

COREY CHIMENTO

NO. 25-C-14

VERSUS

FIFTH CIRCUIT

PARISH OF JEFFERSON  
EAST JEFFERSON LEVEE DISTRICT

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. 833-465, DIVISION "M"  
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

April 02, 2025

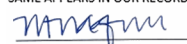
**SCOTT U. SCHLEGEL**  
**JUDGE**

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

**WRIT GRANTED; JUDGMENT REVERSED;**  
**SUMMARY JUDGMENT GRANTED**

**SUS**  
**SJW**  
**JJM**

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

  
Morgan Naquin  
Deputy, Clerk of Court

COUNSEL FOR DEFENDANT/RELATOR,  
PARISH OF JEFFERSON

Kendale J. Thompson

COUNSEL FOR PLAINTIFF/RESPONDENT,  
COREY CHIMENTO

Charles M. Thomas

Leandro R. Area

## **SCHLEGEL, J.**

Defendant, Parish of Jefferson, seeks review of the trial court's December 13, 2024 judgment denying its summary judgment motion. The issue presented is whether the Parish is immune from liability for plaintiff Corey Chimento's personal injury claims based on the recreational use immunity provisions set forth in La. R.S. 9:2795(B)(1). For reasons explained more fully below, we agree with the Parish. Accordingly, we reverse the trial court's judgment denying the Parish's summary judgment motion, grant the motion, and dismiss all claims alleged by Mr. Chimento against the Parish.

### **FACTS AND PROCEDURAL BACKGROUND**

Mr. Chimento alleges that on October 4, 2021, he was injured when his bike slipped out from under him while riding through a puddle containing algae growth. At the time of the accident, Mr. Chimento was riding his bike down a concrete ramp leading to the All-Weather Access Road ("AWAR") located between the levee and Lake Pontchartrain in Jefferson Parish.<sup>1</sup> According to Mr. Chimento, he had biked on the AWAR two to three days a week for several years. On the day of the accident, he left his home in New Orleans and travelled east along the lakefront area to the roundabout at the intersection of Lakeshore Drive and Elysian Fields Avenue. He then biked back westbound along Lakeshore Drive to the AWAR in Jefferson Parish. He travelled on the AWAR for several miles until he came to the concrete ramp crossing over the levee near Purdue Street. Mr. Chimento explained that he rode up the ramp to see if his friend was home and wanted to join him on his bicycle ride. Mr. Chimento further testified in his deposition that he saw water as he rode up the ramp.

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<sup>1</sup> According to the parties, the primary purpose of the AWAR is to allow access for the operation and maintenance of the flood protection system. In Jefferson Parish, there are 11 access points or ramps that cross from one side of the levee to the other. The accident at issue occurred on the access ramp closest to Purdue Street.

When Mr. Chimento did not see his friend's car, he turned around and went back down the ramp, intending to turn left and continue westbound on the AWAR. He testified that he rode down the left side of the ramp and through the wet area at the base of the ramp near the AWAR. According to the GPS data obtained from Mr. Chimento's Garmin, he was traveling at 10.9 mph just seconds prior to the accident. Mr. Chimento explained that he saw the water at the bottom of the ramp, so he used his rear brake to slow down as he made the left turn onto the AWAR. As he was braking though, the bike slipped out from underneath him. Mr. Chimento further explained that as he was slowing, he rode through a "slick patch" that he believed to contain fungus or algae.

On September 29, 2022, Mr. Chimento filed a petition for damages against the East Jefferson Levee District (EJLD) and the Parish of Jefferson. He asserted that EJLD and the Parish had custody and control of the AWAR and surrounding areas and failed to properly maintain them. He specifically alleged that defendants failed to address and fix the slippery surface caused by the buildup of water and algae. He further alleged that defendants knew or should have known this condition existed and willfully failed to warn against the unreasonably dangerous condition.

