

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0024

LATRISHA WILLIAMS [ON BEHALF OF]
JUSTIN ADDISON AND CEDRIC ADDISON, JR.

VERSUS

WALMART LOUISIANA L.L.C., AND
CITY OF DENHAM SPRINGS

Judgment Rendered: October 29, 2010

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston, Louisiana
Trial Court Number 112,165

Honorable Robert H. Morrison, III, Judge

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

Plaintiff, Latrisha Williams, on behalf of Justin Addison and Cedric Addison, Jr., appeals summary judgments rendered in favor of defendants, Wal-Mart Louisiana, L.L.C. and the City of Denham Springs. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 16, 2006, plaintiff, as tutrix of Justin Addison and Cedric Addison, Jr., filed this petition against Wal-Mart and two of its employees, Kirk Jones and Christopher Sims (collectively referred to herein as "Wal-Mart") and the City of Denham Springs and four of its police officers (collectively referred to as "the City"), seeking to recover damages for the alleged wrongful death of the children's father, Cedric Addison, Sr. Plaintiff averred that on June 6, 2006, Mr. Addison was a patron in a Denham Springs Wal-Mart store, when he was confronted by store employee Kirk Jones and chased several blocks until unlawfully detained by four Denham Springs police officers. She alleged that as a result of this detention, Mr. Addison died. Plaintiff also sought to recover survival action damages.

Some of the facts forming the basis for this lawsuit are not disputed. On the day in question, at approximately 11:52 a.m., Officer John Albritton of the Denham Springs Police Department was dispatched to a Wal-Mart store in response to a reported shoplifting in progress. After arriving at Wal-Mart, the officer questioned a black female in the Wal-Mart parking lot and arrested her. He was then informed by Mr. Jones, Wal-Mart's loss prevention associate, that Mr. Jones suspected a black male, later identified as Mr. Addison, of criminal activity. The officer approached Mr. Addison, who was near the exit of the store and was pushing a shopping cart, and questioned him. Thereafter, Officer Albritton placed Mr. Addison under arrest. Mr. Addison knocked Officer Albritton to the ground, fled, and was chased by Officer Albritton and Mr. Jones through the parking lot, across the street, and into a grassy area. There, four officers and two Wal-Mart

employees attempted to subdue Mr. Addison, who resisted arrest and refused commands to place his hands behind his back so that he could be handcuffed. After Mr. Addison was handcuffed and the officers stood up, they observed that Mr. Addison was not responsive. At some point during the struggle, Mr. Addison had a heart attack and died at the scene as a result.

Wal-Mart filed a motion for summary judgment, asserting that plaintiff could not meet her burden of proving two crucial elements of her claim, namely, that Wal-Mart or its employee committed any tort or that Mr. Addison's death stemmed from the commission of any tort. Wal-Mart urged that its employees' assistance in apprehending Mr. Addison was requested by Denham Springs police officers after Mr. Addison was suspected of shoplifting and therefore was protected under La. C.Cr.P. art. 219, which authorizes a private person to aid police officers in making an arrest. Secondly, Wal-Mart insisted that Mr. Addison's death did not stem from any alleged tort, but was the result of his pre-existing condition and ingestion of illegal drugs.

In support of its motion for summary judgment, Wal-Mart introduced the affidavit of Mr. Jones, in which he attested that on June 6, 2006, he informed Officer Albritton of Mr. Addison's suspicious activity. Mr. Jones attested that Denham Springs police officers requested his assistance in handcuffing Mr. Addison after he fled from Officer Albritton. Wal-Mart also introduced an autopsy report prepared by the Livingston Parish Coroner the day after Mr. Addison's death, listing the cause of death as "acute cardiac arrest," and the manner of death as "natural." The report referenced Mr. Addison's physical resistance to arrest and the presence of tear gas spray on his clothing, pepper spray in his eyes, a scalp contusion, and a positive screening blood test for cocaine, opiates, benzodiazepines, and marijuana. The report also referenced the presence of a powder on Mr. Addison's clothing identified as cocaine and hydrocodone. Lastly,

