the morning of July 31, Stringer participated in a team practice in which the players wore full pads and helmets.[69] Shortly after the morning practice, Stringer dropped to his knees, fell to the ground, and lay on his back with his hands over his head.[70]

Stringer was brought to the on-field medical trailer by

61. *See id.* at 750.

62. *Id.* at 748. The Vikings players were cautioned about the heat and proper hydration by Charles Barta, the Vikings' head athletic trainer. *Id.* at 748–49. At the meeting, the players received only oral instruction and did not receive any written instructions concerning prevention of heat-related illnesses. *Id.* at 749.

63. *Id.* at 749. The heat index on the first day of camp was 109°F. *Id.*

64. *Id.* During the morning of July 30, Stringer told Barta that he had an upset stomach. *Id.* Aware that Stringer had suffered from heat-related illnesses in previous training camps, Barta gave Stringer an antacid for his stomach and a sports drink with an extra electrolyte supplement to guard against dehydration. *Id.*

65. *Id.*

66. *Id.* At the time of Stringer's death, though Osterman was employed by the Vikings as an assistant trainer, he was not yet officially certified or registered as an athletic trainer. *Id.* at n.3. Osterman had, however, completed a four-year degree program and other necessary requirements for certification and registration. *Id.* Osterman was not officially certified as an athletic trainer until August 31, 2001, and not officially registered until January 12, 2002. *Id.*

67. *Id.* at 749.

68. *Id.* at 750.

69. *Id.* When the July 31 morning practice began at 8:45 a.m., the heat index was already approximately 90°F. *Id.*

70. *Id.*

Osterman.[71]

Inside the trailer, Osterman gave Stringer fluids as Stringer lay cooling on the trailer floor.[72] A golf cart was summoned to escort Stringer from the on-field trailer to off-field training facilities.[73] When the golf cart arrived, Stringer became unresponsive as Osterman and athletic intern D.J. Kearney attempted to raise Stringer from the trailer floor.[74] Zamberletti was called to the on-field trailer to assess Stringer's condition.[75] In the trailer, Zamberletti, Osterman, and Kearney treated Stringer by administering fluids, applying ice towels to Stringer's body, and by placing a plastic bag over Stringer's mouth to control his breathing.[76]

Shortly thereafter, Stringer was transported by ambulance to a nearby hospital.[77] Hospital staff attempted various measures to cool Stringer's body, but Stringer's condition continued to worsen as the night progressed.[78] After hours of intensive treatments failed, Stringer was pronounced dead during the early morning hours of August 1, 2001.[79]

B. Procedural History

Following Korey Stringer's death, his wife, Kelci Stringer, sought recovery.[80] As trustee and personal representative of Korey Stringer's estate, Kelci Stringer filed a wrongful death action in Hennepin County District Court.[81] The Minnesota Vikings and multiple individual Vikings employees and physicians, including Barta, Osterman, and Zamberletti, were named as defendants in the wrongful death suit.[82]

71. *Id.* Stringer was able to walk to the trailer without assistance. *Id.*
72. *Id.* at 751.
73. *Id.*
74. *Id.*
75. *Id.* at 752.
76. *Id.*
77. *Id.* Zamberletti accompanied Stringer in the ambulance and assisted the paramedics in treating Stringer. *Id.* When Stringer was admitted to the hospital, his core body temperature was 108.8°F. *Id.* at 753.
78. *Id.*
79. *Id.*
80. *Id.* at 748.
81. *Id.*
82. *Id.* at 748 n.1. The wrongful death action asserted thirteen separate counts. *Id.* at 753. Count I asserted that Osterman and Zamberletti each owed a personal duty to Korey Stringer and that they were each grossly negligent in

The claims against most of the defendants were dismissed by the district court.[83] Osterman and Zamberletti were granted summary judgment.[84] Under the two-prong test for coemployee liability established in *Wicken*, the district court held that neither Osterman nor Zamberletti owed Korey Stringer a personal duty. In addition, they were not grossly negligent and were thus entitled to judgment as a matter of law.[85]

Kelci Stringer appealed the district court's grant of summary judgment to Osterman and Zamberletti.[86] The Minnesota Court of Appeals affirmed summary judgment for Osterman and Zamberletti, but on somewhat different grounds.[87] Under the two-prong test for coemployee liability, the court held that Osterman and Zamberletti each owed a personal duty to Korey Stringer, but that they were not grossly negligent and were thus entitled to judgment as a matter of law.[88]

Kelci Stringer appealed the Minnesota Court of Appeals decision that affirmed summary judgment for Osterman and Zamberletti.[89] Specifically, Kelci Stringer petitioned the Minnesota Supreme Court for review of whether Osterman and Zamberletti were grossly negligent.[90] Osterman and Zamberletti then petitioned for cross-review of whether they owed a personal duty to Korey Stringer.[91] The Minnesota Supreme Court granted Kelci Stringer's request for review and Osterman's and Zamberletti's

carrying out their personal duty to Stringer. *Id.* More specifically, Count I asserted that Osterman and Zamberletti, as Vikings medical staff and trainers, each had a personal duty to protect and care for Stringer's health. *Id.*

83. *Id.* at 748 n.1.