On October 11, 2024, the Parish filed a summary judgment motion arguing that it is immune from Mr. Chimento's claims pursuant to La. R.S. 2795(B)(1) because he cannot prove that the Parish willfully or maliciously failed to warn Mr. Chimento of the wet area at issue. The Parish also argued that it had no liability under the ordinary negligence standard because it had no notice of the alleged wet spot, and the alleged wet spot was open and obvious to any reasonable person. The Parish explained in its motion that it entered into an Intergovernmental Agreement with the EJLD to allow the general public access to the AWAR for recreational use. The agreement provides that the Parish is responsible for

ordinary maintenance of the levee access points to the AWAR. The Parish further contends that under the agreement, EJLD is responsible for patrolling the AWAR and reporting maintenance needs to the Parish. Thus, the Parish explained that it does not patrol or inspect the levee. And if an unusual condition is discovered, it is reported to the EJLD's maintenance department supervisor. The Parish argued that it performed maintenance when it was notified of an issue.

The Parish also cited to deposition testimony from Brian Stropolo, the superintendent of maintenance and operations for the Flood Protection Authority.<sup>2</sup> He testified that wet spots on the AWAR or at the base of the access ramps are not considered unusual conditions requiring inspection and investigation by its employees. The Parish further noted that Mr. Stropolo explained that the area at the base of the ramp is expected to be wet for a period of time after a rainstorm because it is the lowest point of the path, so rainwater naturally drains to this area. In addition, Donald Hogan, the assistant director for the Jefferson Parish Streets Department, testified during his deposition that there was no physical problem with the contract pavement. Based on this evidence, the Parish argued that Mr. Chimento could not prove the Parish willfully and maliciously failed to warn of the existence of the wet area.

In his opposition to the summary judgment motion, Mr. Chimento argued that the water at the bottom of the Purdue Street ramp remained for long periods of time, which allowed algae to grow. Thus, he argued that the defendants had constructive knowledge that water pooled in the area and that they admitted the combination of water and algae creates a dangerous condition. To support his arguments, Mr. Chimento attached an affidavit from his friend, Jeffrey Neumeyer, who has lived near the area at issue since 2015. Mr. Neumeyer's affidavit

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<sup>2</sup> Mr. Stropolo explained that EJLD is an agency under the umbrella of the Flood Protection Authority.

contained photographs of the accident site that he took on January 4, 2024, several years after the accident. The photographs depicted a wet spot at the base of the ramp next to the AWAR. Mr. Neumeyer explained that he conducted internet research to determine the weather conditions for the 30-day period prior to taking the pictures. He stated that this research indicated that prior to January 4, 2024, the last time it rained in Jefferson Parish was December 24, 2024. Therefore, he concluded that the standing water was present on the ramp for 11 days before he took the photographs.

Mr. Neumeyer also stated that in general, this area always drained slowly, that it was common for water to pool in this location, and that algae was often growing in the pooled water. He claimed that prior to the accident at issue, he observed a girl slip and fall at the same place where Mr. Chimento fell. He also claimed that after the accident, he witnessed another cyclist “crash” at the same location.

Mr. Chimento also cited to deposition testimony from Mr. Stropolo explaining that EJLD cut the grass in the area at issue on a weekly basis. Mr. Chimento also argued that Mr. Stropolo admitted that standing water with algae growth can cause slippery conditions, and that if water had been standing at a particular point for too long, it is something EJLD employees should report.<sup>3</sup> Finally, Mr. Chimento cited to deposition testimony from Mr. Hogan agreeing that standing water with algae and mud could present a hazard. Mr. Chimento argued that wanton and reckless behavior included actions knowingly taken or not taken, which would likely cause the injury of another. Mr. Chimento argued that EJLD’s employees could see the standing water but never reported the condition. He

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<sup>3</sup> We observe, however, that when asked earlier in his deposition if there was a period of time after which standing water at the base of the ramp would become an unusual condition, Mr. Stropolo responded that if it didn’t rain for three months and water still remained, it would be an issue. He further explained that when it rains frequently, some areas may never dry up.

further claimed that defendants were aware these conditions could foster dangerous algae but consciously disregarded the danger.

Following oral argument, the trial court denied the Parish's summary judgment motion.<sup>4</sup> The trial court reasoned that the Parish was burying its "head in the sand," and that it had a duty to independently inspect the access ramps leading to the AWAR. The trial court further reasoned that EJLD was also burying its "head in the sand," and that it had a duty to instruct its employees regarding the dangers of algae growth and a duty to look for these conditions. The trial court reasoned that by allowing people to use the area at issue, EJLD and the Parish had a duty to make sure it was safe "to some degree." The trial court further concluded that by not doing anything at all, the "willful element" existed.

