NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1832

LEONARD ANTHONY JACKSON, MARIAN ANN GABLE JACKSON, AND RUDOLPH JACKSON

VERSUS

DONALD P. YOUNG, JR.; CITY OF BATON ROUGE, BATON ROUGE CITY POLICE DEPARTMENT; CHARLENE FONTENOT; REBEKAH FONTENOT; NANETTE GREER, PRINCIPAL OF BATON ROUGE MAGNET HIGH SCHOOL; AND EAST BATON ROUGE PARISH SCHOOL BOARD THROUGH CHARLOTTE PLACIDE, SUPERINTENDENT

Judgment Rendered: JUN 17 2011

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On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge
Docket No. 541,479

Honorable Todd W. Hernandez, Judge Presiding

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Gaidry, J. concurs.

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

This is an appeal from a district court's summary judgment, dismissing the plaintiffs' suit, which arose out of a high school student's accusation of rape against another student. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On or about February 12, 2004,[1] Baton Rouge Magnet High School student Rebekah Fontenot reported to the school principal, Nanette Greer, that fellow student Leonard Jackson had raped her sometime between May 3, 2002 and May 13, 2002. The matter was reported after a note had allegedly been passed during a class at school that day between Leonard and Rebekah, in which the prior nonconsensual act was referenced, and which was turned in to Ms. Greer. The students' parents and law enforcement officers were called, and Leonard was subsequently arrested for and charged with forcible rape; however, the charges were later dismissed.

After the dismissal of the charges, Leonard and his parents, Marian and Rudolph Jackson, brought the instant suit, naming as defendants: the East Baton Rouge Parish School Board ("EBRPSB"), through its superintendent, Charlotte Placide; Nanette Greer; the City of Baton Rouge, through its Mayor, Melvin "Kip" Holden; Donald P. Young, Jr.; Charlene Fontenot; Rebekah Fontenot; ABC Insurance Company; and XYZ Insurance Company.[2] The plaintiffs asserted that the "employees and agents" of the East Baton Rouge Parish School Board had "breached their contract" with

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[1] The record variously refers to the date of the note-passing incident as either February 9, 2004 or February 12, 2004.

[2] The plaintiffs asserted that ABC Insurance Company and XYZ Insurance Company "respectively insured the defendants, East Baton Rouge Parish School Board and the City of Baton Rouge against liability of the nature associated herein."

the plaintiffs, on or about February 12, 2004, when they "failed to properly supervise another child that reported a false criminal act" against Leonard, and that these actions/inactions caused damage to them. The plaintiffs also asserted that EBRPSB: (1) failed to properly supervise students enrolled in a public school on February 12, 2004, and on April 22, 2004, when "a Baton Rouge Police Officer was allowed to arrest [Leonard]"; and (2) failed to warn students and their parents "of the danger associated with allowing [Nanette Greer] to [turn] their property over to the police, and other acts of negligence to be established at the trial." The plaintiffs further alleged that EBRPSB and the City of Baton Rouge were "strictly liable . . . under Louisiana Civil Code Article 2317 in that the unsafe supervision of students . . . caused the damage to [the plaintiffs, and that] . . . the unsafe, unsupervised, and undisciplined students had a vice or defect that made it unreasonably dangerous for [Leonard] as a student, whose injuries were caused by this defect, and the defendants, [EBRPSB and the City of Baton Rouge had either actual or [c]onstructive [k]nowledge of the defect." The plaintiffs further asserted that the EBRPSB, the City of Baton Rouge, Donald P. Young, Jr., Charlene Fontenot, Rebekah Fontenot, and Nanette Greer were indebted to them for damages, along with legal interest, and all costs of the proceedings.

The answers filed by the City of Baton Rouge, Mr. Young, EBRPSB, Ms. Greer, and the Fontenots denied any wrongdoing. The EBRPSB and the Fontenots also alleged that any damages suffered by the plaintiffs were caused by other persons for whom neither the EBRPSB, Ms. Greer, nor the Fontenots were responsible. In the alternative, it was asserted that contributory negligence, comparative negligence, victim fault, and/or assumption of the risk should be applied in the case. The Fontenots,

EBRPSB, and Ms. Greer further asserted that the plaintiffs' petition was impermissibly vague and that the stated claims had prescribed. EBRPSB and Ms. Greer also claimed that the plaintiffs had failed to properly serve their petition for damages pursuant to LSA-R.S. 17:51[3] and that the plaintiffs had failed to state a cause of action. The Fontenots also asserted a defense of a conditional privilege.[4]