Wal-Mart offered the affidavit of William J. George, Ph.D., a pharmacologist and toxicologist with over 35 years of experience, who declared that he reviewed the drug test report for Mr. Addison from the St. Louis University Toxicology Laboratory dated June 14, 2006, the autopsy report, a death certificate, police reports, and scientific literature concerning the effects of cocaine, hydrocodone, pepper spray, chemical mace, and alprazolam prior to reaching his professional opinion on the cause of Mr. Addison's death. Dr. George stated that he reviewed a number of scientific articles describing a causal relationship between cocaine use and cardiac arrest, but was unable to find any scientific article supporting a causal relationship between pepper spray and cardiac arrest. Dr. George offered his professional opinion that Mr. Addison's acute cardiac arrest was more likely than not the consequence of his cocaine use combined with his pre-existing cardiac disease and not the result of pepper spray.

In opposition to the motion for summary judgment, plaintiff asserted that there were genuine issues of material fact as to whether Wal-Mart's employee was in the course and scope of his employment for the benefit of Wal-Mart, whether the employee had probable cause to arrest Mr. Addison with the Denham Springs police officers, and whether Mr. Addison's death was causally related to cocaine use or a pre-existing condition of heart disease.

The trial court initially denied Wal-Mart's motion for summary judgment, observing that while article 219 of the Code of Criminal Procedure gives a private citizen the right to act as a peace officer when called into service by police officers, the statute did not automatically immunize the private citizen from any and all claims connected with such service, such as for use of excessive force. On the issue of causation, the court noted that while Wal-Mart's exhibits indicated that the cardiac arrest was more probably caused by a pre-existing condition and cocaine use as opposed to pepper spray, those reports did not exclude the possibility that

the exertion expended by Mr. Addison during his attempt to allegedly “lawfully resist” a “wrongful arrest” was not a substantial contributing factor in his death. Wal-Mart sought review of the denial of its motion for summary judgment from this court, which found no error in the ruling of the trial court on the showing made. **Williams v. Wal-Mart Louisiana, L.L.C.**, 2008-0874 (La. App. 1st Cir. 7/8/08)(*unpublished writ action*).

Thereafter, the City filed a motion for summary judgment, asserting that article 215 of the Louisiana Code of Criminal Procedure conferred immunity upon the police department and its officers for the actions undertaken in connection with the arrest of Mr. Addison. The City argued that the provision authorizes the detention and arrest of shoplifters under certain defined circumstances and immunizes peace officers and merchants from civil liability if the requirements of the provision are met. Alternatively, the City claimed that plaintiff could not prove that any action or inaction of the City or its officers caused the acute cardiac arrest which ultimately resulted in Mr. Addison’s death and that the absence of such proof entitled the City to summary judgment.

In support of its motion for summary judgment, the City offered various pleadings, the affidavit of Mr. Jones, the autopsy report, Dr. George’s affidavit, the affidavit of Captain Joe Shumate of the Denham Springs Police Department, excerpts of the deposition of Officer John Z. Albritton, copies of the police department’s narrative report of the incident which contained statements of the four officers involved in the attempted arrest of Mr. Albritton, and a copy of the St. Louis University Toxicology Report showing the levels of drugs found in Mr. Addison’s blood and urine samples. Wal-Mart filed a second motion for summary judgment, relying on, in addition to some of the items offered by the City, excerpts of the depositions of Officer Albritton, Corporal Kenneth Steagall, and Corporal John Gillespie.

