

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1415

VIRGINIA CAVIN

VERSUS

CRAIG NEAL & SONS FARM, LLC, LOUISIANA FARM BUREAU
CASUALTY INSURANCE COMPANY

Judgment Rendered: March 23, 2012.

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On Appeal from the
20th Judicial District Court,
In and for the Parish of West Feliciana,
State of Louisiana
Trial Court No. 20366

The Honorable George H. Ware, Jr., Judge Presiding

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BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

CARTER, C.J.

This is an appeal of a summary judgment granted in favor of Defendant/Appellee, J. Austin Daniel, Sheriff of West Feliciana Parish. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On January 1, 2008, West Feliciana Parish Sheriff's Deputy Mike Taylor was notified of a complaint that bulls were located in the roadway of Louisiana Highways 967 and 421. Taylor was dispatched to the reported location, but did not find any bulls at the time of his arrival. Taylor then traveled six and one-half miles from the reported location down Highway 967 until he reached the Louisiana/Mississippi state line. However, Taylor still did not find any bulls on the road. When a second complaint about the bulls came, Deputy Ellis Diaz was dispatched to the reported location. Before Diaz arrived, the sheriff's office was notified of a motor vehicle accident involving Plaintiff, Virginia Cavin, and the bulls.

Cavin filed suit against Craig Neal & Sons Farm, LLC (Neal) and Louisiana Farm Bureau Casualty Insurance Company (Farm Bureau), claiming she sustained injuries when her vehicle collided with the bulls owned by Neal. Cavin then amended her petition to add the West Feliciana Parish Sheriff's Office (Sheriff's Office) and Sheriff J. Austin Daniel (Daniel)¹ as defendants, alleging that a substantial cause of the accident was the deputies' fault and/or negligence in

¹ The Sheriff's Office is not a legal entity capable of being sued. See La. Rev. Stat. Ann. § 13:5102B(1); *Valentine v. Bonneville Ins. Co.*, 96-1382 (La. 3/17/97), 691 So. 2d 665, 668; *Slocum v. Litchfield*, 07-0006 (La. App. 1 Cir. 6/8/07), 964 So. 2d 1006, 1007, writ denied, 07-1412 (La. 10/5/07), 964 So. 2d 943. Sheriff Daniel, not the West Feliciana Parish Sheriff's Office, is the constitutionally designated chief law enforcement officer of the Parish and the proper defendant in this action. See La. Const. art. V, § 27; *Valentine*, 691 So. 2d at 668; *Slocum*, 964 So. 2d at 1007.

failing to timely respond to the report of bulls on the highway, failing to clear the bulls from the highway, failing to warn motorists of a known hazard, and failing to locate the bulls.

Daniel filed a motion for summary judgment arguing there were no genuine issues of material fact. In support of his motion, Daniel argued that the deputies were not negligent in their efforts to locate the bulls such that he should be held responsible for their actions.

Cavin opposed the motion, arguing that whether the Sheriff's Office and Taylor acted reasonably is a factual determination that was not appropriate on summary judgment. Cavin further argued that Taylor's actions were unreasonable in the length of time he spent looking for the bulls and his failure to call all cattle owners in the area to find out who owned the bulls.

After a hearing on the motion, the district court granted Daniel's motion for summary judgment and dismissed Daniel from the action with prejudice.² Cavin appeals, arguing that the district court erred by granting Daniel's motion for summary judgment because genuine issues of material fact exist and because the district court made a factual determination that was not allowed on a motion for summary judgment.³

DISCUSSION

A summary judgment is reviewed *de novo* on appeal, viewing the record and all reasonable inferences that may be drawn from it in the light most favorable to the non-movant and using the same criteria that govern the district court's

² The final judgment signed by the district court denied the motion for summary judgment filed by Neal and Farm Bureau.

³ Neal and Farm Bureau also filed a response brief that has been considered by this court for purposes of appeal.

determination of whether summary judgment is appropriate. *Hines v. Garrett*, 04-0806 (La. 6/25/04), 876 So. 2d 764, 765 (per curiam). A motion for summary judgment is warranted only if there is no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. Code Civ. Proc. Ann. art. 966C(1). 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. *Hines*, 876 So. 2d at 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. *Id.* 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.* at 765-66.

