

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 2481

ROGER KEITH MILLER

VS.

THORNHILL WRECKER SERVICE, INC.  
AND RANDALL W. COOK

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JUDGMENT RENDERED: MAY 2, 2008

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ON APPEAL FROM THE  
NINETEENTH JUDICIAL DISTRICT COURT  
DOCKET NUMBER 528,041, DIVISION (F) 22  
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

THE HONORABLE TIMOTHY E. KELLEY, JUDGE

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APPELLEE  
THORNHILL WRECKER SERVICE,  
INC. AND RANDALL W. COOK

BEFORE: GAIDRY, McDONALD AND McCLENDON, JJ

*EGJ* GAIDRY, J. CONCURS  
*JME* McCLENDON, J. CONCURS

**McDONALD, J.**

On September 16, 2004, Roger Keith Miller was working at Thornhill Wrecker Service, and Randall W. Cook was supervising the work. Mr. Cook was operating a forklift, and Mr. Miller attempted to board the forklift while it was moving slowly in an idle position. After Mr. Cook moved the forklift forward Mr. Miller fell, was run over by the forklift, and was injured. Mr. Miller filed suit against Thornhill Wrecker Service and Mr. Cook, asserting that he had been injured by an intentional tort, which was outside the scope of workers' compensation law. Thornhill Wrecker Service and Mr. Cook answered the petition, asserting that Mr. Miller was at fault and negligent, that such fault and negligence barred recovery or proportionately reduced his recovery, and further, that Mr. Miller had received workers' compensation benefits, which was his exclusive remedy under La. R.S. 23:1032.

Thereafter, Thornhill Wrecker Service and Mr. Cook filed a motion for summary judgment, asserting that there was no genuine issue of material fact as to whether Mr. Cook committed an intentional tort against Mr. Miller. After a hearing, the trial court found no evidence of an intentional act and granted the motion for summary judgment. Mr. Miller appealed that judgment. He asserts that the trial court erred in granting the summary judgment and erred in striking a portion of an affidavit which he submitted in support of his opposition to the motion for summary judgment.

After a *de novo* review of the record, we find that Mr. Miller failed to show a genuine issue of material fact. There is no evidence that he was injured by an intentional act of horseplay by Mr. Cook. Further, we find no abuse of discretion by the trial court in striking a portion of Ms. Breau's

affidavit. Even if that portion of Ms. Breau's affidavit was not stricken, we find that Mr. Miller's evidence did not show a genuine issue of material fact.

Thus, we affirm the trial court judgment. Costs are assessed against Mr. Miller. This opinion is issued in compliance with the Uniform Rules-Courts of Appeal, Rule 2-16.1.B.

**AFFIRMED.**