84. *Id.* at 753.

85. *Id.*

86. Stringer v. Minn. Vikings Football Club, LLC, 686 N.W.2d 545, 548–49 (Minn. Ct. App. 2004). On appeal, Kelci Stringer contended that the district court erred in granting summary judgment to Osterman and Zamberletti based on coemployee immunity under Minnesota's Workers' Compensation Act. *Id.* at 549.

87. *See id.* at 553.

88. *Id.* The court explained that Osterman and Zamberletti owed a personal duty to Stringer because they "undertook direct acts toward Stringer that were not pursuant to their employer's nondelegable duty to provide a safe workplace." *Id.* According to the court, although Osterman and Zamberletti owed a personal duty, they were not grossly negligent because they "nevertheless exercised more than a scant level of care that did not entirely disregard the particularly adverse consequences arising from the symptoms of injury Stringer exhibited." *Id.*

89. *Stringer*, 705 N.W.2d at 753.

90. *Id.*

91. *Id.*

request for cross-review.[92]

C. The Stringer *Decision*[93]

The Minnesota Supreme Court framed the central issue in *Stringer* as "whether Kelci Stringer can show . . . that Vikings' employees Paul Osterman and Fred Zamberletti [coemployees of Korey Stringer] are not immune from coemployee liability."[94] The court explained that resolution of this issue required answering whether the two-prong *Wicken* test was satisfied.[95] In deciding *Stringer*, the court acknowledged that it "must address the interaction between common-law tort liability and the workers' compensation system, which has restricted coemployee liability in negligence actions."[96]

The primary question in *Stringer* was whether Osterman's and Zamberletti's actions were sufficient to create a personal duty under the first prong of the *Wicken* test.[97] Under the *Dawley* standard that constituted the first prong of the original *Wicken* test, Osterman and Zamberletti would owe a personal duty to Stringer if they took direct action toward him, or if they directed others to do so.[98] In *Stringer*, as the court explained, the parties agreed that Osterman and Zamberletti took direct action toward Stringer, but the parties disagreed as to whether these direct actions created a personal duty.[99]

In analyzing the questions of coemployee liability at issue in

92. *Id.*

93. Justice Paul H. Anderson authored the majority opinion in *Stringer*. *Id.* at 748. Justice Page, a former Minnesota Vikings player, took no part in the consideration or decision of the *Stringer* case. *Id.* at 763.

94. *Id.* at 748. The "coemployee immunity" referred to by the court was, according to the majority in *Stringer*, established by the 1979 amendment to the Act. *See id.* at 754–55; *supra* Part II.

95. *Stringer*, 705 N.W.2d at 754. *See also* Wicken v. Morris, 527 N.W.2d 95, 98 (Minn. 1995); *supra* Part II.

96. *Stringer*, 705 N.W.2d at 748.

97. *Id.* at 756.

98. *See Wicken*, 527 N.W.2d at 98.

99. *Stringer*, 705 N.W.2d at 756. Kelci Stringer argued that Osterman's and Zamberletti's administering of medical aid to Stringer was sufficient to create a personal duty. *See id.* at 756–57. Osterman and Zamberletti argued that although they took direct action toward Stringer, their actions were a necessary part of their job duties. *See id.* at 757. According to Osterman and Zamberletti, their administering medical aid to Vikings players (i.e., other Vikings employees) was a primary function of their employment and was not sufficient to create a personal duty. *See id.*

Stringer, the court focused on the precedents of *Dawley* and *Wicken*.[100] From the outset, the court acknowledged that the facts in *Stringer* were not precisely analogous to the fact patterns in *Dawley* and *Wicken*.[101] Both *Dawley* and *Wicken* involved defendant coemployees who held managerial positions that did not necessarily entail direct contact with other employees.[102]

The court recognized that, unlike *Dawley* and *Wicken*, Osterman's and Zamberletti's job duties as Vikings athletic trainers and medical staff required direct contact with Vikings players (i.e., other Vikings employees).[103] *Stringer* thus presented a novel issue: if a coemployee's job duties require direct contact with other employees, would carrying out such job duties be sufficient to create a personal duty under the first prong of the *Wicken* test? As the court explained:

> Because the facts of *Dawley* and *Wicken* involved duties not directed toward a specific person, we did not discuss whether "general administrative responsibility" meant only duties of general impact on all employees or whether it also includes carrying out work duties, regardless of whether the work duties involve direct contact with a coemployee, as the respondents [Osterman and Zamberletti] contend.[104]

The court explained that under *Dawley* and *Wicken*, though direct action by the coemployee is necessary to create a personal duty, direct contact alone is insufficient.[105] This is because, as the *Stringer* court stated, an "employee whose job involves direct contact with others should not bear inordinate risk for coemployee liability for the simple fact of his chosen employment or assigned duties."[106] The court further explained that in *Dawley* and *Wicken* its primary concerns "included that the coemployee not be held personally

100. *Id.* at 757–58.

