lant's contention that the chancery court, serving in its probate function, must formally certify that the appellant has the right to contest the will. Section 32–4–109 of the Code clearly indicates otherwise. Only when the probate court transfers the case to another court for trial would certification of the contest be required by statute. Therefore, the chancery court had jurisdiction to hear the case. The appellant's voluntary dismissal was with prejudice and had the legal effect of dismissing the will contest. As stated above, we find that Tennessee Rules of Civil Procedure 41.01 and 66 do not allow the institution of a second will contest after having taken a voluntary dismissal. Further, we find that the taking of voluntary dismissals in will contests defeats the goals of efficiency and quick resolution in probate and will contest proceedings. The judgments of the trial court and the Court of Appeals are hereby affirmed. Costs of this appeal are taxed to the appellant, Beatrice Rice.

Dana Hope Davis THURMON (Scott), Individually and as Surviving Natural Parent of Dalton Thurmon, A Minor, et al.

v.

Edward SELLERS, et al.

Court of Appeals of Tennessee, at Jackson.

Feb. 16, 2001.

Application for Permission to Appeal Denied by Supreme Court Oct. 8, 2001.

Mother of child killed in traffic accident, passenger in pickup truck, and driver of tractor-trailer that collided with pickup truck sued driver of pickup and his employer for wrongful death, personal injuries, and negligent infliction of emotional distress. At the close of proof during bench trial, the Circuit Court, Shelby County, George H. Brown, Jr., J., granted employer's motion for directed verdict, and awarded damages on the remaining claims against pickup truck driver. Pickup truck driver, passenger and mother appealed. The Court of Appeals, Farmer, J., held that: (1) owner of pickup truck was not liable under respondeat superior; (2) as a matter of first impression, driver who was "on call" was not acting in the course of employment when use of vehicle did not benefit employer and employer did not exercise control over driver's use of vehicle; (3) prima facie case was established that father who owned pickup truck was liable for son's negligent driving under family purpose doctrine; (4) in a matter of first impression, mother could recover damages for loss of consortium for death of son under wrongful death statute; (5) driver of tractor-trailer established prima facie case of negligent infliction of emotional distress; and (6) damages for physical and emotional injuries of driver of tractor=trailer were supported by evidence.

Affirmed in part, reversed in part, and remanded.

1. Appeal and Error ⚿893(1), 895(2)

Appellate review of questions of law is de novo with no presumption of correctness.

2. Automobiles ⚿193(1)

In order to impose liability under respondeat superior, it is necessary to show that the operator of a vehicle causing injury was, at the time of the accident, acting

55–10–311 and 55–10–312 of the Tennessee Code and the fact that Eddie Sellers was an "on call" employee of Donnie's Deli and Amoco at the time of the accident.

[2] In order to impose liability under respondeat superior, it is necessary to show that the operator of a vehicle causing injury was, at the time of the accident, acting as a servant or employee of the owner, was engaged in the employer's business, and was acting within the scope of his employment. *See Hamrick v. Spring City Motor Co.,* 708 S.W.2d 383, 386 (Tenn.1986); *Tennessee Farmers Mut. Ins. Co. v. American Mut. Liab. Ins. Co.,* 840 S.W.2d 933, 937 (Tenn.Ct.App.1992). It is undisputed that Eddie was an employee of Donnie's Deli and Amoco. Thus, the pivotal issue is whether Eddie was acting within the course and scope of his employment.

[3–5] Generally, the phrase "within the course and scope of employment" refers to acts of an employee committed while engaged in the service of the employer or while about the employer's business. *See generally Tennessee Farmers Mut. Ins. Co.,* 840 S.W.2d at 937–38. However, sections 55–10–311 and 55–10–312 of the Tennessee Code provide that proof of ownership and registration of a motor vehicle constitutes prima facie evidence that the vehicle was being operated for the vehicle owner's use and benefit and within the course and scope of employment.[3] The prima facie case in these two code sections may be overcome by uncontradicted evidence to the contrary coming from witnesses whose credibility is not in issue. *See Haggard v. Jim Clayton Motors, Inc.,* 216 Tenn. 625, 393 S.W.2d 292, 294 (1965). If the prima facie case is overcome by evidence so strong that reasonable minds could not differ, then a directed verdict for the owner may be proper. *See Hamrick,* 708 S.W.2d at 387.

[6–8] Generally, the issue of scope of employment is a question of fact, but it becomes a question of law when the facts are undisputed and no conflicting inferences are possible. *See Tennessee Farmers Mut. Ins. Co.,* 840 S.W.2d at 936–37. In cases involving a motion for involuntary dismissal, the trial court "must impartially weigh and evaluate the evidence as it would after the presentation of all the evidence" and it must grant such a motion if the plaintiff has failed to make out a prima facie case. *Smith v. Inman Realty Co.,* 846 S.W.2d 819, 822 (Tenn.Ct.App. 1992). On review, we need only determine

3. Section 55–10–311(a) of the Tennessee Code states, in relevant part that

> [i]n all actions for injury to persons ... caused by the negligent operation or use of any automobile, auto truck, motorcycle, or other motor propelled vehicle within this state, proof of ownership of such vehicle shall be prima facie evidence that the vehicle at the time of the cause of action sued on was being operated and used with authority, consent and knowledge of the owner in the very transaction out of which the injury or cause of action arose, and such proof of ownership likewise shall be prima facie evidence that the vehicle was then and there being operated by the owner, or by the owner's servant, for the owner's use and benefit and within the course and scope of the servant's employment.

Tenn.Code Ann. § 55–10–311(a) (1999).

Section 55–10–312 of the Tennessee Code provides that

> [p]roof of the registration of the motor-propelled vehicle in the name of any person shall be prima facie evidence of ownership of the motor propelled vehicle by the person in whose name the vehicle is registered; and such proof of registration shall likewise be prima facie evidence that the vehicle was then and there being operated by the owner or by the owner's servant for the owner's use and benefit and within the course and scope of the servant's employment.

Tenn.Code Ann. § 55–10–312 (1999).