**STATE OF LOUISIANA**
**COURT OF APPEAL, THIRD CIRCUIT**

**25-320**

**CHRISTOPHER MURRELL AND JENNIFER MURREL, INDIVIDUALLY AND ON BEHLAF OF THEIR MINOR CHILD, NATHANIEL MURRELL**

**VERSUS**

**STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF WILDLIFE AND FISHERIES**

**********

APPEAL FROM THE
THIRTY-EIGHTH JUDICIAL DISTRICT COURT
PARISH OF CAMERON, NO. 10-20778
HONORABLE H. WARD FONTENOT, DISTRICT JUDGE

**********

**CHARLES G. FITZGERALD**
**JUDGE**

**********

Court composed of Elizabeth A. Pickett, Van H. Kyzar, and Charles G. Fitzgerald, Judges.

**AFFIRMED.**

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**FITZGERALD, Judge.**

The State of Louisiana, through the Department of Wildlife and Fisheries ("LDWF"), appeals the money judgment rendered against it following a jury trial, arguing among other things civil immunity under La.R.S. 29:735.

## SUMMARY OF FACTS AND PROCEDURAL HISTORY

On August 24, 2021, LDWF employee Shannon Saltzman responded to a call from a contractor who was working in the department's Rockefeller Refuge in Cameron Parish. Oversimplifying slightly, a spud—which is a large steel shaft used in marine anchoring systems—was stuck in the mud. To remedy the situation, Saltzman used LDWF's tugboat *M/V Teal* and barge *Whooping Crane*.

Once the spud was dislodged, Saltzman piloted the vessel back to its previous location within the refuge. But while doing so, the dredge bucket located on the deck of the *Whooping Crane* struck an overhanging tree branch. The impact caused the dredge bucket (and attached chains) to move partially off the side of the barge. In response, Saltzman did nothing: he did not attempt to use the barge's crane to pull the bucket back onto the vessel. Nor did he report the incident to a supervisor.

The next day, on August 25, 2021, LDWF manager Philip Trosclair was notified by the department that Hurricane Ida could potentially make landfall near Cameron Parish within the next several days. So later that day, Trosclair had Saltzman move the *Whooping Crane* inland to a waterway owned by the Miami Corporation, as they had done previously for Hurricane Laura. But this time, the dredge bucket remained partially off the side of the barge when it was moored at the inland location.

Then, on August 26, 2021, Governor John Bel Edwards declared a state-wide state of emergency due to the continued strengthening and expected impact of

Hurricane Ida.[1] LDWF completed all storm preparation at the Rockefeller Refuge on August 27, 2021. Two days after that, on August 29, 2021, Hurricane Ida made landfall in southeast Louisiana—nearly two hundred miles away from the refuge.

By August 31, 2021, it was business as usual at the Rockefeller Refuge: all equipment that had been moved before the hurricane was returned except for the *Whooping Crane*. Trosclair decided to keep the *Whooping Crane* secured at the inland location because of another possible storm system in the Gulf. But that system never materialized.

Nevertheless, five days later, on September 5, 2021, Nathaniel Murrell was operating a small boat near the Rockefeller Refuge. While returning to the boat launch, Nathaniel encountered the unattended *Whooping Crane* with its dredge bucket and chains partially on and partially off the barge. As he maneuvered between the bulkhead and the barge, he ran into the hanging chains, causing the dredge bucket to come crashing down onto his boat. Nathaniel was pulled underwater as his boat began sinking. He sustained personal injuries, including a compound leg fracture. The *Whooping Crane* was returned to the Rockefeller Refuge the following day.

In February 2022, Jennifer and Christopher Murrell filed a petition for damages against LDWF. They filed the lawsuit individually and on behalf of their then-minor son, Nathaniel. Yet, because Nathaniel turned eighteen years old before trial, he was substituted as the plaintiff for all actions and claims other than the claim for past medical expenses.

[1] The state of emergency remained in effect until September 21, 2021.

