STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 CA 1353

AARON L. VAN CLEAVE AND CHRISTY VAN CLEAVE

VERSUS

ARTHUR WAYNE TEMPLE, MISSISSIPPI FARM BUREAU CASUALTY INSURANCE COMPANY, SAFECO INSURANCE COMPANY OF AMERICA, SCOTTSDALE INSURANCE COMPANY, FORD MOTOR COMPANY, SHERIFF NATHANIEL WILLIAMS, MARCHAND MACHINERY MAINTENANCE CO. – K, LLC

Consolidated with

NUMBER 2018 CA 1354

KRISTY DUNNEHOO MARCHAND, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, MICHAEL ANN MARCHAND AND ALIXANDRA QUINN MARCHAND

VERSUS

ARTHUR WAYNE TEMPLE, MISSISSIPPI FARM BUREAU CASUALTY INSURANCE COMPANY, SCOTTSDALE INSURANCE COMPANY, FORD MOTOR COMPANY, AND SHERIFF NATHANIEL WILLIAMS

Judgment Rendered: MAY 31 2019

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of St. Helena
State of Louisiana
Docket Numbers 21035 c/w 21049

Honorable Elizabeth P. Wolfe, Judge Presiding

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William C. Helm
Stephen F. Butterfield
Baton Rouge, LA

Counsel for Plaintiffs/1st Appellants
Kristy Dunnehoo Marchand,
Individually and on behalf her minor children, Michael Ann Marchand and Alixandra Quinn Marchand

Higginbotham, J. agrees in part and dissents in part for the additional reasons assigned.

Rick A. Caballero **Baton Rouge, LA**	**Counsel for Plaintiffs/2nd Appellants** **Aaron L. Van Cleave and Christy Van Cleave**
Timothy R. Richardson **Craig Frausch** **Ronald S. Bryant** **New Orleans, LA**	**Counsel for Defendant/Appellee** **Sheriff Nathaniel Williams**
Stacey A. Moak **Jonathan Mayeaux** **Baton Rouge, LA**	**Counsel for Defendant/Appellee** **Arthur Wayne Temple and** **Mississippi Farm Bureau Casualty Insurance Company**

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BEFORE: WHIPPLE, C.J., MCCLENDON AND HIGGINBOTHAM, JJ.

WHIPPLE, C.J.

The plaintiffs in these consolidated matters appeal the judgment of the Twenty-First Judicial District Court, granting one defendant's motion for summary judgment and dismissing the plaintiffs' claims against the defendant-mover, with prejudice. For the following reasons, we dismiss the appeal, in part, and affirm, in part.

FACTS AND PROCEDURAL HISTORY

On July 19, 2009, Allen Keith Marchand was driving a 2002 Ford F-350 truck, which was owned by Marchand Machinery Maintenance Co. – K, LLC., and Aaron L. Van Cleave was riding in the Marchand truck as a passenger. On the same date, Arthur Wayne Temple was driving a 2006 Ford F-250 truck. The Marchand truck was traveling eastbound on Louisiana Highway 16 in St. Helena Parish, and the Temple truck was traveling westbound on the same highway. Without warning, the Temple truck crossed the centerline of Louisiana Highway 16, entered the eastbound lane occupied by the Marchand truck, and struck the Marchand truck in a head-on collision. Mr. Marchand was killed as a result of the accident.

Approximately an hour prior to the collision between the Temple truck and the Marchand truck on Louisiana Highway 16, June Blades was driving behind what was later discovered to be the Temple truck on Louisiana Highway 43. After observing the Temple truck driving erratically, swerving from one side of the road to another, and fluctuating in speed from twenty-five to thirty miles per hour to about fifty miles per hour, Ms. Blades called the St. Helena Parish Sheriff's Office to report the erratic vehicle on Louisiana Highway 43. While working as a dispatcher with the St. Helena Parish Sheriff's Office, Rhonda Leisa Ballard received the call from Ms. Blades reporting that "a green four-wheel drive truck

[was] all over the road" at 5:56 am on July 19, 2009. As a result of Ms. Blades' call, a Greensburg Police Department unit responded to the area where the Temple truck was reported to be driving erratically, but did not find the Temple truck. A little over an hour after the initial report from Ms. Blades was received, Ms. Ballard received a 911 call reporting the head-on collision between the Marchand truck and the Temple truck.

