Judgment rendered November 18, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 57,062-CW

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

TIFFANY BETHLEY, INDIVIDUALLY AND ON BEHALF OF LANDON WILLIAMS — Respondents

versus

OUACHITA PARISH SCHOOL BOARD AND ABC INSURANCE AND "THE DUTY TEACHER" — Defendants

* * * * *

On Application for Writs from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 2022-3389

Honorable J. Wilson Rambo, Judge

* * * * *

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* * * * *

Before PITMAN, STONE, and ELLENDER, JJ.

STONE, J., dissenting in part with written reasons.

PITMAN, C. J.

Applicant Ouachita Parish School Board ("OPSB") seeks review of the denial of summary judgment seeking dismissal of Respondent Tiffany Bethley's petition for damages sustained by her son Landon Williams in a playground accident at an elementary school. The request for supervisory review was granted to docket. For the following reasons, the writ is granted in part and denied in part.

FACTS

On October 26, 2021, kindergartner Landon Williams was swinging on the monkey bars at Jack Hayes Elementary School in Monroe, Louisiana, and was allegedly being pushed by another student when he fell off the bars and was injured. He sustained a displaced spiral fracture to his right femur as a result of the fall. The accident occurred as the duty teachers were calling students away from the playground to line up to return to class.

Bethley filed suit on September 19, 2022, alleging that OPSB was negligent in its supervision in that it failed to prevent Landon from being pushed off the monkey bars. About three years later, Bethley moved for leave of court to amend her petition to assert a new theory of liability. Specifically, she alleged that OPSB negligently maintained the wood chips under the monkey bars and that this improper maintenance was the cause of the playground accident and/or made the injury worse than it would have been had proper maintenance been observed. This amendment was approved by the trial court on June 23, 2025.

On December 12, 2025, OPSB filed a motion for summary judgment and argued that Bethley could not prove breach of duty as to negligent supervision or the premises liability claims; and, further, she could not prove

causation of injury as to the premises liability claim. OPSB provided the deposition testimony of teachers Cynthia Kincaid and Robin Kirk and argued that there was no evidence of inattentiveness by any teacher and that Landon's fall occurred spontaneously during ordinary horseplay. It contended that the level of supervision provided at the time of the accident was more than sufficient and that there were three teachers supervising approximately 80 students, which was well within the range of acceptable teacher-student ratios in other negligent supervision cases. OPSB also argued that there was no evidence to suggest that the accident could have been prevented with a higher level of supervision or that the activity should have put the teachers on notice that an accident might occur. Based on these arguments, OPSB argued Bethley could not show that it breached its duty to provide reasonable supervision or that any such breach caused the accident.

OPSB argued that in the premises liability claim, Bethley had the burden of proving that the monkey bars contained a defect that created an unreasonable risk of injury and that the defect caused the injury. It argued that Bethley never explained how any condition of the monkey bars caused the injury and that none of the evidence presented connected the injury to lack of proper maintenance of the ground under the monkey bars. It contended that wood chips are ordered in the summer and the area under the monkey bars is filled before school starts in August. The wood chips are then refilled as needed. It argued that Bethley did not provide any records or photographs to show the exact level of wood chips in October 2021 and that she only had photographs of wood chips that were taken at least three years after the accident, at a different time of the school year. For this reason,

OPSB argued that the photographs of the wood chips under the monkey bars have absolutely no probative value to this case.

In support of this argument, OPSB provided the testimony of the Supervisor of Custodial Services, Julian Johnson, who testified regarding the procurement of wood chips, provided documentation showing that 40 cubic yards of wood chips were ordered for the school in June 2021 and that OPSB follows federal guidelines in the maintenance of the playground equipment. The wood chips are replenished on an as-needed basis. OPSB noted that no evidence has been presented to contradict any of this testimony or documentation.

Bethley filed an opposition and argued that genuine issues of material fact remained and that a reasonable fact finder could conclude that crowding at elevated playground equipment used by kindergarten students required heightened attention and proximity, especially during a chaotic transition period, and that OPSB failed to adjust supervision accordingly. She contended that these issues of teacher positioning, line-of-sight, crowding and attentiveness are fact-intensive and cannot be resolved on summary judgment. She argued that the failure of the duty teacher to intervene after observing unsafe or atypical conduct between students on the monkey bars raised questions of fact regarding the reasonableness of the supervision provided. She asserted that the duty teacher, instead of closely monitoring the monkey bar area, was standing away from them in an area where students line up for dismissal.