The exceptions of the defendants were denied by the district court, and thereafter, the defendants each filed motions for summary judgment. The Fontenots, EBRPSB, and Ms. Greer re-urged their exceptions of prescription in their motions for summary judgment.[5] Following an April 6,

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[3] Louisiana Revised Statute 17:51 provides:

> There shall be a parish school board for each of the parishes, and these several parish school boards are constituted bodies corporate with power to sue. The legislature hereby authorizes suits against any parish school board for the enforcement of contracts entered into by the school board or for recovery of damages for the breach thereof, without necessity of any further authorization by the legislature. No other suits may be instituted or prosecuted against any parish school board unless in each individual case the legislature first has granted to the party or parties plaintiff the right to sue the particular school board, as provided in Section 26 of Article XIX and Section 35 of Article III of the Louisiana Constitution. In suits against school boards citation shall be served on the president of the board and in his absence on the vice-president.

[4] Though not pertinent to the issues presented in this appeal, we note that on April 10, 2008 a petition of intervention was filed by State Farm Fire & Casualty Company ("State Farm") asserting that it was the homeowner's insurer of Donald Paul Fontenot and Charlene Candies Fontenot. State Farm noted that the plaintiffs' petition sought recovery for injuries and damages stemming from the April 22, 2004 arrest of Leonard, at Baton Rouge Magnet High School, on "false criminal charge of forcible rape," but maintaining that the petition made no specific allegations of fault against Charlene Fontenot or Rebekah Fontenot. State Farm asserted that "if such claims like those made against the other defendants are nevertheless made or otherwise deemed to have been made against them," the damages claimed would not be covered under its policy provisions. In support of its assertions, State Farm cited its policy provisions, which allegedly covered only "bodily injury" or "property damage" arising out of an "occurrence." Coverage under the policy was further alleged to be excluded for "emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury unless it [arose] out of actual physical injury to some person." Furthermore, State Farm asserted that claims for bodily injury or property damage were also excluded if either "expected or intended" by any insured. State Farm asked the district court to render a declaratory judgment, ruling that there was no coverage under the policy issued to the Fontenots for the plaintiffs' alleged damages. The record before us contains no ruling on this intervention.

[5] We note that Rebekah and Charlene Fontenot's exception pleading the objection of prescription was denied in the district court in June of 2006, along with that of co-defendants EBRPSB and Ms. Greer, prior to the filing of their 2009 motions for summary judgment, and these defendants' applications for supervisory review were denied, "[o]n the showing made." See **Jackson v. Young**, 2006-1443, 2006-1485 (La. App. 1 Cir. 10/18/06) (unpublished), writs denied, 2006-2688, 2006-2742 (La. 1/8/07) 948 So.2d 129, 134. The overruling of a peremptory exception is an interlocutory order, which the trial court has the authority to review and change to do substantial injustice. See **Lee v. East Baton Rouge Parish School Board**, 623 So.2d 150, 154 (La. App. 1 Cir.), writ denied, 627 So.2d 658 (La. 1993) (citing **Babineaux v. Pernie-Bailey Drilling Co.**, 261 La. 1080, 262 So.2d 328 (1972)). See also **VaSalle v. Wal-Mart Stores, Inc.**, 2001-0462 (La. 11/28/01), 801 So.2d 331, 334-35. Further, when an unrestricted appeal is taken from a final judgment, an appellant is entitled to seek review of all adverse interlocutory judgments prejudicial to him, in addition to the review of the final judgment. However, this general principle is subject to exceptions where the adverse interlocutory judgment has previously been appealed, in accordance with the law, or where the aggrieved party has sought supervisory writs, and the appellate court makes a ruling

2009 hearing, the district court granted summary judgment in favor of all of the defendants and dismissed the plaintiffs' action with prejudice. The plaintiffs' subsequent motion for new trial was denied, and this appeal followed. On appeal, the appellants assert the district court "committed manifest and reversible error" in granting the defendants' motions for summary judgment and in denying the plaintiffs' "motion for new trial and/or in the alternative, right to reopen their case."

LAW AND ANALYSIS

Judgment Appealed

At the outset, we note that the plaintiffs' motion for devolutive appeal stated that plaintiffs desired to devolutively appeal from the "final" judgment "signed on the 20th day of May, 2010." This description of the judgment appealed presents an ambiguity. The district court signed a judgment on May 20, 2010, denying the plaintiffs' motion for new trial, while the judgment granting the defendants' motions for summary judgment was signed on June 22, 2009. The plain language of the plaintiffs' motion for appeal appears to appeal the denial of the motion for new trial, rather than the granting of the defendants' motions for summary judgment.

