

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 1363

JENNIFER BULLOCK

VERSUS

**CITY OF SLIDELL, JUSTIN LEE STOKES, UNITED SERVICES
AUTOMOBILE ASSOCIATION & IAN SCOTT JURKIEWICZ**

Judgment Rendered: FEB 24 2016

**Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Docket Number 2014-12410**

Honorable Raymond S. Childress, Judge Presiding

**William R. Mustian, III
Metairie, LA**

**Counsel for Plaintiff/Appellant,
Jennifer Bullock**

**Bryan D. Haggerty
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**Counsel for Defendants/Appellees,
City of Slidell and Justin Lee Stokes**

BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

WHIPPLE, C.J.

Plaintiff, Jennifer Bullock, appeals from a judgment of the trial court granting summary judgment in favor of defendants, the City of Slidell and Justin Lee Stokes, and dismissing Bullock's petition for damages with prejudice.¹

On February 22, 2014, Slidell Police Officer Justin Lee Stokes was traveling north on Highway 11 in his patrol vehicle at a high rate of speed in pursuit of a suspect, with the vehicle's emergency lights and siren activated, near the intersection of Highway 11 and Gause Boulevard, when a vehicle traveling south on Highway 11 driven by Ian Jurkiewicz made a left-hand turn directly in the path of Officer Stokes's unit, causing the officer's vehicle to collide with Jurkiewicz's vehicle and strike a second vehicle driven by Bullock.

Bullock later filed a petition for her damages as a result of the accident. The defendants filed a motion for summary judgment contending that the City of Slidell and Officer Stokes were entitled to immunity from any tort liability in connection with the accident pursuant to LSA-R.S. 32:24 and 9:2798.1. In support of their motion for summary judgment, the defendants offered the deposition testimony of Officer Stokes, the affidavit of Officer Kevin Rea, the defendants' answers and responses to the plaintiff's interrogatories and requests for production of documents.

On April 7, 2015, the trial court signed a judgment granting the defendants' motion for summary judgment and dismissing Bullock's petition with prejudice. Pursuant to Bullock's request, on April 20, 2015, the trial court issued written reasons for judgment specifically finding that the immunity provisions set forth in LSA-R.S. 32:24 and 9:2798.1 were applicable under the facts herein.

¹On October 14, 2014, Bullock filed a motion for partial dismissal of defendants, Ian Scott Jurkiewicz and United Services Automobile Association, with prejudice from these proceedings. Thus, the only remaining defendants are the City of Slidell and Justin Lee Stokes.

Bullock then filed the instant appeal from the judgment of the trial court, contending that the trial court erred in concluding that there were no genuine issues of material fact and in applying LSA-R.S. 32:24 and 9:2798.1 to the facts of this case.

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. Johnson v. Evan Hall Sugar Cooperative, Inc., 2001-2956 (La. App. 1st Cir. 12/30/02), 836 So. 2d 484, 486. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B)(2).² An appellate court reviews a trial court's decision to grant a motion for summary judgment *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. George S. May International Company v. Arrowpoint Capital Corporation, 2011-1865 (La. App. 1st Cir. 8/10/12), 97 So. 3d 1167, 1170.

The mover bears the burden of proving that he is entitled to summary judgment. LSA-C.C.P. art. 966(C)(2). However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, he need only demonstrate the absence of factual support for one or more essential elements of his opponent's claim, action, or defense. See LSA-C.C.P. art. 966(C)(2). If the non-moving party fails to produce factual support sufficient to establish it will be able to satisfy the evidentiary burden of proof at trial, there is no genuine issue of material fact. LSA-C.C.P. art. 966(C)(2). Whether a particular fact in dispute is

² Louisiana Code of Civil Procedure article 966 was amended by Acts 2015, No. 422, § 1, effective January 1, 2016. Section 2 of Acts 2015, No. 422, provides that: “[t]he provisions of the Act shall not apply to any motion for summary judgment pending adjudication or appeal on the effective date of this act.” Here, the pendency of the instant appeal on the effective date of Acts 2015, No. 422 results in the application herein of the prior version of LSA-C.C.P. art. 966.

“material” for summary judgment purposes is viewed in light of the substantive law applicable to the case. MB Industries, LLC v. CNA Insurance Company, 2011-0303 (La. 10/25/11), 74 So. 3d 1173, 1183.