Aaron L. Van Cleave and Christy Van Cleave ("the Van Cleave plaintiffs") filed a petition for damages against numerous defendants, including Mr. Temple and Sheriff Nathaniel Williams ("Sheriff"). Mr. Van Cleave sought damages for the severe injuries he received in the accident, and Christy Van Cleave sought damages as a result of her loss of consortium, services, and society due to her husband's injuries. The Louisiana Safety Association of Timbermen – Self Insurers Fund ("Fund") then filed a petition of intervention naming as defendants: Mr. Van Cleave, Mr. Temple, the Sheriff, and all other defendants named in the Van Cleave petition for damages. The Fund sought recovery of sums paid to or on behalf of Mr. Van Cleave under Louisiana's Worker's Compensation Law for his injuries and disability resulting from the July 19, 2009 accident.

Additionally, Kristy Dunnehoo Marchand, individually and on behalf of her minor children, Michael Ann Marchand and Alixandra Quinn Marchand ("the Marchand plaintiffs"), filed a separate petition for damages against Mr. Temple and the Sheriff, among others. In the Marchand suit, a petition for intervention was filed by Bridgefield Casualty Insurance Company ("Bridgefield"). As the worker's compensation insurer of Mr. Marchand's employer, Bridgefield sought the recovery of sums paid to and on behalf of Mr. Marchand as a result of his death after the July 19, 2009 accident. In the intervention, Bridgefield aligned itself with

the claims of the Marchand plaintiffs and asserted claims against all defendants named in the Marchand suit, including the Sherriff.

After the original petitions and interventions were filed, the Van Cleave suit and the Marchand suit were consolidated pursuant to an order of the trial court. In both suits, the claims against the Sheriff were based on the fact that Ms. Blades reported the erratically driven Temple truck and on the allegation that the St. Helena Parish Sheriff's Office failed to promptly and properly respond. According to plaintiffs, the failure of the Sheriff to properly respond to the report of the erratic driver and to remove Mr. Temple from the highway were proximate causes of the head-on collision and resulting death of Mr. Marchand and injury to Mr. Van Cleave. The Sheriff filed a motion for summary judgment, seeking to dismiss the Marchand and Van Cleave plaintiffs' claims against it and maintaining that it did not breach any duty owed to the plaintiffs because the dispatcher, Ms. Ballard, acted appropriately and the Sheriff is not an insurer of the general public.

The Sheriff's motion for summary judgment was opposed by plaintiffs, and a hearing was held on March 9, 2018, wherein the motion was granted.[1] The judgment granting the Sheriff's motion for summary judgment was signed by the trial court on April 16, 2018, and devolutive appeals were timely requested and obtained by the Marchand plaintiffs and Aaron Van Cleave. The plaintiffs assign as error that the trial court erroneously granted summary judgment in favor of the Sherriff as genuine issues of material fact remain.

APPELLATE JURISDICTION

Notwithstanding that the parties have not raised the issue of subject matter jurisdiction, appellate courts have the duty to examine the basis of its jurisdiction *sua sponte*. Herrera v. First Nat. Ins. Co. of Am., 2015-1097 (La. App. 1st Cir.

[1]Neither the transcript nor the minutes from the March 9, 2018 hearing were included in the record; however, this court was able to obtain the minute entry.

6/3/16), 194 So. 3d 807, 810-11, writ denied, 2016-1278 (La. 10/28/16), 208 So. 3d 885. This court's appellate jurisdiction extends only to final judgments and judgments expressly made appealable by law. Id. at 810; LSA-C.C.P. art. 2083. A final judgment is one that determines the merits in whole or in part. LSA-C.C.P. art. 1841. A final judgment which partially determines the merits may be appealed as set forth in LSA-C.C.P. art. 1915(A).[2] However, LSA-C.C.P. art. 1915(B) provides that when a court renders a partial judgment or partial summary judgment, as to one or more but less than all of the claims, demands, issues, or theories against a party, whether in an original demand or intervention, the judgment shall not constitute a final judgment unless it is designated as such by the court after an express determination that there is no just reason for delay. A partial final judgment under Article 1915(A) is appealable without designation, and a partial final judgment under Article 1915(B) is appealable only if so designated by the court. LSA-C.C.P. art. 1911(B).