The exhibits offered by defendants reflect that on June 6, 2006, at approximately 11:52 a.m., Officer John Albritton was dispatched to Wal-Mart regarding a shoplifting in progress. In his police statement and deposition, Officer Albritton recounted that he spoke to Wal-Mart employees, who advised him that two females in the store had been observed stealing items and were seen making several trips to their vehicles outside the store. The officer arrested one of the females, Cynthia Johnson, in the parking lot and another officer detained the second female. After Officer Albritton placed Ms. Johnson under arrest, Wal-Mart's employee telephoned Officer Albritton and informed him of another suspect, a male, later identified as Mr. Addison, who was at the exit of the store watching what was transpiring in the parking lot. Mr. Jones informed Officer Albritton that Mr. Addison had been interacting earlier in the store with the females who had been arrested for shoplifting. Officer Albritton approached Mr. Addison, who had exited the store and was pushing a shopping cart, and observed that there were several boxes of speakers in the cart, one of which appeared to be partially opened; however, the officer did not see any receipt or Wal-Mart bag in the cart. Officer Albritton asked Mr. Addison whether he was waiting for "Cynthia," and Mr. Addison replied that he was. In response to questioning about the speakers, Mr. Addison and Mr. Jones stated that they were on the counter; Mr. Jones told Officer Albritton that Mr. Addison had stolen the speakers. Officer Albritton stated that he proceeded to place Mr. Addison under arrest because of the partially opened box in the cart with no bag and no receipt, Mr. Addison's indication that he was with the female Officer Albritton had just arrested for shoplifting, and Mr. Jones' statement that Mr. Addison had stolen the speakers.

Officer Albritton stated that he ordered Mr. Addison to place his hands behind his back and proceeded to handcuff him; however, Mr. Addison pulled his arm away and shoved the officer to the ground. The officer also saw Mr. Jones

getting up off the ground and Officer Albritton and Mr. Jones chased Mr. Addison through the parking lot, across the street, and into a grassy area. Officer Albritton was able to bring Mr. Addison to the ground, but stated that Mr. Addison continued to resist the officer while getting up off the ground on his hands and knees.

Corporal Gillespie, Sergeant Tommie Delrie, and Corporal Steagall arrived at the scene to assist Officer Albritton. Officer Albritton was able to get a handcuff on Mr. Addison's left wrist, but Mr. Addison pulled Officer Albritton's left hand underneath his body. Corporal Gillespie attempted to force Mr. Addison's right arm back to get the handcuff on it but was unable to do so and recounted that Mr. Addison was fighting the officers and "tossing" them all around as he came up on his knees and hands and they tried to hold onto him. Corporal Gillespie attempted to place his knee in the center of Mr. Addison's back but was "bucked off."

Sergeant Delrie stated that he attempted to hold one of Mr. Addison's legs when Mr. Addison kicked him and jammed his finger back. When he arrived at the scene, Corporal Steagall observed one officer attempting to restrain Mr. Addison's legs, another attempting to restrain his left arm, a third attempting to restrain his right arm, and two Wal-Mart employees attempting to restrain Mr. Addison's head. Corporal Steagall pushed a Wal-Mart employee out of the way and positioned himself at Mr. Addison's head, and was struck twice on the chin while attempting to hold down Mr. Addison's head with his head. The evidence reflects that Mr. Addison was sprayed with pepper spray by officers two times during the encounter. The officers all stated that numerous commands were given to Mr. Addison to place his hands behind his back and to stop resisting arrest, to no avail. After the officers handcuffed Mr. Addison, they stood up and, according to Corporal Gillespie, the officers were "all out of breath." After he caught his

breath, Corporal Gillespie bent over to get Mr. Addison to stand up; however, Mr. Addison did not respond, and after observing that Mr. Addison was not breathing, medical assistance was sought.

In opposition to the motions for summary judgment, plaintiff submitted copies of eight letters and one facsimile transmission from plaintiff's attorney to Dr. Corrigan, who performed the autopsy, attempting to schedule a deposition. The letters bear dates from December of 2007 through December of 2008. Plaintiff also submitted the deposition testimony of Corporal Steagall. Therein, the officer recounted the events consistently with his statement in the police report. Corporal Steagall testified that upon arriving at the scene, he observed Mr. Addison trying to break free from three officers and two Wal-Mart employees who were trying to control Mr. Addison. He testified regarding Mr. Addison's attempts to resist arrest, the attempts to restrain Mr. Addison by the officers, including the use of pepper spray, and that he was bitten by Mr. Addison. Corporal Steagall estimated that he was involved in the struggle for about 30-45 seconds.

The trial court granted the City and Wal-Mart's motions for summary judgments. In so doing, the court observed that there were no genuine issues of material fact leading up to Mr. Addison's death. The court found that based upon the factual evidence submitted to the court, it appeared clear that there was reasonable suspicion authorizing Mr. Addison's detention, and that given the force of Mr. Addison's resistance of this detention, the actions of the defendants were not unreasonable.