On a motion for summary judgment, the burden of proof is on the mover. La. Code Civ. Proc. Ann. art. 966C(2). If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion, the mover's burden does not require that all essential elements of the adverse party's claim, action, or defense be negated. *Id.* Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id.* Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. *Id.* If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment as a matter of law. *Id.*

The liability of a police officer is determined using the duty/risk analysis. *Sacco v. Allred*, 02-0141 (La. App. 1 Cir. 2/19/03), 845 So. 2d 528, 533. For a

plaintiff to recover, he must prove: (1) the defendant had a duty to conform his conduct to a specific standard of care; (2) he failed to conform his conduct to that standard; (3) that substandard conduct was a cause-in-fact of the injury; (4) the substandard conduct was a legal cause of the injury; and (5) actual damages. *Sacco*, 845 So. 2d at 533-34. Each inquiry must be answered affirmatively. *Id.*

When a law enforcement officer becomes aware of a dangerous traffic situation, he has the affirmative duty to see that motorists are not subjected to unreasonable risks of harm. *Oubre v. Eslaih*, 03-1133 (La. 2/6/04), 869 So. 2d 71, 77. The scope of an officer's duty is to choose a course of action that is reasonable under the circumstances. *Syrie v. Schilhab*, 96-1027 (La. 5/20/97), 693 So. 2d 1173, 1177. In other words, the scope of an officer's duty to act reasonably under the circumstances does not extend so far as to require that the officer always choose the "best" or even a "better" method of approach. *Syrie*, 693 So. 2d at 1177.

Because Daniel would not bear the burden of proving negligence at trial, his burden on the motion for summary judgment was to point out to the court that there was an absence of factual support for one or more elements essential to Cavin's claim. *See* La. Code Civ. Proc. Ann. art. 966C(2). Daniel submitted depositions in support of his position that Cavin would be unable to prove that the deputies' actions amounted to negligence. According to Taylor's deposition, when he was dispatched in connection with the report of missing bulls, he drove to the reported location and contacted the cattle owners living in that area. He and the owners looked for the cattle in the reported area. Taylor then drove down Louisiana Highway 967 until he reached the Louisiana/Mississippi state line, but he never saw the cattle. According to Taylor, there is no procedure in place for

officers to “set up” and activate their vehicle lights in locations where cattle are reported. Another deputy stated in his deposition that he considered Taylor’s search to be proper and that he too has received calls reporting cattle on the highway and been unable to find the cattle.

The burden on the motion then shifted to Cavin to produce factual evidence sufficient to establish that she would be able to satisfy her evidentiary burden of proof at trial. *See* La. Code Civ. Proc. Ann. art. 966C(2). Cavin produced depositions and copies of the complaint reports in an attempt to prove that Taylor’s actions were unreasonable in the amount of time he spent looking for the cattle and because he called only one of three cattle owners in the area. However, none of the evidence produced by Cavin established that a reasonable officer would have acted any differently. Taylor utilized a spotlight and drove from the reported location to the state line and back in search of the cattle. He drove past the property belonging to Neal, the owner of the cattle involved in the accident, and did not see any cattle out near that area. Moreover, there were no additional reports of cattle out on the highway until minutes before Cavin’s accident. The second complaint call and Cavin’s call reporting the accident, which came within fourteen minutes of each other, came in to the Sherriff’s Office over two hours after Taylor completed his search. The scope of Taylor’s duty was to act reasonably under the circumstances.

Cavin argues that the determination of whether Taylor acted reasonably is an issue of fact to be resolved at trial. However, when reasonable minds must inevitably conclude that the mover is entitled to judgment on the undisputed facts before the court, the motion for summary judgment should be granted since, in that case, the reasonableness of conduct is an issue of law. *Johnson v. Edmonston*, 383

So. 2d 1277, 1281 (La. App. 1 Cir. 1980); *see Rager v. Bourgeois*, 06-0322 (La. App. 1 Cir. 12/28/06), 951 So. 2d 330, 333, *writ denied*, 07-0189 (La. 3/23/07), 951 So. 2d 1105. In this instance, the factual circumstances surrounding the deputies' activities are undisputed, and whether their conduct was reasonable is a question of law. The evidence presented by Cavin was not sufficient to prove Taylor acted unreasonably as a matter of law in searching for the cattle such that Daniel could be held liable for his negligence.

CONCLUSION

For the above-stated reasons, we affirm the district court's grant of summary judgment in favor of the Defendant/Appellee, J. Austin Daniel, Sheriff of West Feliciana Parish. Costs of this appeal are assessed to the Plaintiff/Appellant, Virginia Cavin.

AFFIRMED.