A jury trial was held in November 2024. The jury returned a verdict in favor of the Murrells. LDWF then filed a motion to conform the judgment, arguing that the findings by the jury entitled it to immunity under La.R.S. 29:735. The trial court denied LDWF's immunity argument and signed a final judgment in accordance with the jury's findings on January 31, 2025. LDWF now appeals this judgment.

On appeal, LDWF asserts four assignments of error:

**I.** The Trial Court committed legal error by presenting the jury with improper jury instructions and charges, essentially discarding or ignoring those jury instructions/charges suggested by LDWF counsel.

**II.** The Trial Court then committed additional legal error by providing the jury with an improper and/or defective jury verdict form that was based on the Trial Court's improper jury instructions and charges.

**III.** The Trial Court's jury verdict form excluded a section for the jury to assign fault to Anthony Swire and/or any unnamed parties pursuant to **La. Civil Code art. 2323.**

**IV.** The Trial Court failed to apply **La. R.S. 29:735** (Immunity for emergency preparedness and recovery activities) to LDWF given the undisputed facts of the case.

## LAW AND ANALYSIS

*LDWF's First Assignment of Error*

In its first assignment of error, LDWF contends that the jury instructions were deficient in three respects. First, LDWF argues that the trial court failed to instruct the jury about La.R.S. 9:2800. Second, it argues that instructions did not "include any language regarding Louisiana Revised Statute 29:375 that has to do with storm prep and immunity." And third, it argues that the instructions improperly included "language regarding vessel collisions and negligence insofar as vessel collisions."

Jury instructions are addressed in La.Code Civ.P. art. 1792(B): "After the trial of the case and the presentation of all the evidence and arguments, the court shall

instruct the jurors on the law applicable to the cause submitted to them." The appropriate standard of appellate review for jury instructions was addressed in *Johnson v. First National Bank of Shreveport*, 00-870 (La.App. 3 Cir. 6/20/01), 792 So.2d 33, *writs denied*, 01-2770, 01-2783 (La. 1/4/02), 805 So.2d 212, 805 So.2d 213. There, this court explained:

> The trial judge is under no obligation to give any specific jury instructions that may be submitted by either party; however, he must correctly charge the jury. *Lewis v. Wal-Mart Stores, Inc.*, 546 So.2d 267 (La.App. 3 Cir. 1989). Adequate jury instructions are those which fairly and reasonably point to the issues and to the principles of law for the jury to apply to those issues. *Lee v. Automotive Cas. Ins. Co.*, 96-517 (La.App. 3 Cir. 11/6/96); 682 So.2d 995, *writ denied*, 96-2949 (La.1/31/97); 687 So.2d 409. Our court must exercise great restraint before overturning a jury verdict on the suggestion that the instructions were so erroneous as to be prejudicial. *Id.*, *Doyle v. Picadilly Cafeterias*, 576 So.2d 1143 (La.App. 3 Cir. 1991). Under the manifest error standard of review, we will not reverse unless the jury instructions are so incorrect or inadequate as to preclude the jury from reaching a verdict based on the law and the facts. *Lewis*, 546 So.2d 267.

*Id*. at 52.

Now back to LDWF's arguments. LDWF's first argument implicates La.R.S. 9:2800(C), which states in relevant part:

> [N]o person shall have a cause of action based solely upon liability imposed under Civil Code Article 2317 against a public entity for damages caused by the condition of things within its care and custody unless the public entity had actual or constructive notice of the particular vice or defect which caused the damage prior to the occurrence, and the public entity has had a reasonable opportunity to remedy the defect and has failed to do so.

But when a defect or unreasonably dangerous condition is created by the public entity itself, as in the case before us, the entity is presumed to have knowledge of the defect and La.R.S. 9:2800 is rendered inapplicable. *Toledano v. Sewerage and Water Bd. of City of New Orleans*, 95-1130 (La.App. 4 Cir. 3/14/96), 671 So.2d 973.

Here, LDWF employee Saltzman created the dangerous condition (the position of the dredge bucket) when he struck a tree with the *Whooping Crane*. LDWF admits as much in its appeal brief: on "Tuesday, August 24, 2021-Shannon Saltzman moved the WHOOPING CRANE on Rockefeller property and brushed up against a fallen or overhanging tree, causing a dredge bucket to be moved partially off the deck of the WHOOPING CRANE."

