

Judgment rendered September 30, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 57,049-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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CARL FRANKLIN HATTIE FRANKLIN	Plaintiffs-Appellants
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versus

CITY OF BOSSIER, MAYOR THOMAS H. CHANDLER OF BOSSIER, OFFICIAL CAPACITY BOSSIER CITY POLICE DEPARTMENT, CHIEF OF POLICE BOSSIER CITY, OPTIMUM aka SUDDENLINK, AT&T, MIKE WARE, PAMELA WARE, SHERIFF JULIAN WHITTINGTON	Defendants-Appellees
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Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Bossier, Louisiana
Trial Court No. 169,662

Honorable Alexandra Aiello Stahl, Judge

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LAW OFFICE OF CAROL D. POWELL LEXING AND ASSOCIATES (PLLC) By: Carol D. Powell-Lexing	Counsel for Appellants
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WIENER, WEISS & MADISON By: Layne A. Clark, Jr.	Counsel for Appellees, City of Bossier and Bossier City Police Department
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SIMON, PERAGINE, SMITH, &
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By: Windsor V. Richmond

Counsel for Appellees,
BellSouth
Telecommunications,
LLC d/b/a AT&T
Louisiana

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Before COX, STEPHENS, and THOMPSON, JJ.

STEPHENS, J.,

This civil appeal arises from the 26th Judicial District Court, Parish of Bossier, the Honorable Allie Aiello Stahl, Judge, presiding. The trial court rendered judgment granting a motion for summary judgment filed by the defendant, BellSouth Telecommunications, LLC d/b/a AT&T Louisiana (“BellSouth”), dismissing with prejudice all claims filed by plaintiffs, Carl and Hattie Franklin (“the Franklins”). This appeal was filed by the Franklins. For the reasons expressed herein, we affirm the trial court’s judgment.

FACTS AND PROCEDURAL HISTORY

In their original petition filed on March 21, 2023, the Franklins named the following parties as defendants:

- The City of Bossier
- Mayor Thomas H. Chandler
- The Bossier City Council
- Optimum a/k/a Suddenlink
- AT&T/BellSouth – a telephone service conducting business in Louisiana¹
- Mike and Pamela Ware
- Bossier Parish Sheriff Julian Whittington

On December 11, 2023, the Franklins filed an amended petition, omitting Mayor Chandler and the Bossier City Council as defendants. On April 9, 2025, this Court affirmed the trial court’s dismissal of the Wares, Suddenlink, and Sheriff Whittington. *See Franklin v. City of Bossier*, 56,192 (La. App. 2 Cir. 4/9/25), 409 So. 3d 1052, *writ denied*, 25-00606 (La.

¹ Several instances in the record show that the Franklins often used Suddenlink and AT&T interchangeably. On November 9, 2023, BellSouth filed a reply to the Franklins’ opposition to Suddenlink’s peremptory exception of no cause of action and improper cumulation of actions. In its reply, BellSouth highlighted instances of the Franklins using the two utility companies interchangeably and requested that the trial court sever the claims against the utility companies. The trial court denied the exception of improper cumulation of actions.

9/16/25), 416 So. 3d 476. All claims against the City of Bossier were stayed pending the outcome of related criminal charges. Consequently, BellSouth is the only defendant remaining.

According to the Franklins' petition, on April 27, 2022, Suddenlink and BellSouth entered the Franklins' property without permission to place internet lines on behalf of the Franklins' neighbors, the Wares. On this same date, the Wares allegedly placed stakes on the Franklins' property, and when the Wares were asked to remove the stakes, they contacted the Bossier City Police. The disagreement over the placement of the stakes ultimately led to the arrest of Carl Franklin and his daughter.