101. *Id.* at 756.

102. *Id. See also Wicken*, 527 N.W.2d at 98–99; Dawley v. Thisius, 304 Minn. 453, 455–56, 231 N.W.2d 555, 557–58 (1975).

103. *Stringer*, 705 N.W.2d at 756.

104. *Id.* In *Dawley*, the court explained that in cases where there was a question of coemployee liability, "[p]ersonal liability . . . will not be imposed on a co-employee because of his general administrative responsibility for some function of his employment without more. He must have a personal duty towards the injured plaintiff, breach of which has caused plaintiff's damage." *Dawley*, 304 Minn. at 456, 231 N.W.2d at 557.

105. *Stringer*, 705 N.W.2d at 757.

106. *Id.*

liable for decisions he was required and authorized to make as part of his job and that we '[maintain] the integrity of the compromise between employers and employees' under workers' compensation."[107] The court noted that it was for these reasons that *Dawley*, and later *Wicken*, stated that "personal liability . . . will not be imposed on a co-employee because of his general administrative responsibility for some function of his employment without more."[108]

Stringer interpreted *Dawley's* and *Wicken's* discussions of "general administrative responsibility" as "articulat[ing] essentially the same concept" as course and scope of employment.[109] The court explained that "a personal duty necessarily contemplates that the coemployee must have acted outside of his or her course and scope of employment."[110] Thus, according to *Stringer*, there is a two-prong test for establishing a personal duty (the first prong of the *Wicken* test): a coemployee (1) must have taken direct action toward the employee or have directed others to do so; and (2) must have acted outside the course and scope of his employment.[111]

The *Stringer* court clearly acknowledged that the specific phrase "course and scope of employment" was not used in either *Dawley* or *Wicken* in their discussions of personal duty.[112] But the court offered justification for adding the "outside the course and scope of employment" requirement.[113] The court's primary reason for adding the requirement was its deep reservation about allowing coemployee liability for decisions and actions that a coemployee is required to make as part of his job.[114] As the court explained, "[a]cting within the course and scope of employment is what brings

107. *Id.* at 758 (quoting *Wicken*, 527 N.W.2d at 99).
108. *Id.* at 757 (quoting *Wicken*, 527 N.W.2d at 98).
109. *Id.* at 758.
110. *Id.*
111. *Id.* at 757. The court defined "scope of employment" as "the field of action in which a servant is authorized to act in the master-servant relationship." *Id.* at 758 (quoting BLACK'S LAW DICTIONARY 1374 (8th ed. 2004)). The court defined "course of employment" as "[e]vents that occur or circumstances that exist as a part of one's employment; esp., the time during which an employee furthers an employer's goals through employer-mandated directives." *Id.* (quoting BLACK'S LAW DICTIONARY 378 (8th ed. 2004)).
112. *Id.* at 758.
113. *See id.* at 758–60.
114. *Id.* at 758 (citing *Wicken*, 527 N.W.2d at 99) (explaining that "permitting co-employee liability when harm results however indirectly from the carrying out of administrative obligations incident to work responsibilities would eviscerate the fundamental purpose of the workers' compensation laws").

the coemployee within the protection of the workers' compensation system."[115]

The protection to which the court alluded is that under Minnesota's Workers' Compensation Act, employers are liable for any injuries to employees arising out of the course of employment.[116] Thus, according to *Stringer*, if an employee's injuries arise out of the decisions or actions of a coemployee acting within the course and scope of his employment, the injured employee's exclusive remedy should be workers' compensation.[117] The court concluded that "adopting a course and scope of employment prong is compatible with the purposes of the workers' compensation system" and is necessary for maintaining the system's integrity.[118]

Having modified the first prong of the *Wicken* test, the court then applied its new framework for determining coemployee liability to the *Stringer* case.[119] The court ultimately determined that although Osterman and Zamberletti took direct action toward Stringer, they were acting within their course and scope of employment.[120] As the court explained, "[w]hile in retrospect we may want or expect that Osterman and Zamberletti would have responded to Stringer's condition differently, they nonetheless were acting within their scope of employment, and any duty they had toward Stringer did not exist absent their employment status."[121] The court thus held that Osterman and Zamberletti did not owe a personal duty to Stringer, and therefore the court did not reach the question of gross negligence.[122] Based on this holding, the court affirmed summary judgment for Osterman and

