NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1970

LESLIE JONES, WIFE OF/AND JOEL JONES O/B/O
THEIR MINOR CHILD L.J.

VERSUS

CHRISTOPHER MICHAEL JOHNSON, JOHN AND JANE DOE, PARENTS OF CHRISTOPHER MICHAEL JOHNSON AND DEF INSURANCE COMPANY, ARIAN BATISTE, JACK AND JILL DOE, PARENTS OF ARIAN BATISTE AND GHI INSURANCE COMPANY, VERLIEANN ARRIZOLA CRANDLE, MARK AND MARY DOE, PARENTS OF VERLIEANN ARRIZOLA CRANDLE AND JKL INSURANCE COMPANY, DARLENE KIRST RISHTON O/B/O HER MINOR CHILD M.K. AND MNO INSURANCE COMPANY, ALBERT ANDRY AND PQR INSURANCE COMPANY, ST. TAMMANY PARISH SHERIFF'S OFFICE AND FONTAINEBLEAU STATE PARK AND STU INSURANCE COMPANY

Judgment rendered AUG 15 2012

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Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 2008-16693
Honorable August J. Hand, Judge

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* * * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

Welch J. dissents with reasons

PETTIGREW, J.

In this case, the plaintiffs/appellants, Leslie Jones, wife of/and Joel Jones o/b/o their minor child, L.J. (hereinafter referred to as "Jones"), challenge the trial court's grant of summary judgment in favor of defendants, St. Tammany Parish Sheriff's Office (hereinafter referred to as "St. Tammany") and Fontainebleau State Park (hereinafter referred to as "Park"). Said judgment, rendered December 2, 2010, dismissed all of Jones's claims against St. Tammany and the Park with prejudice. For the reasons that follow, we affirm the judgment of the trial court.

Albert Andry (hereinafter referred to as "Andry"), an adult male, and a couple of his friends wanted to throw a Christmas party on the evening of December 23, 2007. To accomplish this, Andry rented a secluded party camp at the Park for that night. For security purposes, Andry also hired St. Tammany Parish Sheriff's Deputy Steve Chiasson (hereinafter referred to as "Chiasson") to work a private detail for the party from 9:00 p.m., December 23, 2007, to 1:00 a.m., December 24, 2007. Chiasson was hired to make sure no one left the party "falling-down drunk" and to break up any trouble between attendees, if it arose. A D.J. was also hired to play music for the party until 1:00 a.m., December 24, 2007.

Andry, the other host, and attendees of the party provided alcoholic beverages to the guests at the party. Between 200 and 300 individuals attended the party. The attendees were a mixed age group -- some older than 21, some between 18 to 21, and even some under 18. Chiasson did not check I.D.s to determine anyone's age. The party was uneventful and everything went smoothly. At two minutes to 1:00 a.m., December 24, 2007, Chiasson presented himself to one of the hosts to be paid and then left the detail to go home.

At 1:00 a.m., the D.J. shut down the music. At approximately 1:30 a.m., December 24, 2007, a brawl broke out amongst the remaining attendees, which was estimated to be about two-thirds of the total attendees who had come to the party. In the process of said brawl, L.J., the 16-year old minor son of Jones, received personal injuries and damages. Jones filed suit for these damages against multiple individuals,

including, but not limited to the parents of/and the individuals who battered L.J., their insurers, the Park, and St. Tammany.

St. Tammany and the Park each filed a motion for summary judgment, both of which were granted by the trial court in its judgment of December 2, 2010. Said judgment is the subject of this appeal.

SUMMARY JUDGMENT

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 Co-op., Inc.**, 2001-2956, p. 3 (La. App. 1 Cir. 12/30/02), 836 So.2d 484, 486. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B). Summary judgment is favored and is designed to secure the just, speedy, and inexpensive determination of every action. La. Code Civ. P. art. 966(A)(2); **Thomas v. Fina Oil and Chemical Co.**, 2002-0338, pp. 4-5 (La. App. 1 Cir. 2/14/03), 845 So.2d 498, 501-502.

On a motion for summary judgment, the burden of proof is on the mover. If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the mover's burden on the motion does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. La. Code Civ. P. art. 966(C)(2); **Robles v. Exxonmobile**, 2002-0854, p. 4 (La. App. 1 Cir. 3/28/03), 844 So.2d 339, 341.