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[2] Louisiana Code of Civil Procedure article 1915(A) provides as follows:

A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

(1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.

(2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.

(3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).

(4) Signs a judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.

(5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before a jury and the issue of damages is to be tried before a different jury.

(6) Imposes sanctions or disciplinary action pursuant to Article 191, 863, or 864 or Code of Evidence Article 510(G).

In these consolidated matters,[3] the trial court granted the Sheriff's motion for summary judgment, which only partially determined the merits of a portion of the claims at issue. In the Van Cleave suit, the April 16, 2018 judgment dismissed the claims of Aaron Van Cleave against the Sheriff in the principal demand, but did not address the claims of Christy Van Cleave against the Sheriff. Accordingly, the Sheriff remains a defendant in the principal demand and a defendant in intervention in the Van Cleave suit. However, in the Marchand suit, the April 16, 2018 judgment ordered that all claims and causes of action asserted in the actions by Kristy Dunnehoo Marchand, individually and on behalf of her minor children, Michael Ann Marchand and Alixandra Quinn Marchand, against the Sheriff be dismissed, with prejudice. While the Sheriff remains a defendant in Bridgefield's petition of intervention, the judgment appealed dismissed all of the claims of all named plaintiffs in the Marchand suit asserted against the Sheriff.

Pursuant to LSA-C.C.P. art. 1915(A)(1), a partial final judgment may be rendered, even though it does not adjudicate all the issues in the case, when the court dismisses the suit as to less than all the parties, defendants, or intervenors. Additionally, LSA-C.C.P. art. 1915(A)(3) provides that a partial final judgment may be rendered, even though it does not adjudicate all the issues in the case, when the court grants a motion for summary judgment as provided in LSA-C.C.P. arts. 966 through 969, but not a summary judgment as provided in LSA-C.C.P. art. 966(E).[4] The April 16, 2018 judgment issued in the Marchand suit is a partial final judgment pursuant to LSA-C.C.P. art. 1915(A)(1) and (3), as it dismissed all

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[3]While the Marchand and Van Cleave suits were consolidated for purposes of trial, each case stands on its own merits, and procedural and substantive rights peculiar to one case are not rendered applicable to the companion suit by the consolidation. Johnson v. Shafor, 2008-2145 (La. App. 1st Cir. 7/29/09), 22 So. 3d 935, 941, writ denied, 2009-1921 (La. 11/20/09), 25 So. 3d 812.

[4] Article 966(E) provides that summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case.

claims against the Sheriff in the main demand and granted a motion for summary judgment that was not an Article 966(E) summary judgment. Accordingly, the judgment in the Marchand suit is final and appealable without designation and is properly before this court on appeal. See Pontchartrain Nat. Gas Sys. v. Texas Brine Co., LLC, 2018-0244 (La. App. 1st Cir. 10/11/18), 264 So. 3d 545, 549-50, writ denied, 2019-0080 (La. 3/6/19), 264 So. 3d 1204; Fla. Gas Transmission Co., LLC v. Texas Brine Co., LLC, 2018-0218 (La. App. 1st Cir. 1/11/19), --- So. 3d ---, n.2, 2019 WL 168491 *1.

In the Van Cleave suit, however, no party was dismissed in the April 16, 2018 judgment. While certain claims against the Sheriff were dismissed, the Sheriff was not dismissed as a party from the Van Cleave suit as Christy Van Cleave's claims against him remain. Thus, the judgment in the Van Cleave suit does not meet any of the criteria set forth in LSA-C.C.P. art. 1915(A), and, instead, is a partial judgment under LSA-C.C.P. art. 1915(B). Absent a designation of finality and an express determination that there is no just reason for delay, the partial judgment issued in the Van Cleave suit is not immediately appealable. LSA-C.C.P. arts. 1911(B) and 1915(B). The judgment in the Van Cleave suit contains no such designation, and this court lacks appellate jurisdiction to consider the merits of the Van Cleave appeal. Moreover, we decline to exercise our supervisory jurisdiction given the procedural posture of this case.[5]

SUMMARY JUDGMENT

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show there is no genuine issue as to material fact and that the mover is entitled to

