

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1953

**CHRIS LEDET, INDIVIDUALLY AND AS ADMINISTRATOR OF HIS  
MINOR CHILD'S, TERREL LEDET, ESTATE AND JANET LEDET,  
INDIVIDUALLY AND AS ADMINISTRATRIX OF HER MINOR CHILD'S,  
TERREL LEDET, ESTATE**

**VERSUS**

**LAWRENCE BREAUX, SHARON BREAUX, JENNIFER BREAUX,  
CELESTE BREAUX, STATE FARM FIRE AND CASUALTY COMPANY,  
GORDON DOVE, XYZ INSURANCE COMPANY, ROBERT PAGE, AND  
ABC INSURANCE COMPANY**

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**On Appeal from the 19th Judicial District Court  
Parish of East Baton Rouge, Louisiana  
Docket No. 529,030, Division "O"  
Honorable Wilson Fields, Judge Presiding**

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Gordon Dove**

**Edwin A. Lombard  
Judge, Ad Hoc**

**BEFORE: BAGNERIS, LOVE, AND LOMBARD, JJ.<sup>1</sup>**

**Judgment rendered**         JUN - 8 2007        

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<sup>1</sup> The Honorable Dennis R. Bagneris, Sr., Judge, the Honorable Terri F. Love, Judge, the Honorable Edward A. Lombard, Judge, all members of the Fourth Circuit Court of Appeal, are serving as judges *ad hoc* by special appointment of the Louisiana Supreme Court.

EA  
DRB  
TR

Plaintiffs, Chris and Janet Ledet (“Plaintiffs”), appeal the trial court’s April 10, 2006, judgment, which denied their Motion for Summary Judgment and granted the Motion for Summary Judgment of Defendant, Gordon Dove. For the reasons set forth below, we affirm the trial court’s judgment.

***Relevant Facts***

Plaintiffs brought suit against the Defendants after their minor son, Terrel Ledet ("Terrel"), allegedly sustained a head injury during a night of drinking with a group of friends at the Baton Rouge home of Defendants Lawrence and Sharon Breaux (“the Breauxs”). Terrel, who had traveled from Houma to Baton Rouge with three other boys to watch an LSU football game, claims that sometime during the early morning hours, he fell out of a hammock at the Breaux’s home and banged his head onto a concrete slab. Testimony from the other teens who were at the Breaux’s home that night indicates that no one saw Terrel fall out of a hammock or otherwise injure his head. Terrel testified that he does not remember telling anyone about the accident at the time, but does recall his head hurting in the morning when he awoke. Marcus Jasper, who was also at the party and who rode to and from Baton Rouge with Terrel, testified that Terrel told him that his head

was hurting and he asked Jasper to look at it. Jasper testified that he noticed a small wound on the back of Terrel's head that resembled a "mosquito bump."

According to Terrel, during the trip back to Houma the morning after the alleged accident, his condition worsened and he repeatedly asked his friend, Gordon Dove, Jr. ("Bubba"), the driver of the vehicle, to take him to the hospital. Although Terrel had his head down on the seat of the truck and was gagging at times, Bubba and the other boys in the truck testified that they thought Terrel was merely hung over. Rather than take Terrel to the hospital, Bubba brought Terrel home, knowing that Terrel's mother was a critical care nurse. The boys did not speak to Terrel's mother upon dropping him off. Terrel's mother brought him to the hospital the following day. Terrel was later diagnosed with a brain injury for which emergency surgery was performed.

Because Bubba Dove was a minor, Plaintiffs filed suit against Bubba's father, Gordon Dove ("Dove") for Terrel's injuries. Dove filed a Motion for Summary Judgment arguing that Bubba was not liable for Terrel's injuries because he owed no duty to rescue or render aid to Terrel. Plaintiffs filed a Cross-Motion for Summary Judgment. The motions came for hearing on March 13, 2006. The trial court granted Dove's Motion for Summary Judgment and denied Plaintiff's Motion. On April 18, 2006 the trial court denied Plaintiff's Motion for New Trial. Plaintiffs now appeal.<sup>2</sup>

### ***Law and Analysis***

On appeal, Plaintiffs argue that the trial court erred in failing to follow the holdings of *Wicker v. Harmony Corporation*, 00-0231 (La. App. 1 Cir. 3/28/01), 784 So. 2d 660 and *Beach v. Point Coupee Electric Membership Corp.*, 04-2255 (La. App. 1 Cir. 11/16/05), 917 So. 2d 556, two Louisiana First Circuit cases that

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<sup>2</sup> The Breauxs have also filed a brief in this appeal "simply to note the factual inaccuracies contained within appellant's appeal as well as within Judge Field's written reasons for judgment." The Breauxs specifically take issue with the district court's findings that their daughters invited Terrel to their home, that he suffered an injury at their home, that there was a "drinking party" at their home.

Plaintiffs argue imposed a duty upon Bubba to render aid to Terrel. Plaintiffs also argue that the trial court's judgment is contrary to the law and evidence because Bubba breached a duty imposed upon him by the Restatement Second of Torts. Plaintiffs further argue that the trial court committed legal error when it based its rulings on La. R.S. §9:2793. Finally, Plaintiffs argue that there are material facts at issue that preclude summary judgment.

Appellate courts review motions for summary judgment *de novo*. *Shelton v. Standard/700 Associates*, 01-0587, p.5 (La. 10/16/01), 798 So. 2d 60, 64-65. The summary judgment procedure is favored and is designed to secure the just, speedy, and inexpensive determination of every action. La. Code Civ. Proc. art. 966(A)(2); *Lee v. Grimmer*, 99-2196, p. 3 (La. App. 1 Cir. 12/22/00), 775 So. 2d 1223, 1225. But the motion should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. Proc. art. 966(B).

