

**FIFTH DIVISION  
BROWN, C. J.,  
MERCIER, P. J., and EPPS, J.**

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**October 2, 2026**

## In the Court of Appeals of Georgia

A26A1174. REEVES et al. v. HIGBEE KYG, LP.

EPPS, Judge.

Portia Reeves, acting individually and on behalf of her minor child, appeals from the trial court's grant of summary judgment in favor of Higbee KYG, LP, on all claims. Reeves contends a jury must decide whether Higbee is vicariously liable for the actions of two off-duty police officers working security for Higbee who chased a fleeing shoplifting suspect that collided with and injured Higbee's daughter. For the reasons that follow, we affirm.

We review de novo a grant or denial of summary judgment, viewing the evidence and all reasonable conclusions and inferences drawn from it in the light most favorable to the nonmovants. Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. The burden on the

moving party may be discharged by pointing out by reference to the affidavits, depositions and other documents in the record that there is an absence of evidence to support the nonmoving party's case. If the movant meets this burden, the nonmovants cannot rest on their pleadings, but rather must point to specific evidence giving rise to a triable issue.

*Paradise Ent. Group v. Favors*, 363 Ga. App. 636, 638 (871 SE2d 916) (2022) (citations and punctuation omitted). See also OCGA § 9-11-56(c).

Acting individually and on behalf of her daughter, Reeves filed the underlying suit, asserting claims against Higbee for premises liability, negligence, negligent infliction of emotional distress as to both the child and Reeves, respondeat superior for the alleged negligence of the police officers, and loss of consortium as to Reeves. Higbee moved for summary judgment on all claims, arguing an employer of an off-duty police officer cannot be held vicariously liable for police work unless performed at the direction of the employer.

In support of its motion, Higbee filed the affidavit of a store employee who observed the shoplifting suspect on Dillards's security surveillance camera. The employee radioed the off-duty officers to report his observation that the suspect was concealing clothing items in a large shopping bag, to report the location of the suspect,

and to give a physical description of the suspect. The employee did not direct, instruct, or ask the officers to take any action. Based on this tip, the two police officers identified the suspect and approached him while still inside the Dillards store. The suspect fled the store and collided with Reeves's daughter in the common area of the mall, injuring her.

Higbee also filed Reeves's deposition, wherein she testified that she and her daughter were just outside of Dillards in the mall's common area when the suspect knocked her daughter down; that she did not know whether a Higbee employee instructed the officers to pursue the suspect; and that when she saw them in uniform she assumed the officers were acting as police officers.

In her response to the summary judgment motion, Reeves argued that the question of vicarious liability turned on the jury question of whether the officers were acting as public police officers or private employees of Higbee. Reeves, however, presented no evidence. Furthermore, while Reeves mentioned her claims for premises liability and negligent infliction of emotional distress, she clearly based these claims solely on the acts of the police officers and asserted no independent basis for liability against Higbee.

Following oral argument, the trial court granted summary judgment to Higbee on all claims, finding that once the officers decided to pursue the suspect to arrest him, they were acting in their capacity as police officers, and not at the direction of Higbee, and thus Higbee could not be vicariously liable for their actions. It further found that because there was no evidence to support a respondeat superior claim against Higbee, Reeves's claims for negligent infliction of emotional distress and loss of consortium could not stand. While recognizing the existence of the premises liability claim and including it within its grant of complete summary judgment, the trial court did not provide an independent rationale for granting summary judgment as to this claim. This appeal followed.

1. Reeves contends the trial court erred by granting summary judgment on the issue of vicarious liability because a jury must determine in what capacity the officers were acting at the time of the police chase that resulted in the collision with Reeves's child. We disagree.

Georgia law is clear that in determining the vicarious liability of a private employer, such as Higbee, for the allegedly tortious acts of off-duty police officers, we consider that

[a] law enforcement officer may occupy a dual position of exercising functions for the public and the company; in which case, where he is in the discharge of duties for the company, and the tort is committed under such circumstances as not to justify it, the company is liable. But if he commits a tort merely as a police officer, the company would not be liable, unless it was done at the direction of the company. The mere fact that a ... company pays for the services of a certain police officer, who does nothing but perform the duties of a police officer proper, does not make the company liable.