As to the premises liability claims, Bethley argued that maintenance personnel testified that OPSB did not maintain written inspection protocols, did not routinely measure the depth of the wood chips

surfacing beneath the monkey bars and did not keep records documenting compliance with safety standards. Maintenance was performed on an informal, "as-needed" basis, relying on casual visual observation rather than objective measurement of documented inspection. Bethley also argued that while OPSB pointed to a delivery of wood chips months before the accident, there is no evidence establishing how much material was installed, whether it was evenly distributed or whether required depths were maintained over time in a high-use area. A delivery alone does not establish proper installation or continued compliance. Bethley contended that on this record, whether OPSB exercised reasonable care in inspecting and documenting resurfacing of the wood chips is a question for the trier of fact; and, thus, summary judgment is not appropriate in this case.

Bethley presented the affidavits of two experts in support of her opposition to the motion for summary judgment, that of Dr. Jon Sand and Bradley Okeson.[1] Sand's affidavit stated that he was retained to review the facts, records and testimony in this case and to render opinions regarding the standard of care, causation and the applicable safety and supervision at Jack Hayes Elementary School. He listed his qualifications as an expert consultant with over 35 years of experience, education and training and professional certifications.

Sand's affidavit stated that he had reviewed depositions of three teachers, the maintenance staff, Bethley and the minor child. He read the accident report, the faculty handbook, the purchase orders and invoices for

[1] Okeson's affidavit and report were excluded from consideration by the trial court after argument at the hearing on the motion for summary judgment because there was no curriculum vitae or other list of his qualifications.

wood chips, the Consumer Product Safety Commission and American Society for Testing and Materials Standards and the Louisiana Administrative Code.

Based on his review of the evidence, Sand reached the following conclusions in his report and the affidavit: 1) Teachers were not in position to observe or intervene at the monkey bars at the time of the incident; 2) Supervision was not active, continuous or focused on high-risk areas during critical transition periods; 3) OPSB failed to implement or document routine playground maintenance and safety inspections; 4) OPSB failed to provide formal training or clear policy guidance on playground safety and hazard identification; 5) Deposition testimony confirms critical gaps in supervision, maintenance and causation evidence; 6) The standard of care and industry guidelines regarding surfacing were recited, and it was noted that Louisiana law recognizes these standards as the baseline for safe playground operation and maintenance.

OPSB replied to the opposition and attacked Sand's affidavit, both as to the timeliness of the affidavit's filing, citing La. C.C.P. art. 966(B)(2), and as to content. It challenged Sand's affidavit as not having been properly notarized because Sand lives in California and the affidavit was notarized by a notary in Louisiana. It also noted that the Remote Online Notarization Act, La. R.S. 35:621, et seq., does allow for out-of-state notarizations but that Sand did not properly follow the procedure. However, three days before the hearing on the motion for summary judgment, Bethley supplemented the record with an affidavit from Sand reflecting proper notarization and propriety as to form. In all other respects, the affidavit was identical to the one previously presented to OPSB in the timely opposition.

The trial court heard argument on the motion on February 12, 2026, and the admission, or non-admission, of the affidavits was argued. Both sides argued the facts as they had in the motion for summary judgment and the opposition. The trial court took the matter under advisement.

The trial court issued written reasons for judgment on March 23, 2026, and found that the Sand affidavit, submitted three days prior to the hearing, remained unchanged from the one that was timely submitted with the opposition to the motion for summary judgment and that it did not create any new issues which would be a surprise to OPSB. The trial court stated that to reject the affidavit on such a hypertechnicality, when OPSB failed to challenge the expert through a *Daubert* hearing on the basis of qualifications or methodology, did not serve the interest of justice and would not promote fairness in this case.

On April 9, 2026, the trial court rendered judgment stating that the Sand affidavit was admitted but did not articulate what genuine issues had been raised which would prevent summary judgment and then denied summary judgment. OPSB filed a motion to reconsider the judgment, which was denied.

OPSB filed a notice of intent to seek writs with this court on April 23, 2026. The writ application was timely filed, and this matter was granted to the appellate docket.

DISCUSSION

The Sand Affidavit

OPSB argues that the trial court erred in considering the Sand affidavit filed in opposition to the motion for summary judgment. It contends that the filing deadlines are mandatory, and the trial court is not to

consider any documents filed after the deadline. Further, it argues that the prejudice inquiry is not a substitute for compliance with the deadline.

