Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-270

KEVIN MONTGOMERY, INDIVIDUALLY AND ON BEHALF OF THE SUCCESSION OF CAROLYN MONTGOMERY DIGGS

versus

GREATER NEW ORLEANS EXPRESSWAY COMMISSION, ET AL.

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 812-138, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

November 10, 2026

TIMOTHY S. MARCEL

JUDGE

Panel composed of Judges Stephen J. Windhorst,
Scott U. Schlegel, and Timothy S. Marcel

WRIT GRANTED;
JUDGMENT REVERSED AND RENDERED;
CLAIMS DISMISSED

TSM
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DEPUTY CLERK

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VOLKERT, INC.

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KEVIN MONTGOMERY, INDIVIDUALLY AND ON BEHALF OF
THE SUCCESSION OF CAROLYN MONTGOMERY DIGGS

Randy G. McKee

MARCEL, J.

In this wrongful death and survival action arising from a 2019 fatal rear-end collision on the Lake Pontchartrain Causeway, defendant Volkert, Inc., seeks supervisory review of a May 20, 2026 judgment of the trial court that denied Volkert's motion for summary judgment. Pursuant to La. C.C.P. art. 966(H), this matter was assigned for argument and additional briefing. For the following reasons, upon *de novo* review, we reverse the judgment of the trial court, grant relator's motion for summary judgment, and dismiss the claims asserted by plaintiff Kevin Montgomery, individually and on behalf of the Succession of Carolyn Montgomery Diggs, with prejudice.

BACKGROUND

The automobile accident occurred on November 13, 2019, while Ms. Carolyn Diggs was travelling southbound on the Lake Pontchartrain Causeway in her 2003 Toyota Camry. On a clear day at approximately 2:00 p.m., Ms. Diggs determined that her left rear tire was becoming flat. She contacted Causeway Dispatch at approximately 2:02 p.m. somewhere near the 4.5 mile marker, who advised her to proceed to an emergency crossover. At approximately 2:03 p.m. Mr. David Dorr, driving a 2012 Toyota F.J. Cruiser at approximately 70 m.p.h., crashed into Ms. Diggs causing her instant death. The Causeway police who investigated the accident concluded that the cause of the accident was Mr. Dorr's inattentiveness and careless operation of his vehicle.

On November 13, 2020, Kevin Montgomery, individually and on behalf of the succession of Carolyn Montgomery Diggs, filed a petition for damages in which he named as defendants Mr. Dorr, the Greater New Orleans Expressway Commission ("Causeway Commission"), their insurers, and Volkert, an engineering consulting firm. In addition to claims against Mr. Dorr for his negligent operation of a motor vehicle, Mr. Montgomery alleged that the injuries and death of Ms. Diggs were proximately and directly caused by the negligence and fault of the Causeway Commission and Volkert for failing to design, install, and maintain safety shoulders for the entire length of the Causeway Bridge on both spans that would have allowed Ms. Diggs to pull over. Plaintiff further alleged that the absence of shoulders for the entire length of the Causeway was an extremely dangerous condition that defendants were aware of and allowed to remain in place.

The Lake Pontchartrain Causeway is under the ownership, custody, and control of the Causeway Commission. The Lake Pontchartrain Causeway consists of two separate parallel bridges approximately 84 feet apart connected by seven crossovers spaced at four-mile intervals. Each twenty-four-mile-long bridge is comprised of two lanes. Construction of the first span was completed in 1956 and the second in 1969.

The liability of the Causeway Commission and Volkert relates to a 2017 Safety Bay Improvement Project in which the Commission hired Volkert as design engineers to design "safety bays" at regular intervals along the twenty-four-mile span to improve safety on the Causeway.

The Safety Bay Improvement Project was intended to significantly increase the emergency stopping area to enhance the overall safety of Causeway users by widening the Causeway bridges to provide a shoulder in at least six locations southbound and six locations northbound approximately midway between the existing crossovers.

In 2017, the Commission issued a Request for Qualifications for Professional Design Engineering Services for the Greater New Orleans Expressway Commission Safety Bay Improvements, (RFQ No. 2017-432-01) and Volkert was retained for the project. Volkert, a design engineering firm with decades of experience working on causeway projects, agreed to provide professional design engineering services, which included providing plans, designs, specifications, drawings, and other construction documents for the Safety Bay Improvement Project. This was memorialized by the parties in an Agreement for Professional Design Engineering Services for the Safety Bay Improvement Project executed between the Causeway Commission and Volkert on January 3, 2018.

The twelve safety bays were constructed in accordance with the designs and plans provided by Volkert pursuant to the scope of work set by the Causeway Commission and outlined in the request for qualifications and subsequent agreement. The location and number of safety bays constructed were decided solely by the Causeway Commission, consistent with the budgetary restraints for the project.

