

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 CA 0398

ROBERT GUIDRY

VERSUS

 SERGEANT PETRIE JACKSON AND STATE OF LOUISIANA THROUGH
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
ELAYN HUNT CORRECTIONAL CENTER

Judgment Rendered: FEB 15 2018

On appeal from the
Eighteenth Judicial District Court
In and for the Parish of Iberville
State of Louisiana
Docket Number 72843

Honorable James J. Best, Judge Presiding

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Louisiana Department of Public
Safety and Corrections, Elayn
Hunt Correctional Center, and
Petrie Jackson

BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

Crain, J. agrees in part and dissents in part and assigns reasons

GUIDRY, J.

Defendants appeal a judgment finding them liable for injuries sustained by an inmate when he fell while disembarking from a prison transport van. For the following reasons, we reverse in part and affirm in part.

FACTS AND PROCEDURAL HISTORY

The plaintiff, Robert Guidry, is an inmate housed at the Elayn Hunt Correctional Center in St. Gabriel, Louisiana. On December 27, 2012, Mr. Guidry, who was 58 years old at the time, was being transported by van on the grounds of the correctional center to an appointment to have blood work performed. On arriving at his destination, Mr. Guidry asked the transport driver to place a step stool on the ground to facilitate his disembarkment. The driver refused and ordered Mr. Guidry to alight from the van as she had another group of passengers to collect. Mr. Guidry obeyed and fell as he was exiting the van, fracturing the posterior medial tibial plateau of his left knee.

On August 2, 2013, Mr. Guidry filed a petition for damages against Petrie Jackson, as the alleged driver of the van from which he fell, and the State of Louisiana through the Department of Public Safety and Corrections (DPSC), as the governing authority over the Elayn Hunt Correctional Center (collectively, "defendants"). Following a bench trial, the trial court rendered judgment in favor of Mr. Guidry and against Ms. Jackson and the DPSC, awarding him \$40,000 in damages. The defendants have suspensively appealed.

ASSIGNMENTS OF ERROR

- A. The trial court erred when it denied the Defendants' Motion for Directed Verdict.^[1]

¹ Although raised as error, the defendants do not expressly argue this point, but instead present various other arguments. As the matter was tried by a judge rather than a jury, not only would use of the directed verdict procedure be improper, but the granting of a directed verdict under such circumstances would be in error as well. See Phillips v. State, Department of Public Safety and Corrections, 43,143, p. 7 (La. App. 2d Cir. 3/19/08), 978 So. 2d 1223, 1228.

B. The trial court erred in awarding excessive damages to the plaintiff in the amount of \$40,000 dollars without evidence of medical special amounts.

DISCUSSION

In their first assignment of error, the defendants present three arguments refuting the finding of liability in this matter: (1) the evidence was insufficient to establish Petrie Jackson as the driver of the van at the time of the incident; (2) the immunity provided under La. R.S. 9:2798.1 shielded them from liability; and (3) the alleged actions of Petrie Jackson were not a cause in fact of Mr. Guidry's injury.

At trial, the three witnesses to the incident – Mr. Guidry, Marvin Johnson, and Jerry Santee – only identified the driver of the van as "Ms. Jackson" or "Sergeant Jackson." None of them specifically identified the driver as Petrie Jackson.² Mr. Santee, when asked whether his testimony to the judge was the same as statements he made to counsel for the defendants in anticipation of litigation, testified:

I didn't tell him in detail, but I told him basically that the man fell out the van; who the --- they say they couldn't find Ms. Jackson, but I'm sure they got a record of the lady being employed there at the time. They got a Log Book in the Patrol. An Officer on every shift got to log that Book, how many prisoners she transport on the trip, and she got to sign in and sign out, just like they do in the Dormitory. So, it's not hard for them to find out where that lady is. They got two other Ms. Jacksons working in the [prison], you know, but they can't find them. I don't understand that. I'm a prisoner. If I was look for it, I could find it.

Considering the unrefuted testimony of Mr. Guidry, Mr. Johnson, and Mr. Santee, the record clearly supports the finding that a correctional officer with the surname of "Jackson" ordered Mr. Guidry to disembark from the van, but the evidence in no way establishes that the unknown "Jackson" was specifically Petrie

² Other evidence in the record indicates that a "Petra Jackson" was employed at the Elayn Hunt Correctional Center around the time of the incident.

Jackson. We therefore find that the trial court clearly erred in holding Petrie Jackson liable. We will reverse the finding of liability as to her.

The defendants additionally argue that there should be no finding of liability on the part of any of the defendants because the actions of the unknown correctional officer are shielded under the immunity provided by La. R.S. 9:2798.1. Paragraph B of that statute provides: "Liability shall not be imposed on public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties." We find no merit in this argument.

