**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 1294

KRIS CATANIA, INDIVIDUALLY AND ON BEHALF OF HER MINOR DAUGHTER, HALAYNA CATANIA, AND HALEY CATANIA

VERSUS

SHERIFF JACK STEPHENS AND THE ST. BERNARD PARISH SHERIFF'S OFFICE

CONSOLIDATED WITH

NO. 2014 CA 1295

MICHAEL VINCENT CATANIA, JR. AND BRITTANY LYNN CATANIA

VERSUS

SHERIFF JACK STEPHENS AND THE ST. BERNARD PARISH SHERIFF'S OFFICE[1]

**Judgment rendered March 17, 2015.**

* * * * * *

Appealed from the
18th Judicial District Court
in and for the Parish of Iberville, Louisiana
Trial Court Nos. 69630 and 70493
Honorable James J. Best, Judge

* * * * * *

[1] The caption of this appeal reflects a consolidation of two separate suits at the trial court level. The suits remain consolidated on appeal. The only issues before this court arise out of the trial court's judgments granting summary judgment in favor of defendants and denying plaintiffs' cross motions for summary judgment. These two judgments were both appealed, and each judgment was assigned a separate appeal number by this court. See **Kris Catania, Individually and on behalf of her minor daughter, Halayna Catania, and Haley Catania v. Sheriff Jack Stephens and The St. Bernard Parish Sheriff's Office**, 2014-1292 (La. App. 1 Cir. 3/17/15) (unpublished opinion) c/w **Michael Vincent Catania, Jr. and Brittany Lynn Catania v. Sheriff Jack Stephens and The St. Bernard Parish Sheriff's Office**, 2014-1293 (La. App. 1 Cir. 3/17/15) (unpublished opinion) (**Catania I**) (also decided this date).

Welch J. concurs in result

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* * * * * *

**BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.**

**PETTIGREW, J.**

Plaintiffs appeal the trial court's judgment granting summary judgment in favor of defendants and dismissing, with prejudice, their claims against defendants. For the reasons that follow, we amend in part and affirm.

## FACTS AND PROCEDURAL HISTORY

Michael Catania, the deceased husband of plaintiff, Kris Catania, had previously been married to Dorinda Catania, a St. Bernard Parish resident. At all times pertinent hereto, Michael was a resident of Iberville Parish. Following his divorce from Dorinda, Michael's child support obligation was court ordered. When Michael fell into arrears on his child support payments, Dorinda initiated charges against him in St. Bernard Parish for criminal neglect of family. On September 2, 2009, Dorinda executed an affidavit for an arrest warrant for Michael. Both the affidavit and the subsequent arrest warrant were signed by Justice of the Peace Howard Luna.

According to Dorinda, she faxed the affidavit to Deputy Maria Small of the Iberville Parish Sheriff's Office ("IPSO"), and Deputy Small advised her that the affidavit was not sufficient to arrest Michael. Rather, Deputy Small told her that the St. Bernard Parish Sheriff's Office ("SBPSO") would need to fax the warrant to her. Dorinda testified that SBPSO confirmed with her that they were sending a copy of the warrant to IPSO.

On September 22, 2009, Michael surrendered himself in St. Bernard Parish, where he was arrested and incarcerated in the St. Bernard Parish jail. On September 23, 2009, SBPSO marked the warrant satisfied in its ARMMS system. Michael remained incarcerated until January 14, 2010, when he pled guilty to the charges and was sentenced to 6 months in parish prison, suspended, and placed on unsupervised probation, with certain conditions, including a sentence of 114 days in parish prison with credit for time served. On July 3, 2010, Michael committed suicide.

Deputy Small, a 25-year employee of IPSO, testified that she is the Chief Criminal Deputy Secretary and has been in charge of the Warrants Division for approximately 17 years. According to Deputy Small, she received the warrant for Michael's arrest on September 21, 2009, and entered it into her computer as an active warrant on the same

day. Subsequently, when Deputy Small learned that Michael was deceased, she contacted SBPSO to advise them of Michael's death. Deputy Small spoke with Kathy Bayham and advised her that IPSO would be recalling the warrant from their system. Deputy Small recalled the warrant on July 6, 2010.

Deputy Small indicated that the normal recall procedure for warrants was that the issuing sheriff's office would either call or fax with notice that the warrant was to be recalled. Deputy Small explained further:

> Q. So it's your testimony that the only time that you would recall a warrant is when some parish calls you to tell you that it's been satisfied?
>
> A. They can fax me something or they can call me.
>
> Q. Should, in your opinion, in your 25 years of experience, should the St. Bernard Parish Sheriff's Office, when a warrant is satisfied, call every sheriff in the state of Louisiana and tell them that
>
> A. If they sent it --
>
> Q. -- or fax it to them?
>
> A. If they sent it to every parish in the state of Louisiana, they should. That's how I do my warrants. I have something attached that wherever I sent it to and if it's recalled, I recall it from all of the parishes that I sent it to.

