

JOANN WOODS D'ANGELO

NO. 25-C-192

VERSUS

FIFTH CIRCUIT

THE PARISH OF JEFFERSON, THE STATE  
OF LOUISIANA, DEPARTMENT OF  
TRANSPORTATION AND DEVELOPMENT,  
STATE OF LOUISIANA, LOUISIANA  
NATIONAL GUARD AND SAFEPOINT  
INSURANCE COMPANY

COURT OF APPEAL  
  
STATE OF LOUISIANA

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE  
TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 832-147, DIVISION "B"  
HONORABLE R. CHRISTOPHER COX, III, JUDGE PRESIDING

June 04, 2025

**STEPHEN J. WINDHORST**  
**JUDGE**

Panel composed of Judges Stephen J. Windhorst,  
John J. Molaison, Jr., and Scott U. Schlegel

**AFFIRMED**

**SJW**

**JJM**

**SUS**

FIFTH CIRCUIT COURT OF APPEAL  
A TRUE COPY OF DOCUMENTS AS  
SAME APPEARS IN OUR RECORDS



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First Deputy, Clerk of Court

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**WINDHORST, J.**

Relator, the State of Louisiana, through the Department of Transportation and Development (“DOTD”), seeks this court’s supervisory review of the trial court’s February 26, 2025 written judgment denying DOTD’s motion for partial summary judgment.

This case involves DOTD’s construction of a temporary bridge on property owned by plaintiff, Ms. JoAnn Woods D’Angelo, due to Hurricane Ida’s destruction of the Leo Kerner Bridge connecting Lafitte to Barataria. In its motion for partial summary judgment, DOTD argued that all of plaintiff’s tort claims should be dismissed based on its immunity from liability under La. R.S. 29:735 A(1) because the DOTD was engaged in emergency preparedness when the damage occurred. For the following reasons, we find no error in the trial court’s ruling.

**BACKGROUND**

Ms. D’Angelo filed a petition for damages against DOTD, Jefferson Parish, the Louisiana National Guard, and Safepoint Insurance Company, alleging the temporary bridge caused significant damage to her property. In a first amended petition, Ms. D’Angelo alleged that after the temporary bridge was deconstructed and removed from plaintiff’s property, defendants left construction mats, limestone, other rock materials, and dirt on her property, which created a nuisance and interfered with the use of the property. Ms. D’Angelo also alleged that defendants assured her that they would clean up and fully repair her property. Despite these assurances, defendants failed to remove the construction materials and to repair the damage to Plaintiff’s property.

In its motion for partial summary judgment, DOTD argued that it is immune from any tort liability in this case because La. R.S. 29:735 affords them immunity from all acts taken due to the state of emergency. While DOTD acknowledges the statute’s exception to the immunity if there is willful or malicious conduct on the

part of the state agency, DOTD contends there is absolutely no indication of any willful or malicious conduct. DOTD attached to its motion applicable state of emergency proclamations indicating that a state of emergency existed due to Hurricane Ida beginning on August 29, 2021 and continuing through the hearing date.

In opposition to the motion, Ms. D'Angelo asserted that genuine issues of material fact exist concerning defendants' continuing assurances they would clean up and repair her property and their failure to abide by these post-emergency assurances. According to the opposition and the transcript, Ms. D'Angelo attached to her opposition an affidavit of Drue D'Angelo attesting that defendants have continued to cause damage to Ms. D'Angelo's property by refusing to remove these construction materials despite amicable demand, and despite assurance they would do so.

In reply, DOTD argued that the emergency declaration for Hurricane Ida has been renewed and extended every thirty (30) days subsequent to its issuance and that the most recent extension continued it to May 12, 2024. DOTD requested that the trial court take judicial notice of the proclamations regarding the continued state of emergency.

At the summary judgment hearing, Ms. D'Angelo's counsel told the court that the situation on Ms. D'Angelo's property had been rectified at her expense for approximately \$7,000. Counsel stated that kids in the neighborhood were using the mound of shells and dirt left by the bridge as a ramp for their golf carts. Due to concerns that someone would injure themselves, in late 2024, Ms. D'Angelo had to clean up and repair the property at her own expense. After hearing argument, the trial court denied DOTD's motion for partial summary judgment, and in stating its reasons, cited to various statements on the record from Mr. D'Angelo's affidavit, including that (1) "subsequent to the removal of the temporary bridge, debris in the

form of mats, limestone, and dirt remained on plaintiff's property"; (2) Louisiana and Jefferson Parish representatives assured him that the construction debris on the property would be cleaned up; (3) as of the date of his testimony, April 17, 2024, the materials had not been removed. The trial court indicated it did not believe summary judgment was the proper procedural mechanism for resolution of this issue. Considering the affidavit, the law, and the limited amount of evidence presented with the motion, the trial court concluded genuine issues of material fact exist and reasonable persons could disagree as to whether DOTD was "engaged in homeland security or emergency preparedness and recover activities when they left construction debris on the property after the removal of the temporary floating bridge, assured the Plaintiff that they would remove the debris and clean up her property, and then failed and/or refused to do so."