Summary judgments are reviewed on appeal *de novo*. An appellate court thus asks the same questions as does the trial court in determining whether summary

judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. **Ernest v. Petroleum Service Corp.**, 2002-2482, p. 3 (La. App. 1 Cir. 11/19/03), 868 So.2d 96, 97, writ denied, 2003-3439 (La. 2/20/04), 866 So.2d 830.

The primary issue raised by this appeal is whether under the facts of this case, a duty was owed by the Park and St. Tammany to Jones's daughter, L.J., and/or whether the injuries sustained fall within the scope of the duty.

In **Roberts v. Benoit**, 605 So.2d 1032 (La. 1991), the Louisiana Supreme Court considered a case in which an off-duty police deputy shot the plaintiff accidentally when he was playing with his gun while intoxicated. The court addressed the ease of association between the risk posed by the deputy's conduct and the Sheriff's duty to exercise reason when hiring and training deputies. The court determined that the ease of association in that case was attenuated at best. **Roberts**, 605 So.2d at 1045. The court extensively discussed the scope of protection element of the duty-risk analysis as follows:

> The most critical issue in the instant case is whether the injury plaintiff sustained was within the contemplation of the duty discussed above. There is no "rule" for determining the scope of the duty. Regardless if stated in terms of proximate cause, legal cause, or duty, the scope of the duty inquiry is ultimately a question of policy as to whether the particular risk falls within the scope of the duty. ...
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> . . . .
>
> In short, the scope of protection inquiry asks "whether the enunciated rule or principle of law extends to or is intended to protect *this plaintiff* from *this type of harm* arising in *this manner.*"
>
> Generally, the scope of protection inquiry becomes significant in "fact-sensitive" cases in which a limitation of the "but for" consequences of the defendant's substandard conduct is warranted. These cases require logic, reasoning and policy decisions be employed to determine whether liability should be imposed under the particular factual circumstances presented. This is such a case. Particularly, the court of appeal's "but for" conclusion is that had Benoit not been commissioned as a deputy he would not have been carrying the gun that caused plaintiff's injuries.
>
> In determining the limitation to be placed on liability for a defendant's substandard conduct–i.e., whether there is a duty-risk relationship–we have found the proper inquiry to be how easily the risk of injury to plaintiff can be associated with the duty sought to be enforced. Restated, the ease of association inquiry is simply: "How easily does one associate the plaintiff's complained-of harm with the defendant's conduct? ... Although ease of association encompasses the idea of foreseeability, it is not based on foreseeability alone." Absent an ease of association between

> the duty breached and the damages sustained, we have found legal fault lacking.

Roberts, 605 So.2d at 1044-1045 (citations omitted).

After a thorough review of the memorandum and exhibits introduced by the parties, we agree with the trial court. Under the duty risk analysis, we come to the conclusion that the unique facts of this case do not fall within the scope of the duty that may have been owed to Jones and their daughter by the Park and St. Tammany. Thus, summary judgment was appropriately granted in favor of the Park and St. Tammany.

For the above and foregoing reasons, we affirm the trial court's December 2, 2010 judgment in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B and assess all appeal costs against the plaintiffs/appellants.

AFFIRMED.

LESLIE JONES, WIFE OF/AND JOEL JONES O/B/O THEIR MINOR CHILD L.J.

VERSUS

CHRISTOPHER MICHAEL JOHNSON, ET AL.

NUMBER 2011 CA 1970

FIRST CIRCUIT

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STATE OF LOUISIANA

WELCH, J., dissenting.

JEW

I respectfully dissent. I believe that genuine issues of material fact exist as to whether the St. Tammany Parish Sherriff's Office (STPSO) and Fontainebleau State Park (Park) acted reasonably under all of the circumstances of this case. Evidence was presented on the motions for summary judgment from which it could be found that the party in question was attended by nearly 300 young persons, approximately two-thirds of whom were under the legal drinking age. It is undisputed that alcohol was being consumed by the party-goers. There is also evidence showing that at the time Deputy Chiasson departed the party, the party was still going on. Witnesses stated that at the time Deputy Chiasson left the party, it was still packed, only a few persons had left, and one witness estimated two-thirds of the party-goers remained. Shortly after Deputy Chiasson's departure, a huge fight erupted, during which Ms. Jones was injured. Additionally, in opposition to the motions for summary judgment, plaintiffs offered a report prepared by Dr. Wade Schindler, who has served as a security consultant, a police officer, commander, and chief, and as an adjunct professor of criminal justice at Tulane University. Therein, Mr. Schindler concluded that the STPSO, Deputy Chiasson, the Park and its employees all had the opportunity to deter the events that should have been foreseeable to them.