Deputy Small testified that she had no knowledge of when or even if Michael was ever arrested in St. Bernard Parish. When shown a computer printout from SBPSO's ARMMS system reflecting Michael's warrant "SATISFIED BY ARREST" as of September 23, 2009, Deputy Small indicated that she would have expected to be notified by either phone or fax that Michael's warrant was satisfied. Deputy Small did note, however, that while both IPSO and SBPSO each have an ARMMS system, the two were not connected.

In a sworn affidavit, Colonel Peter Tufaro, the commander/supervisor of the Criminal Records Division of SBPSO, confirmed that there is no connection between the ARMMS system in St. Bernard and the ARMMS system in Iberville. Colonel Tufaro further noted that the warrant issued by Justice of the Peace Luna on September 3, 2009, for Michael's arrest was not entered into the NCIC system by SBPSO. Finally, Colonel Tufaro explained that he conducted a search of the records maintained by SBPSO and was

unable to locate any record indicating that any employee of SBPSO notified IPSO of the warrant issued by Justice of the Peace Luna for Michael's arrest on September 3, 2009.

Deputy Kathy Bayham indicated that she started working for SBPSO 5 years ago. She handles the daily operations of the Criminal Records Division. With regard to warrants, Deputy Bayham testified that she was involved with every aspect, *i.e.*, entering the warrants into ARMMS, issuing the warrants, and recalling warrants. When asked about the communication between SBPSO and IPSO, concerning the status of the arrest warrant following Michael's incarceration, the following colloquy occurred:

> Q. I will follow up on what Mr. Tillery was doing. I think we agree that when St. Bernard Parish entered into its [ARMMS] System the arrest warrant for Mr. Catania that in and of itself entering into the [ARMMS] System would not have told any other sheriff's office that an arrest warrant existed. They have to ask or find out some other way?
>
> A. Correct.
>
> Q. You are speculating a little bit and I understand that. You were not there. One way or another the St. Bernard Parish Sheriff's Office faxed a physical copy of the arrest warrant at somebody's request?
>
> A. Correct.
>
> . . . .
>
> Q. To Iberville Parish?
>
> A. Uh-huh (affirmative response.)
>
> Q. Now, what would prevent St. Bernard, your criminal records section from noting in the [ARMMS] entry or any other records your department thinks would be reliable a note to the [effect] ... be sure to get back with them if or when it is satisfied? What would stop that from happening? That is just noting we faxed a physical copy of the arrest warrant to another parish; be sure to get back to them when it is satisfied?
>
> A. We faxed them a warrant to be honest with you. If you faxed them an open warrant and they offered information, why wouldn't they call months later to see if the warrant was still good? That is what I would do if the shoe was on the other foot. I would never arrest anybody ... without finding out if this warrant from a few months, next year, or last year, or 10 years from now -- we go through that a lot. You might have a warrant for 10 years. You have got -- the only safe way ... to avoid human error is to check with [the other] agency to see if it is still good.
>
> Q. Is there anything that would keep the St. Bernard Parish Sheriff's Office from making a note in the -- sounds like relatively few instances -- when an arrest warrant is ... actually sent to another sheriff's office to note that be sure to give Iberville a call if this is deemed satisfied; let them know?

A. There is nothing to prevent us from doing that but there is nothing that says we should do that.

Q. This is why I asked?

A. Nobody does it for us either. You know, I can understand why. That is a lot of people you are dealing with. There [are] a lot of people and parishes. We have not had a problem that I know of. We will give you any information you want. All you have to do is call 24/7.

Q. Let me go over this scenario. Then ask some questions. Let's assume in this case Mr. Catania turned himself into St. Bernard. St. Bernard Parish enters into its [ARMMS] that the warrant of September 23rd, 2009 is deemed satisfied. I think we are in agreement Iberville Parish Sheriff's Office would not know of that as of September 23[rd], 24th, or what have you. It seems that this opens up a situation where even if you have a far, far less tragic outcome, a person could be arrested by the sheriff's office to whom a warrant had been sent; arrested at his work, at his home.

Not a traumatic event; just sorry, sir, turn around. We will have to handcuff you and we will take you down to the station. It is found out that it is not valid, that would still seem even in those circumstances to be a real unpleasant event if it was unnecessary and it would seem that it is not a huge barrier to make a note in the [ARMMS] or some other St. Bernard Parish Sheriff's record will be sure to follow up with that other parish and let them know if or when it is satisfied?

A. It is the same thing. It is not a very hard thing for that policeman or deputy to do -- to know what he should do and call to make sure this person should be arrested before he puts handcuffs on him at his home or on his job.

Q. Is there a written protocol for your department criminal records?

A. I don't have one.

Q. Who would have one?

A. Protocol is the way things are done. That is the way they have been done. We have not had a problem with them. That is how you are trained to accept the phone calls when the deputy -- when any police officer calls, you find out anything they need to know and whether or not the warrant is good, you make sure of that. You check your records even though your warrant might say satisfied. You make sure he is arrested for it. It is all in the system right here. You can pull it all up before you answer that question, you check the whole thing. That is to -- to me the best way. I have not had a problem with it.