Immunity based on La. R.S. 9:2798.1 applies when a policy judgment is made at the ministerial level, not at the operational level. Sarasino v. State Through Department of Public Safety and Corrections, 16-408, p. 8 (La. App. 5th Cir. 3/15/17), 215 So. 3d 923, 929. Thus, even when an employee's conduct is based on an exercise of discretion, it must still be shown whether that discretion is the kind that is shielded by the exception, that is, one grounded in social, economic or political policy. If the action is not based on public policy, the government is liable for any negligence, because the exception insulates the government from liability only if the challenged action involves the permissible exercise of a policy judgment. Fowler v. Roberts, 556 So. 2d 1, 15 (La. 1989).

So even accepting that the decision of the unknown correctional officer to force Mr. Guidry to disembark the van without providing the assistance he requested was a discretionary act, such exercise of discretion has in no way been shown to be one grounded in any social, economic, or political policy; rather it was simply an action taken on an operational level. As such, the immunity accorded under La. R.S. 9:2798.1 does not extend to shield the DPSC from liability in this matter.

In their final argument under this assignment, the defendants assert that Mr. Guidry's claim should fail because the evidence presented at trial was insufficient to establish that the actions of the unknown correctional officer were a cause in fact of Mr. Guidry's injury.

In an action to recover damages allegedly caused by another's negligence, the plaintiff has the burden of proving negligence on the part of the defendant by a preponderance of the evidence. Hanks v. Entergy Corporation, 06-477, p. 19 (La. 12/18/06), 944 So. 2d 564, 578. Under Louisiana jurisprudence, most negligence cases are resolved by employing a duty-risk analysis. Hanks, 06-477 at p. 20, 944 So. 2d at 579. In order for liability to attach under a duty-risk analysis, a plaintiff must prove: (1) duty; (2) breach; (3) causation; and (4) damages. A negative answer to any of the inquiries of the duty-risk analysis results in a determination of no liability. Stafford v. Exxon Mobile Corporation, 16-1067, p. 6 (La. App. 1st Cir. 2/17/17), 212 So. 3d 1257, 1262-63, writ denied, 17-0447 (La. 4/24/17), 221 So. 3d 67.

The trial court in this case found that the DPSC had a duty to provide Mr. Guidry with a step stool as he requested, because the evidence presented at trial showed: Mr. Guidry was a feeble man who had suffered from other injuries prior to the one at issue; he required assistance in getting into the van; and there was no evidence indicating that the height of the van from the ground was not of a distance "that there was no necessity for any type of assistance, whether it was a hand, a shoulder, a step, [or a milk] crate." Nevertheless, the defendants argue that because the evidence clearly established that Mr. Guidry was not wearing handcuffs or leg shackles at the time of the incident,³ the failure of the unknown

³ In Mr. Guidry's petition for damages, it was alleged that he was wearing handcuffs and leg shackles at the time of his fall. At trial, counsel for the defendants questioned each of the fact witnesses about this allegation. They all denied that Mr. Guidry was wearing either handcuffs or leg shackles at the time.

correctional officer to provide a step stool could not have caused Mr. Guidry's injury. We disagree.

It is a well-established principle of tort law that a tortfeasor takes his victim as he finds him and is responsible for all natural and probable consequences of his tortious conduct. See Schwartzberg v. Guillory, 16-0753, p. 4 (La. App. 1st Cir. 2/17/17), 213 So. 3d 1266, 1270. "[A]n injured person is entitled to recover full compensation for all damages that proximately result from a defendant's tortious act, even if some or all of the injuries might not have occurred but for the plaintiff's preexisting physical condition, disease, or susceptibility to injury." Williams v. Stewart, 10-0457, p. 7 (La. App. 4th Cir. 9/22/10), 46 So. 3d 266, 272, writ denied, 10-2598 (La. 1/14/11), 52 So. 3d 905, quoting Stein on Personal Injury Damages 3d § 11.1. "The defendant's liability for damages is not mitigated by the fact that the plaintiff's pre-existing physical infirmity was responsible in part for the consequences of the plaintiff's injury by the defendant." Bienemann v. State Farm Mutual Automobile Insurance Company, 08-1045, p. 4 (La. App. 3d Cir. 2/4/09), 3 So. 3d 621, 623, quoting Lasha v. Olin Corp., 625 So. 2d 1002, 1005 (La. 1993). Moreover, in the context of this case, it must be further recognized that an inmate has far less freedom of choice, and is subject to disciplinary measures, if he refuses to do what he is told. See Bridgewater v. State Through Department of Corrections, 434 So. 2d 383, 385 (La.1983).

