

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CW 1484R

TINA LEONARD, INDIVIDUALLY AND ON BEHALF OF HER  
DECEASED HUSBAND, JOHN BENJAMIN CAMPBELL

VERSUS

BEAUREGARD TORRES, III, POINTE COUPEE PARISH SHERIFF  
AND CAPTAIN MICHAEL HEBERT, INDIVIDUALLY AND IN HIS  
CAPACITY AS WARDEN OF THE POINTE COUPEE DETENTION  
CENTER

SEP 26 2017

Judgment Rendered: \_\_\_\_\_

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On Appeal from the  
18th Judicial District Court  
In and for the Parish of Pointe Coupee  
State of Louisiana  
Trial Court No. 45,414

Honorable James J. Best, Judge Presiding

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*Chutz, J. - Concur with  
Petersons*

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BEFORE: HIGGINBOTHAM, THERIOT, AND CHUTZ, JJ.

**HIGGINBOTHAM, J.**

In this tort action, Sheriff Beauregard Torres, in his capacity as Sheriff of Pointe Coupee Parish, and Warden Michael Hebert, individually, and in his capacity as Warden of the Pointe Coupee Parish Detention Center, filed a writ application seeking review of the trial court's denial of their motion for summary judgment.

**FACTS AND PROCEDURAL HISTORY**

On July 23, 2012, around 4:00 p.m., Pointe Coupee Sheriff's Detective Craig Dabadie arrested Mr. John Benjamin Campbell at his home on active warrants for burglary and simple criminal damage to property. Mr. Campbell was transported to the Pointe Coupee Parish Detention Center where he was questioned for approximately two hours by detectives in relation to recent unsolved burglaries in the area. Around 6:00 p.m., Mr. Campbell was placed in a holding cell until he could be booked. Around 8:00 p.m., Sheriff's Deputy Jeffrey Martin was called to the booking area to assist Sergeant Anthony Lewis with booking Mr. Campbell. Mr. Campbell did not answer when called, so Deputy Martin and Sergeant Lewis entered the holding cell, where they discovered Mr. Campbell hanging by his shoelaces from a metal vent in the ceiling. Deputy Martin and Sergeant Lewis attempted to revive Mr. Campbell, but were unsuccessful.

On July 22, 2013, Ms. Tina Leonard, Mr. Campbell's wife, individually, and on behalf of her deceased husband, filed a petition for damages against Beauregard Torres in his capacity as Sheriff of Pointe Coupee Parish, and Michael Hebert, individually and in his capacity as Warden of Pointe Coupee Parish Detention Center (defendants) contending that defendants did not follow protocol for handling inmates when Mr. Campbell's shoe strings were not removed prior

to placing him in a holding cell alone. Ms. Leonard also alleged that the defendants failed to properly instruct, train, and supervise employees, failed to hire competent employees, failed to properly supervise inmates in custody, and failed to prevent inmate hangings.

In response, on August 3, 2015, defendants filed a motion for summary judgment, asserting that Mr. Campbell never expressed any suicidal thoughts or ideations to any employee of the sheriff's office, and no employees had notice or should have known that Mr. Campbell may have had suicidal tendencies or ideations.

Prior to defendants' motion for summary judgment being heard by the trial court, Ms. Leonard filed an amended and supplemental petition for damages adding Police Jury President Cornell Dukes, in his capacity as president of the Pointe Coupee Parish Police Jury, as a defendant. The amended petition also alleged that the Sheriff, as custodian of the jail, was liable under strict liability as well as additional theories of negligence regarding the safety of the facility, such as the placement of the vent above the toilet and sink.

Defendants' motion for summary judgment came before the trial court for a hearing on August 4, 2016, after which the trial court denied the defendants' motion for summary judgment. Defendants filed for supervisory writs with this court, seeking review of the trial court's denial of their motion for summary judgment. On initial review, a majority of this court denied defendants' writ application, declining to exercise its supervisory jurisdiction and noting that the criteria set forth in **Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981) had not been met. Defendants sought supervisory review of this court's decision with the supreme court, and the supreme court remanded the matter back to this court for briefing, argument, and

full opinion. Therefore, it is the trial court's ruling denying defendants' motion for summary judgment that is currently before us for review.<sup>1</sup>

