

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2013 CA 1369**

**DOROTHY WILLIS**

**VERSUS**

**AMERICAN EAGLE AIRLINES, INC., RAY TOLBERT  
AND ABC INSURANCE COMPANY**

**Judgment Rendered: MAY - 2 2014**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. 592,845

Honorable R. Michael Caldwell, Judge Presiding

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\* \* \* \* \*

**BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.**

*PETTIGREW, J. DISSENTS and assigns reasons.*

*PMF  
JMM*

**McCLENDON, J.**

In this appeal, the plaintiff, Dorothy Willis, who was injured in a fall on an airline jet-way, challenges a summary judgment that dismissed her suit for damages against the defendant, G.A.T. – Airline Ground Support, Inc. (GAT). For the reasons that follow, we affirm.

**FACTUAL AND PROCEDURAL HISTORY**

On May 23, 2010, Ms. Willis was scheduled to depart from the Baton Rouge airport on American Eagle Airlines, Inc. (American Eagle) to return to Dallas after visiting with her children and grandchildren in Baton Rouge. Ms. Willis, who was 73-years-old at the time, requested wheelchair assistance upon her arrival outside the terminal building and again at the American Eagle ticket counter. Ms. Willis was transported by wheelchair to the seating area near her departure gate by an unidentified skycap, where she learned that her flight would be delayed for approximately one hour.<sup>1</sup> Ms. Willis sat in a chair near the gate area and asked the skycap to return in an hour with the wheelchair. In less than an hour, the flight was called and the passengers began boarding. The skycap had not returned, and Ms. Willis decided to board the plane herself. Ms. Willis gave an American Eagle employee her boarding pass and began walking down the jet-way from the terminal to the airplane, when she fell and sustained serious injury.

On July 23, 2010, Ms. Willis filed a petition for damages against American Eagle.<sup>2</sup> Thereafter, on November 3, 2011, Ms. Willis filed a first supplemental and amending petition for damages adding GAT as a defendant. On March 5, 2013, GAT filed a motion for summary judgment. In its motion, GAT asserted that Ms. Willis would be unable to meet her burden of proof that any damages she sustained were caused by any fault, action, or inaction on the part of GAT and, accordingly, it was entitled to judgment as a matter of law. Ms. Willis filed

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<sup>1</sup> It is undisputed that GAT had contracted with American Eagle at all relevant times herein to provide skycap services for the airline.

<sup>2</sup> Ms. Willis also named as defendants in her original petition the City of Baton Rouge/Parish of Baton Rouge and Ray Tolbert. Both defendants were eventually dismissed from the suit by consent judgment.

an opposition to the motion for summary judgment, and the matter was heard on May 20, 2013. At the conclusion of the hearing, the trial court granted the summary judgment. A judgment was signed on June 3, 2013, and Ms. Willis appealed.

### **SUMMARY JUDGMENT LAW**

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. **Granda v. State Farm Mutual Insurance Company**, 04-2012 (La.App. 1 Cir. 2/10/06), 935 So.2d 698, 701. 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. LSA-C.C.P. art. 966B. Summary judgment is favored and "is designed to secure the just, speedy, and inexpensive determination of every action." LSA-C.C.P. art. 966A(2).

The burden of proof on a motion for summary judgment remains with the movant. LSA-C.C.P. art. 966C(2). However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements 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. LSA-C.C.P. art. 966C(2); **Lewis v. Morgan**, 11-2182 (La.App. 1 Cir. 6/8/12), 93 So.3d 741, 744.

A "genuine issue" is a "triable issue," that is, an issue on which reasonable persons could disagree. If, on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. **Jones v. Estate of Santiago**, 03-1424 (La. 4/14/04), 870 So.2d 1002, 1006. In determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony, or weigh evidence.

**Fernandez v. Hebert**, 06-1558 (La.App. 1 Cir. 5/4/07), 961 So.2d 404, 408, writ denied, 07-1123 (La. 9/21/07), 964 So.2d 333. A fact is "material" when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery. **Smith v. Our Lady of the Lake Hosp., Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 751.

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **East Tangipahoa Development Company, LLC v. Bedico Junction, LLC**, 08-1262 (La.App. 1 Cir. 12/23/08), 5 So.3d 238, 243-44, writ denied, 09-0166 (La. 3/27/09), 5 So.3d 146.