A judgment denying a motion for new trial is an interlocutory order, which is appealable only when expressly provided by law pursuant to LSA-C.C.P. art. 2083(C) (as amended by 2005 La. Acts, No. 205, § 1, effective January 1, 2006); an interlocutory order is not a final, appealable judgment. See **McClure v. City of Pineville**, 2005-1460, p. 3 (La. App. 3 Cir.

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which constitutes the "law of the case." See **Judson v. Davis**, 2004-1699, pp. 7-8 (La. App. 1 Cir. 6/29/05), 916 So.2d 1106, 1112-13, writ denied, 2005-1998 (La. 2/10/06), 924 So.2d 167 (citing **Landry v. Leonard J. Chabert Medical Center**, 2002-1559, p. 5 n. 4 (La. App. 1 Cir. 5/14/03), 858 So.2d 454, 461 n. 4, writs denied, 2003-1748, 2003-1752 (La. 10/17/03), 855 So.2d 761). In the instant case, the prior ruling of this court, on the defendants' supervisory applications, was not a substantive ruling on the merits and, therefore, did not become law of the case so as to preclude our reconsideration of these issues in this appeal.

12/6/06), 944 So.2d 805, 807, writ denied, 2007-0043 (La. 3/9/07), 949 So.2d 446. However, when a motion for appeal refers by date to the judgment denying a motion for new trial, but the circumstances indicate that the appellant actually intended to appeal from the final judgment on the merits, the appeal should be maintained as being taken from the judgment on the merits. Factors showing such an intent include: the appellant's assertion to that effect, whether the parties briefed issues on the merits of the final judgment, and whether the language of the order granting the appeal indicated that it was from the judgment denying a new trial. When it is clear that reference to the judgment denying a new trial was merely due to inadvertence, a court may conclude that an appellant actually intended to appeal from the judgment on the merits. See **Dural v. City of Morgan City**, 449 So.2d 1047, 1048 (La. App. 1 Cir. 1984). See also **McClure v. City of Pineville**, 2005-1460 at p. 3, 944 So.2d at 807.

In this case, the plaintiffs identified the judgment sought to be appealed as the "final" judgment signed "on the 20th day of May, 2010." The May 20, 2010 date could only have applied to the judgment on the motion for new trial, but the judgment was not otherwise identified in the language of the motion for appeal. Notwithstanding, the plaintiffs' arguments before this court make it clear that the judgment intended for appeal was the June 22, 2009 judgment, granting the defendants' motions for summary judgment, and additionally, the denial of the motion for new trial. Thus, the appeal should be maintained. See **Dural v. City of Morgan City**, 449 So.2d at 1049; **Fuqua v. Gulf Insurance Company**, 525 So.2d 190, 192 (La. App. 3 Cir. 1988).

Motion for Summary Judgment

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by LSA-C.C.P. art. 969; the procedure is favored and shall be construed to accomplish these ends. LSA-C.C.P. art. 966(A)(2). Summary judgment shall be rendered in favor of the mover 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 material fact and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B).

Appellate courts review summary judgments *de novo* under the same criteria that govern a district court's consideration of whether summary judgment is appropriate. **Samaha v. Rau**, 2007-1726, pp. 3-4 (La. 2/26/08), 977 So.2d 880, 882; **Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Authority**, 2002-1072, p. 5 (La. 4/9/03), 842 So.2d 373, 377; **Boudreaux v. Vankerkhove**, 2007-2555, p. 5 (La. App. 1 Cir. 8/11/08), 993 So.2d 725, 729-30.

In ruling on a motion for summary judgment, the judge'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 v. Garrett**, 2004-0806, p. 1 (La. 6/25/04), 876 So.2d 764, 765.

A fact is material if it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. A genuine issue 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. **Id.**, 2004-0806 at p. 1, 876 So.2d at 765-66.

On motion for summary judgment, the burden of proof remains with the movant. However, if the moving party will not bear the burden of proof on the issue at trial and points out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense, then the non-moving party must produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the opponent of the motion fails to do so, there is no genuine issue of material fact and summary judgment will be granted. See LSA-C.C.P. art. 966(C)(2).

