IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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| JANICE CASEY | ) | CASE NO. CV-17-880327 |
| | ) | |
| Plaintiff | ) | JUDGE NANCY R. MCDONNELL |
| | ) | |
| vs. | ) | |
| | ) | |
| ERIE INSURANCE COMPANY, et al. | ) | **ORDER GRANTING DEFENDANTS DERREK AND JOY SUPPLE'S MOTION FOR SUMMARY JUDGMENT** |
| | ) | |
| Defendants | ) | |
| | ) | |

Defendants Derrek and Joy Supple have filed a Motion for Summary Judgment denying they are vicariously liable for the negligent conduct of defendant Kaycie Merkel.

The facts relevant to this motion are straightforward. On June 5, 2015, defendant Kaycie Merkel (Kaycie) was babysitting for the defendants Joy and Derrek Supple (Supples). It was her first time babysitting for the family. Kaycie spoke by phone and communicated by e-mail with Mrs. Supple prior to June 5, 2015. The two had discussed a tentative schedule for babysitting during the summer months as well as the pay. Kaycie was never paid for this one time job. Kaycie was not able to work the hours requested on June 5, 2015, and the two agreed that Kaycie would drop the two children off at Mrs. Supple's employment so that Kaycie could be on time for her job at Marc's. Additionally, Kaycie dropped off a friend of the Supple's children on the way to Mrs. Supple's job. Kaycie used her own vehicle to transport the children. While driving with the children that day, Kaycie was involved in a motor vehicle accident with plaintiff's decedent.

The issue in the instant motion is whether Kaycie is an employee of the Supple's, thereby making them vicariously liable for her negligence or if she is an independent contractor, thereby absolving them of liability.

In order to answer this question, the court must look at all the facts and circumstances involved. However, the primary factor is which party has the right to control the manner and means of the work. (*Industrial Commission of Ohio v. Laird*, 126 Ohio St. 617, 619 (1933), *Harman v. Schnurmacher*, (Ohio App. 11th District) 84 Ohio App. 3d 207 (1992), *Hartings v. The National Mutual Insurance Co.*, 2014 Ohio App. Lexis 1757). The factors to be examined are (1) whether one employed is engaged in a distinct occupation or business; (2) whether the work is done by a specialist, requiring a special skill; (3) whether the worker or the employer supplies the place and requisite instrumental ties; (4) the length of time for which the person is employed; (5) the method of payment, whether by the time or the job; and (6) whether the work is part of a regular business *Harman* at 212. An examination of these factors and applying them to the facts of instant case clearly demonstrates Kaycie is an independent contractor and not an employee of the Supples.

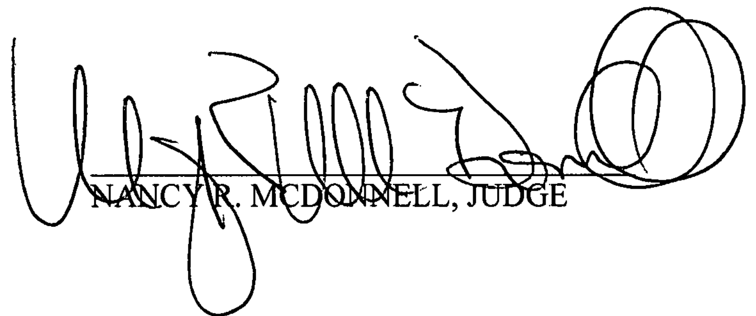
First, a teenage babysitter is not engaged in a distinct occupation or business. Kaycie testified she was babysitting for extra money. It was not her occupation or business. Second, while a babysitter is entrusted with someone's children, it can hardly be said to be work requiring a special skill. There was no testimony of any training or certification. Third, Kaycie provided an important instrumentality, her automobile, to perform the duties for which she was hired, specifically transporting the children to and from activities as well as Mrs. Supple's job. Fourth, this was Kaycie's first time babysitting for this family. She never babysat for them again. Next, it is undisputed that Kaycie was never paid for the one time she babysat for the Supples. The

final factor, whether the work is part of a regular business, clearly points to Kaycie being an independent contractor. It is neither a regular business for Kaycie or the Supples.

While no cases in Ohio regarding the issue at hand could not be found, several other states have ruled that a teenage babysitter is an independent contractor. *Morin v. Department of Social Services*, 174 Mich. App. 718, 740, 436 N.W. 2d 729, 730 (1989), *Stauffer v. Unemployment Comp. Board of Review*, 74 A. 3d 398 (PA Commw. Court 2013) and *Demarco v. Bouchard*, 274 N.J. Super. 197, 198, 643 A. 2d 662 (Law Div. 1994).

For all of the foregoing reasons, defendants Derrek and Joy Supple's Motion for Summary Judgment is granted. In light of the above ruling, Summary Judgment is granted on the cross-claims of Erie Insurance Company, State Farm Insurance Company for potential contribution and/or indemnification.

IT IS SO ORDERED.



NANCY R. MCDONNELL, JUDGE

## CERTIFICATE OF SERVICE

A copy of the foregoing Order Granting Defendants Derrek and Joy Supple's Motion for Summary Judgment was sent by ordinary U.S. Mail this 8th day of June, 2018 to:

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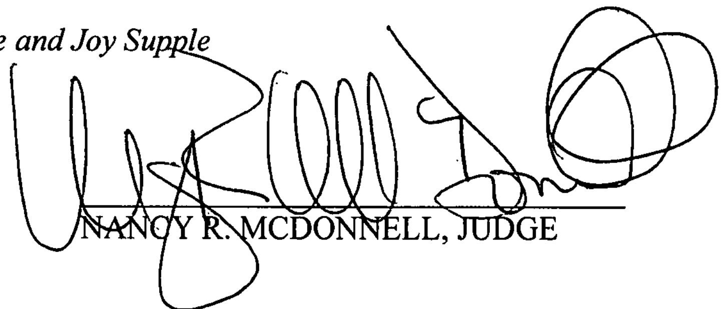

NANCY R. MCDONNELL, JUDGE