

NOT DESIGNATED FOR PUBLICATION

JOANN DAVIS * **NO. 2004-CA-1623**
VERSUS * **COURT OF APPEAL**
MORGAN STANLEY * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2003-8396, DIVISION "D-16"
Honorable Lloyd J. Medley, Judge
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Judge David S. Gorbaty
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(Court composed of Judge James F. McKay III, Judge Max N. Tobias Jr.,
Judge David S. Gorbaty)

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AFFIRMED

Plaintiff, Joann Davis, instituted this action for wrongful termination against her employer, Morgan Stanley DW Inc. (“Morgan Stanley”). Ms. Davis appeals the trial court’s granting of summary judgment with respect to Morgan Stanley’s reconventional demand. For the reasons assigned, we affirm.

FACTS AND PROCEDURAL HISTORY

Ms. Davis worked as a receptionist for Morgan Stanley until her discharge on June 2, 2002. In May of 2000, Ms. Davis sustained a job-related injury. Ms. Davis was placed on disability leave and began receiving workers’ compensation benefits, including shoulder surgery and physical therapy. Ms. Davis attempted to work during her disability, but requested and received a medical leave of absence on June 12, 2001 and September 15, 2001. Ms. Davis did not return to work after September 15, 2001.

On June 2, 2002, Morgan Stanley terminated Ms. Davis’ employment. On June 2, 2003, Ms. Davis filed a petition for damages in the Civil District Court for the Parish of Orleans. The suit alleged unlawful termination based on the filing of a claim for workers’ compensation benefits.

On July 25, 2003, Morgan Stanley filed an answer and reconventional

demand against Ms. Davis. The reconventional demand in pertinent part asserted the following:

4. In March 2002, Davis threatened to kill her co-workers at Morgan Stanley.
5. As a result of Davis' death threats, Morgan Stanley hired Professional Security Bureau, Ltd. to provide security-guard services at Morgan Stanley's New Orleans and Metairie locations from approximately April 15, 2002 through June 14, 2002, at a substantial cost to Morgan Stanley.

The reconventional demand sought damages from Ms. Davis for the cost of the security-guard services and other damages.

On December 17, 2003, Morgan Stanley filed a motion for summary judgment on their reconventional demand. After hearing the matter on April 2, 2004, the trial court rendered judgment on April 5, 2004, in favor of Morgan Stanley and against Ms. Davis in the amount of \$33,162.00 plus costs and interest. The award represented the amount paid by Morgan Stanley to Professional Security Bureau, Ltd. for security-guard services. On April 8, 2004, Ms. Davis filed a motion for new trial (erroneously titled "Motion to Set New Hearing"). The motion for new trial was denied on June 4, 2004. This appeal followed.

DISCUSSION

Appellate courts review the granting of summary judgment *de*

novo under the same criteria governing the trial court's consideration of whether summary judgment is appropriate. Independent Fire Ins. Co. v. Sunbeam Corp., 99-218, 99-2257, p.7 (La. 2/29/00), 755 So.2d 226, 230. Reynolds v. Select Properties, Ltd., 93- 1480 (La.4/11/94), 634 So.2d 1180, 1183. The summary judgment procedure is designed to secure the just, speedy and inexpensive determination of actions. Two Feathers Enterprises v. First National Bank of Commerce, 98-0465, p.3 (La. App. 4 Cir. 10/14/98), 720 So.2d 398, 400. This procedure is now favored and shall be construed to accomplish those ends. La. C.C.P. art. 966 A(2).

A summary judgment shall be rendered forthwith 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 a material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art 966. If the court finds that a genuine issue of material fact exists, summary judgment must be rejected. Oakley v. Thebault, 96-0937, p.3 (La. App. 4 Cir. 11/18/96), 684 So.2d 488, 490. The burden does not shift to the party opposing the summary judgment until the moving party first presents a prima facie case that no genuine issues of material fact exist. Id. At that

point, the party opposing the motion must "make a showing sufficient to establish existence of proof of an element essential to his claim, action, or defense and on which he will bear the burden of proof at trial." La. C.C.P. art. 966 C. If the non-moving party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. La. C.C.P. art. 966; Schwarz v. Administrators of Tulane Educational Fund, 97-0222, p.4 (La. App. 4 Cir. 9/10/97), 699 So.2d 895, 897. When a motion for summary judgment is properly supported, the non-moving party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided by law, must set forth specific facts showing that there is a genuine issue of material fact for trial. La. C.C.P. art. 967; Williams v. Metro Home Health Care, Inc., 02-0534, p.3 (La. App. 4 Cir. 5/8/02), 817 So. 2d 1224, 1227.

Ms. Davis presents three assignments of error. First, the trial court erred in finding that Morgan Stanley met the requisite burden of establishing that no genuine issues of material fact exist. Second, the trial court erred in failing to recognize that genuine issues of material fact are in dispute as to whether Ms. Davis made threats against her co-workers. Third, the trial court improperly denied Ms. Davis'

motion for new trial.

At the outset, we note that Ms. Davis failed to brief her third assignment of error regarding the denial of the motion for new trial. Rule 2-12.4 of the Uniform Rules of Louisiana Courts of Appeal provides in pertinent part: "... All specifications of error must be briefed. The court may consider as abandoned any specification or assignment of error which has not been briefed...." Since Ms. Davis' brief fails to address her third assignment of error, we consider it abandoned. See Drury v. Kitchen, 94-1579 (La. App. 4 Cir. 11/17/94), 645 So. 2d 1290. Ms. Davis' remaining two assignments of error address the same issue, i.e., whether the trial court erred in granting summary judgment when material issues of fact remained.

