

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CW 1292

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 CW 1293

MICHAEL VINCENT CATANIA, JR. AND BRITTANY LYNN CATANIA

VERSUS

SHERIFF JACK STEPHENS AND THE ST. BERNARD PARISH
SHERIFF'S OFFICE¹

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, 2014-1294 (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 App. 1 Cir. 3/17/15) (unpublished opinion) c/w Michael Vincent Catania, Jr.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, 2014-1295 (La. App. 1 Cir. 3/17/15) (unpublished opinion) (**Catania II**) (also decided this date).

*Few
which Jr. concurs in result
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* * * * *

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

PETTIGREW, J.

Plaintiffs appeal the trial court's judgment denying their cross motions for summary judgment. For the reasons that follow, we convert plaintiffs' appeals to applications for supervisory writs and deny their requested relief.

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 that both of them 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, he 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. Cuipepper

regarding Michael's warrant and the fact that the warrant had two CCN² 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 The judgment that forms the basis of the instant appeals provides, in pertinent part, as follows: "**IT IS ORDERED, ADJUDGED AND DECREED** that the Cross Motions for Summary Judgment filed on behalf of the plaintiffs, Kris Catania, individually and on behalf of her minor daughter, Halayna Catania, Haley Catania and Michael Vincent Catania, Jr. and Brittany Lynn Catania, be denied."

On appeal, both Kris and the Catania plaintiffs assign error to the trial court's judgment denying their cross motions for summary judgment. However, the denial of a motion for summary judgment is an interlocutory judgment that cannot be appealed, and, since no writ application has been filed, the issue is not properly before us. **Trahan v. Rally's Hamburgers, Inc.**, 96-1837, p. 9 (La. App. 1 Cir. 6/20/97), 696 So.2d 637, 642. See also La. Code Civ. P. art. 968, which states in pertinent part: "An

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, granted the defendants' motion for summary judgment, and forms the basis of the appeal in **Catania II**.

appeal does not lie from the court's refusal to render any judgment on the pleading or summary judgment."⁴

Nonetheless, we do have authority to exercise supervisory jurisdiction and treat these appeals as applications for supervisory writs. See **Trahan v. Prudential Property & Casualty Ins. Co.**, 97-2470, p. 3 (La. App. 1 Cir. 5/14/99), 739 So.2d 811, 813. Accordingly, in the interest of judicial economy, where our review of the denial of the cross motions for summary judgment in this case will bring finality to the litigation below, we exercise our discretion and convert the appeals by Kris and the Catania plaintiffs of the denial of their cross motions for summary judgment to applications for supervisory writs.

SUMMARY JUDGMENT⁵

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. See **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 interrogatories, and admissions, together with the affidavits, if any, admitted for

⁴ We are aware of a line of cases beginning with **Devers v. Southern University**, 97-0259, p. 16 (La. App. 1 Cir. 4/8/98), 712 So.2d 199, 209 proposing that a summary judgment can be appealed with the final judgment in the case. Employing this principle, several recent cases, have asserted that it is proper to challenge the denial of a motion for summary judgment in connection with the appeal of a final judgment granting summary judgment. See **Parish Nat. Bank v. Wilks**, 2004-1439, p. 4 n.6 (La. App. 1 Cir. 8/3/05), 923 So.2d 8, 11 n.6; **Board of Trustees of State Employees Group Benefits Program v. The St. Landry Parish Bd.**, 2002-0393, p. 8 (La. App. 1 Cir. 2/14/03), 844 So.2d 90, 95, writ denied, 2003-0770 (La. 5/9/03), 843 So.2d 404; **Pitts v. Fitzgerald**, 2001-0543, p. 5 n.8 (La. App. 1 Cir. 5/10/02), 818 So.2d 847, 850 n.8; **Industrial Indem. Co. of the Northwest v. Central National Ins. Co. of Omaha**, 99-2535, p. 8 (La. App. 1 Cir. 12/22/00), 775 So.2d 1246, 1250, writ denied, 2001-0225 (La. 4/12/01), 790 So.2d 1.

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.

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

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).

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.

In this matter, Kris and the Catania plaintiffs direct this court's attention to their respective appeal briefs filed in **Catania II** as support for their argument that Michael's suicide fell within the scope of protection of the duty owed by SBPSO to notify IPSO that the arrest warrant for Michael had been satisfied by his voluntary surrender to SBPSO. For the reasons fully discussed in **Catania II**, we find that the trial court did not err in denying the cross motions for summary judgment.

CONCLUSION

Based on the foregoing, we convert these appeals to applications for supervisory writs and deny the writs. We assess all costs associated with this matter to plaintiffs, Kris Catania, individually and on behalf of her minor daughter, Halayna Catania, Haley Catania, Michael Vincent Catania, Jr., and Brittany Lynn Catania.

APPEALS CONVERTED TO APPLICATIONS FOR SUPERVISORY WRITS; WRITS DENIED.

KRIS CATANIA, ET AL.

FIRST CIRCUIT

VERSUS

COURT OF APPEAL

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

STATE OF LOUISIANA

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STATE OF LOUISIANA

NO. 2014 CW 1293

 CHUTZ, J., concurring.

I respectfully concur in the result reached by the majority upholding the denial of the plaintiffs' motions for summary judgment. It was unnecessary, however, to convert this appeal to a writ application, since the plaintiffs also appealed the summary judgment granted in favor of the defendants. It is well-established that the denial of a motion for summary judgment can be reviewed in connection with the appeal of a final judgment granting summary judgment. See *Parish National Bank v. Wilks*, 04-1439 (La. App. 1st Cir. 8/3/05), 923 So.2d 8, 11 n.6.