Saltzman admitted that he knew the dredge bucket had become dislodged on August 24, 2021; he admitted that he did not report the incident to his supervisor; and he admitted that he did nothing to correct the position of the dredge bucket. He also admitted that the dredge bucket remained in that position when he moored the barge at the inland location the following day. And according to Trosclair, the position of the bucket presented a dangerous and unsafe condition to boaters in the marsh.

Unquestionably, LDWF created the dangerous condition and is presumed to have had knowledge of it. Thus, La.R.S. 9:2800 is inapplicable, and the trial court properly excluded LDWF's proposed instructions about that statute.

In its second argument, LDWF complains that the jury instructions were deficient because they "fail[ed] to include any language regarding Louisiana Revised Statute 29:735 that has to do with storm prep and immunity." In pertinent part, La.R.S. 29:735 (emphasis added) states:

> A. (1) Neither the state nor any political subdivision thereof, nor other state agencies, nor, except in case of willful misconduct, the employees or representatives of any of them *engaged in* any homeland security and *emergency preparedness and recovery activities*, while complying with or attempting to comply with this Chapter or any rule or regulation promulgated pursuant to the provisions of this Chapter shall be liable for the death of or any injury to persons or damage to property as a result of such activity.

Unlike before, LDWF's defense under La.R.S. 29:735 was ultimately submitted the jury. Thus, in our view, the trial court erroneously excluded instructions on this statute. But our analysis does not end here. In other words, "[u]nder the manifest error standard of review, we will not reverse unless the jury instructions are so incorrect or inadequate as to preclude the jury from reaching a verdict based on the law and the facts." *Johnson*, 792 So.2d at 52. Stated differently, were the instructions so erroneous as to be prejudicial? To answer this question, we turn to the record evidence.

The evidence here shows that Saltzman was not engaged in any emergency preparedness when he steered the *Whooping Crane* into the overhanging tree branch, causing the dredge bucket to be moved partially off the barge. LDWF admits this in its brief: "Mr. Saltzman admitted that he knew the dredge bucket had become dislodged on August 24, 2021 *before official storm preparations began*." (Emphasis added).

As stated earlier, LDWF's emergency preparations in Cameron Parish began on August 25, 2021. This is when Trosclair was notified of Hurricane Ida's projected path. And this is when Saltzman moved the *Whooping Crane* to the waterway owned by the Miami Corporation.

The next day, August 26, 2021, Governor John Bel Edwards declared a state of emergency, which remained in effect state-wide until September 21, 2021. LDWF completed its storm preparations at the Rockefeller Refuge on August 27, 2021. Two days after that, on August 29, 2021, Hurricane Ida made landfall nearly two hundred miles away from the refuge. Fortunately, Cameron Parish was unaffected by Ida.

By August 31, 2021, it was business as usual at the Rockefeller Refuge. And after that date, there is no evidence of any emergency preparedness and recovery

activities by LDWF. Nonetheless, five days later, on September 5, 2021, Nathaniel was injured when the dredge bucket that was hanging off the side of the *Whooping Crane* came crashing down onto his boat.

After weighing the evidence, the jury found that the unreasonably dangerous condition (the position of the dredge bucket) was not caused by LDWF's engagement in emergency preparedness and recovery activities. The jury also found that LDWF was not engaged in emergency preparedness and recovery activities when the accident occurred. These findings are entirely consistent with the record evidence and with the terms of La.R.S. 29:735.

In the end, LDWF has not shown prejudice: there is no showing that the absence of a specific charge on La.R.S. 29:735 caused jury confusion or prevented the jury from rendering a just verdict. Thus, there is no reversible error.

In its third and final argument, LDWF claims that the trial court improperly instructed the jury about vessel negligence laws. The charge at issue runs this way:

> When a moving vessel or a barge it is pushing collide[s] with a fixed object, there is a presumption that the moving vessel is at fault. This presumption derives from the commonsense observation that moving vessels do not usually collide with stationary objects unless the vessel is mishandled in some way. This presumption operates to shift the burden of proof-both the burden of producing evidence and the burden of persuasion-onto the moving ship. The burden is heavily upon the vessel asserting the defense. The vessel may rebut the presumption by showing, by a preponderance of the evidence, that the collision was (1) the fault of the stationary object, (2) that the moving vessel acted with reasonable care, and (3) that the collision was an unavoidable accident.