Morgan Stanley presented seven exhibits in support of their motion for summary judgment, as follows:

Exhibit "1" Affidavit of Tamera McWilliams (Morgan Stanley Branch Administrative Manager). In pertinent part, Ms. McWilliams stated:

6. On or about June 7, 2001, Ms. Davis requested a two-week medical leave of absence, which Morgan Stanley approved.

7. On or about June 12, 2001, I learned that Ms. Davis was working as a receptionist at the Crescent City Nissan dealership in New Orleans while on medical leave of absence from Morgan Stanley. ...

8. On or about September 15, 2001, Ms. Davis requested and was approved for another leave of absence from Morgan Stanley – but as of June 1, 2002, she had not returned to work at Morgan Stanley.

9. On March 20, 2002, I was informed by Charisse Lykes, a Morgan Stanley employee in the Metairie office, that Ms. Davis had talked about killing Morgan Stanley employees.

10. On March 26, 2002, Morgan Stanley received a copy of Dr. Yvonne Osborne's January 28, 2002 report that disclosed Ms. Davis' impaired mental status, compromised impulse control, and homicidal/suicidal ideation....

11. On or about April 15, 2002, as a result of Ms. Davis' death threats, Morgan Stanley hired Professional Security Bureau, Ltd. to provide security guards at Morgan Stanley's New Orleans and Metairie locations.

12. On May 23, 2002, on behalf of Morgan Stanley I reported Ms. Davis' death threats to the New Orleans Police Department.

13. Ms. Davis' employment with Morgan Stanley was terminated effective June 1, 2002.

14. Morgan Stanley paid Professional Security Bureau, Ltd. a total of \$33,162.00 for the security guard services provided from approximately April 15, 2002 through June 14, 2002. ...

Exhibit No. "2" Dr. Yvonne Osborne's January 28, 2002 report on Ms. Davis' mental status.

Exhibit No. "3" Affidavit of Kathy M. Perret (Financial Advisor for Morgan Stanley). In pertinent part, Ms. Perret stated:

3. Dominick Musso and Mary Horan are Morgan Stanley employees who work with me at Morgan Stanley's Metairie branch.

4. In February of 2002, I had a conversation with Joann Davis in which she told me that she did not like Mary Horan and said that she would

- burn down Dominick Musso's house where Mary was living at the time, with Mary in it, if she were Dominick's former wife. ...
5. I reported my conversation with Joann by e-mail on March 25, 2002 to Tamera McWilliams. ... A copy of my e-mail... is attached to this affidavit as Exhibit "A."

* * *

7. On May 23, 2002, on behalf of Morgan Stanley I reported Joann's comments about burning down Dominick's house to the Jefferson Parish Sheriff's Office.

Exhibit No. "4" Affidavit of Charisse A. Lykes (Registered Senior Client Services Associate for Morgan Stanley). In pertinent part, Ms. Lykes stated:

3. On the evening of March 19, 2002, I had a telephone conversation with Joann in which she told me that her physician said that she was a "threat" to the Metairie office. During that same telephone conversation Joann said, "I fantasize about killing ya'll." ...
4. I reported my telephone conversation with Joann the next day by e-mail to Tamera McWilliams. ... A copy of my e-mail to Ms. McWilliams is attached to this affidavit as Exhibit "A."

Exhibit No. "5" New Orleans Police Department Report of the May 23, 2002 incident.

Exhibit No. "6" Jefferson Parish Sheriff's Office Incident Report of the May 23, 2002 incident.

Exhibit No. "7" Invoice from Professional Security Bureau, Ltd., dated July 11, 2002 (totaling \$33,162.00).

In opposition to Morgan Stanley's motion for summary judgment, Ms. Davis submitted her own affidavit. It is clear from Ms. Davis' affidavit, and noted on the record by the trial judge, that she does not deny making the threats against the Morgan Stanley employees. Ms. Davis maintains that the threats were specifically denied in her answers to requests for admissions. However, the record reflects that the answers to requests for admissions are unsigned and unverified.

Ms. Davis also introduced the affidavit of Margaret Bryant in opposition to the motion for summary judgment. Ms. Bryant states therein that on March 19, 2002, she overheard a telephone conversation between Ms. Davis and Charisse Lykes, and that she did not hear Ms. Davis make a death threat. Ms. Bryant could only state that she heard Ms. Davis say, "You see I couldn't come back to situations like that because I'm in too much pain, I would slap the shit out of somebody!"

After the presentation of the evidence, the trial court granted the motion for summary judgment with respect to Morgan Stanley's reconventional demand. After our own *de novo* review of the record, we find no error in that ruling. Morgan Stanley presented overwhelming

evidence to document Ms. Davis' threatening behavior and to support the necessity of hiring a security guard service. On the other hand, Ms. Davis failed to present sufficient evidence to refute those facts or to show the existence of a material question of fact. Accordingly, the summary judgment was properly granted.

CONCLUSION

For the foregoing reasons, the trial court's judgment is affirmed.

AFFIRMED