Six months after Michael's release from the St. Bernard Parish jail, Kris received a phone call from a friend, who advised Kris that she had been questioned at the local Wal-Mart by an IPSO deputy concerning Michael's whereabouts. This prompted Kris to call Deputy Sheriff Stephen Engolio of the IPSO on July 3, 2010, to inquire about the alleged

warrant. Deputy Engolio confirmed that there was, in fact, a warrant in their system from SBPSO. Because it was a holiday weekend, Deputy Engolio was unable to verify the outstanding SBPSO warrant. However, he did instruct Kris for both of them to come to his office the following Tuesday so he could "make some calls" about the warrant. Deputy Engolio never told Kris that he would arrest Michael. Rather, he advised Kris that if the warrant was valid, Michael "could go on down that way" and surrender to SBPSO. Deputy Engolio did confirm, however, that neither IPSO nor SBPSO ever tried to execute the warrant on Michael. Not long after the phone call to Deputy Engolio, Kris told Michael about their conversation. According to Kris, Michael was upset, angry, confused, and scared. When Kris attempted to contact the St. Bernard Parish jail about the warrant, she was told that Michael would have to go there himself to find out if there was a warrant.

Kris testified that they had gone to her parents' house with the kids that day to visit and eat watermelon. According to Kris, Michael had started drinking at about 10:00 that morning and had consumed about a six-pack of beer. She estimated that he drank his last beer around "2:00ish." Kris also indicated that Michael would normally take Xanax and hydrocodone, twice daily, and assumed that he had taken his morning medicine that day as well. It was on the drive home from her parents' house when Kris made the phone call to the St. Bernard Parish jail. Michael was present during that call and was aware of what Kris had been told. Shortly thereafter, they arrived at home and Michael committed suicide in their backyard.

When asked if Michael had ever talked about committing suicide before he was incarcerated in September 2009, Kris indicated that after he was released from prison, Michael had said "he would die before he ever had to go back." She also indicated that Michael talked about committing suicide once before, some time prior to 2009, when he had gotten "down and out" over something that happened with his older children. However, Michael never sought any mental health treatment.

Kris testified that on the day of Michael's suicide, they had discussed the warrant situation with her parents. Michael told them that he "wasn't going back." When asked if Michael threatened to kill himself that day, the following colloquy occurred:

Q. Was he threatening to kill himself at any point during that time?

A. He had talked about it. Well, he had talked about when they picked him up showing the gun to the deputies when they pulled up to get him and make the deputies shoot him.

Q. I'm not quit [sic] sure what you are saying. Explain that to me again.

A. He told me that he was going to wait until the deputies pulled in to get him.

Q. On the warrant?

A. Yes, ma'am.

On November 10, 2010, Kris, individually and on behalf of her minor daughter, Halayna Catania, and Haley Catania (hereinafter collectively referred to as "Kris"), filed a petition for damages against Sheriff Jack Stephens and SBPSO (hereinafter collectively referred to as "defendants"), in the 18th Judicial District Court ("18th JDC"), Division A, bearing docket number 69630. Alleging that defendants were negligent in failing to expunge the arrest warrant issued for Michael, Kris sought damages for Michael's wrongful death; past and future loss of support; loss of consortium; mental anguish; loss of love, guidance, affection, and companionship; and funeral expenses. On June 29, 2011, Michael Vincent Catania, Jr. and Brittany Lynn Catania (hereinafter sometimes referred to as the "Catania plaintiffs"), the adult children born of the marriage between Michael and Dorinda, filed a similar petition against defendants in the 18th JDC, Division D, bearing docket number 70493. Defendants filed general denials in response to both claims, along with exceptions raising the objections of improper venue, lack of procedural capacity, and no cause of action. On October 31, 2011, the trial court signed an order transferring the Catania plaintiffs' case to Division A of the 18th JDC. The trial court signed an order on November 30, 2011, consolidating the cases for trial.

The Catania plaintiffs later amended their suit to add a claim for damages against The Princeton Excess and Surplus Lines Insurance Company ("Princeton"). Princeton was the liability insurer for defendants at all times pertinent hereto. Princeton answered the suit and filed exceptions raising the objections of improper venue, lack of procedural capacity, and no cause of action.

Thereafter, defendants filed a motion for summary judgment, seeking dismissal of all the claims against them. Defendants urged that they were entitled to judgment on liability as a matter of law, as plaintiffs could not prevail on any of the elements necessary for a negligence claim; namely, duty, breach of duty, cause-in-fact, and legal cause. In support of their motion for summary judgment, defendants submitted the following: 1) the affidavit executed by Dorinda on September 2, 2009, in support of the arrest warrant to be issued against Michael; 2) the arrest warrant issued by Justice of the Peace Luna on September 3, 2009; 3) excerpts from the deposition of Deputy Small; 4) the affidavit of Colonel Peter Tufaro, commander of the Criminal Records Division of the SBPSO; 5) certified records from IPSO regarding the warrant at issue; 6) excerpts from the deposition of Dorinda; 7) excerpts from the deposition of Deputy Engolio; 8) Michael's medical records from Dr. Gerard Falgoust dated May 11, 2009, indicating that Michael had a longstanding history of anxiety disorder and chronic pain syndrome; and 9) the autopsy report, which confirmed "[m]ultiple drug intoxication" and a blood alcohol level of .154.

