

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinion handed down on the 29th day of May, 2009, is as follow:

PER CURIAM:

2008-CC-2540 CYNTHIA BROOKS, ET AL. v. TRANSIT MANAGEMENT OF SOUTHEAST
LOUISIANA, ET AL. (Parish of Orleans)

The judgment of the district court denying the defendants' motion for summary judgment is affirmed. The case is remanded to the district court for further proceedings.

WEIMER, J., concurs.

05/29/2009

SUPREME COURT OF LOUISIANA

No. 2008-CC-2540

CYNTHIA BROOKS, ET AL.

VERSUS

TRANSIT MANAGEMENT OF SOUTHEAST LOUISIANA, INC., ET AL.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FOURTH CIRCUIT, PARISH OF ORLEANS**

PER CURIAM

The plaintiff, Cynthia Brooks, instituted suit on behalf of her minor son, Donald Brooks, against the defendants, Zachery Dennis, the Regional Transit Authority, and Transit Management of Southeast Louisiana, Inc. The petition alleged the defendants were liable for injuries sustained to the child, while riding without permission on the exterior of a bus owned by the Regional Transit Authority and operated by Mr. Dennis.

The defendants filed a motion for summary judgment urging they are entitled to judgment as a matter of law because the plaintiff is unable to satisfy her threshold burden of proving Mr. Dennis owed a duty to the minor child. The district court denied summary judgment, citing the existence of a genuine issue of material fact as to whether the child was located on the side of the bus, and whether or not the driver should have seen the child. When the court of appeal denied writs in the absence of assigned reasons, this Court granted the defendants' writ application and remanded the case for briefing, oral argument, and an opinion. *Brooks v. Transit Management of Southeast La., Inc., et al.*, 08-0256 (La. 3/28/08), 978 So. 2d 295.

Following its consideration on remand, the court of appeal again denied the defendants' application for supervisory writs finding summary judgment inappropriate

for the reasons articulated by the district court. *Brooks v. Transit Management of Southeast La., Inc., et al.*, 07-1367 (La. App. 4 Cir. 9/24/08), 996 So. 2d 9. We granted defendants' application for certiorari to consider the correctness of the merits of that ruling. *Brooks v. Transit Management of Southeast La., Inc., et al.*, 08-2540 (La. 1/16/09), 998 So. 2d 88.

Upon *de novo* review, we find the lower courts did not err in finding a genuine issue of material fact precludes summary judgment at this time. We now render judgment consisting of the following decree.

DECREE

The judgment of the district court denying the defendants' motion for summary judgment is affirmed. The case is remanded to the district court for further proceedings.