Bethley's opposition to the writ argues that she does not have to depend on the admission or non-admission of Sand's corrected affidavit, although she does contend that the trial court correctly found that the filing of the corrected affidavit only cured the notarization problem and that all of the claims of the affidavit had already been conveyed to OPSB in her timely opposition to the motion. Therefore, she claims her opposition was timely, and OPSB was on notice of her response to the motion.

Bethley contends that even if the affidavit was not properly considered, that issue does not entitle OPSB to a "global" summary judgment because the record contains sufficient factual support, much of it from OPSB's own employees and documentation, precluding dismissal. She asserts that if the record, independent of the affidavit, supports the denial of summary judgment, this writ should be denied.

La. C.C.P. art. 966(B)(2) provides that any opposition to the motion and all documents in support of the opposition shall be filed and served not less than 15 days prior to the hearing on the motion. La. C.C.P. art. 966(B)(5) states that the court shall not reconsider or revise the granting of a motion for partial summary judgment on motion of a party who failed to meet the deadlines imposed by this Paragraph, nor shall the court consider any documents filed after those deadlines.

In *Auricchio v. Harriston*, 20-01167 (La. 10/10/21), 332 So. 3d 660, the plaintiffs filed a motion for summary judgment, and the hearing was set for July 31, 2020. The defendant filed a motion for continuance and, alternatively, a motion to file opposition evidence after the 15-day deadline.

Ten days before the hearing, the defendant filed an opposition to the summary judgment motion, and plaintiffs opposed both the motion for continuance and the motion for leave to file the late opposition. The trial court denied the motion to continue but allowed the late opposition. Supervisory writs were sought and the appellate court denied the writ. The motion for summary judgment was heard and denied by the trial court, which found that the late-filed opposition raised genuine issues of material fact. Writs were sought on this decision, which the appellate court denied. Due to a split in the circuit courts, the Louisiana Supreme Court granted the writ to determine the proper interpretation and application of the article.

In *Auricchio*, the Louisiana Supreme Court discussed the legislative history of La. C.C.P. art. 966(B) and found that the article had been amended in 2015 to remove language that expressly gave the trial court the discretion, upon a showing of good cause, to afford additional time to oppose a motion for summary judgment. The court opined that by removing the discretionary language and replacing it with mandatory language, it assumed the legislature intended to change the law to eliminate the previously afforded discretion. In *Auricchio*, the defendant missed the deadline to file her opposition but argued plaintiffs were not prejudiced by the late filing. The court found that prejudice was irrelevant and that the state mandates compliance without regard to cause or prejudice, stating that, "While the trial court could have considered equitable concerns and continued the summary judgment hearing for 'good cause' under Article 966(C)(2), all discretion to consider the late-filed opposition was eliminated when the continuance was denied." *Id*. The motion for leave to file the opposition was reversed, the denial of summary judgment was

vacated and the matter was remanded for ruling on the motion for summary judgment without consideration of the opposition.

In this case, Bethley's opposition to the motion for summary judgment was timely filed, it was only the Sand affidavit that was not in proper form at the time of the filing. La. C.C.P. art. 966(B)(2) refers to "all documents in support of the opposition" being filed not less than 15 days prior to the hearing. The Louisiana Supreme Court in *Auricchio*, *supra*, has spoken to the mandatory nature of the article. Therefore, we find this assignment of error has merit, and further review of the denial of summary judgment will be addressed by this court without reference to the Sand affidavit.

The Motion for Summary Judgment

OPSB argues the trial court erred in denying the motion for summary judgment on the merits of the negligent supervision and the premises liability claims. It reiterates the same arguments that it made to the trial court regarding these issues–that there were no facts showing negligent supervision, that there was no proof that the wood-chip level was insufficient on the day of the accident and that it was a cause in fact of the minor child's injury. Thus, OPSB contends it is entitled to summary judgment in its favor dismissing Bethley's action against it because no genuine issues of material fact remain.

Bethley filed an opposition and reiterated the arguments that the evidence presented to the trial court prior to the filing of the motion and in opposition to the motion showed that a reasonable trier of fact could find negligence on the part of OPSB and the teachers and could decide whether the wood-chip level was properly maintained and was the cause of the

severity of the minor child's accident. She asserts that the evidence presented showed genuine issues of material fact remained and that the trial court correctly denied the summary judgment.

Summary judgment procedure is designed to secure the just, speedy and inexpensive determination of every action. La. C.C.P. art. 966(A)(2). The procedure is favored and shall be construed to accomplish these ends. *Id*.

Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, admissions on file and any affidavits show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). A summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties. La. C.C.P. art. 966(E).

