NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

BOBBIE SUE PITTMAN, as Administratrix of the Estate of Mark Allen Pittman, Jr., Deceased,

Plaintiff/Appellant,

vs.

DAVID D. DRILLING CORP. d/b/a Dan D. Drilling, Inc.,

Defendant/Appellee,

and

VERDUGO ENERGY, L.L.C.; VERDUGO-PABLO ENERGY L.L.C.; PABLO ENERGY II, L.L.C.; EVOLUTION GUIDANCE SYSTEMS, INC.; CASING CREWS INC. d/b/a Casing Crews L.L.C.; 3D WELL SERVICE, INC. d/b/a 3D Well Service Inc.; DIADEM ENTERPRISES, INC. d/b/a Dale Miller Independent Consultants; HORIZON WELL LOGGING, L.L.C.; ENIVRONMENTAL RECOVERY SOLUTIONS & RENTAL, L.L.C.; and JOHN DOE(S),

Defendants.

Case No. 122,299

APPEAL FROM THE DISTRICT COURT OF
COAL COUNTY, OKLAHOMA

HONORABLE PAULA INGE, DISTRICT JUDGE

AFFIRMED

Jack S. Dawson
MILLER DOLLARHIDE, P.C.
Mustang, Oklahoma — For Plaintiff/Appellant

Mark K. Stonecipher
Greg A. Castro
C. Eric Shephard
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
Oklahoma City, Oklahoma — For Defendant/Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Bobbie Sue Pittman, as administratrix of the estate of Mark Allen Pittman, Jr., deceased, appeals the summary judgment of the district court finding that our workers' compensation law supplies the exclusive remedy for the death of Mark Pitman in a drilling rig fire. On review, we affirm the district court.

I.

This appeal arises from a December 18, 2014, fire on a drilling rig in Colgate, Oklahoma. It was cold on December 18th, and a worker was using an open flame heater to keep warm. The heater had been provided by employer Dan D Drilling Corporation (Dan D), even though Dan D knew that such heaters posed a fire hazard on the drilling floor. Another employee, Matt Thurman, negligently failed to shut off a pressurized mud pump before breaking a pipe connection, resulting in aerosolized volatile mud (which was largely diesel fuel) reaching the flame. A flash fire resulted. Three employees lost their lives, and two others were seriously injured. The personal representatives of the employees filed tort suits under several case numbers, arguing that these deaths fell outside of the exclusive remedy provided by workers' compensation law. They sued a

number of entities reflected in the caption that we will refer to collectively as "defendants." Two of these cases appear to have settled, and the third case, that of Mark Allen Pittman, Jr., is under appeal here. On December 8, 2022, the district court made a journal entry memorializing its findings on summary judgment that the defendants did not act with intent to injure Mr. Pittman because their actions did not raise a "substantial certainty" of the injury. Bobbie Sue Pittman, the administratrix, appeals.

II.

A.

The general standard for summary judgment is that it is proper only when it appears that there is no substantial controversy as to any material fact and that one of the parties is entitled to judgment as a matter of law. *Jordan v. Jordan,* 2006 OK 88, 17, 151 P.3d 117, 121. We review a grant of summary judgment *de novo. Young v. Macy,* 2001 OK 4, 9, 21 P.3d 44, 47. Under this standard, "we have plenary, independent and non-deferential authority to determine whether the trial court erred in its application of the law." *Id.* The exact standard in this case, however, is slightly complicated by a 2010 legislative amendment to § 12 of the then-current workers' compensation code, as discussed below.

B.

This case was decided on summary judgment. It has long been a principle of the common law that two elements are necessary to support summary judgment—that the facts are both undisputed *and* lead to only one conclusion.