When a motion for summary judgment is made and supported as provided in LSA-C.C.P. art. 967, an adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in LSA-C.C.P. art. 967, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be rendered against him. LSA-C.C.P. art. 967(B). See also **Board of Supervisors of Louisiana State University v. Louisiana Agricultural Finance Authority**, 2007-0107, p. 9 (La. App. 1 Cir. 2/8/08), 984 So.2d 72, 79-80; **Cressionnie v. Intrepid, Inc.**, 2003-1714, p. 3 (La. App. 1 Cir. 5/14/04), 879 So.2d 736, 738.

Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Richard v. Hall**, 2003-1488, p. 5 (La. 4/23/04), 874 So.2d 131, 137; **Dyess v. American National Property and Casualty Company**, 2003-1971, p. 4 (La. App. 1 Cir. 6/25/04), 886 So.2d 448, 451, writ denied, 2004-1858 (La. 10/29/04), 885

So.2d 592; **Cressionnie v. Intrepid, Inc.**, 2003-1714 at p. 3, 879 So.2d at 738-39.

After a thorough review of the record presented on appeal in this case, we find summary judgment was properly granted, dismissing the defendants. The pleadings, depositions, and the exhibits to the pleadings, contained in the appellate record, reveal the following facts in this case.[6]

On or about February 12, 2004 a student at Baton Rouge Magnet High School reported to the school principal, Nanette Greer, that Leonard Anthony Jackson had written a note to Rebekah Fontenot, which had upset her.[7] Upon being confronted by Ms. Greer about the note, Rebekah Fontenot turned it over to Ms. Greer.[8]

On the same day, Ms. Greer called Leonard to the office to discuss the note, which he denied writing.[9] Ms. Greer asked Leonard to allow her to look at one of his notebooks to compare his handwriting to that in the note. Ms. Greer stated that Leonard voluntarily turned over a notebook from his booksack.

After comparing the handwriting in Leonard's notebook to that in the note, Ms. Greer called Howard Davis, who was then the director of security for EBRPSB, pursuant to school board policy, and gave him the note. Mr.

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[6] No answers to interrogatories, admissions, or affidavits appear in the record. See LSA-C.C.P. art. 966(B).

[7] Leonard was seventeen years old on February 12, 2004, and he turned eighteen on February 14, 2004. Rebekah was also seventeen years old in February, 2004, and turned eighteen on October 29, 2004.

[8] A copy of the handwritten, two-page note appears in the record and contains a back-and-forth exchange between two writers, a male and a female, who were, allegedly, Leonard and Rebekah. In the note, the male makes numerous sexually-oriented remarks, and the statements therein indicated that there had previously been non-consensual sexual contact between the pair. The note ended with the female refusing the male's request to meet later, stating: "Over my dead body and for the last time, leave me alone!" The male responded: "You'll wish you hadn't said that."

[9] Leonard admitted that he had passed a note to Rebekah in class, but denied that it was the note Rebekah gave to Ms. Greer. Leonard said the handwriting in the note given to Ms. Greer was not his handwriting and that he did not use vocabulary like that. Leonard further stated that Rebekah had passed him a note saying hello, and he returned the note to her. He said, "It was sort of correspondence and it went back and forth a couple times."

Davis contacted the police, and Detective Donald P. Young, Jr., of the Baton Rouge Police Sex Crimes Division, came to the school campus to investigate the matter.

Ms. Greer recommended that Leonard be expelled from school for inappropriate behavior, and he was suspended, pending a hearing on the expulsion.[10]

On February 13, 2004 Detective Young met with Rebekah and her mother, Charlene Fontenot, at the Baton Rouge Police Department. Rebekah accused Leonard of rape, which allegedly occurred nearly two years earlier, between May 3, 2002 and May 13, 2002. Rebekah further identified Leonard as the person who had passed her the note during class, in which comments were made about the alleged rape.

On March 29, 2004 Detective Young petitioned for and obtained an order from a 19th Judicial District Court judge, requiring Leonard to provide twelve handwriting samples for examination by a certified forensic document examiner. On March 30, 2004 Leonard, accompanied by his then-attorney, completed a handwriting specimen form administered by Captain Bill Strickland of the East Baton Rouge Parish Sheriff's office. Leonard's handwriting samples were submitted to forensic document examiner, Robert G. Foley, along with the note allegedly passed by Leonard to Rebekah. After conducting his examination, Foley opined that the person who wrote the March 30, 2004 handwriting samples, Leonard, also wrote the note passed to Rebekah.

