

DEBRA BABIN, ET AL.

NO. 25-C-63

VERSUS

FIFTH CIRCUIT

TURN SERVICES, L.L.C.

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Morgan Naquin
Deputy, Clerk of Court

May 19, 2025

Morgan Naquin
Deputy Clerk

IN RE TURN SERVICES, LLC

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT,
PARISH OF ST JAMES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE KEYOJUAN G.
TURNER, DIVISION "E", NUMBER 39551

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and John J. Molaison, Jr.

WRIT DENIED

Relator, Turn Services, LLC (“Turn Services”), seeks review of the trial court’s January 16, 2025 denial of its motion for partial summary judgment. For the following reasons, we deny the writ application.

In its motion, Turn Services sought summary judgment on the issue of whether La. R.S. 34:851.27 is applicable to the claims alleged by Plaintiffs, Debra Babin, Patricia Gaudet, Candi Babin, Chasity Babin, and Courtney Babin. Turn Services argued that the alleged incident involving the M/V SECRETARIAT and Plaintiffs’ skiff occurred on the federally controlled Gulf Intercoastal Waterway (“ICW”) near Larose, Louisiana, and the plain text of La. R.S. 34:851.27 expressly excludes the ICW from that regulation. It contended that Plaintiffs should be precluded from discussing La. R.S. 34:851.27 during trial because it is inapplicable and maritime law preempts the state regulation. Alternatively, Turn Services argued that Plaintiffs failed to produce any evidence that a valid “no-wake” zone existed in

the area of the alleged incident, rendering La. R.S. 34:851.27 inapplicable. In opposition, Plaintiffs argued La. R.S. 34:851.27 applies to their claims because the alleged incident occurred on a waterway within 300 ft. of a boat launch accessible by the public. They maintained that, while federal law¹ applies to the ICW, the federal law does not expressly state that it supersedes or preempts state law.

Appellate courts review a judgment granting or denying a motion for summary judgment *de novo*. *Populis v. State Dep't of Transp. & Dev.*, 16-655 (La. App. 5 Cir. 5/31/17), 222 So.3d 975, 980, *writ denied*, 17-1106 (La. 10/16/17), 228 So.3d 753. Thus, appellate courts ask the same questions the trial court does in determining whether summary judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. *Id.* Interpretation of a statute is a question of law that may appropriately be considered in the context of a motion for summary judgment and reviewed *de novo*. *Fernandez v. City of Kenner*, 21-550 (La. App. 5 Cir. 12/8/21), 335 So.3d 951, 954. When summary judgment is considered in the context of a statutory interpretation, there are no material issues of fact in dispute, and the sole issue before the reviewing court is a question of law as to the correct interpretation of the statute at issue. *Id.* The decision as to the propriety of a grant of a motion for summary judgment must be made with reference to the substantive law applicable to the case. *Henry v. Reeves*, 19-550 (La. App. 5 Cir. 4/28/20), 296 So.3d 1076, 1082, *writ denied*, 20-246 (La. 9/24/20), 301 So.3d 1176.

Here, Plaintiffs alleged in their petition that they were loading their 19 ft. Carolinas skiff at a public boat launch in Larose, Louisiana. They further alleged that the vessel owned and operated by Turn Services navigated the area at an excessive rate of speed, creating wakes in the area and causing their skiff to rock

¹ 33, C.F.R. § 162.75

backwards into the dock. In their brief to the trial court, Plaintiffs conceded that 33 C.F.R. § 162.75 applies to the ICW; thus, we are called to determine whether La. R.S. 34:851.27 is also applicable to Plaintiffs' alleged claims.

33 C.F.R. § 162.75, entitled "All waterways tributary to the Gulf of America (except the Mississippi River, its tributaries, South and Southwest Passes and Atchafalaya River) from St. Marks, Fla., to the Rio Grande," states, in pertinent part:

(a) The regulations in this section shall apply to:

- (1) Waterways. All navigable waters of the U.S. tributary to or connected by other waterways with the Gulf of America between St. Marks, Fla., and the Rio Grande, Tex. (both inclusive), and the Gulf Intracoastal Waterway; except the Mississippi River, its tributaries, South and Southwest Passes, and the Atchafalaya River above its junction with the Morgan City-Port Allen Route.
- (2) Bridges, wharves, and other structures. All bridges, wharves, and other structures in or over these waterways.
- (3) Vessels. The term "vessels" as used in this section includes all floating craft other than rafts.

(b) Waterways:

- (4) Speed: Speeding in narrow sections is prohibited. Official signs indicating limited speeds shall be obeyed. Vessels shall reduce speed sufficiently to prevent damage when passing other vessels or structures in or along the waterway.

- (7) Meeting and passing: Passing vessels shall give the proper signals and pass in accordance with the Inland Navigation Rules (33 CFR Subchapter E), where applicable. At certain intersections where strong currents may be encountered, sailing directions may be issued through navigation bulletins or signs posted on each side of the intersections.

