

03/16/2020 “See News Release 010 for any Concurrences and/or Dissents.”

SUPREME COURT OF LOUISIANA

No. 2019-OC-1928

NATALIAN DAVIS

V.

**A BAR AND GRILL WITH A BITE, INC.
D/B/A THE CRAZY LOBSTER BAR & GRILL**

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

PER CURIAM

Plaintiff, Natalian Davis, filed the instant suit against defendant. Plaintiff alleged she consumed raw oysters at defendant’s restaurant and began feeling ill shortly thereafter. Plaintiff alleged a test conducted several months later detected the presence of E. coli bacteria in her urine, and she was ultimately diagnosed with cystitis.

During discovery, defendant took the deposition of plaintiff’s treating physician, Dr. Denise Harkins. Dr. Harkins testified she could not relate plaintiff’s symptoms to the incident at defendant’s restaurant. Dr. Harkins further testified she did not believe the E. coli she found in plaintiff’s test was from ingestion of oysters; instead, she opined the E. coli more probably than not originated from plaintiff’s own body.

Thereafter, defendant filed a motion for summary judgment relying in part on the deposition testimony from Dr. Harkins. Plaintiff opposed the motion, citing her own deposition in which she testified Dr. Harkins advised her the E. coli found in her urine could have come from eating contaminated food.

After a hearing, the district court denied defendant’s motion for summary judgment. Defendant applied for supervisory review. The court of appeal denied defendant’s writ application, with one judge dissenting.

Defendant then applied to this court. Pursuant to the provisions of La. Code Civ. P. art. 966(H), we issued a briefing order to the parties. Defendant filed a brief pursuant to that order, but plaintiff did not.¹

DISCUSSION

A ruling on a motion for summary judgment is reviewed on a de novo basis, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate -- i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Wright v. Louisiana Power & Light*, 06-1181 (La. 3/9/07), 951 So.2d 1058, 1070. A court must grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law." La. Code Civ. P. art. 966(B).

On a motion for summary judgment, the burden of proof remains with the movant. However, if the moving party will not bear the burden of proof on the issue at trial and points out there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense, then the non-moving party must produce factual support sufficient to establish he will be able to satisfy his evidentiary burden of proof at trial. If the opponent of the motion fails to do so, there is no genuine issue of material fact and summary judgment will be granted. La. Code Civ. P. art. 966(D)(2); *Murphy v. Savannah*, 18-0991 (La. 5/8/19), 282 So. 3d 1034, 1038.

¹ Defendant also filed a motion for oral argument. Considering the relatively simple facts of this case, combined with plaintiff's failure to file a brief, we determined oral argument would not be necessary and therefore denied the motion.

In the instant case, defendant produced evidence, through the deposition of plaintiff's treating physician, Dr. Harkins, indicating the injuries of which plaintiff complained were not related to her ingestion of oysters at defendant's restaurant. At that point, the burden shifted to plaintiff to produce factual support sufficient to establish she will be able to satisfy her evidentiary burden of proof at trial. Plaintiff produced no medical testimony or evidence in opposition to defendant's motion for summary judgment, but instead relied on her own testimony in which she claimed her physicians advised her that her injuries resulted from ingestion of oysters. However, this assertion is directly contradicted by the sworn testimony of Dr. Harkins.

Under these circumstances, we find the district court erred in denying defendant's motion for summary judgment. In the absence of any showing of genuine issues of material fact, we must render summary judgment in favor of defendant.

DECREE

For the reasons assigned, the writ is granted. The judgment of the district court is reversed. Summary judgment is granted in favor of defendant, A Bar and Grill with a Bite, Inc. d/b/a the Crazy Lobster Bar & Grill, dismissing the suit against it with prejudice.