The central issue in this case is whether Bubba owed a duty to rescue or render aid to Terrel. Generally, there is an almost universal legal duty on the part of a defendant in a negligence case to conform to the standard of conduct of a reasonable person in like circumstances. *Griffin v. Shelter Ins. Co.*, 02-2628, p. 3 (La. App. 1 Cir. 9/26/03), 857 So. 2d 603, 605. But whether a legal duty exists, and the extent of that duty, depends on the facts and circumstances of the case, and the relationship of the parties. *Id.*, citing, *Bowman v. City of Baton Rouge/Parish of East Baton Rouge*, 2002-1376, pp. 5-6 (La. App. 1 Cir. 5/9/03), 849 So. 2d 622, 627. The existence of a duty is an issue of law that is determined by the court, and on such issue, the inquiry is whether the plaintiff has any basis -- statutory, jurisprudential, or arising from general principles of fault -- to support his claim. *Murphree v. Daigle*, 02-1935, p.4 (La. App. 1 Cir. 9/26/03), 857 So. 2d 535, 538.

Where no factual dispute exists and no credibility determinations are required, the legal question of the existence of a duty is appropriately addressed by summary judgment. *See Burton v. Landry*, 602 So. 2d 1013 (La. App. 1 Cir. 1992).

In this case, Dove asserts that the undisputed facts fail to establish that Bubba owed a duty to Terrel. Thus, Dove maintains that, as a matter of law, Bubba is not liable to Terrel for the injuries he sustained, and the judgment correctly dismissed Plaintiffs' liability claims. We agree.

At this point in time, there is no duty to rescue and/or render aid under Louisiana law. Moreover, Plaintiffs' reliance on the holdings of *Wicker v. Harmony Corporation*, *supra*, and *Beach v. Point Coupee Electric Membership Corp.*, *supra*, is misplaced because neither of these cases imposes a duty to rescue under the circumstances of this case. In 2001, the First Circuit in *Wicker*<sup>3</sup> did toy with the notion of establishing a Louisiana duty to rescue. The *Wicker* court noted that although the fundamental rule of American common law of torts is that there is no general duty to go to the rescue of a person who is in peril, in most civil law countries, when a person without danger to himself or others could provide aid to another and rescue him or her in distress, he could be subject to liability if he failed to do so. *Id.*, at 665. The court went on to opine, in dicta, that Louisiana should not follow the "barbarous and uncivilized" common law American Rule but, rather, should follow other civil law countries in establishing a duty to rescue, when one can do so without personal risk. *Id.*, at 665-666. Ultimately, however, because the duty in this case was a duty assumed by contract only, the court deemed it unnecessary to adopt a "duty to rescue" doctrine at that time. *Id.*

Contrary to Plaintiffs' argument, *Beach*<sup>4</sup> also fails to impose a duty upon Bubba under the circumstances of this case. *Beach* dealt with a duty to warn, rather than a duty to rescue or render aid. In *Beach*, the First Circuit Court of

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<sup>3</sup> 00-0231 (La. App. 1 Cir. 3/28/01), 784 So. 2d 660.

<sup>4</sup> 04-2255 (La. App. 1 Cir. 11/16/05), 917 So. 2d 556

Appeal noted that under Louisiana Civil Law precepts, a person who observes that another is in obvious peril has the “slight duty to warn of known eminent dangers when he can do so without personal risk.” *Id.* at 558. In that case, employees of a contractor were aware of PCB contaminated oil in a transformer that was being repaired by the employees of another contractor. Ultimately, the *Beach* court held that summary judgment was improper since there were genuine issues of material fact as to whether the contractor employees breached a duty to warn of a known danger. *Id.*

Plaintiffs’ argument that the trial court erred in basing its rulings on La. R.S. §9:2793, which applies to those who render medical aid to another in peril, is also without merit. In fact, the court specifically noted that Bubba did *not* take on a legal duty of rendering emergency service pursuant to La. R.S. §9:2793. A careful reading of the written reasons for judgment makes clear that the trial court based its rulings on its finding that Bubba’s action of bringing Terrel home to his mother was in good faith and was reasonable under the circumstances, especially in light of the fact that Bubba had no medical training and the injuries suffered by Terrel could not have been detected by a layperson.

Plaintiffs’ final argument, that Bubba breached the duty to act reasonably under the circumstances, as imposed by the Restatement Second of Torts, is equally unpersuasive. Under the circumstances, we find that Bubba acted a reasonable man. Because of Terrel’s symptoms—headache, vomiting, gagging, tiredness, slurred speech, etc., it was reasonable for Bubba to believe that Terrel was merely hung over or still intoxicated. Moreover, a wound the size and character of a mosquito bite would not have alerted Bubba or the other boys in the truck that Terrel had suffered a serious brain injury and needed immediate

emergency medical attention. Therefore, Bubba acted reasonably in taking Terrel home to the care of his mother.

***Conclusion***

There is currently no duty to rescue or render aid under Louisiana law and there are no genuine issues of material fact in dispute as to whether Bubba owed a duty to rescue or render aid to Terrel. Bubba acted reasonably under the circumstances. Accordingly, the trial court's judgment granting Gordon Dove's Motion for Summary Judgment was legally correct and is affirmed. All costs of this appeal are assessed to the Plaintiffs.

**AFFIRMED.**