Only then does the question become one of law suitable for summary judgment. *Robinson v. Oklahoma Nephrology Associates, Inc.*, 2007 OK 2, ¶ 16, 154 P.3d 1250, 1256. The current Oklahoma Uniform Jury Instruction-Civil No. 6.16 (Employer Liability–Substantial Certainty Test) allows a jury to decide if the facts show that a tort is intentional for the purposes of applying the exclusive workers' compensation remedy.[1] This instruction was first approved after *Parret v. UNICCO Serv. Co.*, 2005 OK 54,127 P.3d 572, affirmed the rule that, when an employer's acts create or positively allow a situation where injury is a substantial certainty, an intentional tort exists.

In 2010, however, the legislature amended § 12 of the then-current Workers' Compensation Code apparently to overrule *Parret* and require a plaintiff to show willful, deliberate, specific intent of the employer to cause such injury, rather than a substantial certainty. *Wells v. Oklahoma Roofing & Sheet Metal, L.L.C.,* 2019 OK 45, 457 P.3d 1020, subsequently found this amendment inconsistent with the broader purposes of the Worker's Compensation Code and reinstated the substantial-certainty test.

---

[1] The instruction reads:

For [Plaintiff] to recover from [Defendant] for his/her injury, [Plaintiff] must prove by the greater weight of the evidence:

1. The conduct of [Defendant] was intentional; and

2. [Defendant]'s conduct caused injury to [Plaintiff]; and

3. Either:

A. [Defendant] desired to bring about the injury; or

B. [Defendant] knew that injury to [Plaintiff] was substantially certain, and not merely likely, to occur. You may infer the knowledge of [Defendant] from the conduct of [Defendant] and all the surrounding circumstances.

Another part of the same 2010 amendment went unaddressed, however. The legislature provided in § 12 that "[t]he issue of whether an act is an intentional tort shall be a question of law for the court." The *Wells* opinion did not analyze or apparently comment on this addition to § 12.[2] Nor has any published or unpublished decision subsequent to *Wells* explicitly addressed this addition. A conflict arises because OUJI No. 6.16 is still current, and it provides that a jury shall determine if there was an intentional tort, *i.e.*, whether there was actual intent to injure, or the facts show a substantial certainty of injury. Meanwhile, the current 85A O.S. § 5 renders this a question of law.[3]

The interpretation of this provision of § 5 appears to be an undecided question of law, and we find no immediate way to reconcile OUJI No. 6.16 with the current 85A O.S. § 5. *Wells* was quite clear that "intentional injury" and "substantial certainty of injury" are a single standard, and those two findings are one and the same. We see no means by which the law can allow a jury to decide if an intentional tort occurred because injury was intended or substantially certain, but also reserve the question of an intentional tort for the court.

Attempting to interpret this provision, we note that, historically, where facts are undisputed and lead to only one conclusion, the question has always been one of law. *Robinson*, 2007 OK 2, ¶ 16. Summary judgment on the question

---

[2] This language was carried forward unaltered into the current 85A O.S. § 5.

[3] While conducting a "substantial certainly" inquiry, the Court in *Price v. Howard*, 2010 OK 26, 236 P.3d 82, stated that "[e]ven when the basic facts are undisputed, motions for summary judgment should be denied, if, under the evidentiary materials, reasonable individuals could reach different factual conclusions." *Id.* ¶ 7, 87 (footnotes omitted). The *Price* case was filed in 2007, however, prior to the 2010 changes to 85 O.S. § 12.

of an intentional tort has always been available pursuant to that standard. In specifically changing § 12 (the precursor to § 5), the legislature likely had some purpose *other* than leaving the law as it was. It is, however, unclear how the directive that the existence of an intentional tort is a question of law functions procedurally.

We see two options. The first is that the court may decide if an act constituted an intentional tort only when the material facts are undisputed. The second is that the court may also decide disputed questions of fact. Because the latter may impinge upon the long standing right to request that a jury decide disputed questions of fact in tort cases, we will employ the former interpretation. Although disputed questions of material fact as to the acts and knowledge of the employer may still be a matter for the jury, if the facts are undisputed, the ultimate application of the law to the facts is a task for the court only. This is consistent with the analogous rule that the scope of employment becomes a question of law when the material facts are not in dispute. *Johnson v. Midwest City Del City Pub. Sch.*, 2021 OK 29, ¶ 4, 507 P.3d 637, 645.