115. *Id.*

116. MINN. STAT. § 176.021, subdiv. 1 (2004).

117. *See Stringer*, 705 N.W.2d at 757–58. The dissent's primary concern was that there is no precedent or basis for the majority's adoption of the course and scope of employment requirement. *Id.* at 763. But the majority dismissed the dissent's argument that *Behr* rejected a course and scope of employment requirement as an overly broad and ultimately incorrect interpretation and reading of *Behr*. *Id.* at 759. For detailed discussion of the *Stringer* dissent, see *infra* Part III.D.

118. *Stringer*, 705 N.W.2d at 760.

119. *See id.* at 760–63.

120. *Id.* at 761–62.

121. *Id.* at 762. The court further explained that "[h]ere, Osterman's and Zamberletti's obligations to Stringer directly resulted from their employment by the Vikings and the Vikings' efforts to provide a safe workplace for their players. The record shows that the purpose for employing trainers was to protect the health and safety of the players." *Id.* at 762.

122. *Id.* at 763.

Zamberletti.[123]

D. The Stringer *Dissent*

Justice Hanson's dissent in *Stringer* stands in stark opposition to the majority.[124] In short, the dissent concluded that (1) the evidence presented demonstrated that Osterman and Zamberletti, as a matter of law, owed a personal duty to Korey Stringer, and (2) regarding the gross negligence prong, there were genuine issues of material fact such that summary judgment for Osterman and Zamberletti was inappropriate.[125] The dissent's primary concerns centered on the majority's addition of the "outside the course and scope of employment" requirement to the personal duty prong of the *Wicken* test.[126]

According to the dissent, in order to establish a personal duty, an injured employee should not have to prove that a coemployee acted outside the course and scope of his employment.[127] The dissent pointedly opposed the majority's interpretation of Minnesota's legislative and judicial precedents concerning coemployee liability and personal duty and presented a distinct alternative analysis.[128]

The dissent began its analysis by outlining the policy considerations that *Stringer* raises.[129] At the outset, the dissent explained that it shared the majority's concerns that "unlimited coemployee liability might intrude on the compromise reached in the workers' compensation laws between employer and employees, and could erode the benefit of the immunity from tort liability that is provided to employers."[130] The dissent then outlined the

123. *Id.*

124. *See Stringer*, 705 N.W.2d at 763 (Hanson, J., dissenting). Justice Meyer joined the dissent of Justice Hanson. *Id.*

125. *Id.* In regard to the question of personal duty, the first prong of the *Wicken* test, the dissent explained that, "I would hold that, under our precedent interpreting Minnesota's law of 'personal duty' and absent directions to the contrary from the legislature, the plaintiff need not prove that the coemployee was acting outside the course and scope of his employment, but only that the coemployee's acts were taken directly toward the injured employee and were not general actions taken in the performance of the employer's nondelegable duty to provide a safe workplace." *Id.*

126. *See id.* at 763–67.

127. *Id.* at 763; *see supra* note 125.

128. *See Stringer,* 705 N.W.2d at 763–67.

129. *Id.* at 763–64.

130. *Id.* at 763.

arguments in favor of and against narrowing the window of coemployee liability in a workers' compensation system.[131] Ultimately, the dissent concluded that because there are competing policy considerations at issue concerning narrowing the window of coemployee liability, "any further restrictions on coemployee liability should be addressed by the legislature, not by this court."[132]

The dissent then analyzed Minnesota's legislative history relating to coemployee liability to show that there is no basis for the majority's addition of the "outside the course and scope of employment" requirement.[133] The dissent defined the central issue for consideration as "whether Minnesota's workers' compensation laws expressly eliminate or restrict coemployee liability."[134] According to the dissent, Minnesota's Workers' Compensation Act has always been understood to provide immunity from tort liability to employers, but not to coemployees.[135] The dissent noted that when other states have extended immunity to coemployees, such states have done so expressly through legislative action.[136]

Based on its analysis, the dissent explained that the Minnesota legislature has never expressed "any intent to abrogate common law coemployee liability."[137] Rather, the dissent explained that Minnesota's Workers' Compensation Act preserves coemployee liability.[138] The dissent noted that the Act "preserves the liability of

131. *Id.* at 763–64. Among the arguments for narrowing the window for coemployee liability noted by the dissent are that "coemployees could risk serious personal liability on a daily basis . . . and coemployee liability might provide the employer with a subrogation claim against the employee, shifting the burden for compensating workplace injuries from the employer to the employee." *Id.* at 763. Among the arguments against narrowing the window for coemployee liability noted by the dissent are that "the injured employee is entitled to be fully compensated for his injuries by all but the employer; the coemployee tortfeasor should not be relieved of the consequences of his wrongdoing; [and] extending immunity to the coemployee would encourage fellow employees to neglect their duties." *Id.* at 764.