#### **DISCUSSION**

Generally, most negligence cases are resolved by employing a duty/risk analysis, which entails five separate elements: (1) whether the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) whether the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) whether the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) whether the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) whether the plaintiff was damaged (the damages element). A negative answer to any of the inquiries of the duty/risk analysis results in a determination of no liability. **Hanks v. Entergy Corp.**, 06-477 (La. 12/18/06), 944 So.2d 564, 579.

Further, a tortfeasor is only liable for damages caused by his negligent act; he is not liable for damages caused by separate, independent, or intervening causes. **Yohn v. Brandon**, 01-1896 (La.App. 1 Cir. 9/27/02), 835 So.2d 580, 584, writ denied, 02-2592 (La. 12/13/02), 831 So.2d 989. Hence, the plaintiff has the burden of proving that her injuries were not the result of such separate, independent or intervening causes. **Id.**

In the case *sub judice*, Ms. Willis alleges that GAT is liable to her for the injuries she sustained based on the failure of GAT to get her to the American Eagle departure gate. She argues that GAT's failure to transport her to her actual departure gate or to an American Eagle agent resulted in a breach of GAT's duty of transport. GAT contends, however, that any duty it had was fulfilled by transporting Ms. Willis to the general gate area, after which Ms. Willis informed the sky cap that he could leave.

In support of its motion for summary judgment, GAT submitted excerpts from the deposition of Ms. Willis; excerpts from the deposition of Ray Tolbert, a GAT skycap; the affidavit of Nathaniel Bradley, a GAT employee; and the deposition of Mike McKenzie, an American Eagle employee. In opposition to the motion, Ms. Willis offered the depositions of Ms. Willis, Mr. Tolbert, and Mike McKenzie.<sup>3</sup>

The record shows that Ms. Willis asked for and received assistance in obtaining wheelchair transportation to the area of the departure gate for her flight to Dallas. Ms. Willis stated that soon after she got to the gate area, it was announced that the flight was delayed. Ms. Willis got out of the wheelchair and sat in an airport seat to wait for her flight. She informed the individual who transported her, who never was identified, that he did not have to wait for her as he could help someone else, but she did ask him to return in an hour with the wheelchair to help her. Thereafter, the individual left with the wheelchair.

Ms. Willis testified that after about forty-five to fifty minutes, her flight was called. She stated that passengers were talking about missing their connecting flights and once boarding was called, the other passengers hurried to get on the airplane. Ms. Willis stated that she kept looking for the individual who helped her earlier, but he had not yet returned. The following discussion then took place:

Q. What did you do?

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<sup>3</sup> We note that only copies of the front pages of the two-sided pages of the depositions were submitted by Ms. Willis.

A. Well, I didn't know what to do, but I just - - finally, I realized, you know, I got to get up and get in the line; they'll leave me, you know. So I did, and -- but it went really fast. I mean, there was people rushing to get so they could get the plane off; and when I got up to give the lady my boarding pass, I almost said something to her about, I'm supposed to be in a wheelchair. I'm supposed to be taken on in a wheelchair, but I hesitated because I didn't want to delay the flight anymore. It would have been probably another 20 minutes, so I - -

Q. Was this a lady - - go ahead.

A. I did not want to delay the flight anymore. This nice lady that I was visiting with, you know, she mentioned to me - - she said, "Oh, my goodness," you know, "this is horrible." She said, "If I don't get to my connecting flight, I may be in the airport all night." And I just hated to delay it anymore for those people's sake. And so I just thought, Well, I can walk - - I can walk some, so I'll just go ahead, you know, and not delay it anymore. I just made that decision, but, you know, I didn't want to be selfish and make those people wait longer.

Q. You said there was a lady taking the tickets?

A. Yes.

Q. It wasn't a man?

A. She had walked up while I was in the line because the man was by himself; but when the people started getting on, this lady came up from somewhere; and she was in the - - I noticed it, you know - - about halfway down, I noticed it. There was a lady had come up.

Q. Did you say anything to that lady?

A. I didn't ask her. I almost did because, you know - - but I just decided not to because I didn't want to delay the flight any more.