[5] In the Van Cleave suit, Aaron Van Cleave filed his motion and order for appeal more than thirty days after the notice of judgment was issued. Accordingly, if the appeal was converted to a supervisory writ, the writ would be untimely pursuant to Rule 4-3, Uniform Rules, Courts of Appeal. See Tower Credit, Inc. v. Bradley, 2015-1164 (La. App. 1st Cir. 4/15/16), 194 So. 3d 62, 64-65.

judgment as a matter of law. LSA-C.C.P. art. 966(A)(3). "A genuine issue of material fact is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate." Jackson v. City of New Orleans, 2012-2742 (La. 1/28/14), 144 So. 3d 876, 882, cert. denied, ___ U.S. ___, 135 S.Ct. 197, 190 L.Ed.2d 130 (2014).

On a motion for summary judgment, the initial burden of proof is on the mover. LSA-C.C.P. art. 966(D)(1). If the moving party will not bear the burden of proof at trial, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, but rather to point out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the nonmoving party must produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden at trial. Id. If the nonmoving party fails to make this requisite showing, there is no genuine issue of material fact, and summary judgment should be granted. LSA-C.C.P. art. 967(B); Holt v. Torino, 2012-1579 (La. App. 1st Cir. 4/26/13), 117 So. 3d 182, 184, writ denied, 2013-1161 (La. 8/30/13), 120 So. 3d 267.

A summary judgment is reviewed *de novo* on appeal, viewing the record and all reasonable inferences that may be drawn from it in the light most favorable to the non-movant and using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Hines v. Garrett, 2004-0806 (La. 6/25/04), 876 So. 2d 764, 765 (per curiam). "In deciding a summary judgment motion, it must first be determined whether the supporting documents presented by the mover are sufficient to resolve all material fact issues." Dimattia v. Jackson Nat. Life Ins. Co., 2004-1936 (La. App. 1st Cir.

9/23/05), 923 So. 2d 126, 129. In ruling on a motion for summary judgment, a trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. All doubts should be resolved in the non-moving party's favor. Hines, 876 So. 2d at 765.

DISCUSSION

The basis for the Sheriff's motion for summary judgment centered on the assertion that the Sheriff, through the actions of his dispatcher, did not breach any duty owed to the plaintiffs in this case.

Ordinary Negligence – Duty/Risk Analysis

Louisiana courts have adopted a duty-risk analysis in determining whether liability exists under the facts of a particular case. Christy v. McCalla, 2011-0366 (La. 12/6/11), 79 So. 3d 293, 299. The duty-risk analysis is applicable in evaluating the liability of the Sheriff in this case. See Sacco v. Allred, 2002-0141 (La. App. 1st Cir. 2/19/03), 845 So. 2d 528, 533. Under this analysis, a plaintiff must prove five separate elements: (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant failed to conform his 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). Id. at 533-34. A negative answer to any of the inquiries of the duty-risk analysis results in a determination of no liability. Qasem v. Acadian Apartments, Inc., 2017-1591 (La. App. 1st Cir. 6/1/18), 252 So. 3d 1, 5 (citing Mathieu v. Imperial Toy Corp., 94-0952 (La. 11/30/94), 646 So. 2d 318, 326).

In a proper duty-risk analysis, identifying both the duty imposed upon the defendant by statute or rule of law and the conduct by defendant that allegedly constituted a breach of that duty is helpful. Boykin v. Louisiana Transit Co., 96-1932 (La. 3/4/98), 707 So. 2d 1225, 1230. In this case, plaintiffs maintain that the Sheriff breached his duty in responding to the call made by Ms. Blades, a concerned citizen, notifying the Sheriff of the erratically driven Temple truck, which resulted in Mr. Temple continuing to drive on the roads in St. Helena Parish and crashing into the Marchand truck.