On April 22, 2004 Detective Young submitted a verified complaint of forcible rape against Leonard and obtained an order for Leonard's arrest

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[10] Following the hearing on February 17, 2004, the recommendation of expulsion was modified to a twenty-day suspension.

from an East Baton Rouge Parish Juvenile Court judge. Detective Young then met Leonard at school and arrested him. Leonard asserts that he was cuffed and shackled "in the presence of his [classmates]." Young contends that Leonard was not cuffed or shackled until he was placed in an unmarked police car, and that none of Leonard's classmates were present at the time of the arrest. According to the plaintiffs' petition, on March 17, 2005 the forcible rape charges against Leonard were dismissed in an East Baton Rouge Parish Juvenile Court proceeding.[11]

With respect to the plaintiffs' claims against Rebekah and her mother, that Rebekah's allegedly false allegations against Leonard caused him and his parents damage, we conclude that any action plaintiffs had against these defendants prescribed before the petition in this case was filed. Pursuant to LSA-C.C. art. 2315(A), "[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." Nevertheless, "[d]elictual actions"[12] are subject to a liberative prescription[13] of one year; this prescription commences to run from the day injury or damage is sustained. LSA-C.C. art. 3492. In the instant case, the actions and/or statements of Rebekah and her mother, which allegedly caused damage to the plaintiffs, occurred in February of 2004.[14] However, plaintiffs' suit

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[11] This fact was alleged in the plaintiffs' petition and was not disputed by the other parties to the suit, but no documents from the juvenile court appear in the record. In various filings in the district court in this case, it was either stated that Leonard was found "not guilty" or that the juvenile proceeding was "dismissed." However, Leonard stated in his deposition that the juvenile proceeding did not result in a "not guilty" verdict, but was dismissed "because of inconsistencies."

[12] A delictual action is subject to the one-year prescriptive period set forth in LSA-C.C. art. 3492. Delictual actions, subject to the one-year rule, can arise from intentional misconduct, negligence, abuse of right, and liability without fault; and include actions for defamatory or libelous statements. See LSA-C.C. art. 3492, 1983 Revision Comment (b); Hon. Max Tobias, Jr., John M. Landis, and Gerald E. Meunier, Louisiana Practice Series, "Louisiana Civil Pretrial Procedure," § 6:23 (2010-2011 ed.). See also **Terrel v. Perkins**, 96-2629 (La. App. 1 Cir. 11/7/97), 704 So.2d 35, 38.

[13] Liberative prescription is a mode of barring of actions as a result of inaction for a period of time. LSA-C.C. art. 3447.

[14] Nothing contained in the record on appeal indicates that any of these defendants' actions or statements, upon which plaintiffs' suit was based, took place after February of 2004.

against these defendants was not filed until March 15, 2006, well after the one-year prescriptive period provided for by LSA-C.C. art. 3492. Thus, the plaintiffs' action against Rebekah and Charlene Fontenot was barred.

As to the Baton Rouge Police Department and its officers, actions were taken following the report of a citizen that a crime had taken place. We find no indication in the record before this court that those actions were unreasonable.

Police officers who act pursuant to statutory authority in arresting and incarcerating a citizen are not liable for damages for false arrest or imprisonment. **Wolfe v. Wiener Enterprises, Inc.**, 94-2409 (La. 1/13/95), 648 So.2d 1293, 1296. Furthermore, LSA-R.S. 9:2798.1 provides immunity to police officers in the "exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties."[15]

In the instant case, the police officers interviewed the parties involved, obtained expert handwriting analysis of evidence obtained, and submitted the facts to a district court judge for a probable cause evaluation. The

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[15] Louisiana Revised Statute 9:2798.1 provides:

> A. As used in this Section, "public entity" means and includes the state and any of its branches, departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, employees, and political subdivisions and the departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, and employees of such political subdivisions.
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> B. Liability shall not be imposed on public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.
>
> C. The provisions of Subsection B of this Section are not applicable:
> (1) To acts or omissions which are not reasonably related to the legitimate governmental objective for which the policymaking or discretionary power exists; or
> (2) To acts or omissions which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconduct.
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> D. The legislature finds and states that the purpose of this Section is not to reestablish any immunity based on the status of sovereignty but rather to clarify the substantive content and parameters of application of such legislatively created codal articles and laws and also to assist in the implementation of Article II of the Constitution of Louisiana.

district court judge found probable cause existed for the arrest of Leonard in connection with Rebekah's allegations. The arrest of Leonard by the police was made on the strength of the arrest warrant issued by the district court. Under these circumstances, we find no basis presented in this record of actionable negligence on the part of the police department or Detective Young.[16]