### STANDARD OF REVIEW

When reviewing summary judgments, appellate courts conduct a *de novo* review of the evidence, using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Boudreaux v. Vankerkhove**, 2007-2555 (La. App. 1st Cir. 8/11/08), 993 So.2d 725, 729-30. The motion for summary judgment should be granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B)(2).<sup>2</sup>

On a motion for summary judgment, the initial burden of proof is on the moving party. However, on issues for which the moving party will not bear the burden of proof at trial, the moving party must only 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. Then the nonmoving party must produce factual support sufficient to satisfy its evidentiary burden of proof at trial. If the nonmoving party fails to do so, there is no genuine issue of material fact

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<sup>1</sup> Defendants' motion for summary judgment was filed before Ms. Leonard's amended and supplemental petition adding Cornell Dukes as a defendant was filed, and Mr. Dukes was not a party to the motion for summary judgment. Thus, the claims against Mr. Dukes are not before this court on appeal. However, because the amending petition relates back to the filing of the original petition and was filed well before the hearing on the motion for summary judgment, defendants had the burden of proving the absence of any genuine issue of material fact as to the amending petition's additional theories of recovery against Sheriff Torres. See **Koenig v. New Orleans Public Service, Inc.**, 619 So.2d 1127, 1130 (La. App. 4th Cir. 1993).

<sup>2</sup> Louisiana Code of Civil Procedure article 966 was amended and reenacted by Acts 2015, No. 422, § 1, with an effective date of January 1, 2016. The amended version of article 966 does not apply to any motion for summary judgment pending adjudication or appeal on the effective date of the Act. Therefore, we refer to the former version of the article in this case. See Acts 2015, No. 422, § § 2 and 3.

and the mover is entitled to summary judgment. La. Code Civ. P. art. 966(C)(2). 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 the case. **The Shaw Group v. Kulick**, 2004-0697 (La. App. 1st Cir. 4/8/05), 915 So.2d 796, 800, writ denied, 2005-1205 (La. 11/28/05), 916 So.2d 148.

In **Scott v. State**, 618 So.2d 1053 (La. App. 1st Cir.), writ denied, 620 So.2d 881 (La. 1993) parents of a juvenile who hung himself while in the custody of a juvenile detention center filed suit seeking damages for wrongful death. After reviewing jurisprudence from other states, this court stated:

These cases indicate that in most jurisdictions, in order to recover for the negligence of prison authorities, the plaintiff must prove that the authorities knew or should have known that there was a risk that the inmate would harm himself and that they failed to take reasonable precautions to guard against such harm. In the absence of such proof the plaintiff is relegated to proving that the manner in which the facility was operated breached a standard of care owed by all such facilities and must put on evidence to that effect.

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[W]e find that prison authorities owe a duty to use reasonable care to protect inmates from harm and that this duty extends to protecting inmates from self-inflicted injury. This duty is not absolute, but depends upon the circumstances of the particular case. . . .

In order to determine if the duty to use reasonable care was breached, we must evaluate the actions of the detention center personnel in light of the circumstances that existed at the time of the alleged negligence.

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Plaintiffs failed to prove the standard of care to be used by the detention center. There is no evidence of any standard which required the removal of articles of clothing, including shoes, absent some indication of possible self-inflicted harm. If the detention center had allowed this deceased to keep his shoes and pants, and yet the suicide still had happened, under the facts of this case there would have been no breach of a duty to exercise reasonable care. We find no legal difference merely because the shoes were removed and placed in a position whereby the deceased could retrieve them.

**Id.** at 1058-1059.

In **Misenheimer v. West Baton Rouge Parish Sheriff's Office**, 95-2427 (La. App. 1st Cir. 6/28/96), 677 So.2d 159, 161 writ denied, 96-1853 (La. 10/25/96), 681 So.2d 371, suit was filed after an inmate committed suicide after obtaining a pistol belonging to a deputy. After a trial on the merits, the trial court rendered judgment in favor of defendants, dismissing plaintiffs' suit. This court referenced the duty-risk analysis<sup>3</sup> conducted in negligence cases, along with the principles from **Scott**, supra. This court noted the trial court's factual finding that the sheriff and his employees were unaware of the inmate's suicidal tendencies prior to his death. Plaintiffs argued that there was an ease of association between the victim's act of suicide and the availability of the gun, because during his incarceration he was treated for depression and was prescribed medication. The court noted, however, that those physicians did not consider the inmate to be suicidal and found that "[g]iven the fact that no one at the jail was or should have been aware of his suicidal intentions and that Mr. Misenheimer's act was one of deliberately inflicting harm upon himself, this act was neither foreseeable nor easily associated with any duty that was allegedly breached." **Misenheimer**, 677 So.2d at 161-162. This court found that the inmate's act was not encompassed within the duty owed to the inmate by the prison authorities.