The burden of proof rests with the mover. La. C.C.P. art. 966(D)(1). 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 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*. When a motion for summary judgment is made and supported as provided for in La. C.C.P. art. 967(A), an adverse party may not rest on the

mere allegations or denials of his pleadings; but his response, by affidavits or as otherwise provided in La. C.C.P. arts. 966 and 967, must set forth specific facts showing that there is a genuine issue for trial. La. C.C.P. art. 967(B).

The failure to file an opposition does not automatically require that the motion for summary judgment be granted, as the initial burden of proof is on the mover. *Auricchio*, *supra*. The district court must first determine whether the supporting documents presented by the mover are sufficient to resolve all material fact issues. *Walker v. J.M. Props. Mgmt., Inc.,* 56,484, (La. App. 2 Cir. 10/1/25), 422 So. 3d 414.

Appellate courts review summary judgments de novo under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Costello v. Hardy*, 03-1146 (La. 1/21/04), 864 So. 2d 129; *Webber v. City of Shreveport*, 56,705 (La. App. 2 Cir. 12/17/25), 425 So. 3d 485, *writ denied*, 26-00047 (La. 3/31/26), 428 So. 3d 690.

A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success or determines the outcome of the legal dispute. *Webber*, *supra*. 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. *Id*. In determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony or weigh evidence. *Id*.

A school, through its agents and teachers, owes a duty of reasonable supervision over students. La. C.C. art. 2320; *Slack on Behalf of C.S. v.*

Copeland, 54,591 (La. App. 2 Cir. 7/13/22), 343 So. 3d 346, *citing S.J. v. Lafayette Parish Sch. Bd.*, 09-2195 (La. 7/6/10), 41 So. 3d 1119. The supervision compelled is reasonable, competent supervision appropriate to the age of the children and the attendant circumstances. *Id*. Constant supervision of all students is not possible, nor is it required, for educators to discharge their duty to provide adequate supervision. *Id*. There must be proof of negligence in furnishing supervision and proof of a causal link between the insufficient supervision and the accident before liability can be levied upon a school for failure to sufficiently supervise the wellbeing of students. *Id*.

To impose such liability on the part of a school, the risk of unreasonable injury must be foreseeable, constructively or actually known, and preventable if a requisite degree of supervision had been exercised. *Slack on Behalf of C.S.*, *supra*. Generally, teachers are obliged to use only that supervision and discipline required of a reasonably prudent person under the circumstances at hand. *Id*.

Before liability can be imposed upon a school board for failure to adequately supervise the safety of students, there must be proof of negligence in providing supervision and also proof of a causal connection between the lack of supervision and the accident. *Wallmuth v. Rapides Par. Sch. Bd.*, 01-1779 (La. 4/3/02), 813 So. 2d 341.

The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice or defect which caused the damage; that the damage could have been prevented by the exercise of reasonable care; and that he failed to exercise such

reasonable care. La. C.C. art. 2317.1. The determination of whether a defect presents an unreasonable risk of harm involves factual findings which differ with each case. *LeBlanc v. Bossier Par. Sch. Bd*., 45,307, (La. App. 2 Cir. 5/26/10), 37 So. 3d 591. Thus, there is no fixed or mechanical rule for determining whether a defect presents an unreasonable risk of harm. *Id*. Instead, the trier of fact must balance the gravity and risk of harm against individual and societal rights and obligations, the thing's social value and utility and the cost and feasibility of repairing the defect to determine whether the thing presents an unreasonable risk of harm. *Id*.

After a thorough de novo review of the record, without reference to the Sand affidavit, we find that genuine issues of material fact remain and that OPSB is not entitled to summary judgment as a matter of law. Although the trial court did not articulate the material issues of fact remaining, the degree to which the young children were supervised and the foreseeability of the accident occurring on the playground, along with issues pertaining to maintenance of the playground, are all questions which preclude summary judgment in favor of OPSB. For the foregoing reasons, this assignment of error is without merit.

CONCLUSION

The request for supervisory review of the trial court's consideration of the Sand affidavit is granted, and the record was reviewed without reference to that portion of Bethley's opposition. The request for supervisory review of the trial court's denial of Ouachita Parish School Board's summary judgment is denied.

WRIT GRANTED IN PART AND DENIED IN PART.