With respect to the EBRPSB and its employees' actions in investigating whether, and reporting to the police that, a possible crime might have taken place, based on the allegations made by Rebekah, we also find summary judgment was appropriate. The plaintiffs alleged in their petition that EBRPSB employees failed to properly supervise Rebekah, implying that school employees could have prevented her from falsely reporting a criminal act, and they contend that EBRPSB should have protected them from "students [who] had a vice or defect that made it unreasonably dangerous for [Leonard] as a student, whose injuries were caused by this defect," when school officials had actual or constructive knowledge of the defect. Further, the plaintiffs assert that school employees had a duty to warn students and their parents "of the danger associated with allowing [Ms. Greer] to [turn] their property over to the police," and they complain that school employees "allowed" police to arrest Leonard.

First, we note that a conditional privilege is extended to citizens, respecting the communication of alleged wrongful acts to the officials authorized to protect the public from such acts, which is founded on a strong

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[16] We note that the plaintiffs further alleged that the Baton Rouge defendants, along with the school board defendants, were "strictly liable . . . in that the unsafe supervision of students . . . caused the damage to [them];" however, the plaintiffs have cited no legal authority, and no evidence was introduced into the record, that would impose such a duty on the part of the police department to supervise school students in a manner that would have prevented the harm complained of in this case. Therefore, we find no merit in this assertion.

public policy consideration: vital to our system of justice is that there be the ability to communicate to police officers the alleged wrongful acts of others without fear of civil action for honest mistakes. **Kennedy v. Sheriff of East Baton Rouge**, 2005-1418, p. 19 (La. 7/10/06), 935 So.2d 669, 683. A cause of action based on the reporting of a possible crime exists when that privilege has been abused. See **Kennedy v. Sheriff of East Baton Rouge**, 2005-1418 at pp. 19-20, 935 So.2d at 683. In **Kennedy**, the supreme court determined that, in order for a court to find abuse of the conditional privilege, there must have been a knowledge of falsity or reckless disregard for the truth on the part of a defendant. See **Kennedy v. Sheriff of East Baton Rouge**, 2005-1418 at p. 24, 935 So.2d at 686. The burden to show an abuse of privilege is on the plaintiff. See **Kennedy v. Sheriff of East Baton Rouge**, 2005-1418 at p. 27, 935 So.2d at 687. In the instant case, the record contains no evidence suggesting that the EBRPSB or Ms. Greer acted with knowledge of falsity or a reckless disregard for the truth.[17]

Moreover, "any person who provides training and supervision of a child, including any public or private teacher, teacher's aide, instructional aide, school principal, [or] school staff member" are specifically denominated "mandatory reporters" by LSA-Ch.C. arts. 603(15)[18] and

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[17] In the deposition excerpts of Leonard and his father, Rudolph Jackson, mention was made of an "accusation" of "assault" made by another student, named Christina, in 2002. Rudolph said that Rebekah knew about Christina's prior allegations so Detective Young should have "proceeded with caution," and Rudolph also indicated that the school also knew about Christina's allegations and seemed predisposed to find guilt in this case. The inference was that because there had been a prior, allegedly unfounded similar accusation of wrongdoing as to Leonard, school officials and police had a greater duty to ascertain the validity of Rebekah's allegations. Notwithstanding, no evidence appears in the record establishing that there was, in fact, any other means available to these defendants that could have been utilized to accomplish that goal. Additionally, there was no evidence produced to establish that the parties involved in this case, in fact, had knowledge of the prior accusations against Leonard. To the contrary, Ms. Greer testified in her deposition that she had no prior knowledge of any problems with Leonard, and she seemed to indicate that she had not been the principal in 2002.

[18] Mandatory reporters are identified in LSA-Ch.C. 603(15), which provides, in pertinent part:

> "Mandatory reporter" is any of the following individuals performing their occupational duties:
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> * * *

609(A),[19] which require these school employees to report to appropriate authorities if they have cause to believe a child has been sexually abused. See also LSA-R.S. 14:403(A)(1).[20] Furthermore, any person who in good faith makes a report, cooperates in any investigation arising as a result of such report, or participates in judicial proceedings authorized under the provisions of the Louisiana Children's Code is entitled to immunity from suit, pursuant to LSA-Ch.C. art. 611(A)(1).[21]

In the instant case, a student at Baton Rouge Magnet High School reported to the school principal that she had been sexually abused at the school nearly two years previously and that, at the time of her reporting the

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> (d) "Teaching or child care provider" is any person who provides training and supervision of a child, including any public or private teacher, teacher's aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, or any individual who provides such services to a child.
>
> (e) Police officers or law enforcement officials.