The Parish filed a notice of intent to apply for supervisory writs and filed a timely writ application with this Court on January 8, 2025. After reviewing the writ application, this Court allowed the parties the opportunity to present oral argument and submit additional briefing in accordance with La. C.C.P. art. 966(H).

### **LAW AND DISCUSSION**

In its writ application, the Parish contends that the trial court erred by failing to find that it was entitled to immunity pursuant to La. R.S. 9:2795. The Parish also argues that it is entitled to summary judgment under the ordinary negligence standards set forth under La. R.S. 9:2800 because Mr. Chimento cannot prove the Parish had actual or constructive notice of the dangerous condition, and that the alleged condition was open and obvious to all.

The summary judgment procedure is favored and is designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966(A)(2). A trial court must grant a motion for summary judgment if the motion,

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<sup>4</sup> EJLD also filed a similar summary judgment motion, which the trial court heard the same day and also denied.

memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). Appellate courts review summary judgments *de novo* using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *Reed v. Landry*, 21-589 (La. App. 5 Cir. 6/3/22), 343 So.3d 874, 880.

“The stated goal of the Recreational Use Statutes is ‘to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes’.” *Monteville v. Terrebonne Par. Consol. Gov't*, 567 So.2d 1097, 1101 (La. 1990). Because they are in derogation of a natural or common right, the statutes are subject to strict interpretation and cannot be extended beyond their obvious meaning. *Id* at 1100. Simultaneously, Louisiana courts also consistently recognize that the enactment of the immunity statutes evidence the Legislature's intent to grant broad immunity from liability. *Richard v. Hall*, 03-1488 (La. 4/23/04), 874 So.2d 131, 151.

La. R.S. 9:2795 establishes “a limitation of liability for landowners, including the state and its political subdivisions, of property used for recreational purposes.” *Souza v. St. Tammany Parish*, 11-2198 (La. App. 1 Cir. 6/8/12), 93 So.3d 745, 747.<sup>5</sup> La. R.S. 9:2795(B)(1) provides as follows:

**Except for willful or malicious failure to warn against a dangerous condition**, use, structure, or activity, an owner of land, except an owner of commercial recreational developments or facilities, who permits with or without charge any person to use his land for recreational purposes as herein defined **does not thereby:**

**(a) Extend any assurance that the premises are safe for any purposes.**

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<sup>5</sup> Pursuant to La. R.S. 9:2795(E)(2), the immunity applies “to any lands, whether urban or rural, which are owned, leased, or managed as a public park by the state or any of its political subdivisions and which are used for recreational purposes.”



(b) Constitute such person the legal status of an invitee or licensee to whom a duty of care is owed.

(c) **Incur liability for any injury to person or property caused by any defect in the land regardless of whether naturally occurring or man-made.** [Emphasis added.]

This immunity provision clearly shows that exposure to liability to a person who uses the premises for a recreational purpose is drastically limited. *See Monteville*, 567 So.2d at 1101. The owner owes no duty of care to keep the premises safe or to give warnings of hazards, use, structure or activity on the premises. *Id.*; *Lewis v. City of Bastrop*, 52,884 (La. App. 2 Cir. 9/25/19), 280 So.3d 907, 915. The statute maintains potential liability only for the willful or malicious failure to warn against a dangerous condition, structure, use, or activity.

“A failure to warn of a dangerous condition connotes a conscious course of action, and is deemed willful or malicious when action is knowingly taken or not taken, which would likely cause injury, with conscious indifference to consequences thereof.” *Robinson v. Jefferson Parish Sch. Bd.*, 08-1224 (La. App. 5 Cir. 4/7/09), 9 So.3d 1035, 1046, *writ denied*, 09-1187 (La. 9/18/09), 17 So.3d 975. “Willfulness cannot exist without purpose or design, and a willful injury will not be inferred when the result may be reasonably attributed to negligence or inattention.” *Lester v. BREC Found.*, 22-514 (La. App. 1 Cir. 11/4/22), 356 So.3d 18, 30, *writ denied*, 23-19 (La. 3/7/23), 357 So.3d 351.