STONE, J., dissenting in part

I agree with the majority's ruling that the Sand affidavits were inadmissible, but dissent regarding the majority's denial of OPSB's motion for summary judgment. The majority tacitly reversed the burden of proof, i.e., denied the defendant's motion for summary judgment because, essentially, the evidence did not affirmatively prove that the defendant was nonnegligent. Therefore, the majority offers only a bald conclusion in reaching its ultimate result. After reciting the law of summary judgment, the majority opinion merely offers:

> After a thorough de novo review of the record, without reference to the Sand affidavit, we find that genuine issues of material fact remain and that OPSB is not entitled to summary judgment as a matter of law. *Although the trial court did not articulate the material issues of fact remaining, the degree to which the young children were supervised and the foreseeability of the accident occurring on the playground, along with issues pertaining to maintenance of the playground, are all questions which preclude summary judgment in favor of OPSB.* For the foregoing reasons, this assignment of error is without merit. (Emphasis added.)

This conclusion is irreconcilable with La. C.C.P. art. 966(D)(1), which bears repeating here:

> *[I]f 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. *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. (Emphasis added.)

It requires a party who opposes a motion for summary judgment and would have the burden of proof a trial—such as a personal injury plaintiff opposing

a defense motion—to introduce prima facie proof of all elements challenged by the motion for summary judgment. This court's recent opinion in *Brown v. LSU Health Scis. Ctr.- Shreveport Through Bd. of Supervisors of Louisiana State Univ. Agric. & Mech. Coll.,* 56,195 (La. App. 2 Cir. 4/9/25), 409 So. 3d 471, 479, explains:

> The purpose of a motion for summary judgment is to weed out those cases where it is obvious that the evidence, even if accepted as true, is insufficient to establish an essential element of a party's case." . . . Therefore, to avoid summary judgment, a nonmoving party who would bear the burden of proof at trial on the factual issues concerned in the MSJ needs only to introduce prima facie evidence of such facts. *McGee v. Ashford Place Apartments, LLC*, 54,795 (La. App. 2 Cir. 11/16/22), 351 So. 3d 899; *Cyprien v. Bd. of Sup'rs ex rel. Univ. of Louisiana Sys.*, 08-1067 (La. 1/21/09), 5 So. 3d 862, 866. "*Prima facie* evidence is defined as evidence sufficient to establish a given fact which, if not rebutted or contradicted, will remain sufficient." *Ganey v. Cupstid*, 55,798 (La. App. 2 Cir. 8/28/24), 400 So. 3d 172, 2024 WL 3959267, *quoting Livingston Par. Sch. Bd. ex rel. Sales & Use Tax Div. v. Hwy 43 Cornerstore, LLC*, 12-0103 (La. App. 1 Cir. 5/23/12), 93 So. 3d 709. If such nonmover fails to introduce prima facie evidence, there is no genuine issue of material fact.

Like the trial court, the majority fails to identify genuine issues of material fact, yet denies summary judgment. For the plaintiffs' negligent supervision claim, it was the plaintiffs' burden to demonstrate by prima facie evidence, among other things, the: (1) "degree to which . . . the children were supervised"; and (2) "foreseeability of the accident," i.e., of Landon falling off the monkey bars and breaking his leg in light of that supervision. The plaintiffs' burden also required them to establish exactly what act or omission by the duty teachers breached the standard of care, and that such act/omission was the empirical and legal cause of Landon's broken leg. As stated by the majority opinion, "[c]onstant supervision of all students is not

possible, nor is it required, for educators to discharge their duty to provide adequate supervision."

Landon testified that the kid who pushed his legs and thereby caused him to fall off the monkey bars did it four times "really, really fast." The duty teacher, Robin Kirk, testified that the fall happened while the students on the playground were starting to line up to go to their classes. There were 80 students and 3 supervisors. The majority opinion, like plaintiffs' brief, frames this as a shortage of evidence such that reasonable minds could differ regarding whether negligence occurred, when, in reality, it shows that the plaintiffs failed to produce prima facie evidence of a specific act of negligence, which is required—to defeat summary judgment—by La. C.C.P. art. 966(D)(1).

Likewise, the plaintiffs' theory that there were not enough wood chips to reasonably pad Landon's fall is based on nothing. **There simply is no evidence of how deep the wood chips were at the time of the fall.** The plaintiffs' attempt to conjure negligent wood chip depth maintenance from remote evidence (lack of formal recordkeeping regarding woodchips) does not and cannot establish a prima facie case. The majority obfuscates this deficiency in the plaintiffs' evidence by reframing the deficiency as a failure of the defense to prove there was no negligence. This directly contravenes La. C.C.P. art. 966(D)(1). The plaintiffs have failed to introduce prima facie proof that the wood chips were inadequate when Landon fell into them, and therefore, the defense's motion should have been granted.