SUMMARY JUDGMENT

Appellate courts review summary judgments *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. **Buck's Run Enterprises, Inc. v. Mapp Construction, Inc.**, 99-3054, p. 4 (La. App. 1st Cir. 2/16/01), 808 So.2d 428, 431. A motion for summary

judgment should be granted only if all of the pleadings, depositions, answers to interrogatories, admissions, and affidavits submitted to the trial court 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(B).

An issue is "genuine," and thus "triable," only when reasonable persons could disagree. If, on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for trial on that issue. **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512, p. 27 (La. 7/5/94), 639 So.2d 730, 751. Once the motion for summary judgment has been properly supported by the moving party, the failure of the opposing party to produce evidence of a material factual dispute mandates the granting of the motion. **Pugh v. St. Tammany Parish School Board**, 2007-1856, p. 2 (La. App. 1st Cir. 8/21/08), 994 So.2d 95, 97, writ denied, 2008-2316 (La. 11/21/08), 996 So.2d 1113.

To establish a wrongful death claim against either Wal-Mart or the City, plaintiff must prove that legal fault on the part of the defendants caused the death of Mr. Addison. La. C.C. art. 2315.2; **Callais v. Allstate Insurance Co.**, 334 So.2d 692, 700 (La. 1975). In this lawsuit, plaintiff claims that Wal-Mart is at fault in causing Mr. Addison's death on the basis that its loss prevention employee, Mr. Jones, did not have reasonable cause to suspect Mr. Addison of shoplifting and to report his suspicion to Officer Albritton. Plaintiff further asserts that the City is at fault because Officer Albritton did not have probable cause to arrest Mr. Addison, making the attempt to place Mr. Addison in handcuffs unlawful, and justifying Mr. Addison's resistance to the unlawful arrest. Plaintiff also claims that excessive force was used to place Mr. Addison under arrest and that excessive force caused Mr. Addison's death.

Plaintiff contends genuine factual issues exist which preclude the granting of summary judgment, including: (1) whether Mr. Jones had reasonable cause to

believe that Mr. Addison committed a theft and was justified in his decision to have Officer Albritton detain Mr. Addison; (2) whether defendants' actions during the confrontation between Mr. Addison, the police officers, and Wal-Mart's loss prevention employees were a cause of Mr. Addison's death; and (3) whether the force used by defendants was excessive and whether that force was a factor in causing Mr. Addison's death.

In support of her claim that there are factual disputes on these issues, plaintiff emphasizes that Mr. Jones did not witness Mr. Addison steal anything or engage in improper behavior but only observed Mr. Addison "interact" with the two female shoplifters. Therefore, she insists, there was no reasonable cause as required by La. C.Cr.P. art. 215 to detain Mr. Addison and the detention and subsequent arrest of Mr. Addison was unlawful. Plaintiff further claims that there is evidence that Mr. Addison's death was a direct result of the actions of the police officers and loss prevention employees who attempted to arrest him, citing the fact that Corporal Gillespie stated that during the struggle to handcuff Mr. Addison, he heard Mr. Addison say he could not breathe. She also points to the officers' statements that they experienced problems as the result of the pepper spray and the heat, particularly, Corporal Gillespie's statement that the heat and pepper spray took his breath away as he was wrestling with Mr. Addison. Lastly, plaintiff insists that there is an important factual dispute as to whether the force used by the defendants was excessive, stressing that there were six people attempting to subdue Mr. Addison, Mr. Addison was pepper sprayed two times during the confrontation, Wal-Mart's loss prevention employees were near Mr. Addison's head holding him down during the struggle, and when the confrontation was over, Mr. Addison was dead.