The Franklins filed an amended petition on December 11, 2023, in which they alleged that Suddenlink and BellSouth dug an extremely deep hole in the Franklins' yard to place internet lines. This allegedly caused damage to the Franklins' plumbing resulting in the Franklins having to shut down water flow to faucets in their home. The Franklins also asserted that the placement of the internet line caused a sunken hole in the yard which affected the landscaping and killed plants and grass. The petition further claimed that the hole and internet line caused leaking and lingering water in the Franklins' yard which caused a mosquito infestation on the property. The Franklins accused BellSouth of conversion and trespass because "they did not have a servitude" and alleged that they suffered the loss of use of their property as well as mental and physical damages. The Franklins also alleged that BellSouth was liable for loss of use of the Franklins' property and mental and physical damages arising out of the false arrest.

On August 25, 2025, BellSouth filed its motion for summary judgment in which it claimed that the Franklins would be unable to prove

that BellSouth trespassed on the Franklins' property. BellSouth stated that the Franklins' neighborhood is encumbered by utility and drainage easements which are intended for use by utility companies, the city, and for drainage purposes. BellSouth utilized these easements throughout the neighborhood to install underground fiber cables that provide internet and home phone services to customers within the subdivision. BellSouth indicated that a utility easement exists between the Franklin and Ware properties, and at one time, BellSouth had an active pedestal in that location. BellSouth specified in its motion for summary judgment that despite this recorded easement, the Franklins repeatedly harassed BellSouth technicians as they serviced the pedestal. Local law enforcement was contacted on several occasions to protect BellSouth employees from the Franklins' harassment and to enforce BellSouth's use of the easement. Following a harassment incident between the Franklins and a BellSouth technician in February 2022, BellSouth paid a contractor to install a new pedestal on the Wares' property in March 2022.

In its memorandum of support of the motion for summary judgment, BellSouth maintained that it had no record of any dispatch to the Wares' property or the Franklins' property on April 27, 2022. BellSouth further urged that no evidence existed that BellSouth exceeded the scope of the easement and trespassed on the Franklins' property at any point in time. In support of its motion, BellSouth submitted the affidavit of Nika Echols, its Associate Director of Network Services in Northwest Louisiana. In her affidavit, Ms. Echols stated that she personally requested that the Franklins' service be cancelled due to the harassment and threats BellSouth employees received when attempting to use the utility easement to maintain BellSouth's

facilities. She also attested that she personally reviewed the Wares' account records and saw that BellSouth personnel were not dispatched or present on April 27, 2022. Ms. Echols stated that the property records and BellSouth records showed an easement on the Franklins' property, and if BellSouth personnel entered the property at any time, it was solely within the boundaries of the easement to perform installation and repair work related to internet service for customers. BellSouth also attached the StoneBridge Subdivision plat which showed two easements: a utility easement labeled as "closed and abandoned" and another utility easement labeled as an "existing" utility easement.

On November 4, 2025, the trial court held a hearing on BellSouth's motion for summary judgment. The Franklins first made an oral motion to strike Ms. Echols's affidavit as hearsay because it lacked personal knowledge. BellSouth explained that Ms. Echols placed the work order for the pedestal to be relocated, and she oversaw the entire area at issue for AT&T/BellSouth as the Associate Director of Network Services. The trial court denied the Franklins' oral motion to strike and indicated that the affidavit was clearly based on personal knowledge, and Ms. Echols was a qualified affiant due to her position as Associate Director of Network Services.

In its argument related to the motion for summary judgment, BellSouth maintained that the petition was for damages resulting from an alleged false arrest as well as a standing property dispute between the Franklins and the Wares. BellSouth noted that their records indicated that BellSouth personnel were not dispatched or present on the Ware or Franklin property on April 27, 2022. Even if BellSouth representatives had been

present that day, they would have been within the scope of the existing easement located between the Ware and Franklin properties.

Following the arguments made, the trial court granted BellSouth's motion for summary judgment, finding that the Franklins failed to offer evidence supporting any type of trespass on April 27, 2022. It also noted that there was no evidence presented to show that BellSouth installed any equipment or serviced the pedestal outside of the scope of the easement. The Franklins appealed the trial court's judgment. This Court determined that the trial court's November 25, 2025, judgment lacked proper decretal language expressly indicating the effect of the relief awarded. Consequently, the trial court amended the judgment on June 5, 2026, granting BellSouth's motion for summary judgment and dismissing with prejudice the Franklins' claims against BellSouth.

