

OBADIAH STEPHENSON, JR.

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NO. 2018-C-0998

VERSUS

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COURT OF APPEAL

**BRYCE W. HOTARD,
SUNBELT RENTALS, INC.,
AND TRAVELERS PROPERTY
AND CASUALTY COMPANY
OF AMERICA**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2016-02900, DIVISION "J"
Honorable Nicole D. Sheppard

Judge Daniel L. Dysart

(Court composed of Judge Roland L. Belsome, Judge Daniel L. Dysart, Judge
Rosemary Ledet)

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WRIT GRANTED; REVERSED

JANUARY 9, 2019

Relators seek review of the denial of their Motion for Partial Summary Judgment rendered on November 5, 2018. After a *de novo* review of the record, we find that the trial court erred and thus reverse its ruling. *Madere v. Collins*, 17-0723, p. 6 (La.App. 4 Cir. 3/28/18), 241 So.3d 1143, 1147.

Obadiah Stephenson, Jr., (“Stephenson”) was rear-ended by a truck owned by Sunbelt Rentals, Inc. (“Sunbelt”), and driven by Bryce Hotard (“Hotard”). In his petition, Stephenson claimed that he suffered injuries from the collision. In a supplemental petition, Stephenson alleged that Hotard was obligated by his employer to report the accident and submit to alcohol/drug testing within eight hours of the accident. Stephenson argues that Hotard intentionally did not report the accident, thereby denying him of proof that Hotard was intoxicated at the time of the accident. He argues the failure to report and be tested is tantamount to spoliation of evidence.

In his deposition, Stephenson stated that Hotard appeared “sweaty” and had “droopy eyes.” Hotard told Stephenson he was afraid of losing his job. During the

three to five minutes that the two men stood on the side of the road, Stephenson did not smell alcohol on Hotard, nor did he notice that Hotard's speech was impaired. Contrary to the allegations of his petition, Stephenson, at the time of the accident, stated that he was uninjured and chose not to call the police.

Hotard testified in his deposition that he did not report the incident to his employer, as there was no damage to either vehicle, and Stephenson stated he was uninjured.

In Louisiana, the general public policy is against awarding exemplary damages. *Chauvin v. Exxon Mobil Corp.*, 14-0808, p. 10 (La. 12/9/14), 158 So.3d 761, 768. Exemplary damages are not allowed unless expressly authorized by statute, and said statutes must be strictly construed. *Id.* The purpose of exemplary damages is to punish the defendant and deter others from engaging in the same type of conduct; therefore, the focus is on the defendant's conduct and motives, not on the tort or injury itself. *Id.*, 14-0808, pp. 10-11, 158 So.3d at 768.

Stephenson argues that La. Civ. Code art. 2315.4 permits him to seek exemplary damages. Art. 2315.4 provides, in part: "[E]xemplary damages may be awarded upon proof that the injuries on which the action is based were caused by a wanton or reckless disregard for the rights and safety of others by a defendant whose intoxication while operating a motor vehicle was the cause in fact of the resulting injuries."

In *Lyons v. Progressive Ins. Co.*, 03-2163 (La.App. 4 Cir. 7/21/04), 881 So.2d 124, this Court set forth three elements that must be proved to allow an award of exemplary damages:

- (1) that the defendant was intoxicated or had consumed a sufficient quantity of intoxicants to make him lose normal control of his mental and physical faculties;
- (2)

that the intoxication was a cause-in-fact of the resulting injuries; and (3) that the injuries were caused by the defendant's wanton or reckless disregard for the rights and safety of others.

Relators argue that summary judgment is warranted as there is a lack of evidence that Hotard was intoxicated at the time of the accident. They point to Stephenson's deposition testimony that Hotard did not smell of alcohol, his speech was not impaired, and he did not request that Stephenson not call the police.

Our *de novo* review of the record, which includes other evidence that Hotard was not intoxicated, indicates that there are no genuine issues of material fact that preclude summary judgment. Specifically, Stephenson's claim for exemplary damages due to the alleged intoxication of Bryce Hotard is not supported by any facts, and relators are entitled to summary judgment as a matter of law.

Stephenson's claim of spoliation of evidence is likewise unsupported by the facts and thus cannot be used to create an adverse presumption of intoxication. He argues that Hotard intentionally failed to inform his employer of the accident and timely submit to an alcohol/drug test, depriving his employer, Sunbelt, of the results of the test. Stephenson argues that Hotard's actions are sufficient to allow a trier-of-fact to conclude that Hotard engaged in the spoliation of evidence that gives rise to a presumption of intoxication.

In *Reynolds v. Bordelon*, 14-2362 (La. 6/30/15, 172 So.3d 589, the Louisiana Supreme Court held that Louisiana only recognizes a cause of action for intentional spoliation. Similarly, in *Quinn v. RISO*, this Court stated that "[t]he theory of 'spoliation of evidence' refers to an intentional destruction of evidence for [the] purpose of depriving opposing parties of its use." *Id.*, 03-0903, p. 5, 869 So.2d at 926-27 (citing *Pham v. Contico Intern. Inc.*, 99-945, p. 4 (La.App. 5 Cir.

3/22/00), 759 So.2d 880, 882). We found that allegations of negligent spoliation were insufficient and that a claimant must allege the destruction was intentional. *Quinn*, 03-0903, p. 5, 869 So.2d at 927.

Here, Stephenson admits that he told Hotard he was uninjured immediately following the accident, and that both men agreed there was no damage to either vehicle. When combined with Stephenson's testimony that he did not believe Hotard was intoxicated at the time of the accident, plaintiff cannot support his allegation that Hotard intentionally "destroyed," or in this case, intentionally failed to provide evidence that would give rise to an adverse presumption of intoxication.

Accordingly, we find that relators are entitled to summary judgment as a matter of law on these limited issues. The writ is therefore granted and the ruling of the trial court is reversed.

WRIT GRANTED; REVERSED