Louisiana Revised Statute 32:24, which sets forth the privileges and duties of the driver of an emergency vehicle when in pursuit of a suspect, provides as follows:

- A. The driver or rider of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to, but not upon returning from, a fire alarm, may exercise the privileges set forth in this Section, but subject to the conditions herein stated.
- B. The driver or rider of an authorized emergency vehicle may do any of the following:
 - (1) Park or stand, irrespective of the provisions of this Chapter.
 - (2) Proceed past a red or stop signal or stop sign, but only after slowing down or stopping as may be necessary for safe operation.
 - (3) Exceed the maximum speed limits so long as he does not endanger life or property.
 - (4) Disregard regulations governing the direction of movement or turning in specified directions.
- C. The exceptions herein granted to an authorized emergency vehicle shall apply only when such vehicle or bicycle is making use of audible or visual signals, including the use of a peace officer cycle rider’s whistle, sufficient to warn motorists of their approach, except that a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.
- D. The foregoing provisions shall not relieve the driver or rider of an authorized vehicle from the duty to drive or ride with due regard for the safety of all persons, nor shall such provisions protect the driver or rider from the consequences of his reckless disregard for the safety of others.

If the provisions of subsections A, B, or C of LSA-R.S. 32:24 apply to the accident in question, the driver will be held liable only for his conduct which constitutes reckless disregard for the safety of others. Lenard v. Dilley, 2001-1522 (La. 1/15/02), 805 So. 2d 175, 180. “Reckless disregard” connotes conduct more

severe than negligent behavior and is, in effect, “gross negligence.” Gross negligence has been defined as “the want of even slight care and diligence.” “Reckless disregard” or “gross negligence” is the standard to be applied in assessing culpability if the emergency vehicle driver’s actions fit LSA-R.S. 32:24(A) through (C). Lenard v. Dilley, 805 So. 2d at 180. Otherwise, the officer’s actions are judged by the standard of ordinary negligence.

Moreover, LSA-R.S. 9:2798.1(B) provides:

Liability shall not be imposed on public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.

Bullock contends on appeal that the immunity set forth in LSA-R.S. 32:24 is not applicable herein, where there is no evidence that “speed was a cause of the accident.” Bullock argues that Officer Stokes’s failure to maintain control of his vehicle following his collision with Jurkiewicz’s vehicle is not an activity listed in the exceptions affording immunity enumerated in LSA-R.S. 32:24(B). Thus, she contends that the emergency vehicle immunity statute does not apply in this case, that Officer Stokes’s actions are considered as acts of ordinary negligence, and that the discretionary immunity set forth in LSA-R.S. 9:2798.1 is not intended to apply to instances of ordinary or “operational negligence,” such as in the instant case.

The deposition testimony of Officer Stokes, who was on patrol duty in a marked police cruiser, sets forth that at the time of the accident herein, he was traveling in pursuit of a suspect, with his emergency lights and sirens activated. See LSA-R.S. 32:24(A) & (C). Officer Stokes testified that the suspect was traveling over seventy miles per hour and that he estimated his speed was seventy miles per hour in pursuit of the suspect. He further testified that as he approached the Gause Boulevard intersection, he had a green light to proceed through the intersection, yet decreased his speed to ensure that it was safe to cross the

intersection. See LSA-R.S. 32:24(B)(3). According to Officer Stokes, after the impact with Jurkiewicz's vehicle, he applied his brakes "as hard as [he] could," but, the first impact caused his vehicle to become inoperable.

Officer Kevin Rea of the Slidell Police Department participated in the pursuit of the fleeing suspect, with his patrol unit directly behind Officer Stokes's patrol unit during the pursuit. According to Officer Rea's affidavit, he and Officer Stokes had their emergency sirens and lights activated during the pursuit; both he and Officer Stokes slowed their patrol units down as they approached the intersection of Highway 11 and Gause Boulevard to ensure it was safe to proceed across; and suddenly, without warning, and in direct contravention of the law, Jurkiewicz turned his vehicle directly in the path of Officer Stokes.

Based on our *de novo* review of the record and evidence submitted in support of the motion for summary judgment, we find that the defendants made the requisite showing that the accident herein occurred while Officer Stokes was traveling at a high rate of speed in pursuit of a suspect with his emergency lights and sirens activated and that he exercised due regard for the safety of others, such that the statutory immunity would apply herein. In response to this showing on summary judgment, Bullock failed to present contradictory evidence to refute this showing or which would create a material issue of fact. Because the immunity provisions set forth in LSA-R.S. 32:24 and 9:2798.1 apply herein, summary judgment in favor of the defendants was appropriate. The arguments urged by Bullock on appeal are without merit.

CONCLUSION

For the above reasons, we affirm the April 7, 2015 judgment of the trial court, granting summary judgment in favor of the defendants/appellees, the City of Slidell and Justin Lee Stokes, and dismissing Bullock's petition. This memorandum opinion is issued in compliance with Uniform Rules – Courts of

Appeal, Rule 2-16.1(B). Costs of this appeal are assessed to the plaintiff/appellant,
Jennifer Bullock.

AFFIRMED.