[19] Louisiana Children's Code Article 609(A) provides:

> With respect to mandatory reporters:
>
> (1) Notwithstanding any claim of privileged communication, any mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death shall report in accordance with Article 610.
>
> (2) Violation of the duties imposed upon a mandatory reporter subjects the offender to criminal prosecution authorized by R.S. 14:403(A)(1).

"Abuse" is defined by LSA-Ch.C. art. 603(1) as "any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:"

> (a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.
>
> (b) The exploitation or overwork of a child by a parent or any other person.
>
> (c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

[20] Louisiana Revised Statute 14:403(A)(1) provides:

> Any person who, under Children's Code Article 609(A), is required to report the abuse or neglect or sexual abuse of a child and knowingly and willfully fails to so report shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

[21] Louisiana Children's Code Article 611(A)(1) provides, in pertinent part:

> No cause of action shall exist against any:
>
> (a) Person who in good faith makes a report, cooperates in any investigation arising as a result of such report, or participates in judicial proceedings authorized under the provisions of this Chapter.

incident, she had, on the day she made the report, been further subjected to sexual harassment by the alleged perpetrator, in the form of a note, which was produced and seemingly supported the accusations. In light of these accusations, school personnel had a duty to investigate the accusations and inform the appropriate law enforcement officials when they found the reports credible. No tort liability can attach under these factual circumstances.

The EBRPSB employees further had the right, during the course of their investigation into these allegations, to examine Leonard's written school work in attempting to resolve the conflicting statements given by Rebekah and Leonard, as to whether he had written the note in question. Although the Fourth Amendment applies to searches conducted by school authorities, public high school students have a lesser expectation of privacy than the general public. Even though school students do not shed their constitutional rights at the schoolhouse door, they have a lesser expectation of privacy than members of the population in general. The reasonableness of seizures must be determined in light of all of the circumstances, with particular attention being paid to whether the seizure was justified at its inception and reasonable in scope. A warrant is not necessarily required before searching a student, and the burden for a reasonable search in a school setting is not probable cause, but the much lesser burden of reasonable suspicion. See **Lindsey ex rel. Lindsey v. Caddo Parish School Board**, 41,854, p. 3 (La. App. 2 Cir. 3/14/07), 954 So.2d 272, 274, writ denied, 2007-1033 (La. 8/31/07), 962 So.2d 441.

Under the particular facts and circumstances presented in this case, we conclude that the EBRPSB employees' actions were unquestionably reasonable. In this regard, we further note the qualified privilege granted to

school teachers and officials by LSA-R.S. 17:416.11, decreeing that no personal liability shall lie "for any act or failure to act in the directing of or disciplining of school children under his care and supervision, unless such act or failure to act was malicious and willfully and deliberately intended to cause bodily harm."[22] See also LSA-R.S. 17:416;[23] LSA-R.S. 17:416.3;[24] LSA-R.S. 17:416.18.[25] No evidence was introduced into this record that in

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[22] Louisiana Revised Statute 17:416.11 provides:

> A. No teacher, principal, or administrator in a public school system or in an approved nonpublic school shall be personally liable for any act or failure to act in the directing of or disciplining of school children under his care and supervision, unless such act or failure to act was malicious and willfully and deliberately intended to cause bodily harm.
>
> B. This Section shall not be applicable to the operation, use, or maintenance of any motor vehicle.

[23] Louisiana Revised Statute 17:416 provides, in pertinent part:

> A. (1)(a) Every teacher shall endeavor to hold every pupil to a strict accountability for any disorderly conduct in school or on the playgrounds of the school, on the street or road while going to or returning from school, or during intermission or recess.
>
> (b)(i) Each teacher may take disciplinary action to correct a pupil who disrupts normal classroom activities, who is disrespectful to a teacher, who willfully disobeys a teacher, who uses abusive or foul language directed at a teacher or another pupil, who violates school rules, or who interferes with an orderly education process.
>
> * * *
>
> (3)(a) A school principal may suspend from school or suspend from riding on any school bus any pupil who:
>
> * * *
>
> (iv) Uses unchaste or profane language.
>
> * * *
>
> (ix) Writes any profane or obscene language or draws obscene pictures in or on any school material or on any public school premises, or on any fence, pole, sidewalk, or building on the way to or from school, or on any school bus, including those owned by, contracted to, or jointly owned by any city or parish school board.