In this case, the material facts appear to be undisputed.[4] If the facts are undisputed, we review the court's decision for error of law in its final decision, rather than merely for the existence of a plausible alternate conclusion from the same facts.

---

[4] In her response to the defendant's motion for summary judgment, Ms. Pittman states that "material facts are disputed in this matter, as shown *infra*" and that the record shows "several material facts in dispute." Doc 47, 9. However, the response contains no list of disputed facts as required by District Court Rule 13.

C.

Besides the uninterpreted provisions of § 5, a second unusual feature of this case is that the harm was brought about by two apparently independent acts that led to Mr. Pittman's death. Most *Parret* cases involve direct acts or omissions of the employer that could raise a substantial certainty of injury. Here, however, the injury resulted from at least two separate acts, only one of which was a direct act of the defendant. First, the defendant provided open flame heaters for use on site. Second, employee Matt Thurman negligently failed to shut off the mud pump before breaking a connection, resulting in aerosolized volatile fuel reaching the flame, and failed to break the connection with the specified tool, but instead used the rotary table. Neither of these acts, standing alone, was sufficient to cause the injury. Pittman argues, however, that Thurman's acts were within his scope of employment, and are legally acts of the defendant under respondeat superior principles. Hence, the defendant's "acts" include both providing the open flame heater *and* failing to turn off the mud pump and using the rotary table.[5]

This theory of respondeat superior liability is complicated, however, by the fact that this case otherwise falls under workers' compensation law, and Thurman's negligence while working contributed to the injury of a fellow employee, not a third party. *Bayouth v. Dewberry*, 2024 OK 42, 550 P.3d 920, is

---

[5] Pittman cites to several cases for this principle, including *Chap-Tan Drilling Co. v. Myers,* 1950 OK 304, 225 P.2d 373, *Cosden Pipe Line Co. v. Berry*, 1922 OK 251, 87, 210 P. 141, and *Thompson v. Madison Mach. Co.*, 1984 OK CIV APP 24, 684 P.2d 565. However, none of the cases go beyond the general principles that an employment relationship and an act within the scope of employment are required for respondeat superior liability.

clear that when an employee is injured by a fellow employee acting within the scope of employment "the AWCA requires the Act to be strictly construed and Section 5 of the Act made crystal clear ... that an employee cannot sue any ... employee ... of the employer on account of injury." *Id.* ¶ 12 (internal citations omitted). We find no indication that Thurman, although negligent, acted intentionally or was otherwise acting outside his scope of employment when he failed to shut off the mud pump or decided to use the rotary table to assist in breaking the connection.

Title 85A O.S. § 5(A) states in pertinent part:

> The rights and remedies granted to an employee subject to the provisions of the Administrative Workers' Compensation Act shall be exclusive of all other rights and remedies of the employee ... against the employer, or any ... employee ... of the employer on account of injury, illness, or death.

Unless his acts were intentional, Thurman has no personal liability to Pittman for his acts, and we find no indication that Thurman acted intentionally. The bedrock of respondeat superior liability is the imputation of the employee's liability to a third party to the employer. If Thurman has no initial liability to Pittman, there can be no respondeat superior liability.[6]

---

[6] Indeed, respondeat superior liability in such situations appears difficult, if not impossible, to establish. The fellow employee's actions must generally constitute an intentional tort to remove them from the exclusivity of the workers' compensation remedy. But intentional torts committed with a substantial certainty of harm are highly unlikely to fall within the scope of ordinary employment. Although *Bayouth v. Dewberry*, 2024 OK 42, ¶ 18, 550 P.3d 920, 929, did remand a situation where an employee was shot by a co-employee in their place of employment for an "intentional tort" inquiry, there was a question of whether the shooter's action was intentional because of his delusional state of mind.

