

WILLIAM W. HAVENER JR.

v.

JEFF'S MARINE, INC.

Argued November 7, 2007
Decided December 18, 2007

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER,
MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

William W. Havener Jr. appeals from a summary judgment entered by the Superior Court (Knox County, *Wheeler, J.*) in favor of Jeff's Marine, Inc. Havener contends that the court erred in finding that an employee of Jeff's Marine was not acting within the scope of his employment when operating a customer's boat during his time off on a weekend.

Contrary to Havener's contentions, the court did not err in concluding that pursuant to M.R. Evid. 801(d)(2)(D) the employee's out-of-court statements were insufficient to establish the scope of the employment relationship, or in refusing to consider them when ruling on the motion for summary judgment. *See* M.R. Civ. P. 56(e) (affidavits submitted in support of a motion for summary judgment must "set

forth such facts as would be admissible in evidence”); M.R. Evid. 801(d)(2) (“contents of the statement shall be considered, but are not alone sufficient to establish . . . the agency or employment relationship and scope thereof under subdivision (D)”). The court also did not err in entering summary judgment in favor of Jeff’s Marine. When the facts are viewed in the light most favorable to Havener, the record fails to create a genuine issue of material fact regarding whether the employee’s conduct was within the scope of his employment. *See Spencer v. V.I.P., Inc.*, 2006 ME 120, ¶¶ 7-9, 910 A.2d 366, 368; *Mahar v. Stonewood Transp.*, 2003 ME 63, ¶¶ 13-17, 823 A.2d 540, 544-45.

The entry is:

Judgment affirmed.

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