

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

LEONE ELLIOTT

NO. 2016 CW 0701

VERSUS

SEP 26 2016

JOSEPH "AJ" FORD AND
SHEVELLE FORD

In Re: Leone Elliott, applying for supervisory writs, 19th
Judicial District Court, Parish of East Baton Rouge,
No. 639305.

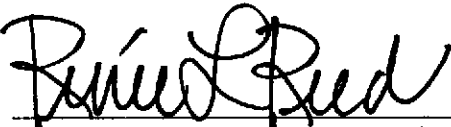
BEFORE: WHIPPLE, C.J., GUIDRY, PETTIGREW, McCLENDON AND CRAIN, JJ.

WRIT GRANTED AND REMANDED. When the mover of a motion for summary judgment will bear the burden of proof at trial, he must support his motion with credible evidence that would entitle him to a directed verdict if not controverted at trial. **Mines v. Garrett**, 2004-0806 (La. 6/25/04), 876 So.2d 764, 766. Such an affirmative showing will then shift the burden of production to the party opposing the motion, requiring them either to produce evidentiary materials that demonstrate the existence of a genuine issue for trial or to submit an affidavit requesting additional time for discovery. **Id.** at 766-67. Pursuant to a *de novo* review, we find that Leone Elliott has put forth supporting proof through affidavits or otherwise, of the facts upon which his motion is based, and no counter-affidavits or other receivable evidence were offered by the opposing party to contradict that proof. Therefore, a conclusion may be justified that there is no genuine issue as to the facts so proved, even though allegations to the contrary might be contained in the pleadings. See **Parish Motors, Inc. v. Reed**, 305 So.2d 546 (La. App. 1st Cir. 1974). Accordingly, we reverse the trial court's April 25, 2016 ruling denying Leone Elliott's motion for summary judgment. Judgment is granted in favor of Leone Elliott and against Joseph Ford and Shevelle Ford. The matter is remanded to the trial court for entry of judgment awarding stipulated damages to Leone Elliott in the amount of \$155,000.00, interest, if any, attorneys' fees, and court costs.

JMG
PMc
WJC

Whipple, C.J., and Pettigrew, J., dissent and would deny the writ.

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