Using the duty-risk analysis, the court in **Estate of Shelvin v. Neustrom**, 15-63 (La. App. 3d Cir. 10/7/15), 179 So.3d 707, 713-14, found that affidavits which indicated that Ms. Shelvin expressed no behaviors indicative of mental

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<sup>3</sup> "[I]n order for liability to attach under a duty/risk analysis, a plaintiff must prove five separate elements: (1) the defendant had a duty to conform his or her conduct to a specific standard of care (the duty element); (2) the defendant failed to conform his or her 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 plaintiff's injuries (the scope of liability or scope of protection element); and, (5) actual damages (the damages element)." **Mathieu v. Imperial Toy Corp.**, 94-0952 (La. 11/30/94), 646 So.2d 318, 322.

health issues or suicide potential, and since each employee of the jail was trained in suicide prevention and Ms. Shelvin was checked on and appeared to be no risk to herself, a prima facie showing was made indicating that none of the jail staff knew or should have known that Ms. Shelvin presented a risk of harm to herself. Further, because there was no controverting evidence, the court determined that the plaintiffs failed to carry their burden of production on the motion for summary judgment.

While prison officials must exercise reasonable care to protect inmates from harm, including harm from suicide or other self-inflicted injury, the cases clearly provide that, in order to show that a duty arose on the part of the prison officials, the evidence must establish that the prison authorities either knew or should have known of an inmate's suicidal tendencies. Prison officials owe prisoners a duty to prevent self-inflicted harm that is reasonably foreseeable.

Additionally to prove strict liability or negligence for the conditions of the jail, under either theory, Ms. Leonard must prove (1) the thing which caused the damage was in the custody of the defendant; (2) the thing contained a "defect" (i.e., it had a condition that created an unreasonable risk of harm to the plaintiff); and (3) the "defective" condition of the thing caused the plaintiff's injuries. **Oster v. Dept. of Transp. & Development**, 582 So.2d 1285, 1288 (La. 1991).

In support of their motion for summary judgment, the defendants attached affidavits of Detective Dabadie, Ms. Penny Collie, and Warden Hebert, as well as the investigative report of the Louisiana State Police. Detective Dabadie attested that on the day of Mr. Campbell's arrest he was present for the questioning of Mr. Campbell. Detective Dabadie stated that during the entirety of his interaction with Mr. Campbell, Mr. Campbell never vocalized any thoughts of suicide or self-

harm. Detective Dabadie further attested that he was never given any reason to believe Mr. Campbell was contemplating suicide or self-harm.

In her affidavit, Ms. Collie, who is an administrative assistant at the Pointe Coupee Parish Detention Center and a personal friend of Ms. Leonard, stated that she was present following Mr. Campbell's arrest and had at least two verbal interactions with him. According to Ms. Collie, during her interactions with Mr. Campbell, he never stated he was suicidal or contemplating suicide, and Ms. Collie had no reason to believe he was suicidal or contemplating self-harm. Warden Hebert, in his affidavit, stated that he had no interactions with Mr. Campbell on the day of his arrest, and he requested that the Louisiana State Police conduct an investigation into the suicide.

Investigator Hamp Guillory was the lead investigator in the Louisiana State Police investigation into the incident. As part of Louisiana State Police's criminal investigation report, on the night of the incident, State Troopers Jared Sandifer and Brit Forbes interviewed the Pointe Coupee Sheriff's detectives who were involved in Mr. Campbell's arrest and several of the Pointe Coupee Sheriff's Deputies who were employed at the parish detention center on the date of the incident. During the interviews, Detective Dabadie explained that Mr. Campbell seemed fine other than becoming agitated with some of the questions he was asked. He said Mr. Campbell never gave any indication to the detectives that he may attempt to harm himself and never made any statements that would have indicated he intended to harm himself. Detective Richard Torres, Detective Josh Adams, and Detective Lester Jarreau, who also interviewed Mr. Campbell, stated that Mr. Campbell never made any statements or gave any indication to the detectives that he intended to harm himself. Detective Jarreau acknowledged that Mr. Campbell was angry and threatened him, but said that he did not make any