Once a defendant establishes that it is entitled to immunity under La. R.S. 9:2795, the burden of establishing a malicious or willful failure to warn of a dangerous condition shifts to the plaintiff. *Richard v. Louisiana Newpack Shrimp Co.*, 11-309 (La. App. 5 Cir. 12/28/11), 82 So.3d 541, 548.

The cases analyzing La. R.S. 9:2795(B)(1) generally only impose liability when the defendant is actually aware of the dangerous condition by means of a prior accident or prior report, and the defendant fails to take adequate steps to warn

of or address the dangerous condition. For example, in *Price v. Exxon Corp.*, 95-392 (La. App. 1 Cir. 11/9/95), 664 So.2d 1273, a commercial fisherman struck a submerged pipeline and bulkhead in a lake. In finding there was a willful failure to warn, the appellate court observed that the State had been informed that fishermen reported striking a submerged bulkhead with their boats and was provided with the exact location of the obstacle and informed that the fishermen recommended marking it as a hazard to navigation. The court found the State's failure to take steps to warn against the submerged bulkhead after receiving the report was willful, and therefore, the State was not entitled to recreational immunity.

Further, in *Lambert v. State*, 40,170 (La. App. 2 Cir. 9/30/05), 912 So.2d 426, *writ denied*, 05-2310 (La. 4/17/06), 926 So.2d 509, the appellate court found that genuine issues of material fact existed as to whether the Department of Wildlife and Fisheries and Water District willfully failed to warn of a dangerous condition. Strong currents caused by a dam and spillway located near a boat launch had resulted in at least 30 similar deaths over the course of 20 years. Signs had been posted on the spillway and boat launch warning of dangerous currents, but after several more deaths, the governing authority installed a pipe and cable fence to close the high-water area during dangerous conditions and a folding sign which, when unfolded, stated that the boat launch was closed. However, at the time of the plaintiffs' deaths, the boat launch remained open and the sign had never been unfolded. *Id.* at 435.

Unlike the plaintiffs in *Lambert* and *Price*, Mr. Chimento has not presented evidence to establish that anyone, including Mr. Neumeyer, reported any concerns to EJLD or the Parish about the wet spot at issue.

In a similar matter, *Souza, supra*, the appellate court found that the plaintiff failed to bear his burden of establishing a malicious or willful failure to warn of a dangerous condition, and the City of Mandeville was afforded recreational use

immunity. In *Souza*, the plaintiff was injured while riding his bicycle through a tunnel on the Tammany Trace, a 31-mile recreational trail made available to the public for recreational purposes. The plaintiff encountered a slippery surface covered with mold, mildew, slime or growth and fell off of his bike.

In opposition to the City's summary judgment motion, the plaintiff in *Souza* presented evidence of three recent work orders entered shortly before the accident that addressed issues of water in and around the tunnel. The plaintiff also introduced evidence of a work order entered a year prior to the accident indicating that the City pressure-washed the tunnel in response to a bike rider's report that the tunnel was slippery. The plaintiff argued that the work orders proved the City had knowledge of the *potential* for a dangerous or slippery surface in the tunnel, but the City failed to warn of the danger. However, because there was no evidence that the City had knowledge of the alleged dangerous condition on the day of the plaintiff's accident or that the City failed to warn of such a condition that day, the appellate court found there was no evidence of a malicious or willful failure to warn of a dangerous condition. *Id.* at 750. The appellate court found the work orders only showed that once the City was notified of a maintenance issue, it was remedied on the same day. *Id.* Thus, it did not find "the City's failure to warn of the *possibility* that the tunnel surface could be slippery when wet to be malicious or willful." *Id.* [Emphasis added.] The appellate court further concluded that the plaintiff made no showing that the City "consciously chose a course of action that revealed a willful or malicious failure to warn users of the tunnel about the allegedly dangerous condition." *Id.*; *see also Richard*, 82 So.3d at 548 (affirming summary judgment finding immunity under La. R.S. 9:2795(B)(1) because plaintiffs made no showing that the defendant was aware of the alleged danger.)