Kris and the Catania plaintiffs opposed defendants' motion for summary judgment and filed cross motions for summary judgment contending that defendants were liable as a matter of law for the wrongful death of Michael. Submitted in support of the cross motions for summary judgment were the following exhibits: 1) excerpts from the deposition of Dorinda; 2) excerpts from the deposition of Deputy Bayham; 3) the affidavit executed by Dorinda on September 2, 2009, in support of the arrest warrant to be issued against Michael; 4) excerpts from the deposition of Deputy Small; 5) certified records from IPSO regarding the warrant at issue; 6) excerpts from the deposition of Kris; 7) a message sent by Kris to Dorinda on myspace.com the morning before Michael committed suicide, questioning why she was trying to have him arrested again; 8) a printout from the website thinkstream.com, describing the technology available to law enforcement in Louisiana for communications between databases; 9) a copy of a letter Michael wrote to Kris while he was incarcerated; 10) an unsigned affidavit of Kris' mother, Brenda Griffin; 11) an unsigned affidavit of Kris' father, William Griffin; 12) a note from Cpl. D. Culpepper

regarding Michael's warrant and the fact that the warrant had two CCN[2] numbers that needed to be combined (Cpl. Culpepper also indicated that because of the two CCN numbers, the warrant "did not Load properly" and needed to be satisfied in ARMMS.); 13) report and affidavit of Dr. Marc L. Zimmerman, a clinical, medical, and forensic psychologist who was asked to review certain documents pertaining to Michael's arrest, incarceration, and suicide; and 14) arrest-related death statistics developed by the United States Department of Justice.

Following a hearing on the motions, the trial court ruled from the bench, granting defendants' motion for summary judgment. The trial court found that Michael's suicide was not foreseeable and did not fall within the scope of the duty owed by the defendants. The trial court also denied the cross motions for summary judgment filed by Kris and the Catania plaintiffs, noting that there existed a genuine issue of material fact as to whether SBPSO had notified IPSO that there was an outstanding warrant.

There are two separate judgments, both signed by the trial court on April 8, 2014, addressing the motions.[3,4] The judgment that forms the basis of the instant appeals provides, in pertinent part, as follows:

> **IT IS ORDERED, ADJUDGED AND DECREED** that the Motion for Summary Judgment filed on behalf of the defendants, Sheriff Jack Stephens and the St. Bernard Parish Sheriff's Office is hereby granted in favor of the

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[2] According to Deputy Bayham, a CCN number is assigned to an inmate upon arrest.

[3] The other judgment signed by the trial court on April 8, 2014, denied the plaintiffs' cross motions for summary judgment, and forms the basis of the appeal in **Catania I**.

[4] Prior to rendering judgment, the trial court considered neither the answer nor the exception raising the objection of no cause of action filed by Princeton in response to the Catania plaintiffs' claims. However, that would not affect our authority to notice the objection. In **Board of Trustees of East Baton Rouge Mortg. Finance Authority v. All Taxpayers**, 336 So.2d 303, 305 (La. App. 1 Cir. 1976), this court, citing **Pogue v. Ray**, 272 So.2d 454, 457 (La. App. 2 Cir. 1973), noted as follows:

> Although the record does not show that the trial court considered or ruled on the exception of no cause of action filed by defendants . . ., under the provisions of La. C.C.P. Article 927, this court has authority on its own motion to take notice that the petition and attached documents do not disclose a cause of action.

Thus, despite the trial court's failure to consider or rule on the no cause of action exception, we find that the Catania plaintiffs have failed to state a cause of action against Princeton and amend the judgment to reflect that the Catania plaintiffs' claims against Princeton are dismissed, with prejudice, for failure to state a cause of action.

defendants, Sheriff Jack Stephens and the St. Bernard Parish Sheriff's Office against the plaintiffs, Kris Catania, individually and on behalf of her minor daughter, Halayna Catania, Haley Catania, Michael Vincent Catania, Jr. and Brittany Lynn Catania, dismissing this action with prejudice.

On appeal, Kris assigns the following specifications of error for our review:

> 1. The Trial Court erred as a matter of law in failing to find the invalid arrest warrant issued against decedent Michael Catania entitled the Catania Appellants to damages for their injuries pursuant to Article 1, Section 5 of the Louisiana Constitution.
>
> 2. The Trial Court erred as a matter of law in failing to find that Appellee SBPSO's failure to present decedent Michael Catania before a judge to appoint defense counsel within 72 hours of his surrender violated La. Code of Criminal Procedure Article 230.1 and entitled the Catania Appellants to civil damages.
>
> 3. The Trial Court erred in failing to find the uncontradicted evidence showed that law enforcement agencies have long known about the risk of suicide by potential arrestees and that the risk of suicide is foreseeable.
>
> 4. The Trial Court erred in failing to find that since the risk of suicide by potential arrestees is foreseeable to law enforcement agencies like Appellee SBPSO, such foreseeability imposes a duty on the part of law enforcement agencies like the SBPSO to use due care in the issuance and removal of arrest warrants from law enforcement records.