When a law enforcement officer becomes apprised of a dangerous traffic situation, he has the affirmative duty to see that motorists are not subjected to an unreasonable risk of harm. Oubre v. Eslaih, 2003-1133 (La. 2/6/04), 869 So. 2d 71, 77. However, whether this duty exists and the scope of the duty depends on the specific facts and circumstances of the case and the relationship of the parties. Davis v. Witt, 2002-3102 (La. 7/2/03), 851 So. 2d 1119, 1128 (citing Socorro v. City of New Orleans, 579 So. 2d 931, 938 (La. 1991)). In this case, it is undisputed that on July 19, 2009, Ms. Blades dialed 911 and reported to Ms. Ballard, a deputy and 911 dispatcher with the Sheriff's office, that a truck, which was later determined to be the Temple truck, was driving erratically on Highway 43 near Greensburg, Louisiana. Accordingly, the Sheriff had knowledge of a potentially dangerous traffic situation and had an affirmative duty to respond so that other motorists were not subjected to an unreasonable risk of harm. See Syrie v. Schilhab, 96-1027 (La. 5/20/97), 693 So. 2d 1173, 1177).

However, the scope of an officer's duty encompasses the choosing of a course of action which is **reasonable** under the circumstances. Syrie, 693 So. 2d at 1177 (citing Mathieu, 646 So. 2d at 325); Sacco, 845 So. 2d at 537. As such, the scope of an officer's duty to act reasonably under the particular facts and

circumstances is not so broad as to require that an officer always choose the "best" or even a "better" method or approach. Id. Accordingly, in evaluating the reasonableness of an officer's actions, the existence of other available alternative methods does not by itself render the chosen method in a case unreasonable. Sacco, 845 So. 2d at 537. Rather, the determination of reasonableness is made in light of the totality of the circumstances. Id.

The Sheriff's Motion for Summary Judgment

The Sheriff, as the mover on the motion for summary judgment, would not bear the burden of establishing negligence at trial; therefore, his burden on summary judgment was to establish that there was an absence of factual support for one or more elements essential to the plaintiff's claims. LSA-C.C.P. art. 966(D)(1). In support of his contention that Ms. Ballard acted reasonably under the facts of the case, the Sheriff submitted as exhibits: the July 19, 2009 Complaint Report completed by Ms. Ballard after Ms. Blades called 911; Ms. Ballard's Log Sheet containing all of her calls from July 19, 2009; the deposition of Mr. Van Cleave; and the Affidavit of Ms. Ballard. Based on this evidence, the Sheriff maintained that Ms. Ballard acted reasonably in receiving the call from Ms. Blades and immediately dispatching an officer to the area in which Ms. Blades reported seeing the truck driving erratically. After not finding the truck upon a search of the reported area, the officer reported back to Ms. Ballard. Unfortunately, however, the accident at issue occurred one hour later. The Sheriff concluded that it would be unreasonable to require the dispatcher to know where the reported truck headed after receiving the call from Ms. Blades.

In opposition to the motion for summary judgment, the Marchand plaintiffs attached as exhibits the Affidavit of June Blades, the deposition of Rhonda Leisa Ballard, and the Affidavit of W. Lloyd Grafton. Plaintiffs maintain that Ms.

Ballard's actions were not reasonable in that she failed to notify other officers or the state police that a drunk driver was travelling on a state road, failed to ask Ms. Blades for any additional details about the drunk driver, and failed to make any request that Ms. Blades follow the drunk driver at a safe distance. According to plaintiffs, because there were genuine issues of material fact as to the reasonableness of Ms. Ballard's actions, the Sheriff was not entitled to judgment as a matter of law.

In this case, the material facts are not genuinely disputed. Sometime between 5:54 and 5:56 in the morning on July 19, 2009, Ms. Ballard received a call from Ms. Blades reporting that a green four-wheel drive truck (the Temple truck) was all over the road. Ms. Blades reported that the Temple truck was driving on Highway 43 and heading toward the intersection of Highway 10 approaching Greensburg, Louisiana. At 5:56 a.m., Ms. Ballard broadcast the information received from Ms. Blades over the radio for any available Greensburg Police Department unit to investigate. At 6:02 a.m., Kenny Wascom, a Greensburg Police Department employee, reported to Ms. Ballard that he went to the scene and left after not being able to locate the reported truck. An hour later, at 7:03 a.m., Ms. Ballard received a call reporting that two trucks were involved in a head-on collision on Highway 16, which was approximately sixteen miles from the location where the Temple truck was reported by Ms. Blade as being driven.