statement that made the detective believe Mr. Campbell intended to harm himself. Sergeant Michael Donovan, who was the day shift supervisor, stated that he took Mr. Campbell's belt from him and noted that Mr. Campbell requested that he not be put in a cell with another inmate who he referred to as "his enemy." Sergeant Donovan pointed out that he had very little interaction with Mr. Campbell, but stated that Mr. Campbell did not appear to be upset or distraught during their interactions.

Ms. Collie was interviewed by Investigator Guillory. During her interview, Ms. Collie stated that she spoke with Mr. Campbell on two occasions on the night of his arrest. Ms. Collie said Mr. Campbell expressed concern that his wife may learn information about his prior criminal history. Ms. Collie said that Mr. Campbell did not make any statement in her presence that would have led her to believe that Mr. Campbell intended to harm himself, and that if he had made any statements that were of concern to her, she would have notified the supervisors at the detention center so that appropriate measures could have been taken.

Sergeant Lewis, who was the night shift supervisor at the detention center, was also interviewed by Investigator Guillory. Sergeant Lewis stated that he spoke with Mr. Campbell several times after he was interviewed by the detectives. He stated that Mr. Campbell repeatedly asked if he could make a phone call. Sergeant Lewis explained that he waited to complete the booking process with Mr. Campbell because he had to make shift change, make rounds, and perform an inmate headcount. He said he last spoke with Mr. Campbell around 7:40 p.m. Sergeant Lewis pointed out that each time he spoke with Mr. Campbell, his only request was to make a telephone call. Sergeant Lewis noted that Mr. Campbell never made any statement or performed any actions that caused Sergeant Lewis to be concerned that Mr. Campbell was a danger to himself.

On July 25, 2012, Ms. Leonard was interviewed by the Louisiana State Police. Ms. Leonard explained that she never had any reason to believe that her husband was suicidal, but looking back at the way he spoke to her on the day he was arrested, she believed that he may have been contemplating suicide. Ms. Leonard stated that Mr. Campbell never made any statements to her or anyone else about committing suicide.

After a thorough investigation regarding the incident, the Louisiana State Police concluded that “[t]here [was] no evidence that John Campbell displayed any signs or made any statements to anyone that would have indicated that he may intend to harm himself or commit suicide.”

In light of the affidavits and investigation report submitted in support of defendants’ motion for summary judgment which pointed out that Mr. Campbell never expressed any suicidal thoughts or ideations to any employees of the sheriff’s office, nor did the employees have notice or should have had notice that Mr. Campbell may have had suicidal tendencies or ideations, we conclude that defendants met their burden of proving that there was no breach of duty owed to Mr. Campbell. Thus, the burden shifted to Ms. Leonard to raise a genuine issue of material fact by producing sufficient evidence establishing that the prison authorities either knew or should have known of an inmate’s suicidal tendencies.

In opposition to defendants’ motion for summary judgment, Ms. Leonard attached the depositions of Sheriff Torres, Warden Hebert, detectives involved in Mr. Campbell’s arrest and subsequent interviews, as well as numerous employees of the Pointe Coupee Sheriff’s Office who had contact with Mr. Campbell on the day of his arrest. Ms. Leonard relied heavily on the alleged lack of training of the sheriff’s office employees regarding suicide prevention, and the lack of policy regarding communication between the officers about the inmate’s behavior. Ms.

Leonard also pointed out that prior to being placed in the holding cell, Mr. Campbell's belt was removed, but not his shoe laces, and that Mr. Campbell never filled out the medical intake form. Additionally, Ms. Leonard alleged that the sheriff was negligent for allowing Mr. Campbell to be placed in a cell where the vent was accessible because it was located above the toilet and sink.

During his deposition testimony, Sheriff Torres acknowledged that Mr. Campbell did not fill out the medical intake form upon arrival, but pointed out that because of shift change, Mr. Campbell had not yet been booked, and the medical intake form is completed at the time of booking. Sheriff Torres was thoroughly questioned regarding what steps his office had taken regarding suicide prevention and acknowledged that he did not have any specific training in suicide prevention. Sheriff Torres also agreed that the location of the vent above the toilet was not a very good design.