DISCUSSION

On appeal, the Franklins assert four assignments of error. First, the Franklins maintain that the trial court erred in denying the oral motion to strike Ms. Echols's affidavit when the evidentiary objection was made in the opposition memorandum. Next, they assert that the trial court erred in granting BellSouth's summary judgment motion when the only evidence presented was, in the Franklins' opinion, a defective affidavit. Third, the Franklins submit that the trial court erred in granting the motion for summary judgment because BellSouth's utility easement was allegedly closed and abandoned. Finally, the Franklins urge that genuine issues of material fact exist related to BellSouth's trespass on the Franklins' property.

Appellate courts review motions for summary judgment *de novo*, using the same criteria that govern the trial court's consideration of whether

the summary judgment is appropriate. *Peironnet v. Matador Res. Co.*, 12-2292 (La. 6/28/13), 144 So. 3d 791; *Dupree v. Bossier Par. Sch. Bd.*, 56,091 (La. App. 2 Cir. 2/26/25), 408 So. 3d 468, *writ denied*, 25-00368 (La. 6/3/25), 410 So. 3d 787; *Bank of Am., N.A. v. Green*, 52,044 (La. App. 2 Cir. 5/23/18), 249 So. 3d 219. Summary judgment is favored by law and provides a vehicle by which the just, speedy, and inexpensive determination of an action may be achieved. La. C.C.P. art. 966(A)(2). We view the record and all reasonable inferences to be drawn from it in the light most favorable to the nonmoving party. *Hines v. Garrett*, 04-0806 (La. 6/25/04), 876 So. 2d 764; *Dupree, supra*. A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show there is no genuine issue as to material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3).

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. La. C.C.P. art. 966(D)(1). 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.*

A genuine issue is one about which reasonable persons could disagree. *Hines, supra*; *Dupree, supra*; *Franklin v. Dick*, 51,479 (La. App. 2 Cir. 6/21/17), 224 So. 3d 1130. In determining whether a fact is genuine for purposes of summary judgment, courts cannot consider or weigh the merits,

make credibility determinations, or evaluate testimony. *Suire v. Lafayette City-Parish Consol. Gov't*, 04-1459 (La. 4/12/05), 907 So. 2d 37; *Sepulvado on Behalf of Sepulvado v. G-Rock Climbing, LLC*, 55,637 (La. App. 2 Cir. 5/22/24), 387 So. 3d 870, *writ denied*, 24-00800 (La. 10/15/24), 394 So. 3d 818. A material fact is one that potentially ensures or precludes recovery, affects the ultimate success of the litigant, or determines the outcome of the dispute. 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. *Jackson v. City of New Orleans*, 12-2742 (La. 1/28/14), 144 So. 3d 876; *Richard v. Hall*, 03-1488 (La. 4/23/04), 874 So. 2d 131; *Sepulvado on Behalf of Sepulvado, supra*.

Assignments of Error 1 and 2:

The Franklins assign as errors the trial court's denial of an oral motion to strike Ms. Echols's affidavit as well as the use of the alleged defective affidavit in its decision to grant BellSouth's motion for summary judgment. As it relates to Ms. Echols's affidavit, the Franklins urge that the affidavit contains hearsay, it lacks personal knowledge, and it fails to set forth facts that would be admissible. More specifically, the Franklins assert that Ms. Echols stated in her affidavit that she was "familiar with" and "aware of" the case. Furthermore, the Franklins also suggest that although she stated she reviewed the accounts and property records involved with this matter, Ms. Echols admitted she was not personally present on the day the matter occurred, and she did not personally prepare the records. The Franklins argue that the affidavit is defective and should not have been considered in support of the motion for summary judgment.