The crux of the issue presented in the motion for summary judgment was whether Ms. Ballard's actions were **reasonable** under the circumstances of this case. Syrie, 693 So. 2d at 1177. As noted by the Sheriff in the motion for summary judgment, reasonable minds could only conclude that Ms. Ballard acted reasonably under the circumstances, by immediately receiving the call, dispatching the information over the radio, which would be heard by both the Sheriff's

department and the Greensburg Police Department. Accordingly, the Sheriff maintained that there was no breach of the duty to act with reasonable care in responding to the potentially dangerous traffic situation so that other motorists were not subjected to an unreasonable risk of harm.

However, plaintiffs asserted in their opposition before the trial court that Ms. Ballard's actions were not reasonable under the circumstances. Further, in this court, plaintiffs assign as error the trial court's improper determination in the affirmative of the factual question of whether Ms. Ballard's actions were reasonable. Plaintiffs contend that they produced evidence creating a genuine issue of material fact as to the reasonableness of Ms. Ballard's actions.

First, in the affidavit of Ms. Blades, Ms. Blades stated that when she reported the erratically driven Temple truck on Highway 43 near Easleyville heading south toward Greensburg to the dispatcher, the dispatcher informed her that an officer would be sent to intercept the vehicle. Ms. Blades stated that the dispatcher asked no further questions about the location of the vehicle and never asked for any additional assistance from Ms. Blades. Ms. Blades indicated that had she been asked to follow the Temple truck, she would have done so at a safe distance.

The deposition of Ms. Ballard, established that the dispatcher received National Crime Information Center ("NCIC") training from LSU as well as on-the-job training. At the time of the accident, she had worked for the Sheriff for six years, but had since retired in April of 2017. After receiving the call from Ms. Blades on the morning of July 19, 2009, Ms. Ballard broadcasted the call over the radio and reported the description of the Temple truck to the Greensburg Police Department. On the morning of July 19, 2009, there was only one Greensburg Police officer on duty and two Sheriff's deputies on duty. Ms. Ballard further

testified that both the Greensburg Police Department and Sheriff's deputies on duty would hear anything dispatched over the radio. Plaintiffs note that Ms. Ballard did not notify Louisiana State Police[6] and did not issue a "be-on-the-lookout" alert.

Lastly, in opposition to the Sheriff's motion for summary judgment, the affidavit of Mr. Grafton was submitted. Mr. Grafton was an Associate Professor of Criminal Justice for twenty-four years in the University of Louisiana System and twenty-three years of service as a United States Special Agent. In his affidavit, Mr. Grafton echoed the undisputed facts and timeline of the events of the morning of July 19, 2009. However, Mr. Grafton opined that the Sheriff, through the dispatcher Ms. Ballard, "contributed to the fatal accident ... by failing to obtain enough information in order to intercept the impaired driver" and further stated that in his opinion, Ms. Ballard did not act reasonably.

ANALYSIS

On review, we find the material facts are not in dispute. Essentially, a call was made by Ms. Blades to report the erratically driven Temple truck, Ms. Ballard received the call and immediately broadcasted the information on the radio, a Greensburg Police unit promptly responded to the broadcast, but was unable to locate the Temple truck near the reported location. Thereafter, the accident at issue in this case occurred an hour after the initial call was made by Ms. Blades, at a location of approximately sixteen miles from the location where the Temple truck was initially reported. After learning of the potentially dangerous traffic situation in this case, the Sheriff, through Ms. Ballard, had an affirmative duty to respond; however, contrary to plaintiffs' assertion, Ms. Ballard was not required to choose the "best" or even a "better" method or approach; her response needed only be

[6] Ms. Ballard testified that while both the Greensburg Police Department and Sheriff's deputies would hear anything dispatched over the radio, she would have to contact Louisiana State Police by phone.

reasonable under the circumstances. See Syrie, 693 So. 2d at 1177; Mathieu, 646 So. 2d at 325; Sacco, 845 So. 2d at 537.