The Catania plaintiffs also appealed, assigning error to the trial court's judgment as follows: "The trial court erred in granting defendants' Motion for Summary Judgment and dismissing plaintiffs' claims on the grounds that Mr. Catania's suicide as a matter of law was not within the scope of defendants' duty in this case."

## SUMMARY JUDGMENT[5]

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 for all or part of the relief prayed for by a litigant. **All Crane Rental of Georgia, Inc. v. Vincent**, 2010-0116, p. 4 (La. App. 1 Cir. 9/10/10), 47 So.3d 1024, 1027, writ denied, 2010-2227 (La. 11/19/10), 49 So.3d 387. While summary judgments are now favored, a motion for summary judgment should only be granted if the pleadings, depositions, answers to

[5] The summary judgment in this case was signed on April 8, 2014; thus, it is governed by the version of La. Code Civ. P. art. 966 in effect after its amendment by 2013 La. Acts, No. 391, § 1, effective August 1, 2013. See **Ciolino v. First Guaranty Bank**, 2012-2079, p. 6 n.3 (La. App. 1 Cir. 10/30/13), 133 So.3d 686, 690 n.3. Changes implemented by a later amendment to Article 966 are not implicated in this appeal. See 2014 La. Acts, No. 187, § 1, effective August 1, 2014. **Smith v. Northshore Regional Medical Center, Inc.**, 2014-0628, p. __ n.3 (La. App. 1 Cir. 1/26/15), ___ So.3d ___, ___ n.3.

interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment,[6] show that there is no genuine issue as to material fact, and that the movant is entitled to summary judgment as a matter of law. La. Code Civ. P. art. 966(B)(2).

The burden of proof on a motion for summary judgment remains with the movant. 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 essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. La. Code Civ. P. art. 966(C)(2).

Thus, once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. La. Code Civ. P. art. 967(B); **Pugh v. St. Tammany Parish School Bd.**, 2007-1856, p. 2 (La. App. 1 Cir. 8/21/08), 994 So.2d 95, 97 (on rehearing), writ denied, 2008-2316 (La. 11/21/08), 996 So.2d 1113. Moreover, when a motion for summary judgment is made and supported as provided above, an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided above, must set forth specific facts showing that there remains a genuine issue for trial. If he does not so

[6] Louisiana Code of Civil Procedure article 966 was recently amended by Acts 2013, No. 391, § 1, to provide for submission of evidence and objections to evidence for motions for summary judgment. Under the amended version of the article, evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for purposes of the motion for summary judgment unless excluded in response to an objection made in accordance with Article 966(F)(3). Only evidence admitted for purposes of the motion for summary judgment may be considered by the court in its ruling on the motion. La. Code Civ. P. art. 966(F)(2). Moreover, a summary judgment may be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time. La. Code Civ. P. art. 966(F)(1).

respond, summary judgment, if appropriate, shall be rendered against him. La. Code Civ. P. art. 967(B).

In determining whether summary judgment is proper, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Sanders v. Ashland Oil Inc.**, 96-1751, p. 7 (La. App. 1 Cir. 6/20/97), 696 So.2d 1031, 1035, writ denied, 97-1911 (La. 10/31/97), 703 So.2d 29. Material facts are those that potentially ensure or preclude recovery, affect the litigant's success, or determine the outcome of a legal dispute. **Populis v. Home Depot, Inc.**, 2007-2449, p. 3 (La. App. 1 Cir. 5/2/08), 991 So.2d 23, 25, writ denied, 2008-1155 (La. 9/19/08), 992 So.2d 943. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. **Christakis v. Clipper Const., L.L.C.**, 2012-1638, pp. 3-4 (La. App. 1 Cir. 4/26/13), 117 So.3d 168, 170, writ denied, 2013-1913 (La. 11/8/13), 125 So.3d 454.

**VALIDITY OF ARREST WARRANT**
**(Kris's Assignment of Error No. 1)**

Alleging that the arrest warrant against Michael was issued without probable cause, Kris asserts a right of action for SBPSO's wrongful arrest, imprisonment, and wrongful death of Michael based on the issuance of an invalid arrest warrant that SBPSO failed to recall. In response, defendants assert that the arrest warrant was issued by Justice of the Peace Howard Luna based on information provided by Dorinda and that neither SBPSO nor Sheriff Jack Stephens were involved in the issuance of the warrant. Defendants further argue that any action for false arrest arising from the alleged defective warrant prescribed prior to the time suit was filed in this matter.