In reply, BellSouth notes that the Franklins failed to file a written motion to strike but instead orally requested that the trial court strike the Echols affidavit. Despite the Franklins' claims, BellSouth urges that Ms. Echols expressly stated her personal knowledge and familiarity with the facts, and she is the Associate Director of Network Services whose responsibilities include the very issue involved in this matter. In light of these reasons, BellSouth asserts that the trial court's evidentiary ruling was within its discretion, and it properly considered the affidavit when ruling on the motion for summary judgment.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. La. C.C.P. art. 967(A). Under La. C.C.P. art. 966(D)(2), "[a]ny objection to a document shall be raised in a timely filed opposition or reply memorandum." Comment (k) of the Revision Comments 2015 to Article 966 states that "[t]his provision changes prior law by specifically removing the motion to strike as a means of raising an objection to a document offered by an adverse party in support of or in opposition to a motion for summary judgment and does not allow a party to file that motion." The intent of La. C.C.P. art. 966(D)(2) was to make it mandatory that any objection to a document filed in support of or in opposition to a motion for summary judgment must be objected to in a timely filed opposition or reply memorandum and not in a "motion to strike" or other pleadings. *Ramus v. KCJS Trucking, LLC*, 19-0039 (La. App. 1 Cir. 9/27/19), 287 So. 3d 728. Comment (k) also highlights that La. C.C.P. art. 966(D)(2) "makes explicit that an oral objection to any document cannot be

raised at the hearing on the motion for summary judgment and that a court must consider all documents to which there is no objection.”

In the Franklins’ reply memorandum opposing BellSouth’s summary judgment motion, the Franklins included its objections to the Echols affidavit, stating that the affidavit contained hearsay, lacked personal knowledge, and failed to set forth facts that would be admissible in evidence. This inclusion of the objection to the affidavit in the timely filed reply memorandum served as the proper method to object to the Echols affidavit. *Aldridge v. Greenbrier Hosp.*, 23-0526 (La. App. 1 Cir. 3/13/24), 385 So. 3d 712, *writs denied*, 24-00480, 24-00484, 24-00492 (La. 9/17/24), 392 So. 3d 633, 634, 635. Consequently, the Franklins’ oral motion to strike at the summary judgment hearing was unwarranted, and BellSouth’s arguments that the motion to strike had to be in writing to be considered proper are incorrect and contrary to the law regarding objections made to documents in summary judgment proceedings.

Notwithstanding the oral motion to strike, the trial court properly dealt with the Echols affidavit. The court recognized that Ms. Echols, as the Associate Director of Network Services in Northwest Louisiana for AT&T/BellSouth, was a qualified affiant who clearly stated her personal knowledge of and familiarity with the situation regarding the Franklins. As a result, the trial court did not err in either allowing BellSouth’s use of the affidavit or its own consideration of the affidavit when ruling on BellSouth’s motion for summary judgment. Therefore, the Franklins’ first and second assignments of error are without merit.

Assignment of Error 3:

In their third assignment of error, the Franklins claim that BellSouth's utility easement was allegedly closed and abandoned, which creates a genuine issue of material fact as to the validity of the utility easement. The Franklins suggest that the StoneBridge Subdivision plat dated December 15, 1998, shows genuine issues of material fact as to whether BellSouth had a utility easement because the plat reflects that the easement is closed and abandoned. However, BellSouth asserts that the Franklins have misread the recorded plat, noting that it depicts two different easements: (1) an older easement running between the properties marked "closed and abandoned"; and (2) a separate ten-foot utility easement which is where BellSouth's pedestal is located. This second easement, according to BellSouth, is not marked closed and abandoned. Instead, urges BellSouth, the evidence establishes that it maintained an active pedestal within the easement and regularly dispatched technicians to service it.

The personal servitude of right of use confers in favor of a person a specified use of an estate less than full enjoyment. La. C.C. art. 639. A right of use includes the rights contemplated or necessary to enjoyment at the time of its creation as well as rights that may later become necessary, provided that a greater burden is not imposed on the property unless otherwise stipulated in the title. La. C.C. art. 642. A right of use is regulated by application of the rules governing usufruct and predial servitudes to the extent that their application is compatible with the rules governing a right of use servitude. La. C.C. art. 645. Nonuse for ten years extinguishes predial servitudes. La. C.C. art. 753.