Wal-Mart argues that the uncontested facts demonstrate that its employee had reasonable suspicion to seek the detention of Mr. Addison, who was

associating with other suspected shoplifters and who had merchandise in his cart for which he did not have a receipt. Wal-Mart contends that its employees' actions were authorized and protected under La. C.Cr.P. art. 215, which provides for the detention and arrest of shoplifters as follows:

A. (1) A peace officer, merchant, or specially authorized employee or agent of a merchant, may use reasonable force to detain a person for questioning on the merchant's premises, for a length of time, not to exceed sixty minutes, unless it is reasonable under the circumstances that the person be detained longer, when he has reasonable cause to believe that the person has committed a theft of goods held for sale by the merchant, regardless of the actual value of the goods. The merchant or his employee or agent may also detain such a person for arrest by a peace officer. The detention shall not constitute an arrest.

(2) A peace officer may, without a warrant, arrest a person when he has reasonable grounds to believe the person has committed a theft of goods held for sale by a merchant, regardless of the actual value of the goods. A complaint made to a peace officer by a merchant or a merchant's employee or agent shall constitute reasonable cause for the officer making the arrest.

Additionally, Wal-Mart urges that its employees' use of force was reasonable under the circumstances, where the suspected shoplifter shoved a police officer to the ground, fled, violently resisted arrest, and it also submits that there are no facts demonstrating Wal-Mart employees used any unreasonable force during the incident.

Alternatively, Wal-Mart submits that plaintiff cannot prove that its employees' conduct was a cause-in-fact or the proximate cause of Mr. Addison's death. Rather, Wal-Mart insists, it was Mr. Addison's unilateral decision to flee and resist four officers' attempt to arrest him, while on drugs, that directly and proximately caused his cardiac arrest and death.

The City contends that La. C.Cr.P. art. 215 confers immunity upon it for the actions of its officers in their attempt to arrest Mr. Addison. It relies on language in Article 215(A)(2) providing that a complaint to a peace officer by a merchant or a merchant's employee or agent shall constitute reasonable cause for the officer

making the arrest and evidence demonstrating that Wal-Mart's loss prevention employee made the shoplifting complaint regarding Mr. Addison to Officer Albritton. The City points to Mr. Jones's admission in his affidavit that he informed Officer Albritton of suspicious behavior involving Mr. Addison and Officer Albritton's testimony that Mr. Jones informed him of Mr. Addison's suspicious activity. The City also focuses on Officer Albritton's testimony that while he was arresting one suspected shoplifter, he received a telephone call from Mr. Jones apprising him that another suspected shoplifter was at the exit of the store and watching the arrest transpire in the parking lot, as well as Officer Albritton's statement that Mr. Jones told him Mr. Addison stole the speakers. This evidence leaves no doubt, the City contends, that Wal-Mart relayed a complaint of suspected shoplifting by Mr. Addison to Officer Albritton, and in accordance with Article 215, Officer Albritton had the requisite reasonable cause to arrest Mr. Addison without a warrant based on the information provided to him by Mr. Jones without independently ascertaining the facts underlying the complaint. Moreover, the City argues, Mr. Jones, in making the complaint, had reasonable cause to believe that Mr. Addison committed a theft of goods, as Mr. Addison was seen associating with shoplifters and was in possession of merchandise without a store bag or receipt. These circumstances, the City contends, unquestionably provided a reasonable basis or cause on which to detain Mr. Addison, thereby negating plaintiff's cause of action for wrongful death based on the alleged unlawful arrest.

Alternatively, the City argues, despite her allegations, plaintiff has not and cannot demonstrate that any action or inaction of the City or its officers caused the acute cardiac arrest which ultimately resulted in Mr. Addison's death. On the causation issue, the City challenges plaintiff's contention that the exertion expended by Mr. Addison in attempting to resist a wrongful arrest was a contributing cause to his death on two fronts: first, the arrest was not wrongful,

and second, the choice to expend such exertion was made solely by Mr. Addison, who could have easily submitted to the officers' attempts to determine whether the accusations of shoplifting were valid, but who chose to flee and resist arrest because he was under the influence of drugs.