132. *Id.* at 763.

133. *See id.* at 764–65.

134. *Id.* at 764.

135. *Id.* In discussing immunity provided to employers under the Act, the dissent quoted Minnesota Statutes section 176.031 (2004), which stated: "The liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee, personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death." *Id.*

136. *Stringer*, 705 N.W.2d at 764.

137. *Id.* at 765.

138. *Id.*

a 'third party' to injured employees."[139] According to the dissent, "third party" has been held to include coemployees.[140] The dissent explained that the 1979 amendment to the Act "confirms that a 'third party' includes a coemployee and that coemployees are not covered by the employer's immunity from tort liability."[141] The dissent thus concluded that under the Act there is no coemployee immunity, the only restriction on coemployee liability is the heightened gross negligence standard, and there is no mention of personal duty.[142]

Having found no legislative basis for the majority's addition to the personal duty prong of the *Wicken* test, the dissent then analyzed the relevant case law concerning coemployee liability.[143] The dissent conceded that the concept of personal duty in relation to coemployee liability originated in previous decisions of the Minnesota Supreme Court and not the Minnesota legislature.[144] While the dissent agreed that the personal duty prong is applicable, the dissent explained that a major question concerning personal duty and coemployee liability is the proper scope of this prong.[145]

Based on its analysis of relevant case law, the dissent argued that the majority's addition of the "outside the course and scope of employment" requirement is an unwarranted and overly broad expansion of the personal duty prong.[146] The dissent did not dispute the court's holdings in *Dawley* or *Wicken* that established the

139. *Id.* (citing MINN. STAT. § 176.061, subdiv. 5 (2004)).

140. *Id.* (citing Behr v. Soth, 170 Minn. 278, 283, 212 N.W. 461, 463 (Minn. 1927)). For general discussion of *Behr, see supra* note 32.

141. For discussion of the 1979 amendment to the Act, *see supra* Part II.B. The dissent explained that the amendment provides a "restriction of third-party liability for a coemployee." *Stringer*, 705 N.W.2d at 765. Specifically, the amendment stated, "A coemployee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the coemployee or was intentionally inflicted by the coemployee." *Id.* (quoting Act of June 7, 1979, ch. 3, § 31, 1979 Minn. Laws Ex. Sess. 1256, 1272 (codified at MINN. STAT. § 176.061, subdiv. 5(c) (2004))). *Id.*

142. *Id.*

143. *See id.* at 765–67.

144. *Id.* at 765. *See* Wicken v. Morris, 527 N.W.2d 95, 98–99 (1995); Dawley v. Thisius, 304 Minn. 453, 455–56, 231 N.W.2d 555, 557–58 (1975).

145. *Stringer*, 705 N.W.2d at 765.

146. *Id.* at 765–66. Specifically, the dissent explained, "I read the majority opinion to expand the personal-duty prong, and quite broadly, when it adds the requirement that the coemployee's acts must be outside the course and scope of employment. Such a requirement is not supported by any legislative action . . . [and] is not required by prior case law . . . ." *Id.*

personal duty requirement for coemployee liability.[147] But according to the dissent, *Dawley* and *Wicken* set forth a narrow test for establishing personal duty.[148]

But the dissent argued that, by adding the "outside the course and scope of employment" requirement, the majority broadened the test for establishing personal duty.[149] According to the dissent, this broadening of the personal duty prong "would have the effect, perhaps unintended, of providing immunity to coemployees that is essentially coextensive with that of the employer."[150] The dissent explained that if the legislature had intended to restrict coemployee liability or extend immunity to coemployees in the manner contemplated by the majority, the legislature would have expressly done so in amending the Act.[151]

Finding no basis for the majority's addition to the personal duty prong of the *Wicken* test, the dissent explained that, under the original *Wicken* test, it would find that Osterman and Zamberletti owed a personal duty to Korey Stringer.[152] Proceeding to the gross negligence prong, the dissent explained that it found genuine issues of material fact as to whether Osterman and Zamberletti were grossly negligent.[153] Accordingly, the dissent concluded that summary judgment granted for Osterman and Zamberletti should be reversed and the case remanded for trial.[154]

IV. ANALYSIS

A. *Summary of* Stringer*, Questions* Stringer *Raises*

Stringer modified the *Wicken* test for determining coemployee liability under Minnesota's workers' compensation system.[155] Specifically, *Stringer* added a new requirement for determining