On March 30, 2026, Volkert filed a motion for summary judgment in which it argued that there were no genuine issues of material fact

and that Mr. Montgomery would be unable to prove essential elements of his claim against Volkert for professional negligence in engineering design. In opposition, Mr. Montgomery argued that there remained disputed genuine issues of material fact and that Volkert was not entitled to summary judgment as a matter of law. Parties, through their expert witnesses, dispute whether this project complies with contemporary safety standards, including the American Association of State Highway and Transportation Officials (AASHTO) standard specifications for highway bridges. The Causeway Commission retained Gulf Engineers & Consultants (GEC) and Krebs LaSalle as consulting engineers to provide engineering services related to the Causeway Commission, including advising on AASHTO standards.

On May 13, 2026, the trial court denied Volkert's motion for summary judgment.[1] In the same judgment, the trial court granted a motion for summary judgment filed by the Causeway Commission and dismissed Mr. Montgomery's claims with prejudice. In so doing, the trial court expressly found that the safety bays as designed and constructed did not constitute a defective or unreasonably dangerous condition. Volkert's timely application for supervisory writs followed.

Volkert raises the following four assignments of error:

1. The trial court erred by finding a genuine issue of material fact that Volkert breached a design engineering duty in the Project;

2. The trial court erred in finding that Volkert is not entitled to summary judgment as a matter of law;

[1] The claims against Mr. Dorr were previously dismissed pursuant to a settlement agreement.

3. The trial court erred by improperly deciding summary judgment on issues beyond those raised by the parties, in violation of La. C.C.P. art. 966(F), and by improperly expanding the scope of Mr. Montgomery's cause of action *sua sponte*, from whether Volkert was negligent in failing to design and construct emergency shoulders on the Causeway to whether Volkert had an engineering duty beyond that explicitly set forth in the request for qualifications; and

4. The trial court erred in finding that Mr. Dorr's negligence was not the sole, proximate cause of the accident.

We consider the first three assignments of error *en globo* in our discussion below, and pretermit discussion of the fourth assignment of error.

DISCUSSION

Appellate courts review summary judgments *de novo* using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *David v. Dollar Tree Stores, Inc.*, 19-36, p. 2 (La. App. 5 Cir. 10/2/19), 282 So.3d 329, 331. The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966. If the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id.* The burden is on the adverse party to produce factual support sufficient

to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.* After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, 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. *Id.*

A material fact is one whose existence or nonexistence may be essential to a plaintiff's cause of action under the applicable theory of recovery. *Wiebelt v. Stonebridge Manor New Orleans, LLC*, 25-69, p. 4 (La. App. 5 Cir. 9/24/25), 423 So.3d 196, 199; *Dillenkofer v. Marrero Day Care Ctr., Inc.*, 16-713, p. 3 (La. App. 5 Cir. 5/24/17), 221 So.3d 279, 282. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material for summary judgment purposes can be seen only in light of the substantive law applicable to the case. *Campbell v. Orient-Express Hotels Louisiana, Inc.*, 2024-00840, p. 5 (La. 3/21/25), 403 So.3d 573, 579.

With this last precept in mind, we examine plaintiff's theories of recovery to determine what facts may be material to his claims. Reviewing the pleadings and memoranda filed by plaintiff, we observe that he often conflates the duties of Volkert and the Causeway Commission. For example, in his petition, plaintiff avers, "the accident, resulting injuries and death of [Ms. Diggs] … were proximately and directly caused by the negligence and fault of the Causeway Commission and Volkert which includes … [f]ailing to adequately

maintain the Causeway Bridge, roadway and all associated components in a reasonably safe manner for motorists… [and] [f]ailing to remedy an unsafe and hazardous condition on the Causeway Bridge…". Similarly, in his opposition to the motion for summary judgment, plaintiff states "the Causeway Commission and Volkert fail to overcome the proof that it created an unreasonably dangerous condition". Despite this conflation, the legal duties owed by Volkert and the Causeway Commission are distinct.

The liability of Volkert, a firm with no custody or control of the Causeway, arises under a theory of negligence pursuant to La. C.C. art. 2315. Liability in a negligence action is determined by employing a duty/risk analysis. *Brewer v. J.B. Hunt Transp., Inc.*, 2009-1408, p. 14 (La. 3/16/10), 35 So.3d 230, 240. Under this standard, a plaintiff must prove: (1) the defendant had a duty to conform his conduct to a specific standard; (2) the defendant's conduct failed to conform to the appropriate standard; (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries; (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries; and (5) actual damages. *Int'l Wine & Spirits, Inc. v. United Wisconsin Ins. Co.*, 25-310, p. 5 (La. App. 5 Cir. 1/28/26), 430 So.3d 602, 607; *Alfred Conhagen, Inc. of Louisiana v. Ruhrpumpen, Inc.*, 2021-0396, p. 7 (La. App. 4 Cir. 4/13/22), 338 So.3d 55. If a plaintiff fails to prove any one element by a preponderance of the evidence, the defendant is not liable. *Campbell*, 403 So.3d at 581. In any negligence action, the threshold issue is whether the defendant owed the plaintiff a duty. *Id.* Absent a

recognized duty, a defendant cannot be held liable and there is no need to inquire further. *Id.* Whether one owes a duty is a question of law. *Id.*; *Cavalier v. St. James Par.*, 23-424, p. 3 (La. App. 5 Cir. 4/24/24), 386 So.3d 340, 343; *Bonilla v. Verges Rome Architects*, 2022-0802, p. 11 (La. App. 4 Cir. 5/11/23), 368 So.3d 170, 177.