In a nutshell, LDWF argues that vessel negligence laws are inapplicable in this case. LDWF suggests that vessels are only responsible for the damage they cause while they are moving. Thus, because the Whooping Crane was moored at the time of Nathaniel's accident, LDWF contends that the trial court erred in

providing the above instruction. But LDWF offers no support for this position, and we reject it.

After all, LDWF posits in its brief, "Had Shannon Saltzman operated the M/V Teal in a manner that resulted in damage or injury to another's property or body, [the vessel negligence] rules would apply." Yet that is precisely what happened here: Saltzman struck a tree with a vessel. That collision created the unreasonably dangerous condition (the position of the dredge bucket). And that unreasonably dangerous condition caused Nathaniel's injuries. Therefore, the trial court did not manifestly err in providing the jury with the vessel negligence instruction.

LDWF's first assignment or error is without merit.

*LDWF's Second Assignment of Error*

LDWF's second assignment asserts that the trial court "committed additional legal error by providing the jury with an improper and/or defective jury verdict form[.]" As with our review of the jury instructions, we review the jury interrogatories for manifest error. *Cruz v. Hanover Ins. Co.*, 23-0173 (La.App. 4 Cir. 1/10/24), 381 So.3d 148.

At the outset, the jury verdict form addresses negligence and causation (questions 1 through 3) before turning to immunity under La.R.S. 29:735 (questions 4 and 5). Below are questions 1 through 3 and the jury's corresponding answers:

QUESTION 1

> Did the position of the crane bucket on the vessel deck at the time of the accident create an unreasonably dangerous condition?
>
> ✓ _____ _____
> YES NO
>
> (If at least nine of you answered Question 1 "YES" go to the next question. . . .)

QUESTION 2

Was the unreasonably dangerous condition caused by the fault or negligence of Shannon Saltzman?

| ✓ | |
|---|---|
| YES | NO |

(If at least nine of you answered Question 2 "YES" go to the next question. . . .)

QUESTION 3

Was the unreasonably dangerous condition a cause of the accident which injured Nathaniel Murrell?

| ✓ | |
|---|---|
| YES | NO |

(If at least nine of you answered Question 3 "YES" go to the next question. . . .)

At this point, the focus of the interrogatories shifts to LDWF's immunity defense. For example:

QUESTION 4

Was the unreasonably dangerous condition caused by Defendant Louisiana Department of Wildlife and Fisheries' engagement in emergency preparedness and recovery activities?

| | ✓ |
|---|---|
| YES | NO |

(Proceed to the next question regardless of how you answer Question 4.)

QUESTION 5

Was the defendant, Louisiana Department of Wildlife and Fisheries, engaged in emergency preparedness and recovery activities when this accident occurred?

| | |
|---|---|
| _____ | ✓ _____ |
| YES | NO |

As to question 4, LDWF argues that the wording of that interrogatory requires the jury to find "active engagement" in emergency preparedness and recovery activities for immunity to apply under La.R.S. 29:735, essentially heightening the standard. We disagree. By its plain language, question 4 homes in on whether the unreasonably dangerous condition resulted from LDWF's engagement in emergency preparedness and recovery activities. And this comports with La.R.S. 29:735(A)(1).

LDWF also argues that questions 4 and 5, when read together, suggest a "temporal requirement" for immunity to apply, even though the statute requires only that the damages are the "result of" emergency preparedness activities. Again, we disagree.

In our view, questions 4 and 5 encompass the essential elements for immunity under La.R.S. 29:735(A)(1). For instance, the jury's answer to question 4 was that the unreasonably dangerous condition did not arise from LDWF's emergency preparedness activities. Based on this finding of fact, one more question was needed to determine immunity: Did the injury occur when LDWF was engaged in emergency preparedness and recovery activities? And this is the very essence of question 5.