147. *See id.* at 767.
148. *Id.* The narrow test for personal duty referred to by the dissent is that "liability must be based on a coemployee's direct acts toward the injured employee and not on general actions taken in performance of the employer's nondelegable duty to provide a safe workplace." *Id.*
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.* at 767–68.
153. *Id.* at 768.
154. *Id.*
155. *See supra* Part III.C.

when a coemployee will owe a personal duty.[156] Under *Stringer*, a coemployee will not owe a personal duty unless he acted outside the course and scope of his employment.[157] Arguably, the effect of *Stringer* is that there is now a heightened standard for establishing personal duty in coemployee liability cases.[158] The standard is heightened because, for a coemployee to owe a personal duty under *Stringer*, he must have taken direct action toward the plaintiff-employee or have directed others to do so, *and* he must have acted outside the course and scope of his employment.[159]

The *Stringer* court's modification of the framework for determining coemployee liability naturally raises many questions. Perhaps most significant is whether the *Stringer* court's addition to the personal duty prong of the *Wicken* test is appropriate or justified. Moreover, questions remain as to how the addition of the course and scope of employment requirement will be interpreted and applied. Further, there is a question as to what effect the addition will ultimately have on coemployee liability in Minnesota. Though subject to criticism, *Stringer's* addition of the course and scope of employment requirement is grounded in well-established precedent and is justified because it serves to protect the purposes and benefits of Minnesota's workers' compensation system.

B. Basis for Stringer's *Personal Duty Modification*

1. Judicial Basis

Stringer's modification of the framework for determining coemployee liability is consistent with relevant Minnesota case law concerning coemployee liability. *Dawley* and *Wicken* established the framework for determining coemployee liability in Minnesota.[160] Therefore, it is important that any Minnesota court resolving an issue of coemployee liability formulate its holding within the precedents of *Dawley* and *Wicken*.

In adding the course and scope of employment requirement, *Stringer* does not stray from the intent and reasoning of *Dawley* and *Wicken*. Ensuring protection for coemployees from liability for

156. *Id.*
157. *Stringer*, 705 N.W.2d at 757.
158. *Id.* at 758.
159. *See id.* at 757–58.
160. *See supra* Part II.B.

work-related injuries was an express concern of both the *Dawley* and *Wicken* courts.[161] Moreover, and perhaps most significantly, *Dawley* and *Wicken* were concerned that too freely allowing coemployee liability would defeat the purposes and benefits of Minnesota's workers' compensation system.[162] In light of such concerns, *Dawley* and *Wicken* first specifically narrowed the window of coemployee liability so as to protect the integrity of the workers' compensation system.[163]

Stringer only refines further the narrow window for coemployee liability intended by *Dawley* and *Wicken* by expanding on their discussions of when a personal duty may exist.[164] *Dawley* and *Wicken* sought to prevent coemployee liability based on a coemployee's job duties.[165] But *Dawley's* and *Wicken's* holdings that a personal duty may not arise out of a coemployee's administrative responsibilities did not necessarily protect coemployees whose job duties involve direct contact with other employees.[166] *Stringer* extended *Dawley* and *Wicken* by explaining that a coemployee does not owe a personal duty unless he acted outside the course and scope of his employment (i.e., a personal duty may not be based on events that arise out of the course and scope of a coemployee's employment).[167] By adding the course and scope of employment requirement, the *Stringer* court aimed to protect all coemployees from potential liability, including those whose job duties require direct contact with other employees.[168]

Like *Dawley* and *Wicken*, *Stringer* narrowed the window of coemployee liability in order to maintain the integrity of Minnesota's workers' compensation system.[169] *Stringer's* rationale for further narrowing this window is consistent with the rationale offered by *Dawley* and *Wicken*.[170] Specifically, *Stringer* reasoned, just

161. *See* Wicken v. Morris, 527 N.W.2d 95, 98 (Minn. 1995); Dawley v. Thisius, 304 Minn. 453, 455–56, 231 N.W.2d 555, 557 (1975).

162. *See Wicken*, 527 N.W.2d at 98–99; *Dawley*, 304 Minn. at 455–56, 231 N.W.2d at 557–58.

163. *See Wicken*, 527 N.W.2d at 98–99; *Dawley*, 304 Minn. at 455–56, 231 N.W.2d at 557–58.

164. *See Stringer*, 705 N.W.2d at 758.

165. *See Wicken*, 527 N.W.2d at 98–99; *Dawley*, 304 Minn. at 455–56, 231 N.W.2d at 557–58.

166. *See Stringer*, 705 N.W.2d at 756.

167. *Id.* at 757–58.

168. *See id.* at 758.

