

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0189

ROBERT JOHNSON AND CATHERINE HARRIS INDIVIDUALLY
AND ON BEHALF OF MAXIMILLIAN JOHNSON (DECEASED)

VS.

THE STATE OF LOUISIANA, D/B/A THE BOARD OF SUPERVISORS
OF SOUTHERN UNIVERSITY AND A&M COLLEGE

JUDGMENT RENDERED: NOV - 7 2007

ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 503,355, DIVISION I
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE R. MICHAEL CALDWELL, JUDGE

LEWIS O. UNGLESBY
ROBERT M. MARIONNEAUX, JR.
JOSHUA D. GORDON
BATON ROUGE, LA

ATTORNEYS FOR PLAINTIFFS/APPELLANTS
ROBERT JOHNSON AND CATHERINE HARRIS
INDIVIDUALLY AND ON BEHALF OF
MAXIMILLIAN JOHNSON

WINSTON G. DECUR, SR.
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ATTORNEYS FOR DEFENDANTS/APPELLEES
STATE OF LOUISIANA, SOUTHERN UNIVERSITY
AND A AND M COLLEGE, BOARD OF
SUPERVISORS OF SOUTHERN UNIVERSITY

McClendon, J. concurs and Assigns reasons.

BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

MCDONALD, J.

This is an appeal of a summary judgment from the Nineteenth Judicial District Court. Maximillian Johnson, a freshman at Southern University and A&M College, was in his dorm room with his girlfriend in the early morning hours of March 9, 2002. When he answered a knock at the door, an assailant demanded money, then shot him in the chest and fled. Johnson died at the scene, and the assailant was never identified.

Johnson's parents, Robert Johnson and Catherine Harris (plaintiffs), filed suit naming as defendant the State of Louisiana, through the Board of Supervisors of Southern University and A&M College. The plaintiffs asserted that inadequate security provided by Southern University was the proximate and legal cause of Johnson's death.

The defendant thereafter filed a motion for summary judgment, asserting that Johnson died from the random, unforeseeable and unpredictable action of an unknown third party. The defendant asserted that Southern University had provided adequate security and lighting for its students and that no evidence, history of similar incidents, or pattern had emerged to put Southern University on notice of the possible commission of such a crime. Further, it asserted that Southern University had no duty to protect individuals engaged in criminal activity, and that Johnson was in possession of illegal drugs at the time of his death.

Defendant attached to its motion the depositions of the investigating officers, as well as the investigation reports from the Southern University Police Department and the East Baton Rouge Parish Sheriff's Office, and summaries of the crime statistics at Southern University.

The trial court granted summary judgment, finding there was no genuine issue of material fact. Plaintiffs are appealing that judgment.

The trial court found in its reasons for judgment:

As indicated by both counsel in argument, this is a tragic situation where a young man was killed in his dormitory at Southern; and the parents have sued the University. Mr. Unglesby mentioned an expert. And for the record, I will note that this motion has been continued on a few occasions. And on one occasion Mr. Unglesby's associate, Mr. Ward, indicated that they were trying to get an expert's report. Mr. Decuir objected because there had been a pretrial conference and a discovery cutoff, and everything done -- or not a discovery cutoff but a pretrial conference, and a pretrial order [sic] done and the summary judgment had been filed and set for hearing once before the defendants' received notice of an expert. And I made a ruling that an expert would not be allowed because there was no one listed on the pretrial order. So just for background information so the court -- any court that may have to review this later will know that this is the situation.

In any event, it is before me now with a number of depositions of the investigating police officers and so forth and the crime statistics. And clearly the law has become much more stringent in recent years in what is required of a plaintiff in bringing an action against a property owner. The Posecai case, of course, is the landmark Supreme Court case; and it deals with criminal acts of third persons. And even some of the older cases, Williams versus the State and Hall versus Board of Supervisors, go into random acts of violence or acts that are not anticipated, random as far as the property owner or the custodian is concerned.

And the question, of course, is whether Southern provided [proper] security and so forth for this young man. As indicated in argument and in the depositions, Southern had established a checkpoint both for vehicular and foot traffic coming back to the areas of these dormitories to try to restrict access to the students and visitors, or recognized visitors to the property. In addition to the Southern police force, Southern had engaged assistance from the East Baton Rouge Parish Sheriff's Office for extra duty deputies to be out there. There was an extra duty Constable from the City Constable's Office manning the foot bridge or supposedly manning the foot bridge that provided access to this area. So clearly Southern had taken some efforts to increase the security in this area.

There was a question about the lighting, though the testimony of Deputy Banta shows that the lighting at the place of the shooting, that is, the door outside this young man's room, was sufficient.

So, as indicated, it is a tragic situation; but there has been no evidence which would show that this obvious intended murder of Mr. Johnson was in any way foreseeable by Southern

University. And so though this is, again, a tragic situation and it's difficult for the parents, I am going to have to grant the motion for summary judgment.

On appeal, summary judgments are reviewed de novo under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 750.

As found by the trial court, there was no evidence to show that the murder of Mr. Johnson was foreseeable by Southern University. Thus, the trial court judgment granting defendant's motion for summary judgment is affirmed. Plaintiffs are cast with costs. This memorandum opinion is issued in conformity with the Uniform Rules-Courts of Appeal, Rule 2-16.1.B.

AFFIRMED.

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 McCLENDON, J., concurs and assigns reasons.

While foreseeability is not generally disposed of by summary judgment, the showing by the university was sufficient to establish that plaintiffs would not be able to meet their burden of proof on that element of their case. Thus, the burden shifted from the mover to plaintiffs. However, based on the evidence presented, plaintiffs failed to sufficiently rebut the showing by the university, which rendered summary judgment appropriate in this particular case. See LSA-C.C.P. art. 966C(2).