In support of their motions for summary judgment, both the STPSO and the Park argued that they had no duty to protect Ms. Jones from unforeseeable criminal

attacks by third-parties. The trial court apparently agreed with these arguments in granting the motions for summary judgment. Forseeability of the events leading to Ms. Jones's injury is a crucial issue in this case as it determines the scope of the STPSO's and the Park's duty to Ms. Jones. I find from the evidence on the motions for summary judgment that there are genuine issues of material fact as to whether the fight was foreseeable from the perspective of the STPSO and the Park, particularly in light of the large number of youthful attendees at a party where alcohol was being consumed. Because there are genuine issues of fact regarding forseeability, I conclude that the fact Ms. Jones was the victim of a criminal attack does not preclude a finding of liability on the part of either the STPSO or the Park as a matter of law.

In its motion for summary judgment, the STPSO further insisted that Deputy Chiasson had no duty to check the IDs of persons attending the private function because he reasonably believed he was providing security for a 10-year high school reunion and thus had no reason to believe the attendees were under the legal drinking age. Deputy Chiasson testified that he believed all of the party-goers had graduated from high school ten years before the party and that the attendees were in their mid-20s. The STPSO also contended that Deputy Chiasson had no duty to stay at the party beyond the time designated in the work detail because there were no outward signs of trouble until the first punch was thrown, which led to the brawl, after Deputy Chiasson had completed his work detail and left the event. Deputy Chiasson acknowledged that if he felt there had been any problems at the end of his shift, he could have done one of three things: (1) stay at the party; (2) shut down the party prior to leaving; or (3) call for additional police units and depart the premises following their arrival.

The STPSO work details procedures make it clear that a deputy performing a private work detail is an employee of the STPSO, not the entity paying for the

work detail, and a deputy is required to enforce all state and parish laws while working the paid detail. As a general rule, a police officer has a duty to perform his function with due regard for the safety of all citizens who will be affected by his actions. His authority must be exercised at all times in a reasonable fashion and he must act as a reasonably prudent person under the circumstances. Officers are held to choosing a course of action which is reasonable under the circumstances. **Hardy v. Bowie**, 98-2821 (La. 7/8/99), 744 So.2d 606, 614. Whether Deputy Chiasson acted reasonably in assuming all of the party-goers were of the legal drinking age, whether he should have taken any action prior to leaving the party or whether he should have stayed past the time designated in the work detail, and whether Deputy Chiasson's actions or lack thereof played a causative role in Ms. Jones' injuries are questions of fact which should be determined by the trier of fact. In short, I find there are genuine issues of fact as to whether Deputy Chiasson acted reasonably under all of the circumstances of this case, and I conclude that summary judgment on the issue of the STPSO's liability was improvidently granted.[1]

Similarly, I find that there are genuine issues of fact as to whether the Park acted reasonably. The Park ranger was charged with the responsibility of enforcing the Park's rules and regulations and like Deputy Chiasson, the Park ranger was charged with the responsibility of enforcing the law. Whether the Park's actions or inactions were reasonable and whether the Park's actions or inactions played a causative role in Ms. Jones's injuries are questions of fact which may not be summarily resolved.

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[1] The STPSO contends that even if the conduct of Deputy Chiasson could be found to be negligent, it is entitled to immunity under La. R.S. 9:2798.1(B), urging that the deputy's decision not to investigate attendees for underage drinking or to stay after the designated time for the work detail are discretionary acts for which liability may not be imposed on the STPSO. The STPSO's argument on immunity focuses on the reasonableness of Deputy Chiasson's actions and the alleged lack of forseeability that the fight would break out. Because there are genuine issues of material fact on the issues of forseeability and the reasonableness of Deputy Chiasson's actions and inactions, the STPSO has not demonstrated it is entitled to immunity as a matter of law.

For these reasons, I would reverse the summary judgments entered in favor of the STPSO and the Park and remand for further proceedings.