To summarize, the interrogatories at issue here were neither misleading nor confusing; they adequately set forth the issues to be decided by the jury. There is no manifest error, and LDWF's second assignment of error is also without merit.

*LDWF's Third Assignment of Error*

In its third assignment, LDWF complains that the "jury verdict form excluded a section for the jury to assign fault to Anthony Swire and/or any unnamed parties pursuant to La. Civil Code art. 2323."[2]

Nathaniel was injured during a marsh excursion organized by his uncle, Sergeant Anthony Swire. LDWF contends that Sergeant Swire allowed Nathaniel to operate a boat belonging to a third party knowing he lacked a boater's safety certificate and without proper instruction. LDWF argues that Sergeant Swire's actions may have contributed to the accident, and his degree of fault, if any, is a question for the jury.

Although Sergeant Swire was not a party to this suit, LDWF pled his contributory fault as an affirmative defense, and he testified at trial. However, at the close of LDWF's defense-in-chief, the Murrells moved for a directed verdict on this issue. The trial court, in turn, granted the motion and thus precluded the jury from quantifying the fault of nonparties, including Sergeant Swire.

Directed verdicts are governed by La.Code Civ.P. art. 1810. The application of that article was addressed in *Cane v. O'Brien*, 23-718 (La.App. 1 Cir. 2/23/24), 384 So.3d 1003, *writ denied*, 24-478 (La. 6/25/24), 386 So.3d 1082. In that case, the first circuit explained:

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[2] Louisiana Civil Code Article 2323 states in relevant part:

> A. In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.

> Generally, a motion for directed verdict is appropriately granted in a jury trial when, after considering all evidentiary inferences in the light most favorable to the movant's opponent, it is clear that the facts and inferences are so overwhelmingly in favor of the moving party that reasonable men could not arrive at a contrary verdict. However, if there is substantial evidence opposed to the motion, *i.e.*, evidence of such quality and weight that reasonable and fair-minded jurors in the exercise of impartial judgment might reach different conclusions, the motion should be denied, and the case submitted to the jury.

*Id*. at 1009 (citations omitted).

"On appeal, the standard of review for a directed verdict is de novo." *Pannell v. City of Scott*, 22-538, p. 8 (La.App. 3 Cir. 2/1/23), 355 So.3d 1279, 1286, *writ denied*, 23-315 (La. 4/25/23), 359 So.3d 988.

Now to the record evidence. Sergeant Swire testified that he had been conducting boating excursions on the Miami Corporation property, with permission, for many years. On the date of the accident, he was not aware that Nathaniel lacked a boater safety certificate, but he had watched Nathaniel competently and safely operate boats numerous times, including the boat Nathaniel used on the day of the accident. That boat had been borrowed from a third party, and Sergeant Swire testified that he reviewed the operational functions with Nathaniel and felt confident in Nathaniel's abilities and in the safety of the activity. And although Sergeant Swire did not review the reverse function on this boat with Nathaniel, he instructed Nathaniel on how to reverse a boat using a push pole, which he felt was a simpler and easier method.

In the end, there is no evidence that Sergeant Swire caused or contributed to Nathaniel's injuries. Nor is there evidence of fault by any other unnamed party. The trial court correctly granted the directed verdict. This assignment of error is without merit.

*LDWF's Fourth Assignment of Error*

In its fourth and final assignment, LDWF asserts that the trial court failed to correctly apply La. R.S. 29:735 to the undisputed facts of the case. This is a question of law, and the appropriate standard of review is de novo. *Evans v. Lungrin*, 97-541 (La. 2/6/98), 708 So.2d 731.

Following the jury verdict, LDWF filed a motion to conform the judgment, arguing that the jury's findings of fact satisfied the essential elements for immunity under La.R.S. 29:735. The trial court rejected this argument and so do we.

