

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

BILLY MULKEY AND ROCHELLE
MULKEY (INDIVIDUALLY AND ON
BEHALF OF THEIR MINOR CHILD,
SHELLY MULKEY), SKYLAR
MILKEY AND JUSTIN MULKEY

NO. 2017 CW 1150

VERSUS

BURNELL ALESSI, SR., GEICO
CASUALTY COMPANY, STATE FARM
FIRE AND CASUALTY COMPANY,
AND STATE FARM GENERAL
INSURANCE COMPANY, AARON
ALESSI, JARED ALESSI, ABC
INSURANCE COMPANY AND DEF
INSURANCE COMPANY

FEBRUARY 26, 2018

In Re: Jared Alessi, applying for supervisory writs, 19th
Judicial District Court, Parish of East Baton Rouge,
No. 637329.


BEFORE: HIGGINBOTHAM, HOLDRIDGE AND PENZATO, JJ.

WRIT DENIED.

GH
TMH

Penzato, J., dissents and would grant the writ. Pursuant to a *de novo* review, I believe that defendant, Jared Alessi, met his initial burden on summary judgment by pointing out an absence of factual support for an essential element of plaintiff's case, particularly that he owed a duty to plaintiff and, even if a duty was owed, the scope of any duty did not extend to such a risk of harm. The burden then shifted to plaintiff, Billy Mulkey, and he failed to produce factual support sufficient to establish that he will be able to carry his evidentiary burden of proof at trial that Jared Alessi owed him any duty or to demonstrate that Jared Alessi was the custodian of or had garde of the tractor. La. Code Civ. P. art. 966. Accordingly, I would grant the writ, reverse the ruling denying Jared Alessi's motion for summary judgment, and would grant summary judgment in favor of Jared Alessi, thereby dismissing plaintiff's claims against him with prejudice.

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DEPUTY CLERK OF COURT
FOR THE COURT