

DAVENIQUE HELMSTETTER

NO. 24-C-344

VERSUS

FIFTH CIRCUIT

U-HAUL INTERNATIONAL, INC., ALLAN
BRUCE AWE, AND ALLAN BRUCE AWE
D/B/A ABA RENTALS

COURT OF APPEAL
STATE OF LOUISIANA

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



Linda Wiseman
First Deputy, Clerk of Court

October 15, 2024

Linda Wiseman
First Deputy Clerk

IN RE U-HAUL CO. OF LOUISIANA, ALLAN BRUCE AWE, AND ABA RENTALS, INC.

APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT,
PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
VERCELL FIFFIE, DIVISION "A", NUMBER C-74869

Panel composed of Judges Marc E. Johnson,
Scott U. Schlegel, and Timothy S. Marcel

WRIT DENIED

Relators/Defendants, Allan Bruce Awe, U-Haul Co. of Louisiana (“U-Haul”), and ABA Rentals, Inc. (“ABA”), seek review of the trial court’s June 30, 2024 denial of its motion for summary judgment. Relators assert that they are entitled to summary judgment and dismissal from Respondent/Plaintiff’s, Davineque Helmstetter, action. In her petition, Ms. Helmstetter alleged that she sustained injuries after being confronted by a dog while attempting to return the keys to a van. In their motion for summary judgment, U-Haul and ABA argued that they must be dismissed from the action because they were not the owners of the dog in question and can have no liability for the dog’s actions. Mr. Awe argued that he had no liability for Ms. Helmstetter’s injuries because the dog was within a fence and made no direct physical contact with her. In its oral reasons for judgment, the trial court

believed that summary judgment was not appropriate because the owner of the business and the owner of the dog, Mr. Awe, has not been located for deposition.

After *de novo* review, we find that summary judgment is not appropriate at this time. A review of the admissible summary judgment evidence shows that there are remaining genuine issues of material fact, *e.g.*, whether Defendants had custody, pursuant to La. C.C. art. 2317, of the dog on the night of the alleged incident, and whether the dog posed an unreasonably dangerous hazard. Accordingly, the writ application is denied.

Gretna, Louisiana, this 15th day of October, 2024.

MEJ
TSM

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**SCHLEGEL, J., CONCURS IN PART AND DISSENTS IN PART
WITH REASONS**

I agree with the majority's decision to deny summary judgment based on the ownership issues raised by defendants, U-Haul Co. of Louisiana and ABA Rentals, Inc. These defendants moved for summary judgment only on the ownership issue, failed to address the additional issue of custody outlined by the majority decision, and failed to provide any competent evidence to shift the burden to Ms. Helmstetter. *See* La. C.C.P. arts. 966(A)(4)(a) and 966(D)(1) and (2).

However, I dissent from the majority's decision to deny the writ application with respect to the separate arguments raised by defendant, Allan Bruce Awe. Mr. Awe moved for summary judgment on the grounds that the applicable law and jurisprudence do not recognize liability for a fenced dog that has no direct contact with the plaintiff. He further argued that Ms. Helmstetter was aware of the dog's presence as she saw and heard the dog as she approached the fence. Because I believe the writ application has merit on these issues, and if granted, would result in summary judgment in favor of Mr. Awe, I would assign the case for briefing and give the parties the opportunity to request oral argument, as provided in La. C.C.P. art. 966(H).

SUS

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



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SUSAN S. BUCHHOLZ
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LINDA M. WISEMAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/15/2024** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-C-344

E-NOTIFIED

40th District Court (Clerk)
Honorable Vercell Fiffie (DISTRICT JUDGE)
Fielding Matkins (Respondent)

MAILED

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