The StoneBridge Subdivision Phase 1, Unit 1-A plat recorded on December 15, 1998, shows two easements: (1) a ten-foot utility easement designated as “closed & abandoned”; and (2) an “existing” ten-foot utility easement. Despite the Franklins’ protests that the utility easement is closed and abandoned, the recorded StoneBridge plat clearly shows that there is an “existing” ten-foot utility easement, and that it is this existing easement that is used by BellSouth to maintain its pedestal, not the easement labeled “closed & abandoned.” Instead of producing factual support to establish the existence of a genuine issue of material fact, the Franklins simply continued to assert that the easement was labeled closed and abandoned. While we agree there is a ten-foot easement labeled closed and abandoned on the plat, what is also apparent is that the plat depicts an existing ten-foot utility easement available to BellSouth, and that it was this existing easement which was used by BellSouth in the maintenance of its equipment. Any further claims made by the Franklins related to the prescription of nonuse were not properly raised before the trial court nor are they relevant as the Franklins’ arguments address the “closed and abandoned” easement, an easement that is not at issue. For these reasons, the Franklins’ third assignment of error lacks merit.

Assignment of Error 4:

Finally, the Franklins argue that summary judgment was not appropriate because there are genuine issues of material fact related to whether BellSouth trespassed on the Franklins’ property. BellSouth maintains that it had no dispatch records showing the presence of a BellSouth employee on the property on April 27, 2022. Despite an absence of documentation of BellSouth’s presence on that date, according to

BellSouth, even if it had been present on that date, BellSouth urges that it had a valid, recorded utility easement authorizing its presence. BellSouth points out that the burden shifted to the Franklins to produce evidence of a genuine issue of material fact, but they failed to do so. Ultimately, BellSouth claims that the events of April 27, 2022, involve a property line dispute between the Franklins and the Wares that led to police involvement, and BellSouth was not involved in this property line dispute.

By submitting Ms. Echols' affidavit attesting to no BellSouth employees being physically present on the Wares' property on April 27, 2022, as well as the StoneBridge plat highlighting the existence of a valid utility easement, BellSouth carried its burden in pointing out the absence of factual support for the Franklins' trespass claim. The burden then shifted to the Franklins to produce factual support to create a genuine issue of material fact. The Franklins included in their opposition to the motion for summary judgment one affidavit signed by both Carl and Hattie Franklin. The affidavit contained restatements made in the petition, such as that BellSouth entered the property without permission, and that BellSouth placed an internet box and lines on their property. They also stated that BellSouth did not obtain written consent nor did the Franklins receive compensation from BellSouth before BellSouth entered their property. Other than conclusory statements, the Franklins introduced no evidence creating a genuine issue of material fact. As set forth above, BellSouth was within its right to use the valid, existing ten-foot utility easement. BellSouth's entry on the land

within the utility easement is not a trespass.² Furthermore, BellSouth has no record of any employees being dispatched to this particular location in the StoneBridge subdivision on April 27, 2022. We agree with BellSouth's categorization of the Franklins' claim as one seeking damages arising out of an alleged false arrest. As noted by BellSouth, there is no connection between the events of April 27, 2022, and BellSouth. Consequently, the Franklins' final assignment of error is without merit.

CONCLUSION

For the reasons set forth above, the judgment of the trial court granting summary judgment in favor of the defendant, BellSouth Telecommunications, LLC d/b/a AT&T Louisiana, is affirmed. Costs of this appeal are assessed to the plaintiffs, Carl and Hattie Franklin.

AFFIRMED.

² The owner of the dominant estate has the right to enter with his workmen and equipment into the part of the servient estate that is needed for the construction or repair of works required for the use and preservation of the servitude. La. C.C. art. 754.