Just as in *Souza*, we find that Mr. Chimento's evidence is insufficient to meet his burden to prove that the Parish consciously chose a course of action that

revealed a willful or malicious failure to warn of an alleged dangerous condition on the access ramp next to the AWAR. Mr. Chimento does not have any evidence that EJLD or the Parish had actual knowledge of a slippery condition on the access ramp on the day of his accident. The only evidence he offered is his friend's affidavit generally stating that the area drained slowly, and algae often grew in the pooled water. He also indicated he was aware of one incident prior to the accident and one after where someone slipped in the area. However, he did not offer any evidence to establish that anyone, including his friend Mr. Neumeyer, ever reported the slippery conditions to EJLD. Mr. Neumeyer's statement that almost three years after the accident, he determined that water remained on the ramp for 11 days after the last rain, is at best, evidence that could serve as an attempt to establish constructive notice under an ordinary negligence standard. This evidence is insufficient to meet the higher standard of willful conduct required under La. R.S. 9:2795(B)(1).

In addition, the deposition testimony from Mr. Hogan recognizing that algae could grow in standing water and create a slippery or hazardous condition does not create a genuine issue of material fact that EJLD and/or the Parish had knowledge of a slippery condition on the day of the accident or that they engaged in a conscious decision to fail to warn of the condition.

Finally, we disagree with the trial court's reasoning that the Parish and EJLD had a duty under the circumstances of this case to inspect wet spots for algae growth, and that the failure to do so constituted willful conduct. The *Souza* court certainly did not find that the City of Mandeville owed a duty to continuously inspect for water and slippery conditions under the recreational use immunity provisions, even though such conditions were previously reported. In fact, the plain language of La. R.S. 9:2795(B)(1)(a) explains that entities such as EJLD and the Parish do not extend assurances that the area is safe. The purpose of these

immunity statutes is to allow the public to access these areas for recreational use. In exchange for allowing access for recreational use, the immunity statutes shield political entities, such as EJLD and the Parish, from liability under the ordinary negligence standards. Further, willfulness cannot exist without purpose or design, and willful conduct cannot be inferred when the result may be reasonably attributed to negligence or inattention. *See Celestine, supra*. Evidence of the alleged failure to inspect miles of paths and ramps for algae in wet spots or puddles of water is not sufficient to establish a willful or malicious failure to warn.

Further, to impose a duty to discover on EJLD or the Parish under the circumstances at issue in this case would essentially require their employees to constantly monitor miles of levee systems for wet spots or puddles to determine if they contain algae growth. This is not a reasonable duty even under a general negligence standard. Such a duty would require EJLD and the Parish to monitor puddles created by natural conditions and gravity and to somehow determine when they may have been “standing too long” and therefore, may contain algae growth. This is not a reasonable or rationale duty under the circumstances. Mr. Chimento, who rides on the AWAR on a frequent basis, himself acknowledges that there are “many seepages” and “tons of wet areas” along the AWAR.

Accordingly, we do not find that the Parish’s failure to take steps to discover the alleged algae growth on the Purdue Street access ramp to be willful conduct. Further, Mr. Chimento failed to introduce any evidence that the Parish consciously chose a course of action that revealed a willful or malicious failure to warn of an allegedly dangerous condition on the ramp. Thus, Mr. Chimento cannot satisfy his burden of proof at trial. The Parish is immune from plaintiff’s claims pursuant to the recreational use immunity statute set forth in La. R.S. 9:2795(B)(1) under the facts of this matter.<sup>6</sup>

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<sup>6</sup> We pretermitted discussion of the Parish’s remaining assignments of error.

## CONCLUSION

After *de novo* review of the record, we find that the trial court erred by denying defendant Parish of Jefferson's motion for summary judgment.

Accordingly, we grant the writ application and reverse the trial court's judgment.

We further grant the Parish of Jefferson's motion for summary judgment and dismiss plaintiff Corey Chimento's claims against it with prejudice.

**WRIT GRANTED; JUDGMENT REVERSED;  
SUMMARY JUDGMENT GRANTED**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISSON, JR.  
SCOTT U. SCHLEGEL  
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

[www.fifthcircuit.org](http://www.fifthcircuit.org)

CURTIS B. PURSELL  
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FIRST DEPUTY CLERK

MELISSA C. LEDET  
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

**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 **APRIL 2, 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-14**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)

KENDALE J. THOMPSON (RELATOR)

MARK E. HANNA (RESPONDENT)

TREVOR M. CUTAIAR (RESPONDENT)

CHARLES M. THOMAS (RESPONDENT)

LEANDRO R. AREA (RESPONDENT)

**MAILED**