In this case, the medical director for the Elayn Hunt Correctional Center, Dr. Preeti Singh, acknowledged that Mr. Guidry had a history of medical and/or ambulatory disabilities prior to the incident. On questioning by the court, Dr. Singh stated that while she could not say that a person with Mr. Guidry's restrictions was incapable of getting off the van without assistance, she stated that she would "tell him not to do that." She further opined, "if I have an option with an elderly gentleman who has these restrictions, then I would provide him with the

assistance that he needs at that time." Mr. Guidry testified that he was assisted in getting in the van on the date of the incident due to a previous injury and surgery that had been performed on his right foot. Considering this evidence, we cannot say that the trial court erred in finding that the action of the unknown correctional officer was a cause in fact of Mr. Guidry's injury. Accordingly, we find no merit in any of the arguments raised by the defendants in their first assignment of error.

In their remaining assignment of error, the defendants contest the amount of damages awarded by the trial court, primarily arguing that no duty was owed, but further asserting that the amount awarded was excessive considering that Mr. Guidry sustained what at most amounted to a three to five month injury.

Penal authorities have a duty to use reasonable care in preventing harm after they have reasonable cause to anticipate it. State ex rel. Jackson v. Phelps, 95-2294, p. 3 (La. 4/8/96), 672 So. 2d 665, 667; Williams ex rel. Williams v. Jones, 09-839, p. 5 (La. App. 5th Cir. 2/23/10), 34 So. 3d 926, 930, writ denied, 10-0677 (La. 5/28/10), 36 So. 3d 250. In Leonard v. Torres, 16-1484, p. 7 (La. App. 1st Cir. 9/26/17), ___ So. 3d ___, ___, it was likewise recognized that that while prison authorities must exercise reasonable care to protect inmates from harm, in order to show that a duty arose on the part of prison officials, the evidence must establish that the prison authorities either knew or should have known of the risk of harm presented.

The trial in this matter took place on November 24, 2015. Mr. Guidry appeared at the trial in a wheelchair. When he testified, he expressed his disagreement with Dr. Singh's testimony that the pain he still experienced in his knee was just arthritis, explaining that the pain he was presently feeling in his knee was not in the knee joint, but was in the same place where he experienced pain after the knee was fractured. Mr. Guidry also testified that after the fall, he was unable to return to his prison job. Mr. Guidry's medical records, which were

introduced as a joint exhibit, indicate that his knee was completely healed by May 2013; however, the records also show that he continued to complain about pain in his left knee, swelling of his left leg, and leg weakness for almost a year after that date.⁴

Mr. Santee testified that he was "on the driveway," walking past where the van had pulled up, when "[t]hat lady jumped out, came around the front to the right side, and opened the doors, and ordered them to get out under the context of she had another load to go pick up, and she walked off." When Mr. Guidry fell, Mr. Santee said that the driver "was going [back] around the front of the van." He stated that he did not realize Mr. Guidry was falling until he heard a "cracking sound." He looked back and noticed Mr. Guidry on the ground. After Mr. Guidry fell, Mr. Santee said the driver got in the van and left, without providing any assistance to Mr. Guidry. On six or seven occasions following the accident, Mr. Santee said he observed that Mr. Guidry "was in some pain" and had a "slowness of gait."

Considering this evidence and the trial court's reasons, we cannot say the award of \$40,000.00 was an abuse of the trial court's vast discretion. See Bouquet v. Wal-Mart Stores, Inc., 08-0309, pp. 4-5 (La. 4/4/08), 979 So. 2d 456, 459. Accordingly, we reject this assignment of error as well.

CONCLUSION

For the reasons stated, we find the trial court erred in finding Petrie Jackson liable, and therefore, that portion of the December 15, 2015 judgment holding her liable is reversed. In all other respects, the judgment is affirmed. All costs of this appeal, in the amount of \$3,581.00, are assessed to the State of Louisiana through the Department of Public Safety and Corrections.

⁴ In a March 2014 note to the warden, Mr. Guidry complained of both of his knees "giving out" and hurting. And in a medical note from a March 19, 2014 telemedicine visit, it was reported that Mr. Guidry was "[w]heel chair bound/non-weight bearing left leg."

REVERSED IN PART AND AFFIRMED IN PART.

ROBERT GUIDRY

STATE OF LOUISIANA

VERSUS

COURT OF APPEAL

**SERGEANT PETRIE JACKSON
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 **CRAIN, J., agrees in part and dissents in part.**

I agree with reversing the trial court's judgment as to Petrie Jackson. In all other respects, I dissent, as I find the trial court's award of \$40,000.00 in damages to be excessive.