

## CHASE, J., DISSENTS

I respectfully dissent from the majority. Plaintiff submitted evidence which disputes whether the hazard at issue posed an unreasonable risk of harm. Recent Louisiana Supreme Court jurisprudence has clarified that summary judgment in cases involving open and obvious or unreasonably dangerous hazards is inappropriate where a plaintiff is able to adduce sufficient evidence on genuine issues of material fact. “Under the facts presented, we find there are genuine issues of fact as to whether the dimly-lit stairwell was unreasonably dangerous, thereby precluding judgment as a matter of law. To the extent plaintiff was aware of the condition of the stairwell, the trier of fact may consider such evidence at trial for purposes of determining the percentage of fault, if any, to be assigned to plaintiff.” *Rodrigue v. Baton Rouge River Center*, 2016-2075 (La. 1/25/17), 209 So.3d 93 (per curiam) (citing *Broussard v. State ex rel. Office of State Buildings*, 2012-1238 (La. 4/5/13), 113 So.3d 175); *see also Falcon v. Surcouf*, 2017-0212, pp. 11-12 (La.App. 5 Cir. 12/27/17), 236 So.3d 716, 724. The fact that Ms. Lafaye saw the hose – just as one might perceive a stairwell to be dimly lit – does not necessarily mean it did not present an unreasonable risk of harm.<sup>1</sup>

<sup>1</sup> As Relators acknowledge in their appellant brief, the degree to which a danger is evident to a potential victim is but one factor in determining whether the condition is unreasonably dangerous.

Only in cases where the plaintiff failed to rebut a defendant's evidence has the Louisiana Supreme Court held that summary judgment is appropriate. “[O]ur jurisprudence does not preclude the granting of a motion for summary judgment in cases where the plaintiff is unable to produce factual support for his or her claim that a complained-of condition or thing is unreasonably dangerous.” *Bufkin v. Felipe's Louisiana, LLC*, 2014-0288 (La.10/15/14), 171 So.3d 851, 859 (Guidry, J., concurring). *See also Allen v. Lockwood*, 2014-1724 (La. 2/3/15) (per curiam), 156 So.3d 650, 653 (plaintiff “failed to produce *any* evidence to rebut [defendant's] evidence”) (emphasis in original); *Rodriguez v. Dolgencorp, LLC*, 2014-1725 (La. 11/14/14), 152 So.3d 871, 872 (per curiam) (“[p]laintiff failed to produce any evidence showing she could meet her burden at trial”). Ms. Lafaye put forth expert testimony noting the steps Relators could have undertaken to protect pedestrians. Thus evidence was submitted to refute Relators' claim that the condition was open and obvious. Accordingly, I would deny the writ, finding the trial court did not err in denying the motion for summary judgment.