

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0672

EMMETT SPOONER I

VERSUS

**EAST BATON ROUGE PARISH SHERIFF DEPARTMENT,
DEPUTY D. PENNINGTON AND
WARDEN JOSEPH SEBELLA, ET AL.**

Judgment Rendered: February 11, 2011

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 477,617**

The Honorable Timothy E. Kelley, Judge Presiding

**Emmett Spooner, Sr.
Baton Rouge, Louisiana**

**Plaintiff/Appellant
In Proper Person**

**Phillip E. Foco
William H. L. Kaufman
Baton Rouge, Louisiana**

**Counsel for Defendants/Appellees
Sheriff Sid Gautreaux and
Deputy Dennis Pennington**

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

GAIDRY, J.

In this case, the plaintiff appeals a judgment in favor of the defendants, dismissing his claims with prejudice. We affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Emmett Spooner, Sr., a former inmate at the East Baton Rouge Parish Prison, filed a petition for damages against the East Baton Rouge Parish Sheriff's Department,¹ Sheriff Elmer Litchfield, Deputy Dennis Pennington, and Warden Joseph Sebella² arising from a courtroom incident in which Spooner alleges Deputy Pennington pushed him, causing him serious personal injuries. In an amended petition, Spooner sought punitive and special damages due to the alleged policy of the East Baton Rouge Parish Prison allowing deputies to "use unlawful force and brutality against inmates." Spooner also claimed that his injuries were further aggravated when the defendants placed him in an "unjustified 'Administrative Lockdown.'"

Spooner filed a motion for summary judgment on his personal injury claims, which was denied. A bench trial was held on December 17 and 18, 2009, after which the trial court denied all of Spooner's claims. Spooner filed a motion for new trial, which was also denied. Spooner now appeals both the judgment denying his claims and the denial of his motion for new trial, alleging the trial court erred in not allowing him a jury trial, denying

¹ It is well-settled that there is no such legal entity as a "sheriff's office;" there is only the Sheriff. It is the elected Sheriff, not the "Parish Sheriff's Office," that is the constitutionally-designated chief law enforcement officer of the Parish. The law of Louisiana affords no legal status to the "Sheriff's Office," so the department cannot sue or be sued, such status being reserved for the Sheriff. *See Valentine v. Bonneville Ins. Co.*, 96-1382, pp. 4-5 (La. 3/17/97), 691 So.2d 665, 668; *Slocum v. Litchfield*, 07-0006, p. 3 (La.App. 1 Cir. 6/8/07), 964 So.2d 1006, 1007, writ denied, 07-1412 (La. 10/5/07), 964 So.2d 943; *Jenkins v. Larpenter*, 04-0318, p. 2 n. 1 (La.App. 1 Cir. 3/24/05), 906 So.2d 656, 657 n. 1, writ denied, 05-1078 (La. 6/17/05), 904 So.2d 711. However, Elmer Litchfield was also named as a defendant in his capacity as the Sheriff of East Baton Rouge Parish, and he filed an answer in that capacity.

² The claims against Warden Joseph Sebella have been dismissed.

his motion for summary judgment, and failing to award damages for his claims.

DISCUSSION

Spooner's first argument is that he should have been allowed a jury trial. We disagree. Louisiana Revised Statutes 13:5105(A) provides that "[n]o suit against a political subdivision of the state shall be tried by jury." The Louisiana Governmental Claims Act, La. R.S. 13:5101, et seq., applies to any suit for injury against "an officer or employee of a political subdivision arising out of the discharge of his official duties or within the course and scope of his employment." La. R.S. 13:5101(B). A sheriff is included within the definition of "political subdivision." See La.R.S. 13:5102(B)(1). Sheriff's deputies are employees of a political subdivision for purposes of the Louisiana Governmental Claims Act; thus, deputies are also included under La.R.S. 13:5105(A)'s provision regarding jury trials against political subdivisions. *Chenevert v. Hilton*, 07-1223, p. 5 (La.App. 3 Cir. 3/5/08), 978 So.2d 1078, 1083, writ denied, 08-0731 (La. 5/30/08), 983 So.2d 901. Although a political subdivision may waive the prohibition against a jury trial, La. R.S. 13:5105(D), there was no such waiver in this case. Thus, Spooner's argument that he was entitled to a jury trial is without merit.

Spooner next argues that the trial court erred in denying his motion for summary judgment because the defendants did nothing to oppose his motion for summary judgment. This is incorrect. The defendants did file an opposition to Spooner's motion for summary judgment, and attached the depositions of Deputy Dennis Pennington (the deputy whose actions Spooner alleged caused his injuries) and Lieutenant Leroy Burton (Deputy Pennington's supervisor who came into the courtroom following the

incident). In dismissing Spooner's motion for summary judgment, the trial court found that a genuine issue of material fact remained concerning what exactly happened and whether Deputy Pennington's conduct was reasonable under the circumstances. After a review of the record, it is clear that there was a genuine issue of material fact as to whether Deputy Pennington's conduct was reasonable, and summary judgment was improper for that reason.

Spooner next argues that the testimony of an eyewitness, Judge Anderson, constituted an affirmative defense which was not disclosed to him by the defendants and as such should be stricken. Judge Anderson's trial testimony was essentially that after Deputy Pennington touched Spooner's arm and instructed him to sit down, Spooner backed up and purposefully threw himself over the railing. It is not clear, nor does Spooner explain, how Judge Anderson's eyewitness account of what transpired in his courtroom on the day of the incident constitutes an affirmative defense or an unfair surprise. First, defendants did in fact plead this version of events in their answer to Spooner's petition; Paragraph 4 of defendants' answer states: "[w]hen Deputy Pennington placed his hand on plaintiff's arm to escort him to his seat, plaintiff backed away and in the process fell over the jury box rail." Further, defendants' November 6, 2006 Pre-Trial Order, which was filed into the record, states:

At trial, Defendants will present testimony from various individuals present in Judge Anderson's courtroom on September 18, 2000, including Judge Anderson, that will establish Deputy Pennington did nothing whatsoever to harm Plaintiff and that Plaintiff's fall was self-inflicted.

Defendants' version of the events surrounding Spooner's fall and Judge Anderson's testimony were no surprise to Spooner. This assignment of error is also without merit.

Spooner's final assignment of error is that the trial court erred in failing to award him damages for his claims. The trial court's dismissal of Spooner's claims for damages for his personal injuries was based on a credibility call; at the close of the trial, the trial court stated that it found the version of events given by several uninterested individuals, especially Judge Anderson, to be more credible. It is well settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). This assignment of error has no merit.

CONCLUSION

The judgment in favor of the defendants dismissing plaintiff's claims with prejudice is affirmed. Costs of this appeal are assessed to plaintiff.

AFFIRMED.