Under some circumstances, however, the knowledge and acts of an agent may be imputed to an employer using agency principles, rather than respondeat superior principles when employees with policymaking functions exercise authority on behalf of the employer. *Tiger v. Verdigris Valley Elec. Coop.*, 2016 OK 74, 410 P.3d 1007, is exemplary of this agency theory.

In *Tiger*, a dangerous condition existed at the jobsite. Mr. Tiger was asked to work on a high-voltage junction box that was closely surrounded by a steel barricade. *Id.* ¶ 5. Because performing the work was otherwise impossible, Mr. Tiger climbed over the barricade and positioned his large frame in the nineteen inches of space between the junction box and the cabinet. He was electrocuted while working on the "live" cabinet, and the barrier was considered a factor in his death. Although the employer was apparently not aware of the barrier and did not direct the work methods, *Tiger* held that the knowledge and acts of onsite employees with policymaking functions, who saw the barrier and recognized it was a hazard, could be attributed to the employer in an intentional tort analysis. *Id.* ¶ 19. Mr. Thurman, however, had no evident policymaking or supervisory function.

Nonetheless, Pittman attempts to bring him inside the rule of *Tiger* by citing industry practice that *all* workers on a rig are responsible for safety and that any worker has the authority to shut operations down if they see a safety hazard. Doc 47, *Response to Motion for Summary Judgment*, 7-8. Hence, all workers have a "policymaking" role in safety matters. Pittman also argues that

other entities had some agency role in providing for safe working conditions on the site that may be imputed to the employee.

Even if this is so, it makes little difference to our analysis here. Although many workers and agents and even persons with policymaking powers may have noticed the heaters, it is clear that the defendant already knew they were on site, and knew they posed a hazard. There is no need to impute this knowledge from Mr. Thurman or anyone else.

As for Mr. Thurman's negligent acts, we find no indication that he failed to break the connection with the rotary table or failed to shut off the mud pump based on orders from any party, or that any policymaking employee knew that he was likely to forget to shut off the pump until it was too late, or use the rotary table rather than tongs to break the pipe connection. As such, the "acts" of the defendant we must assess here are providing open flame heaters that were a known safety hazard and failing to provide flame retardant clothing, not the failure to turn off the mud pump or decision to use the rotary table.

D.

In assessing whether those acts indicate the possibility of an intentional tort, we first note that the bar set by *Parret* and *Wells* is a high one. As *Parret* notes:

> The employer must have knowledge of more than "foreseeable risk," more than "high probability," and more than "substantial likelihood." Nothing short of the employer's knowledge of the "substantial certainty" of injury will remove the injured worker's claim from the exclusive remedy provision of the Workers' Compensation Act, thus allowing the worker to proceed in district court.

Parret, 2005 OK 54, ¶ 25. Consistent with the rule, *Parret* cited Professor Prosser for the principle that placing an employee at great risk could be found reckless or wanton, but these acts did not equate to an intentional tort. *Id.* We also note that neither *Parret* nor *Wells* was actually tried to conclusion.[7] In fact, we find no published or unpublished Oklahoma case where a successful recovery at trial was based on a *Parret* tort.

Returning to the facts of the case, Pittman alleged the following facts were undisputed:

> (1) Using an open flame heater on a rig floor is a known hazard, and against industry standards and safety rules.
>
> (2) "Driller" Arthur Matthew Thurman failed to shut off the mud pump before breaking a pressurized joint, causing an aerosolized spray of "mud" that was actually eighty percent diesel fuel.[8]
>
> (3) This aerosolized diesel fuel came into contact with the open flame causing an explosion and or fireball.
>
> (4) Thurman used a "rotary table" rather than tongs to break the pipe connection, making it difficult to reconnect it when it became clear that the mud pump was still running.
>
> (5) The workers had not been issued with flame retardant clothing, and there was no swift means to exit the area where their fire occurred.
>
> (6) OSHA had cited the defendant for the use of open flame heaters in 2012.

