

**BETTY WHITE MEDLIN AND
DWAIN D. MEDLIN**

*

NO. 2008-CA-0381

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**WILSON LOUISIANA
ASSOCIATES, L.P. AND TRI-W
DEVELOPMENT, INC. D/B/A
THE MALL OF LOUISIANA,
ABC INSURANCE COMPANY;
MCRAE'S, INC. D/B/A
MCRAE'S DEPARTMENT
STORE, ET AL.**

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STATE OF LOUISIANA

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BELSOME, J., DISSENTS WITH REASONS.

I respectfully dissent from the majority's opinion. As acknowledged by the majority, a summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to a material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art 966.

Additionally, the evidence presented must be viewed in the light most favorable to the party opposing the motion. Reviewing the record *de novo*, and putting aside the familial relationship of the victim and potential tortfeasor(s), this case meets the minimum threshold for denying the motion for summary judgment. Arguably, under the facts and circumstances of this case, a factfinder could find Ms. Enete's and/or her children's actions to be unreasonable and thus find the duty owed to Mrs. Medlin was breached.

In opposition to State Farm's motion for summary judgment the plaintiffs submitted an affidavit by safety expert, Michael J. Frenzel, stating that considering all the facts and conditions present at the time of Mrs. Medlin's fall, Ms. Enete's children were probably a contributing factor in the fall. Also, submitted was the deposition testimony of Mrs. Medlin and her daughter, Ms. Enete. Mrs. Medlin's

statements establish that she was startled when Benjamin grabbed her hand, an action that coincided with her fall. Further, Ms. Enete discussed her knowledge of Mrs. Medlin's condition at the time of the fall stating that her mother had been suffering with medical conditions that made it difficult for her to walk and she was tired from spending several hours at the mall. In hindsight, Ms. Enete recognized that with her older son Avery extending one of her mother's arms in front of her, she should not have allowed Benjamin to run up behind her mother and grab her other hand. Even though the majority's opinion characterizes Benjamin's action as a "taking" of his grandmother's hand, the testimony in the record repeatedly claims that he "grabbed" Mrs. Medlin's hand, indicating a more sudden or forcible action.

The evidence establishes that the actions of Benjamin grabbing Mrs. Medlin's hand, startling her and her stumbling and falling to the ground were simultaneous. Although the question of breach of duty is hardly clear cut, it is a question for the factfinder as to whether Ms. Enete and or her sons acted reasonably under the circumstances. Accordingly, I would reverse the trial court's granting of State Farm's motion for summary judgment.