In order to prevail at trial and recover wrongful death and survival damages, plaintiff must demonstrate that defendants are guilty of unreasonable conduct that caused Mr. Addison's fatal heart attack. Defendants' motions for summary judgment raised two questions: (1) whether plaintiff could demonstrate that defendants acted unreasonably in connection with the detention and attempted arrest of Mr. Addison for shoplifting and; (2) whether plaintiff could demonstrate that defendants' actions caused Mr. Addison to suffer the fatal heart attack. On the first issue, Wal-Mart's motion questioned whether plaintiff could demonstrate at trial that its loss prevention employee acted unreasonably in reporting Mr. Addison's suspicious behavior in connection with the shoplifting incident. The City's motion for summary questioned whether plaintiff could demonstrate at trial that Officer Albritton did not have reasonable or probable cause to arrest Mr. Addison, thereby rendering the attempted arrest of Mr. Addison unlawful and thus unreasonable.

The uncontroverted evidence on the motion for summary judgment showed that Wal-Mart employees apprised Officer Albritton that they saw two females in the store stealing items. While Officer Albritton was arresting one of the females, Mr. Jones reported to him that Mr. Addison, who had been interacting with the women earlier at the store, was in the parking lot watching the arrests transpire. Plaintiff suggests that Mr. Jones was unreasonable in reporting this suspicion to Officer Albritton because he did not see Mr. Addison actually steal merchandise in the store. However, in connection with his investigation of the shoplifting complaint, Officer Albritton approached Mr. Addison and confirmed that Mr.

Addison in fact was a companion of woman he had arrested. The officer also observed a partially opened speaker box in Mr. Addison's shopping cart and saw no Wal-Mart bags or a receipt for the merchandise. At that point, Officer Albritton unquestionably had reasonable grounds to believe Mr. Addison had committed a theft of goods and had authority, by virtue of La. C.Cr.P. art. 215, to place Mr. Addison under arrest. Clearly, after Mr. Addison knocked the officer to the ground and fled, Officer Albritton had probable cause to arrest Mr. Addison independent of the authority vested on police officers to arrest shoplifters pursuant to La. C.Cr.P. art. 215.¹ Defendants' uncontradicted evidence demonstrated the absence of factual support for plaintiff's claim that Mr. Jones acted unreasonably in suspecting that Mr. Addison was involved in the shoplifting or that Officer Albritton's attempted arrest of Mr. Addison was unreasonable or unlawful.

Having concluded that plaintiff failed to offer evidence demonstrating that she could satisfy her evidentiary burden of proving that Wal-Mart's loss prevention employee acted unreasonably in reporting his suspicions to Officer Albritton or that Officer Albritton's arrest of Mr. Addison was unlawful, we examine her only remaining theory of liability. Plaintiff theorizes that the defendants employed excessive force during the attempt to subdue Mr. Addison to place him under arrest and that excessive force caused Mr. Addison to have the fatal heart attack. Again, in order to prevail, plaintiff must demonstrate unreasonable conduct on the part of the defendants that caused Mr. Addison to have a heart attack. Defendants offered testimony and statements of all of the involved police officers detailing Mr. Addison's violent and strenuous efforts to resist arrest. The officers described their attempts to subdue Mr. Addison, their repeated commands to Mr. Addison to cease resisting arrest, and Mr. Addison's refusal to obey the officers' commands.

¹ Probable cause to arrest exists when facts and circumstances within the arresting officer's knowledge and of which he has reasonable and trustworthy information are sufficient to justify a man of average caution in the belief that the person to be arrested has committed or is committing an offense. *State v. Bell*, 395 So.2d 805, 807 (La. 1981).

Plaintiff failed to offer any evidence to suggest that the officers used excessive force or that the conduct of the officers and Wal-Mart's employees under all of the circumstances surrounding the attempt to place handcuffs on Mr. Addison was unreasonable. Moreover, plaintiff offered no evidence supporting her conclusory allegation that Mr. Addison's exertion during the struggle caused his heart attack.

Considering all of the evidence presented on the motions for summary judgment, we find that plaintiff's failure to produce evidence of a material factual dispute in response to defendants' properly supported motions entitled defendants to summary judgment. Accordingly, we affirm the judgment granting defendants' motions for summary judgment.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to plaintiff, Latrisha Williams, on behalf of Justin Addison and Cedric Addison, Jr.

AFFIRMED.