---

[7] *Parret* clarified, answering a certified question, that Oklahoma would apply the substantial certainty test, and *Wells* held that the trial court had applied an incorrect legal standard by applying a literal interpretation of § 12. After receiving the answer to the certified question, *Parret v. UNICCO Serv. Co.*, CIV-01-1432-HE, 2006 WL 752877, at *4 (W.D. Okla. Mar. 21, 2006) held that there was a "triable issue" of whether the was a substantial certainty of injury and remanded the case. However, *Parret* was dismissed with prejudice before trial. *Wells* was also dismissed with prejudice before the issue could be tried. *Tiger v. Verdigris Valley Elec. Coop.*, 2016 OK 74, 410 P.3d 1007 settled before trial.

[8] OSHA further noted in a post-accident citation that the mud also contained some hydrocarbons more volatile than diesel fuel.

(7) OSHA cited the defendant again after the 2014 explosion.[9]

The first issue we must address is the role of OSHA regulations and citations in this inquiry. Pittman relies heavily on various OSHA citations as showing a substantial certainty of injury in this case, going so far as to argue that "the employer's citation for this behavior"—use of open flame heaters—created "ample circumstantial evidence" that defendant "knew an injury was substantially certain." Doc 47, *Response to Motion for* Summary Judgment, 15.

Caselaw takes a different view of the significance of OSHA citations, however. "[V]iolation of government safety regulations, even if willful and knowing, does not rise to the level of an intentional tort or an actual intent to injure." *Price v. Howard,* 2010 OK 26, ¶ 16, 236 P.3d 82, 90 (footnotes omitted).[10] The rationale behind this principle is clear. Any preventable injury will draw the

---

[9] Although not specifically mentioned in the body of Ms. Pittman's response, we note that the OSHA citation concerning the provision of the heaters states that "[a]pproximately 2 weeks prior to December 18, 2014, two to three flash fires occurred under the same circumstances as the December 18, 2014. Drilling mud hitting the operating open flame heater." While we have no further details, we presume for the purposes of summary judgment that the defendants were aware of these other incidents. Doc. 47, *Response to Motion for Summary Judgment,* 23 (*Exhibit A*, page 3 of Worksheet 5a1).

[10] Other states that employ a "substantial certainty" test are in accord. *See Pendergrass v. R.D. Michaels, Inc.*, 936 So. 2d 684, 693 (Fla. Dist. Ct. App. 2006) (even a serious violation under OSHA indicates only a substantial probability that injury could result from a condition, not a substantial certainty); *Sorban v. Sterling Eng'g Corp.*, 79 Conn. App. 444, 457, 830 A.2d 372, 380 (2003) ("This court and the Supreme Court ... have stated that OSHA violations are not enough to take the resulting injury out of the exclusivity provision of the act."); *Warren v. Wester,* 827 So. 2d 116, 121–22 (Ala. Civ. App. 2002) (OSHA citations do not compel the conclusion that injury or death were substantially certain); *Regan v. Amerimark Bldg. Products, Inc.,* 127 N.C. App. 225, 228, 489 S.E.2d 421, 424 (1997) (fact that unguarded machine was in violation of OSHA regulations and employer was cited by OSHA for having no guard did not create substantial certainty of injury); *Vermett v. Fred Christen and Sons Co.* (2000), 138 Ohio App.3d 586, 603, 741 N.E.2d 954 (refusing to consider an OSHA violation issued after an accident in determining substantial certainty and stating that OSHA does not affect an employer's duty to an employee).

interest of a safety agency and may lead to regulation. The fact that the regulation recognizes a potential for harm from certain acts or omissions does not, however, equate to a substantial certainty of injury from the same acts. Although OSHA violations and citations may act as evidence of substantial certainty, standing alone, they do not establish it.