Volkert was hired by the Causeway Commission to provide design engineering services as specified in the request for qualifications and the Agreement for Professional Design Engineering Services for the Safety Bay Improvement Project. Pursuant to the agreement, Volkert had a contractual duty to provide professional engineering designs in accordance with the care and skill ordinarily used by members of the design profession practicing under similar conditions and at the same time and locality of the project. The evidence offered by Volkert, including an affidavit from Janet L. Evans, a vice president at Volkert and project principal for the Safety Bay Improvement Project, as well as a deposition of Mr. Carlton Dufrechou, the general manager of the Causeway Commission, both indicate that Volkert's services conformed to this standard of care. Plaintiff has offered no evidence to support a claim that Volkert breached its contractual duty as specified on the agreement between Volkert and the Causeway Commission or the existence or breach of any other professional duty by Volkert.

Plaintiff's expert, Mr. William C. Stein, opined mainly that it was the decision to install safety bays as opposed to emergency shoulders spanning the entire length of the Causeway Bridge that did not conform to AASHTO standards and created an unsafe or dangerous condition.

Mr. Stein expressly stated in his deposition, "It appears that Volkert did what they were supposed to do, what they were required to do… the standard of care for what they did is not an issue." In other words, the testimony of plaintiff's expert relates to the liability of the Causeway Commission as custodian of the Causeway, not Volkert's liability as professional design engineer.

In its reasons for judgment[2] for denying Volkert's motion for summary judgment, the trial court appears to identify a duty owed by Volkert to the Causeway Commission, "Volkert was required to use its engineering expertise…to at least note that their proposal was not safe under the current engineering standards." The court's finding of fact that "[n]owhere in the documents provided in response to the RFQ, or subsequently during the entire process, did Volkert advise their design was not the safest option" is an apparent failure of Volkert's obligation "to consult and provide all necessary design services for this Project."

According to the trial court's oral reasons for judgment in which it granted summary judgment in favor of the Causeway Commission and dismissed plaintiff's claims against it, the court specifically found that the Causeway Commission had met its duty to maintain the roadway in a reasonably safe condition and that the improvements did not constitute a defective or hazardous condition.[3]

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[2] Appeals are taken from the judgment, not the written reasons for judgment. *Greater New Orleans Expressway Comm'n v. Olivier*, 02-2795, p. 3 (La. 11/18/03), 860 So.2d 22, 24.

[3] That judgment is not before us on this writ application.

On review of the writ application before us, we find that the trial court is incorrect in its articulation of Volkert's duty. It is undisputed that all parties and their representatives acknowledged and agreed that the "most safe" option, constructing a shoulder along the entire span of the Causeway (as stated in plaintiff's petition), was cost prohibitive at an estimated $2 billion. In light of this acknowledged fact, there is no clear reason why Volkert, in response to a request for qualifications to specifically design safety bays, would have a legal duty to advise that its design for safety bays was "not the safest option." Furthermore, as noted above, the Causeway Commission retains consulting engineers, GEC and Krebs LaSalle, to provide engineering services and advice, including advising on AASHTO standards. The trial court's expansion of the scope of Volkert's professional duty is unreasonable in light of the facts and circumstances of this case.

Finally, and most importantly, the trial court's findings with respect to Volkert are inconsistent with the trial court's dismissal of the Causeway Commission. If, as a matter of fact and law, the Causeway with its installed and completed safety bays on November 13, 2019 did not present an unreasonable hazard or risk of harm to commuters, as stated by the trial court and assumed in the grant of the Causeway Commission's motion for summary judgment and the dismissal of plaintiff's claims against it, there can be no breach of any duty of care that may have been owed by Volkert to Ms. Diggs or any other commuters. Under the facts of this case, without a finding that the causeway improvements presented a hazardous or defective condition,

the question of whether Volkert breached the duty it owed the Causeway Commission, as stated by the trial court in her written reasons for judgment, is ultimately immaterial to plaintiff's claims.

DECREE

On *de novo* review, we find that plaintiff has failed to carry his burden to produce factual support sufficient to establish the existence of a genuine issue of material fact as to the essential elements of his claims against Volkert or that Volkert is not entitled to judgment as a matter of law. Accordingly, we grant the writ application, reverse the May 20, 2026 judgment of the trial court, and render summary judgment in favor of Volkert. Plaintiff's claims against Volkert are hereby dismissed with prejudice.

WRIT GRANTED;
JUDGMENT REVERSED AND RENDERED;
CLAIMS DISMISSED

SUSAN M. CHEHARDY
CHIEF JUDGE

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

JUDGES

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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 **NOVEMBER 10, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-C-270

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)
KATHY A. RITO (RELATOR)
MEGAN S. PETERSON (RELATOR)
RANDY G. MCKEE (RESPONDENT)
DANIEL CARUSO (RELATOR)

MAILED
NO ATTORNEYS WERE MAILED