169. *See id.* at 760.

170. *See Stringer*, 705 N.W.2d at 760; *Wicken*, 527 N.W.2d at 99; *Dawley*, 304

as *Dawley* and *Wicken* did, that maintaining a narrow window of coemployee liability ensures that the fundamental compromise upon which workers' compensation is based is preserved and that the costs of work-related injuries are borne ultimately by consumers and not coemployees.[171]

2. Legislative Basis

Stringer's addition of the course and scope of employment requirement is also consistent with legislative intent concerning coemployee liability. The 1979 amendment to Minnesota's Workers' Compensation Act[172] was specifically passed with intent to narrow the window in which coemployee liability will exist.[173] The legislature added language to the Act stating that coemployee liability will exist only when a work-related injury "resulted from the gross negligence of the coemployee or was intentionally inflicted by the coemployee."[174]

The 1979 amendment indicates that the legislature intended for coemployee liability to exist only in narrowly defined circumstances.[175] In deciding to narrow the window of coemployee liability, the legislature sought to protect the purposes and benefits of Minnesota's workers' compensation system.[176] The legislature, like the *Dawley* and *Wicken* courts, was also seeking to maintain the fundamental compromise upon which workers' compensation is based to ensure that the costs of work-related injuries are borne ultimately by consumers and not coemployees.[177] It was for these same reasons that *Stringer* further narrowed the window of coemployee liability by adding the course and scope of

Minn. at 455–56, 231 N.W.2d at 557.

171. *See Stringer*, 705 N.W.2d at 760; *Wicken*, 527 N.W.2d at 99; *Dawley*, 304 Minn. at 455–56, 231 N.W.2d at 557.

172. Act of June 7, 1979, ch. 3, § 31, 1979 Minn. Laws Extra Sess. 1272 (codified as amended at MINN. STAT. § 176.061, subdiv. 5 (2004)). *See also supra* Part II.B (discussing the act and other developments in Minnesota workers' compensation law).

173. *See supra* Part II.B.

174. Act of June 7, 1979, ch. 3, § 31, 1979 Minn. Laws Extra Sess. 1272 (codified at MINN. STAT. § 176.061, subdiv. 5(c) (2004)). The 1979 amendment concerning the gross negligence of a coemployee comprises the second prong of the *Wicken* test. *Wicken*, 527 N.W.2d at 98. *See also supra* Part II.B.

175. *See supra* Part II.B.

176. *Id.*

177. *See* Benanav, *supra* note 42, at 764; *Wicken*, 527 N.W.2d at 99; *Dawley*, 304 Minn. at 455–56, 231 N.W.2d at 557.

employment requirement.[178]

C. *Criticism and Defense of* Stringer

Stringer introduced language to the *Wicken* test for determining coemployee liability that was not previously used.[179] The *Stringer* court was acutely cognizant of the fact that it was modifying the elements for establishing personal duty in coemployee liability cases.[180] Though *Stringer* appears grounded in well-established legislative and judicial precedent, *Stringer* is not free from criticism.

There is a valid concern that the court is in effect legislating on its own by arbitrarily adding the course and scope of employment requirement. Minnesota's workers' compensation system was enacted by the Minnesota Legislature in 1913.[181] Because the workers' compensation system exists as statutory law, modifications and amendments to the Act are the purview of the Minnesota legislature. But interpretation of these statutes falls to Minnesota's judiciary.

The question then is whether the *Stringer* court was within its bounds in adding the course and scope of employment requirement. The *Stringer* court of course does not purport to modify the statutory framework concerning coemployee liability established by the legislature. What the *Stringer* court modified was its own test for determining coemployee liability within the narrow window for such liability as intended and outlined by the legislature.

Such modification was necessary because the fact pattern in *Stringer* raised issues relating to coemployee liability that had yet to be fully analyzed under the *Wicken* test.[182] In *Stringer*, the primary question was whether Osterman's and Zamberletti's actions toward Stringer were sufficient to create a personal duty, even though these actions were required by Osterman's and Zamberletti's job duties.[183] Upon its analysis of legislative intent and judicial precedent concerning coemployee liability, the *Stringer* court rightly concluded that the window for such liability is to be kept

178. *See Stringer*, 705 N.W.2d at 759–60.
179. *Id.* at 758.
180. *See id.*
181. *See* Act of Apr. 24, 1913, ch. 467, 1913 Minn. Laws 675 (codified as amended at MINN. STAT. §§ 176.001–.862 (2004)).
182. *See Stringer*, 705 N.W.2d at 756.
183. *Id.*

narrow so as to preserve the integrity of the workers' compensation system.[184] But the *Stringer* court realized that the original *Wicken* test would likely allow a personal duty to exist under the circumstances presented in *Stringer*, which in effect would be to more freely allow coemployee liability.[185] That is, a personal duty could be based solely upon a coemployee's job duties that require direct contact with other employees.