Pittman's first argument in opposition to summary judgment was that an operating drilling rig is an inherently dangerous environment and that the act of operating one increases the substantial certainty that an injury will occur. We acknowledge that oil and gas drilling carries a risk of injury or death above the average for general employment. We do not agree that an above average injury rate in a particular industry evidences a "substantial certainty" of injury, however.

This analysis ties into another of Pittman's arguments. Pittman argues at several points that the question is whether injury is *eventually* certain, *i.e.*, Pittman only has to show that an injury to some unspecified employee becomes substantially certain if a behavior is repeated a sufficient number of times. *Pittman* cites *Wells* as holding that working without a safety harness did not require an immediate substantial certainty that Wells himself would fall, but only one that "eventually a fall would occur" if safety lines were not used. Pittman argues that a certainty of "eventual injury" from a practice is the correct standard for deciding if an intentional tort exists for exclusivity of remedy purposes and that it was substantial certain that injury would eventually result from using the heaters.

We do not agree that *Wells* adopted such a broad standard.[11] *Parret* is clear that a "substantial likelihood" of injury does not constitute a "substantial certainty" of injury, even though an act which carries that substantial likelihood of injury *will* eventually result in an injury if sufficiently repeated. For example, in *Price v. Howard*, 2010 OK 26, 236 P.3d 82, an employer directed an aircraft with an experimental propeller to take off into a rainstorm when it was one thousand pounds overweight. Testimony established that overweight takeoff into a rainstorm "substantially increased the likelihood that complications could occur." *Id.* ¶ 15. Nonetheless, the *Price* Court found no substantial certainty of injury, even though repeating behavior which creates a "substantially increased" risk of a crash a sufficient number of times will eventually result in a crash.

As we previously noted, oil and gas drilling involves inherent dangers above the average, and simply requiring enough employees to work on enough rigs creates a substantial certainty that an injury will *eventually* occur to some employee working on a rig floor. If the standard requires only substantial certainty that an injury will eventually occur, a large-scale oil and gas drilling employer may commit an intentional tort simply by continuing to send employees to work. We hold that *Parret* and *Wells* require a more specific nexus between the employer's acts and the resulting injury than a showing that injury

[11] We further note that Pittman's response appears to argue that *Wells* changed the Supreme Court's interpretation of "substantial certainty," invalidating *Parret* and all such cases between *Parret* and *Wells*. We find no inconsistency between *Parret* and *Wells* in this regard, however.

will eventually occur to an unspecified employee on an unspecified worksite if the behavior is continued for long enough.

Pittman's most compelling argument is that the defendants knew that open flame heaters created a significant risk of fire or explosion on a drilling floor because they had previously been warned of this risk by both OSHA in a 2012 citation and by knowledge of industry practice. Yet, the defendants still provided such heaters and allowed them to be used. The record confirms that the defendants had knowledge of a "foreseeable risk," and arguably of a "high probability," and a "substantial likelihood" of injury. Their acts may have been reckless or wanton, but *Parret* is clear that such risks do not equate to an intentional tort for the purposes of worker's compensation exclusivity.

The trial court found that administratix Pittman did not go "the extra mile" and show that these acts crossed over into the realm of substantial certainty. As we previously noted, pursuant to 85A O.S. § 5, where the facts were undisputed, this was a question of law for the court. Based upon this record, we agree with the court that, even though it was possible to interpret the evidence as showing a foreseeable risk, a high probability and a substantial likelihood of injury, or even reckless or wanton behavior, this record on summary judgment did not demonstrate a substantial certainty of injury to the decedent arising from the defendants' acts.

E.

Pittman further argued below that, if this Court finds that 85A O.S. § 5 does bar a tort remedy here, the statute is unconstitutional. Specifically, Pittman

argues that the limited remedy provided for wrongful death in workers' compensation law is less than that available to similarly situated persons who are accidently killed outside of a work environment, and this violates equal protection principles. Pittman further argues that the exclusivity of this lesser remedy constitutes an unconstitutional cap on damages.