[24] Louisiana Revised Statute 17:416.3 provides, in pertinent part:

> A. (1) The parish and city school systems of the state are the exclusive owners of all public school buildings and all desks and lockers within the building assigned to any student and any other area of any public school building or grounds set aside specifically for the personal use of the students. Any teacher, principal, school security guard, or administrator in any parish or city school system of the state may search any building, desk, locker, area, or grounds for evidence that the law, a school rule, or parish or city school board policy has been violated.
>
> (2)(a) The teacher, principal, school security guard, or administrator may search the person of a student or his personal effects when, based on the attendant circumstances at the time of the search, there are reasonable grounds to suspect that the search will reveal evidence that the student has violated the law, a school rule, or a school board policy. Such a search shall be conducted in a manner that is reasonably related to the purpose of the search and not excessively intrusive in light of the age or sex of the student and the nature of the suspected offense.

[25] Louisiana Revised Statute 17:416.18 provides:

> A. Respecting the authority of teachers is essential to creating an environment conducive to learning, effective instruction in the classroom, and proper administration of city, parish, and other local public schools. To maintain and protect that authority, it is

any way indicates that the EBRPSB employees involved acted with malice or an intent to cause bodily harm. All evidence presented was to the contrary; i.e., the school employees acted solely to ensure that all students under their protection were safe from bodily harm. Thus, we conclude no evidence of actionable negligence was presented in this case as to these defendants.

Accordingly, we conclude no genuine issue of material fact existed in this case, and the defendants were entitled to summary judgment dismissing

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important that teachers, administrators, parents, and students are fully informed of the various rights conferred upon teachers pursuant to this Section, which are:

(1) A teacher has the right to teach free from the fear of frivolous lawsuits, including the right to qualified immunity and to a legal defense, and to indemnification by the employing school board, pursuant to R.S. 17:416.1(C), 416.4, 416.5, and 416.11, for actions taken in the performance of duties of the teacher's employment.

(2) A teacher has the right to appropriately discipline students in accordance with R.S. 17:223 and 416 through 416.16 and any city, parish, or other local public school board regulation.

(3) A teacher has the right to remove any persistently disruptive student from his classroom when the student's behavior prevents the orderly instruction of other students or when the student displays impudent or defiant behavior and to place the student in the custody of the principal or his designee pursuant to R.S. 17:416(A)(1)(c).

(4) A teacher has the right to have his or her professional judgment and discretion respected by school and district administrators in any disciplinary action taken by the teacher in accordance with school and district policy and with R.S.17:416(A)(1)(c).

(5) A teacher has the right to teach in a safe, secure, and orderly environment that is conducive to learning and free from recognized dangers or hazards that are causing or likely to cause serious injury in accordance with R.S. 17:416.9 and 416.16.

(6) A teacher has the right to be treated with civility and respect as provided in R.S. 17:416.12.

(7) A teacher has the right to communicate with and to request the participation of parents in appropriate student disciplinary decisions pursuant to R.S. 17:235.1 and 416(A).

(8) A teacher has the right to be free from excessively burdensome disciplinary paperwork.

(9) A beginning teacher has the right to receive leadership and support in accordance with R.S. 17:3881, including the assignment of a qualified, experienced mentor who commits to helping him become a competent, confident professional in the classroom and offers support and assistance as needed to meet performance standards and professional expectations.

B. No city, parish, or other local public school board shall establish policies that prevent teachers from exercising the rights provided in this Section or in any other provision included in R.S. 17:416 through 416.16.

C. The provisions of this Section shall not be construed to supersede any other state law, State Board of Elementary and Secondary Education policy, or city, parish, or other local public school board policy enacted or adopted relative to the discipline of students.

D. Each city, parish, or other local public school board shall provide a copy of this Section to all teachers at the beginning of each school year. Each such school board also shall post a copy of the rights provided in this Section in a prominent place in every school and administrative building it operates and provide such a copy to parents or legal guardians of all children attending such schools in a form and manner approved by the school board. Each city, parish, or other local public school board and every school under its jurisdiction that maintains an Internet website shall post on such website a copy of the Teacher Bill of Rights required by this Section.

them from the suit. Having decided that summary judgment was appropriately granted, we further find no merit in the plaintiffs' contention that their motion for new trial was improperly denied.

CONCLUSION

For the reasons assigned herein, the judgment of the district court, granting summary judgment in favor of the defendants and dismissing the plaintiffs' suit, is affirmed. All costs of this appeal are to be borne by the plaintiffs, Leonard Anthony Jackson, Marian Ann Gable Jackson, and Rudolph Jackson.

AFFIRMED.