To avoid this result, and to maintain a narrow window of coemployee liability, the *Stringer* court modified its own test for personal duty based upon its interpretation of *Dawley* and *Wicken*.[186] The *Stringer* court interpreted *Dawley's* and *Wicken's* discussions of "general administrative responsibility" as "articulat[ing] essentially the same concept" as course and scope of employment.[187] Based on its interpretation, the court added a new requirement that essentially heightened the standard for establishing a personal duty.[188]

But as the dissent suggests, a worrisome question concerning *Stringer* is whether the majority's interpretation of *Dawley* and *Wicken* is unwarranted and too expansive.[189] The difference between *Stringer* and *Dawley* and *Wicken*, is that in *Stringer*, the litigation was based on coemployees' direct actions toward another employee, while in *Dawley* and *Wicken* the litigation was based on coemployees' administrative responsibilities over other employees. Preventing coemployee liability based on a coemployee's job duties was a primary aim of the *Dawley* and *Wicken* courts.[190] Thus, *Dawley* and *Wicken* held that personal duty cannot be based on a coemployee's general administrative responsibilities.[191]

Based on the intent of *Dawley* and *Wicken*, it is not an overly expansive interpretation by the *Stringer* court to hold that a personal duty cannot be based on a coemployee's direct actions toward another employee that arise out of the coemployee's job duties. To hold that a personal duty exists in such circumstances

184. *See id.* at 758.
185. *See id.*
186. *See id.* at 757–58.
187. *Id.* at 758.
188. *See id.* at 757–58.
189. *See id.* at 765–66 (Hanson, J., dissenting).
190. *See Wicken*, 527 N.W.2d at 99; *Dawley*, 304 Minn. at 455–56, 231 N.W.2d at 557.
191. *Wicken*, 527 N.W.2d at 99; *Dawley*, 304 Minn. at 455–56, 231 N.W.2d at 557.

would be to more freely allow coemployee liability, which is directly contrary to the policy objectives underlying *Dawley* and *Wicken*. Like *Dawley* and *Wicken*, the *Stringer* court sought to prevent coemployee liability based on a coemployee's job duties. Thus, *Stringer* is much more a logical extension of the policy objectives of *Dawley* and *Wicken* than a broadly off-base interpretation.

D. Policy Considerations Prevail

Though *Stringer* may be criticized for the basis it provides in support of adding the course and scope of employment requirement, the addition is nonetheless justified by the policy objectives it seeks to protect. In adding the course and scope of employment requirement, *Stringer* protects the integrity of Minnesota's workers' compensation system. *Stringer* limits coemployee liability and the resulting shift in costs for work-related injuries to coemployees. Adding the requirement ensures that persons whose employment involves direct contact with other employees will not necessarily bear a greater risk for coemployee liability simply because of their job duties. As a result, persons whose job duties require direct contact with other employees will be able to work without worry that their job duties alone might put them at greater risk for personal liability to other employees.[192]

By maintaining the narrow window of coemployee liability, *Stringer* suggests that the circumstances in which coemployee liability may exist will continue to be very limited. Maintaining the integrity of Minnesota's workers' compensation system, as *Stringer* does, is important as a matter of public policy because the system guarantees an equitable and efficient means of compensating victims of work-related injuries.[193]

VI. CONCLUSION

Stringer's addition of the course and scope of employment requirement does not in any sense mark a drastic new direction for

192. The *Stringer* court noted that persons who provide health-care services would, for example, be particularly well served by its addition of the course and scope of employment requirement. *See Stringer*, 705 N.W.2d at 762. As the court explained, "we . . . want those who provide health care services to be able to perform their duties and respond to emergencies without unduly worrying about being subject to personal liability for their acts." *Id.*

193. *See Wicken*, 527 N.W.2d at 99; Franke v. Fabcon, Inc., 509 N.W.2d 373, 376 (Minn. 1993); Foley v. Honeywell, Inc., 488 N.W.2d 268, 271 (Minn. 1992).

establishing coemployee personal duty. Rather, though *Stringer* adds new language to the existing framework for determining coemployee liability, *Stringer* is consistent with the intent and reasoning of well-established precedent that states such liability should exist only in very limited circumstances.

Because *Stringer* was decided a little over a year ago, there is not yet any real indication of how its course and scope of employment requirement will be treated and applied by Minnesota courts. The courts hopefully will recognize and accept *Stringer* simply as a new caveat in the well-established test for determining coemployee liability. *Stringer's* addition to this test affirms that the window for coemployee liability under Minnesota's workers' compensation system will remain very narrow.