With regard to the arrest warrant, Dorinda testified as follows in her deposition:

> Q. Did you mention to the Justice of the Peace Luna that you understood Michael Catania had fallen behind in child support because he lost his job for whatever reason?
>
> A. No. I don't think I went into details with Mr. Luna. I picked up the paperwork, filled it out, and dropped it back off. That was it.
>
> Q. When you say filled it, you are referring to --

A. I filled out that paperwork --

Q. -- that paperwork being the affidavit ...?

A. Correct.

Q. Where did you pick it up from?

A. Out of his mailbox.

. . . .

Q. You picked up an empty version of --

A. That form.

Q. ... You filled out the substance of the complaint --

A. Correct.

Q. ... Then you dropped it off back at his --

A. Drop off box that he has.

Q. Did Magistrate Luna fill out the part on the top after you had dropped it off?

A. Yes.

Q. Did Magistrate Luna fill -- did he fill in this bottom part here? I am referring to the left-hand corner sworn and described [sic] before me?

A. I would imagine that is his signature. I don't know. I can't answer that one.

Q. You didn't sign that in front of Magistrate --

A. No.

Q. Did you and Magistrate Luna have any conversation about the issuance of the warrant?

A. No. I couldn't even tell you what he looked like. I have no clue what he looks like.

Q. That was my next question.

A. I don't know what he looks like. I couldn't tell you. He has a drop off box and a pick up box.

. . . .

Q. Have you ever gotten a copy of the actual warrant that was issued for Michael?

A. No.

Q. Have you ever seen a copy of the warrant?

A. No.

The trial court heard argument of respective counsel and considered the evidence submitted by the parties in connection with defendants' motion for summary judgment. The trial court noted that the warrant might have been defective because Dorinda did not swear out the affidavit before Justice of the Peace Luna. Nonetheless, the trial court concluded that SBPSO could not be faulted for an allegedly defective warrant that it did not issue. The trial court noted "how is that the fault of the Sheriff's Department for putting in their system a warrant, though defective, from a Justice of the Peace, who obviously buying your argument, signed ... a warrant without having the affiant swear before them." We find no error in the trial court's ruling on this issue. This assignment of error is without merit.

**ALLEGED VIOLATION OF LA. CODE CRIM. P. ART. 230.1**
**(Kris's Assignment of Error No. 2)**

Kris argues that when Michael voluntarily surrendered himself to SBPSO on September 22, 2009, La. Code Crim. P. art. 230.1 required that he be brought before a judge within 72 hours of his surrender for the purpose of appointment of counsel. Noting that Michael's first and only "passing contact with defense counsel occurred on November 18, 2009, after two months of incarceration," Kris asserts that the trial court committed reversible error in failing to find SBPSO liable for violating Michael's right to counsel under Article 230.1.

We believe that Kris' argument, that SBPSO is liable for a violation of Article 230.1, is not supported either by the language of the article or by the jurisprudence applying it. Article 230.1 states:

> A. The sheriff or law enforcement officer having custody of an arrested person shall bring him promptly, and in any case within seventy-two hours from the time of the arrest, before a judge for the purpose of appointment of counsel. Saturdays, Sundays, and legal holidays shall be excluded in computing the seventy-two-hour period referred to herein. The defendant shall appear in person unless the court by local rule provides for such appearance by telephone or audio-video electronic equipment. However, upon a showing that the defendant is incapacitated, unconscious, or otherwise physically or mentally unable to appear in court

within seventy-two hours, then the defendant's presence is waived by law, and a judge shall appoint counsel to represent the defendant within seventy-two hours from the time of arrest.

B. At this appearance, if a defendant has the right to have the court appoint counsel to defend him, the court shall assign counsel to the defendant. The court may also, in its discretion, determine or review a prior determination of the amount of bail.

C. If the arrested person is not brought before a judge in accordance with the provisions of Paragraph A of this Article, he shall be released forthwith.

D. The failure of the sheriff or law enforcement officer to comply with the requirements herein shall have no effect whatsoever upon the validity of the proceedings thereafter against the defendant.

Of course, Article 230.1 itself does not provide for any civil liability for its violation. However, in **State v. Wallace**, 392 So.2d 410 (La. 1980), the Supreme Court held that a person incarcerated, without being brought before a judge within 72 hours, in violation of Article 230.1, does have a civil cause of action for damages. The court stated:

> We note that a person who is not brought before a judge within 72 hours of his arrest, as required by art. 230.1 A, not only is statutorily entitled to obtain release, but also has a claim for civil damages resulting from violation of the article's mandate. When an arrested person is released within (or at the expiration of) 72 hours, the sanction of release does not come into play, and the arrested person has only a claim for civil damages and then only if his initial arrest and the detention (of less than 72 hours) were illegal. But when an arrested person is held in custody more than 72 hours without being brought before a judge, then any detention thereafter is illegal, whether or not the initial detention was proper, and that detention (in excess of 72 hours) gives rise to (1) the right to immediate release and (2) a claim for civil damages for that illegal detention.