Without material factual disputes and, instead, only conflicting opinions as to the conclusions to be drawn based on the facts presented, the question of whether Ms. Ballard's actions were reasonable is appropriately decided on summary judgment. Hogg v. Chevron USA, Inc., 2009-2632 (La. 7/6/10), 45 So. 3d 991, 999. As recognized by the Supreme Court, "summary judgment is appropriate when all the relevant facts are marshalled before the court, the marshalled facts are undisputed, and the only issue is the ultimate conclusion to be drawn from those facts." Smith v. Our Lady of the Lake Hosp., Inc., 93-2512 (La. 7/5/94), 639 So. 2d 730, 752. The factual circumstances of Ms. Ballard's actions are undisputed, and whether her actions were reasonable is a question of law in this case. See Cavin v. Craig Neal & Sons Farm, LLC, 2011-1415 (La. App. 1st Cir. 3/23/12), 2012 WL 994625, *3 (unpublished), writ denied, 2012-1205 (La. 9/21/12), 98 So. 3d 340.

Moreover, the affidavit of Mr. Grafton, concluding that Ms. Ballard's actions were unreasonable for her failing to obtain additional information from Ms. Blades about the Temple truck and its location, only establishes that there were other, possibly better, alternative actions that could have been taken by Ms. Ballard. Whether there existed available alternative methods does not alone render the chosen method unreasonable. Sacco, 845 So. 2d at 537. As noted above, Ms. Ballard was not required to choose the "best" or even the "better" approach in responding to Ms. Blades' call. Id.; Syrie, 693 So. 2d at 1177 (citing Mathieu, 646 So. 2d at 325).

Although mindful of the tragic nature of this case, we are unable to conclude that Ms. Ballard's actions were unreasonable under the circumstances. When

reasonable minds must inevitably conclude that the mover is entitled to judgment on the undisputed facts presented, the motion must be granted. Smith, 639 So. 2d at 752. Accordingly, on *de novo* review, we find that the trial court did not err in granting the Sheriff's motion for summary judgment, and these plaintiffs' assignments of error lack merit.

CONCLUSION

For the above and foregoing reasons, we dismiss, at the costs of plaintiff/appellant, Aaron L. Van Cleave, the appeal taken in the Van Cleave suit. We hereby affirm the April 16, 2018 judgment granting, summary judgment in favor of Sheriff Nathaniel Williams and dismissing, with prejudice, the claims of Kristy Dunnehoo Marchand, individually and on behalf of her minor children, Michael Ann Marchand and Alixandra Quinn Marchand against defendant/appellee, Sheriff Nathanial Williams, with costs of this appeal assessed to plaintiffs/appellants, Kristy Dunnehoo Marchand, individually and on behalf of her minor children, Michael Ann Marchand and Alixandra Quinn Marchand.

APPEAL DISMISSED IN PART; AFFIRMED IN PART.

STATE OF LOUISIANA

COURT OF APPEAL

NO. 2018 CA 1353

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TMH

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HIGGINBOTHAM, J., AGREES IN PART AND DISSENTS IN PART AND ASSIGNS ADDITIONAL REASONS.

I agree with the portion of the majority opinion that dismisses the Van Cleave appeal for lack of subject matter jurisdiction, but I respectfully disagree with the affirmation of the summary judgment granted in favor of Sheriff Nathaniel Williams in the Marchand appeal. Duty is a question of law, and when no factual dispute exists and no credibility determinations are required, the legal question of the existence of a duty is appropriately addressed by summary judgment. **Manno v. Gutierrez**, 2005-0476 (La. App. 1st Cir. 3/29/06), 934 So.2d 112, 116. However, whether the defendant has breached a duty owed is a question of fact. **Mundy v. Department of Health and Human Resources**, 620 So.2d 811, 814 (La. 1993).

Further, whether the defendant's conduct was a substantial factor in bringing about the harm is a factual question to be determined by the factfinder. **Bonin v. Ferrellgas, Inc.**, 2003-3024 (La. 7/2/04), 877 So.2d 89, 94. Thus, while the "reasonableness of the conduct" of the sheriff's office is one of the legal issues presented in this case, the material facts upon which that determination is made are genuinely disputed. Without additional evidence at a trial, it is impossible to know whether the sheriff's office owed a further duty to inquire, investigate, or physically respond under these circumstances. See **Whatley v. Caddo Parish Sheriff's Dept.**, 27,321 (La. App. 2d Cir. 9/27/95), 661 So.2d 557, 561-62, writ denied, 95-2842 (La. 2/2/96), 666 So.2d 1097. See also **Howery v. Linton**, 454 So.2d 1283, 1284-85 (La. App. 2d Cir. 1984). Therefore, I would reverse the grant of summary judgment and remand for further proceedings.