Title 85A O.S. § 47 does provide a remedy less than the damages that could be properly sought in a wrongful death tort case. However, workers' compensation remedies have long been less than those potentially available in a tort case involving the same injury. By example, 85A O.S. § 45 limits lost wage compensation to seventy percent of the injured employee's average weekly wage, while one hundred percent of lost wages may be sought in a tort case. This limitation has been a feature of worker's compensation law for at least seventy years.[12] Loss of limbs is similarly capped at compensation levels below those potentially available in a tort case. These historically lesser remedies have never been found to constitute either a denial of equal protection or an impermissible damages cap. As *Wells* notes, "there has always been disparity between the rights and remedies of persons injured while in the course and scope of their employment and those who are injured elsewhere." *Wells*, 2019 OK 45 ¶ 20 (citing *Adams v. Iten Biscuit Co.*, 1917 OK 47, 162 P. 938). "However, that disparity is properly confined within the Workers' Compensation system." *Id.*

[12] Indeed, the 1957 version of 85 O.S. § 22 limited compensation to sixty-six and two-thirds percent of weekly wages.

Further, the Fourteenth Amendment's guarantee of equal protection "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249 (1985). "When those who appear similarly situated are nevertheless treated differently, the Equal Protection Clause requires at least a rational reason for the difference ...." *Engquist v. Oregon Dept. of Agr.*, 553 U.S. 591, 602, 128 S.Ct. 2146 (2008). Assuming for the purposes of argument that tort and workers' compensation plaintiffs seeking recovery for the same injury are legally "similarly situated," we find a rational reason for the lesser remedy here. The burden of proof on a worker's compensation claimant is limited, and recovery is reasonably certain if that limited burden is met. In simple terms, all a claimant must show is injury occurred and that it arose in the course of employment. *K-Mart Corp. v. Herring*, 2008 OK 75, ¶ 12, 188 P.3d 140, 144. One substantial purpose of the worker's compensation system was to provide what is essentially a "no fault" system of compensation for work injuries. By comparison, the tort plaintiff must, in addition, both prove fault by the employer, and contend with a contributory negligence defense. We find these fundamental differences sufficient to create a rational reason for the difference in remedies.[13]

[13] Ms. Pittman finally argued that she may bring a negligence *per se* claim based on a defendant's violation of an OSHA regulation. As this claim would first require that Pittman's case fall outside of the exclusive remedy of workers' compensation law, we need not address it.

V.

The Supreme Court has made clear that "[b]ecause Oklahoma's workers' compensation laws clearly underscore and contemplate the accidental character of a workplace injury, an employer's immunity ... cannot be stretched to include the employer's intentional acts." *Wells*, 2019 OK 45, ¶ 20. When determining whether an employee's harm was caused by an employer's intentional acts, the Court has directed us to § 8A of the Restatement (Second) of Torts. *See, e.g.*, *Parret*, 2005 OK 54, ¶ 17; *Wells*, 2019 OK 45, ¶ 11. The first example provided in the Restatement is as follows:

> When an actor fires a gun in the midst of the Mojave Desert, he intends to pull the trigger; but when the bullet hits a person who is present in the desert without the actor's knowledge, he does not intend that result. "Intent" is limited ... to the consequences of the act.

Restatement (Second) of Torts § 8A (1965) (comment a). Here, even assuming the defendant fired the gun and intended to pull the trigger, no facts suggest the defendant intended the resulting harm. While its actions might be properly described as reckless, we cannot find on this record that the defendant committed an intentional tort. We thus affirm the district court's grant of summary judgment. Further, on the arguments presented, we find no constitutional infirmity in the challenged statutes.

AFFIRMED.

WISEMAN, P.J., and FISCHER, J., concur.

July 2, 2025