....

Q. Did you say to anyone, "I need assistance boarding the aircraft"?

A. No.

Ms. Willis then stated that she began walking down the jet-way. She stated she was trying to be careful "but trying to rush at the same time" because she had been the last passenger to board. She remembered getting fairly close to the door of the airplane, but then she fell and lost consciousness.

Ray Tolbert testified in his deposition that for the past seven years he had been employed by GAT as a skycap, which included providing wheelchair

services. He stated that skycap service is provided from the ticket counter to the gate, but not down the jet-way; at that point, the gate agent for the airline would take over.

This testimony was confirmed by Nathaniel Bradley, manager of GAT at the Baton Rouge airport. Mr. Bradley provided an affidavit in which he attested that GAT employees are prohibited from transporting wheelchair passengers down the jet-ways at the Baton Rouge airport and that GAT employees are only allowed to transport wheelchair passengers as far as the airline's gate agent handling the particular flight and not beyond that point. Mr. Bradley also attested that wheelchair passengers seeking assistance beyond the top of the jet-way must be escorted down the jet-way by airline personnel and not by GAT employees.

Michael McKenzie, in a telephone deposition, testified that the ultimate responsibility of taking care of passengers with disabilities who need assistance is upon the agents of American Airlines.

In granting the motion for summary judgment, the trial court stated:

[Ms. Willis] chose not to notify anyone that she needed a wheelchair. She got up, walked across to the ticket counter where she could have again informed American Eagle that she needed wheelchair assistance, and they could have summoned someone, but she did not. She proceeded to go down the jetway, she fell and injured herself. It's clear from all of the evidence and all of the testimony that GAT's obligation was to bring her to the gate, it was not to take her down the jetway. ... It's unquestioned that GAT fulfilled their duty of transporting her from the ticket counter to the gate. ... She also testified that there was an American Eagle employee on her side of the passageway for a good portion of this time, but she never said anything about saying anything to that person about needing additional assistance. If GAT had a duty to come back, if GAT somehow breached that duty, I think the actions of Ms. Willis was an intervening cause that relieved them of that duty.

Upon our own thorough review of the record, we agree with the trial court. Even if the unidentified person who transported Ms. Willis was a GAT employee who owed a duty to her, the evidence established that GAT's duty ended when she was delivered to the gate area. Ms. Willis indicated that she was close to her departure gate, and when the flight was delayed, she informed

the skycap that he could go, but did ask him to return later with the wheelchair. Also, the GAT employee could not transfer Ms. Willis down the jet-way, and only American Eagle employees were permitted to assist Ms. Willis where the fall occurred. The evidence failed to establish that any GAT employee was present on the jet-way when Ms. Willis fell. Furthermore and significantly, Ms. Willis made the decision to walk down the jet-way on her own without assistance. By her own admission, she did not ask any American Eagle employee for assistance in getting to the airplane, although she was sitting near an American Eagle employee while waiting. Nor did Ms. Willis ask for assistance when she handed the American Eagle agent her boarding pass. Thus, even if GAT had some duty to return to the gate and transfer Ms. Willis to an American Eagle agent, that duty ended when Ms. Willis chose to proceed down the jet-way on her own.<sup>4</sup>

Accordingly, once GAT pointed out the absence of factual support for an essential element of Ms. Willis's claim, the burden shifted to her to present evidence demonstrating that a material issue of fact remained. Ms. Willis failed to do so, and GAT's motion for summary judgment was properly granted.

### **CONCLUSION**

For the foregoing reasons, the June 3, 2013 judgment of the trial court granting GAT's motion for summary judgment is affirmed. Costs of this appeal are assessed to Dorothy Willis.

**AFFIRMED.**

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<sup>4</sup> We also reject Ms. Willis's argument that somehow GAT assumed some of American Eagle's heightened duties as a common carrier.



DOROTHY WILLIS

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PETTIGREW, J., DISSENTS, AND ASSIGNS REASONS.

I am of the opinion that the facts of this case were not appropriate for summary judgment. In Louisiana, we have comparative fault, as set forth in La. Civ. Code art. 2323. In my humble opinion, the majority and the trial court improperly weighed evidence and made credibility decisions that are not appropriate for summary judgment.