As discussed earlier, La.R.S. 29:735(A)(1) affords LDWF and its employees civil immunity for the injuries to any person resulting from emergency preparedness and recovery activities. "Emergency preparedness" is defined as "the mitigation of, preparation for, response to, and the recovery from emergencies or disasters." La.R.S. 29:723(7). "'Disaster' means the result of a natural or man-made event which causes loss of life, injury, and property damage, including but not limited to natural disasters such as hurricane[.]" La.R.S. 29:723(4). And "emergency" is "[t]he actual or threatened condition which has been or may be created by a disaster." La.R.S. 29:723(6)(a).

Importantly, when a law confers civil immunity, such as La.R.S. 29:735, it must be strictly construed. *Monteville v. Terrebonne Parish Consol. Gov't*, 567 So.2d 1097 (La.1990). And "[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." La.Civ.Code art. 9.

Now back to the jury's findings of fact. The jury specifically found that the position of the dredge bucket hanging partially over the side of the *Whooping Crane*

created an unreasonably dangerous condition. This is consistent with Trosclair's testimony: he admitted that the position of the dredge bucket at the time of the accident presented a dangerous and unsafe condition to boaters in the marsh.

The jury then found that the unreasonably dangerous condition was caused by Saltzman's fault. This is consistent with the evidence: Saltzman admitted this. But Saltzman's negligence was compounded by his failure to report the dangerous condition to any of his superiors so that it could have been corrected before the barge was moved to the accident site.

Next, the jury found that the unreasonably dangerous condition caused the accident. The evidence adduced at trial compels this finding; there is no evidence to the contrary.[3]

The jury then found that the unreasonably dangerous condition was not caused by LDWF's engagement in emergency preparedness and recovery activities. As stated earlier, LDWF admits this in its brief: "Mr. Saltzman admitted that he knew the dredge bucket had become dislodged on August 24, 2021 before official storm preparations began." The evidence shows that the LDWF's emergency preparedness activities did not begin until the following day, August 25, 2021.

And finally, the jury found that LDWF was not engaged in emergency preparedness and recovery activities when the accident occurred. The evidence shows that on the day of the accident, September 5, 2021, no one at LDWF in Cameron Parish was preparing for, responding to, or recovering from Hurricane Ida.

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[3] Clearly, LDWF wants the cause of Nathaniel's injuries to be the storing of the barge on Miami Corporation's property in anticipation of Hurricane Ida. But the jury found that the cause of Nathaniel's injuries was the position of dredge bucket hanging off the side of the barge, not the location of the barge. And LDWF did not appeal that finding.

To sum up, neither the creation of the unreasonably dangerous condition that caused Nathaniel's injuries nor the accident itself took place while LDWF was engaged in emergency preparedness and recovery activities. In denying immunity, the trial court correctly applied La.R.S. 29:735. Hence, this assignment is also without merit.[4]

**DISPOSITION**

For the above reasons, the trial court's judgment of January 31, 2025, is affirmed. The costs of this appeal, which total $14,057.49, are assessed to the State of Louisiana, through the Department of Wildlife and Fisheries.

**AFFIRMED.**

[4] LDWF points to a handful of cases to support its fourth assignment of error: *Lyons v. Terrebonne Parish Consol. Gov't*, 10-2258 (La.App. 1 Cir. 6/10/11), 68 So.3d 1180; *Koonce v. St. Paul Fire & Marine Ins. Co.*, 15-31 (La.App. 3 Cir. 8/5/15), 172 So.3d 1101, *writ denied*, 15-50 (La. 11/30/15), 184 So.3d 36; and *Privat v. Louisiana Dep't of Transp. and Dev.,* 19-215 (La. App. 3 Cir. 11/20/19) (unpublished opinion). But those cases are factually distinguishable. For example, in *Lyons*, the plaintiff slipped and fell in a parking lot being used by various government agencies for recovery and disaster assistance activities immediately following Hurricane Gustav. In *Koonce*, sheriff's deputies were engaged in the hurricane evacuation of inmates at the parish jail utilizing school buses, when the deputy driving the bus in which the plaintiff-inmate was riding was involved in an accident. And in *Privat*, a DOTD employee was spreading aggregate over the highways in advance of an ice storm when he lost control of his truck and crashed into other vehicles. Based on those facts, the grant of immunity was proper. But those facts do not exist in the case before us.