In his deposition, Detective Jarreau described in more detail the incident with Mr. Campbell in which he described Mr. Campbell as mad and upset that he was going to jail and stated that Mr. Campbell threatened to "kick [his] ass". Detective Torres, in his deposition, pointed out that while he was not an expert in assessing a person's mental status, through his previous experience, in his opinion, Mr. Campbell did not show any signs of mental instability. In her deposition, Ms. Collie also indicated that she did not have any training in suicide prevention. She described her conversation with Mr. Campbell in which Mr. Campbell expressed his concern about his wife finding out about why he was arrested and why he was on probation. Ms. Collie specifically stated "there was nothing in our conversation that caused [her] to believe that [Mr. Campbell] was a danger to himself."

Ms. Leonard pointed out that her attorney was unable to depose Sergeant Donovan who took Mr. Campbell's belt, but not his shoelaces. However, as previously noted in the Louisiana State Police report, Sergeant Donovan stated that he did not observe Mr. Campbell to be distraught or upset during their interactions.

The evidence presented by Ms. Leonard in opposition to defendants' motion for summary judgment, although thorough, failed to establish that the sheriff's office employees either knew or should have known of Mr. Campbell's suicidal tendencies. Mr. Campbell was in the custody of the detention center for only four hours and no one had any indication that he intended to harm himself. Whether the Pointe Coupee Detention Center had a policy of immediately filling out the medical intake forms upon an inmate's arrival, or additional policies and staff education in preventing inmate suicides would have prevented Mr. Campbell from hanging himself is a matter of speculation. The evidence was without a causative connection between the lack of training or policy and Mr. Campbell's death. Given the fact that there was no evidence that anyone at the detention center was or should have been aware of Mr. Campbell's suicidal tendencies, and that Mr. Campbell's act was one of deliberately inflicting harm upon himself, Mr. Campbell's suicide was neither foreseeable nor easily associated with any duty that was allegedly breached. Therefore, Ms. Leonard did not produce factual support sufficient to satisfy her evidentiary burden of proving a duty arose on behalf of the sheriff's office to provide reasonable care necessary to prevent Mr. Campbell from committing suicide.

Additionally, Ms. Leonard did not produce any evidence that the holding cell in which Mr. Campbell was placed provided an unreasonably dangerous

condition, thus, there was no strict liability on the part of the Sheriff. Accordingly, the defendants are entitled to summary judgment in their favor.

### **CONCLUSION**

For the foregoing reasons, we grant the writ, reverse the ruling of the trial court, and render judgment in favor of the defendants, Sheriff Beauregard Torres, III and Warden Michael Hebert, against plaintiff, Ms. Tina Leonard, dismissing all claims against the defendants. We remand the matter to the trial court in order to address Ms. Leonard's remaining claims against Cornell Dukes in his capacity as president of the Pointe Coupee Parish Police Jury. All costs of the writ are assessed to Ms. Tina Leonard.

**WRIT GRANTED; REVERSED AND RENDERED.**

**TINA LEONARD  
INDIVIDUALLY AND ON  
BEHALF OF HER DECEASED  
HUSBAND, JOHN BENJAMIN  
CAMPBELL**


**FIRST CIRCUIT  
  
COURT OF APPEAL**

**VERSUS**

**STATE OF LOUISIANA**

**BEAUREGARD TORRES, III  
ET AL**

**NO. 2016 CA 1484R**

 CHUTZ, J., concurring.

I write separately to note that, in addition to failing to produce evidence of an unreasonably dangerous condition, plaintiff-respondent, Tina Leonard, individually and on behalf of her deceased husband, John Benjamin Campbell, failed to introduce any evidence of the standard of care the Pointe Coupee Detention Center was required to use or that defendants-relators, Pointe Coupee Sheriff Beauregard Torres, III, and Warden Michael Hebert, breached that standard. Therefore, I agree with the majority that defendants established a lack of evidence of a breach of the duty they owed to Mr. Campbell to use reasonable care to protect him from self-inflicted injury. And because plaintiff thereafter failed to produce factual support sufficient to establish that defendants breached that duty, I agree that these defendants are entitled to summary judgment dismissing plaintiff's claims against them.