**Wallace**, 392 So.2d at 413. But the **Wallace** case does not state that the sheriff holding the incarcerated person is liable for damages when the violation of Article 230.1 is the fault of some other government agency and not the fault of the sheriff. Nothing in **Wallace** suggests that the sheriff is liable without fault for a violation of Article 230.1. Moreover, an alleged violation of Article 230.1 is moot after conviction and sentence. **State v. Durio**, 371 So.2d 1158, 1163 (La. 1979).

According to the record in the instant case, Michael voluntarily surrendered himself to SBPSO on September 22, 2009. He was brought to Magistrate Court to appear before

Division "C" on September 23, 2009, at which time bond was set at "$5,000 cash only." The two boxes for "Attorney" labeled "I.D." and "own" were left unchecked, indicating that the court may not have appointed an attorney to represent Michael at that time. Nonetheless, when Michael appeared for his arraignment on November 18, 2009, he was represented by counsel. Thereafter, Michael appeared on January 14, 2010, waived his right to an attorney, entered a guilty plea to criminal neglect of family, and was sentenced accordingly.

Thus, not only would any alleged violation of Article 230.1 be moot at this point because of Michael's guilty plea and subsequent sentencing, but we also find that SBPSO fulfilled its duty under Article 230.1 by bringing Michael to Magistrate Court within 24 hours of his surrender. What happened at that court appearance with regard to the appointment of counsel cannot be imputed to SBPSO. It was the court's responsibility, not SBPSO's, to assign counsel to Michael. We find no merit to Kris' argument to the contrary.

**FORESEEABILITY OF SUICIDE AND DUTY/RISK ANALYSIS**
**(Kris's Assignments of Error Nos. 3 and 4 and**
**Catania Plaintiffs' Assignment of Error)**

Kris and the Catania plaintiffs argue that the trial court erred in granting the defendants' motion for summary judgment and dismissing their claims, contending that because the risk of suicide by potential arrestees is foreseeable to law enforcement agencies, Michael's suicide, as a matter of law, was within the scope of the defendants' duty in this case. They further argue that summary judgment should be reversed based on the unchallenged expert report of Dr. Zimmerman.[7] In response, the defendants contend that as a matter of law, the risk that Michael would commit suicide, based on an unsubstantiated rumor that he was going to be arrested on an outstanding warrant, when

[7] We are mindful of the well-settled principle of law that the trial court has great discretion in determining the qualifications of experts and the effect and weight to be given to expert testimony. **Smith v. Smith,** 2004-2168, p. 15 (La. App. 1 Cir. 9/28/2005), 923 So.2d 732, 742. Absent a clear abuse of the trial court's discretion, this court will not disturb the trial court's determination. **Washauer v. J.C. Penney Co., Inc.,** 2003-0642, p. 4 (La. App. 1 Cir. 4/21/2004), 879 So.2d 195, 198.

there was no attempt being made to actually arrest him, does not fall within the scope of any duty owed by the defendants. We agree with the defendants.

The claims by Kris and the Catania plaintiffs in this case are based upon SBPSO's alleged negligence. Louisiana courts have adopted a duty-risk analysis in determining whether to impose liability under general negligence principles. **Lemann v. Essen Lane Daiquiris, Inc.**, 2005-1095, p. 7 (La. 3/10/06), 923 So.2d 627, 632-633. For liability to attach under a duty-risk analysis, a plaintiff must prove: (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant failed to conform his conduct to the appropriate standard (the breach of duty element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiffs injuries (the scope of liability or scope of protection element); and (5) actual damages (the damages element). **Roberts v. Rudzis**, 2013-0538, p. 9 (La. App. 1 Cir. 5/28/14), 146 So.3d 602, 608-609, writ denied, 2014-1369 (La. 10/3/14), 149 So.3d 797. A negative answer to any of the inquiries of the duty-risk analysis results in a determination of no liability. **Bellanger v. Webre**, 2010-0720, p. 8 (La. App. 1 Cir. 5/6/11), 65 So.3d 201, 207, writ denied, 2011-1171 (La. 9/16/11), 69 So.3d 1149. Therefore, to carry the burden on summary judgment, defendants were required to show an absence of factual support for any of the elements of the negligence cause of action.

"*A risk may be found not within the scope of a duty where the circumstances of* that injury to the plaintiff could not reasonably be foreseen or anticipated, because there was no ease of association between the risk of that injury and the legal duty." **Lazard v. Foti**, 2002-2888, p. 6 (La. 10/21/03), 859 So.2d 656, 661 (citing **Hill v. Lundin & Assoc.**, 260 La. 542, 256 So.2d 620, 622 (1972)) (emphasis in original).