## **DISCUSSION**

A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966 A(3). A material fact is one that potentially insures or prevents recovery, affects a litigant's ultimate success, or determines the outcome of a lawsuit. Rhodes v. AMKO Fence & Steel Co., LLC, 21-19 (La. App. 5 Cir. 10/28/21), 329 So.3d 1112, 1117. A genuine issue of material fact 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. Zelia, LLC v. Robinson, 19-372 (La. App. 5 Cir. 12/30/19), 286 So.3d 1268, 1272, writ denied, 20-253 (La. 4/27/20), 295 So.3d 948. Appellate courts review summary judgments *de novo* using the same criteria applied by trial courts to determine whether summary judgment is appropriate. Id. at 1273.

The motion for partial summary judgment presents the issue of whether DOTD has come forth with sufficient evidence to show that the DOTD was and has continued to be engaged in emergency preparedness activities relative to Ms. D'Angelo's property damage claims such that DOTD is entitled to immunity pursuant to La. R.S. 29:735 for any damages caused by its negligence.

The immunity defense set forth in La. R.S. 29:735 is an affirmative defense. Thus, despite the plaintiff's burden at trial to prove the defendant's liability for the claims alleged, the defendant bears the burden of proving the applicability of the emergency preparedness immunity provision to the plaintiff's claims. Monteville v. Terrebonne Parish Consolidated Government, 567 So.2d 1097, 1106 (La. 1990); Banks v. Parish of Jefferson, 08-27 (La. App. 5 Cir. 6/19/08), 990 So.2d 26, 30, writ denied, 08-1625 (La. 10/24/08), 992 So.2d 1043. Immunity statutes are strictly construed against the party claiming the immunity. Monteville, 567 So.2d at 1101; Rabee v. Louisiana Dep't of Pub. Safety & Corr., 23-384 (La. App. 5 Cir. 11/2/23), 378 So.3d 71, 74, reh'g denied (Nov. 17, 2023), writ denied, 23-1620 (La. 2/14/24), 379 So.3d 30, and writ denied, 23-1651 (La. 2/14/24), 379 So.3d 34; Banks, 990 So.3d at 30.

La. R.S. 29:735 A(1) provides:

A. (1) Neither the state nor any political subdivision thereof, nor other state agencies, nor, except in case of willful misconduct, the employees or representatives of any of them engaged in any homeland security and emergency preparedness and recovery activities, while complying with or attempting to comply with this Chapter or any rule or regulation promulgated pursuant to the provisions of this Chapter shall be liable for the death of or any injury to persons or damage to property as a result of such activity.

“Emergency preparedness” is defined in pertinent part as “the mitigation of, preparation for, response to, and the recovery from emergencies or disasters.” La. R.S. 29:723 (6).

Considering the allegations asserted, the burden is on DOTD to prove through admissible and relevant documents that the DOTD was engaged in an emergency preparedness activity not only when building the temporary building, but also when it made representations to Ms. D'Angelo that it would properly repair and clean up her property, thereby entitling DOTD to immunity for any negligent acts under La. R.S. 29:735.

A genuine issue of material fact is one as to which reasonable minds could disagree. Zelia, LLC, 286 So.3d at 1272. Clearly, reasonable people could disagree as to whether DOTD continued to be engaged in emergency preparedness when it failed to properly restore and clean up Ms. D'Angelo's property; when it assured her it would be done; and when it failed to do so. Hurricane Ida occurred in August 2021 and issues related to the construction debris left on her property continued for over three years through 2024, well after the temporary bridge was removed.<sup>1</sup>

We duly note that DOTD excluded from its writ application the affidavit of Mr. D'Angelo, which was admitted into evidence and referenced by the trial court in its reasons for judgment.

Genuine issues of material fact clearly exist. Without a trial wherein all facts and circumstances can be admitted into evidence and considered by the trier of fact, we believe it would be legal error to grant immunity from liability to DOTD for any negligent actions or inactions no matter the length of time from the actual emergency preparedness activity. This is especially so considering that immunity statutes are strictly construed against the party claiming the immunity.

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<sup>1</sup> In concurrences in Rabee, *supra*, Judges Johnson and Molaison pointed out that broad interpretations of La. R.S. 29:735 relative to "emergency preparedness" or "homeland security" response activities which have tenuous temporal relationships or connections to the events that necessitated the state of emergency declaration in the first place may further threaten the safety of Louisiana's citizens. Similarly, the hearing transcript in this case indicates that DOTD's continued inaction, children using the construction debris as a ramp, all while DOTD relied on the immunity defense, illustrate this well-placed concern. 378 So.3d at 76.

## **DECREE**

We find no error in the trial court's conclusion that DOTD failed in its burden of proving there are no genuine issues as to any material facts and that DOTD is entitled to immunity as a matter of law.

Accordingly, we affirm the trial court's denial of DOTD's motion for partial summary judgment.

**AFFIRMED**



SUSAN M. CHEARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISSON, JR.  
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**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JUNE 4, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**25-C-192**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)  
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WM. DAVID COFFEY (RELATOR)

ELIZABETH B. MURRILL (RELATOR)  
P. HANLON DEVERGES, JR. (RESPONDENT)

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