*Paradise Ent. Group*, 363 Ga. App. at 643 (2) (citation and punctuation omitted). See also *Carnegay v. WalMart Stores, Inc.*, 353 Ga. App. 656, 659 (839 SE2d 176) (2020) (“in cases involving off-duty police officers working for private employers, ... the employer escapes liability if the officer was performing police duties which the employer did not direct when the cause of action arose.”) (citation and punctuation omitted). “[T]he proper focus of analysis is to determine in what capacity [the officers] [were] acting *at the time the tort arose*.” See *Agnes Scott College v. Hartley*, 346 Ga. App. 841, 844(3)(a) (816 SE2d 689) (2018) (citation modified; emphasis added). See also *Ambling Mgmt. Co. v. Miller*, 295 Ga. 758, 761-62(2) (764 SE2d 127) (2014).

The question of the officers’ capacity at the time of the tort is “generally a question for the jury based on all evidence provided.” *Id.* 295 Ga. at 762-63(2)

(citation omitted). But when the evidence, even when viewed in the light most favorable to the plaintiff, shows without dispute that an officer was performing police duties which the employer did not direct, the trial court does not err by granting summary judgment to the employer. See *Wilson v. Waffle House*, 235 Ga. App. 539, 539-40 (510 SE2d 105) (1998).

Here, the Dillards's employee reported the suspect's description, location, and apparent concealment of merchandise to the officers without providing any directions or instructions. Nor is there any evidence in the record of Higbee providing the officers with any relevant policies, practices, training, goals, objectives, or expectations. Accordingly, there is no evidence to suggest the officers were acting at Higbee's direction. See *Wilson*, 235 Ga. App. at 539-40. See also *Page v. CFG Properties*, 259 Ga. App. 812, 813 (578 SE2d 522) (2003) (employer not liable where evidence was undisputed employer did not direct officer to confront or arrest suspect, and officer determined there was probable cause and decided to arrest suspect based on his training and experience as a police officer).

Furthermore, as the trial court properly determined, once the suspect fled the store, the officers' decision to pursue him into the common area, where the tort was

committed, and ultimately arrest him, was also a decision they made as public police officers with no direction from Higbee. *American Multi-Cinema, Inc. v. Walker*, 270 Ga. App. 314, 315(1)(a) (605 SE2d 850) (2004) (“ ‘... the employer escapes liability if the officer was performing police duties which the employer did not direct *when the cause of action arose.*’ ”) (emphasis added). See also *Beck v. Paideia School, Inc.*, 191 Ga. App. 183(1) (381 SE2d 132) (1989) (“If *at the time the alleged tort was committed* the police officer was performing public duties, not at the direction of the private master, the master is not liable.”) (emphasis added). Compare *Ambling Mgmt. Co.*, 295 Ga. at 765(3) (finding a jury question regarding whether the officer was acting in his capacity as a police officer or private employee because there was evidence the employer directed patrol officers to make arrests in order to curb illegal activity on the premises) with *Wilson*, 235 Ga. App. at 539-40 (affirming summary judgment to company because off-duty officer made arrest pursuant to authority as a police officer rather than company directions, procedures, or policies). Given these facts, even when viewed in the light most favorable to Reeves, Higbee could not be vicariously liable for the actions of the officers at the time of the incident, and thus the trial court properly granted summary judgment in Higbee’s favor on this issue.

2. Reeves also argues that Higbee is liable under the theory of premises liability and negligent infliction of emotional distress, and that she was entitled to bad-faith attorney fees under OCGA § 13-6-11.<sup>1</sup> Our ruling in Division 1 necessarily defeats all of the claims asserted against Higbee, including the premises liability and negligent infliction of emotional distress claims. As Reeves's appellate briefing makes clear, all such claims seek to hold Higbee vicariously liable for the officers' pursuit of the suspect. The claim for attorney fees must also fail because it is derivative. See *Helton v. United Svcs. Automobile Assn.*, 354 Ga. App. 208, 213-14(2) (840 SE2d 692). See also *City of Gainesville v. Dodd*, 275 Ga. 834, 838-39 (573 SE2d 369) (2002) (appellate courts retain discretion to determine whether to apply the right-for-any-reason rule and consider alternative legal theories not addressed by the trial court, or to vacate and remand for the trial court to consider alternative legal theories in the first instance).

*Judgment affirmed. Brown, C. J., and Mercier, P. J., concur.*

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<sup>1</sup> Although Reeves raised a claim for loss of consortium in her complaint, the trial court did not rule on this issue, and Reeves did not raise it in her argument on appeal. Thus, she has abandoned it. *Grogan v. City of Dawsonville*, 305 Ga. 79, 89(4) n.7 (823 SE2d 763) (2019) (explaining that the Court will not address an issue or argument that appellant did not raise on appeal).