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. ... 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. ...
>
> 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) (emphasis in original). On rehearing, the **Roberts** court further noted:

> Because substandard conduct does not render the actor liable for all consequences [spiraling] outward until the end of time, the concept of proximate cause, or one of its functional equivalents, such as scope of the duty in duty-risk analysis, is necessary to truncate liability at some point. The primary inquiry, then, in a proximate cause determination is: "whether plaintiff will be granted the legal system's protection-that is, will the defendant be required to have met a specified standard of conduct in the case at issue or be subject to liability."
>
> . . . .
>
> The cases on legal cause are many and diverse. Our modern jurisprudence begins with the seminal duty-risk case, *Dixie Drive It Yourself System New Orleans Co. v. American Beverage Co.*, 242 La. 471, 137 So.2d 298 (1962), in which this Court held:

> The essence of the [legal cause] inquiry is whether the risk and harm encountered by the plaintiff fall within the scope of protection of the [duty].... Specifically, it involves a determination of whether the ... duty of displaying signal flags and responsibility for protecting traffic were designed, at least in part, to afford protection to the class of claimants of which plaintiff is a member from the hazard of confused or inattentive drivers colliding with stationary vehicles on the highway.

*Id.* 137 So.2d at 304.

**Roberts**, 605 So.2d at 1052, 1054.

The primary issue before us is whether, under the facts of this case, SBPSO had a duty to notify IPSO when Michael's arrest warrant had been satisfied and/or whether the alleged injuries sustained fall within the scope of the duty. The trial court noted as follows:

> THE COURT:
>
> I find that the question of whether or not St. Bernard notified Iberville that the warrant was outstanding, I find that it is a genuine issue of material fact. ... I'm not going to grant a Motion for Summary Judgment on that issue, because the finder of fact, which is going to be me or a jury, must determine that, after they hear from all of the witnesses and let the finder of fact decide whether St. Bernard contacted Iberville. But, in a light most favorable to the plaintiffs, I want to shift gears and move further down the road.
>
> So, I'm going to couch it this way, let's go ahead and concede for argument sake at this hearing, that St. Bernard contacted Iberville and Iberville ... knew that there was a warrant out for Catania. It seems to me the ultimate fact to be decided, is whether ... their breach of duty, St. Bernard's breach of duty to not notify timely, and when I say timely, I'm talking about before the suicide. ...
>
> But, the question is did they owe or did they -- is their breach of their duty to contact Iberville. Is it the [cause-in-fact] of the injuries sustained by the plaintiffs ...?
>
> . . . .
>
> THE COURT:
>
> . . . .
>
> To me the more important issue, which we agree can be made by this Court, is the -- whether or not -- I also think that it is likely that there is a -- that there is a duty. Did y'all ask me to find whether ... there was a duty; Plaintiffs?
>
> [COUNSEL FOR KRIS]:
>
> Yes, Your Honor.

THE COURT:

That there was a duty?

[COUNSEL FOR KRIS]:

Under the Louisiana Constitution, the Louisiana Sheriff's Procedures and foreseeability, yes, Your Honor, it create[s] the duty to recall.

THE COURT:

I find that there was a -- is a duty for the Sheriff's Department to notify a persons, for which they request someone be arrested [sic]. There certainly is a duty. The ultimate question is whether ... the breach of duty was a cause-in-fact....

. . . .

I think the position as voiced by the counsel -- by the St. Bernard Parish is absolutely right. We have the duty risk analysis. I do not think [Michael's suicide] was forseeable [sic]....

. . . .

[H]e served his time already and for reasons I may never know, unless I'm reversed and it comes back, this man committed suicide and it was obviously some concern about being re-arrested. I make no bones about that. This is a legal question and I do not think it falls in the scope of the duty.

We have thoroughly reviewed the evidence submitted by the parties in connection with defendants' motion for summary judgment, and agree with the trial court's conclusion that the risk of harm to Michael in this case did not fall within the scope of the duty owed by defendants. It is clear that any duty defendants had to contact IPSO to advise them that the warrant for Michael had been satisfied by his arrest and incarceration did not encompass the risk that Michael would then commit suicide, after consuming drugs and alcohol, based on speculation that he may be arrested on an outstanding warrant. The record is devoid of any evidence that either SBPSO or IPSO ever took any action to arrest Michael on the warrant. Nor is there any evidence that affirmative steps would have been taken to arrest Michael without first verifying that the warrant was still active. In fact, Deputy Engolio specifically told Kris when she contacted him that when they came into his office, he would call SBPSO to verify that the warrant was still outstanding. Moreover, Deputy Small testified that the normal IPSO procedure

for out of parish warrants is that the deputies will call her or the jail so that they can verify that the warrant is still active before they make an arrest.

Kris and the Catania plaintiffs failed to produce factual evidence sufficient to establish that they will be able to satisfy their evidentiary burden of proof at trial on the duty/risk analysis. The arguments made by Kris and the Catania plaintiffs on appeal concerning these issues are without merit. Accordingly, summary judgment in favor of defendants was appropriate.

## CONCLUSION

For the above and foregoing reasons, we amend the trial court's April 8, 2014 judgment to provide that the Catania plaintiffs' claims against Princeton be dismissed, with prejudice, for failure to state a cause of action. In all other respects, we affirm the trial court's April 8, 2014 judgment. We assess all costs associated with this appeal against appellants, Kris Catania, individually and on behalf of her minor daughter, Halayna Catania, Haley Catania, Michael Vincent Catania, Jr., and Brittany Lynn Catania.

**AMENDED IN PART; AFFIRMED AS AMENDED.**