La. R.S. 34:851.27, entitled "Local regulations prohibited; exceptions; speed limits," provides, in pertinent part:

- A. Through the passage of this Part, the state reserves to itself, through the commission, the right to regulate the operation and to establish the minimum equipment requirements of vessels and motorboats. Except as provided in subsection B of this Section, R.S. 38:2758, R.S. 34:3269(13), and R.S. 33:1236.12, all political subdivisions of this state are expressly prohibited from regulating watercraft in any respect, including but not limited to their operation, minimum equipment requirements, registration (with or without a fee), or inspection.
- B. (1) The governing authority of any parish or municipality may establish and post speed limits on waterways within its jurisdiction

with the exception of the Mississippi River, the Mississippi River Gulf Outlet, and the Gulf Intracoastal Waterway. Such speed limits, if established, shall be posted along the affected waterway.

- C. In addition to speed limits established by any governing authority of any parish or municipality under the provisions of this Section, there are hereby established certain “no-wake” zones where each vessel shall operate at bare steerage speed, the slowest speed the vessel can travel while allowing the operator to maintain directional control of the vessel to produce the minimum water surface turbulence. The “no-wake” zones are established on all waterways within three hundred feet of any of the following facilities:
- (1) A boat launch accessible by the public.
 - (2) A docking facility adjacent to a boat launch accessible by the public.
- D. The commission shall adopt rules and regulations establishing a uniform system of “no-wake” zone signs. Local municipal and parish authorities in their respective jurisdictions shall place and maintain such “no-wake” zone signs as they may deem necessary to carry out the rules and regulations of the commission. All such “no-wake” zone signs hereafter erected by local municipal and parish authorities shall conform to such rules and regulations adopted by the commission.

A plain reading of 33 C.F.R. § 162.75 shows that vessels are required to sufficiently reduce speeds to prevent damage when passing other vessels in the ICW. Additionally, that particular federal regulation does not set forth the speed limitations for vessels navigating the ICW, but it requires the vessels navigating the ICW to obey the officially posted signage limiting speeds. A reading of La. R.S. 34:851.27, which allows the establishment and posting of speed limits by local governing authorities, prohibits those authorities from establishing speed limits for the ICW. Although the local governing authorities are prohibited from establishing a speed limit in the ICW, Subsection C establishes a state-imposed “no-wake” zone with a bare steerage speed limit for all waterways within 300 ft. of a boat launch accessible by the public. Neither 33 C.F.R. § 162.75 nor La. R.S. 34:851.27 prohibit the State of Louisiana from establishing a speed limitation for the vessels navigating the ICW. Because the “no-wake” zones can be enforced in conjunction with the regulations of 33 C.F.R. § 162.75, we find that La. R.S. 34:851.27 may be applied to Plaintiffs’ alleged claims arising from the navigation of the vessels on the ICW.

Next, we must consider whether there is a remaining genuine issue of matter fact regarding the “no-wake” zone.

A material fact is one that potentially insures or prevents recovery, affects a litigant’s ultimate success, or determines the outcome of the lawsuit. *Jefferson Parish School Board v. TimBrian, LLC*, 21-67 (La. App. 5 Cir. 10/20/21), 362 So.3d 691, 694, *writ denied*, 21-1725 (La. 1/12/22), 330 So.3d 629. An issue is genuine if it is such that reasonable persons could disagree. *Id.* If only one conclusion could be reached by reasonable persons, summary judgment is appropriate as there is no need for trial on that issue. *Id.*

At the trial court level, Turn Services argued that Plaintiffs failed to present any evidence showing the area where the alleged incident occurred was a “no-wake” zone. It contended there was no sign at the boat launch indicating that it was a “no-wake” zone.² To support its position, Turn Services attached deposition excerpts from Plaintiffs and its employees, Captain Kerim Uluduz, Captain Dusty Otero, deckhand Lloyd Trosclair, and deckhand Jermaine Bridges. When asked whether any “no-wake” zone signs were posted, Plaintiffs generally indicated that they could not remember. Turn Services’ employees generally responded that there were no signs posted in that area. In response, Plaintiffs submitted excerpts from the same witnesses who described the area where the alleged incident occurred.

After review, we find there is a remaining genuine issue of material fact as to whether the section of the ICW where the alleged incident occurred is within a “no-wake” zone. Both sides have presented evidence that calls into question whether the area was a “no-wake” zone, requiring an ultimate determination of fact at trial by the fact-finder.

² Although La. R.S. 34:851.27(C) establishes by law “no-wake” zones at boat launches accessible by the public, it does not specifically require the placement of “no-wake” signs. Furthermore, although La. R.S. 34:851.27(D) provides, in pertinent part, “[l]ocal municipal and parish authorities in their respective jurisdictions shall place and maintain such ‘no-wake’ zone signs *as they may deem necessary* to carry out the rules and regulations of the commission” (emphasis added), the writ application contains no evidence that the local governing authorities deemed “no-wake” zone signs necessary at the location on the ICW in question.

Accordingly, for the foregoing reasons, we deny the writ application.

Gretna, Louisiana, this 19th day of May, 2025.

MEJ
JGG
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **05/19/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell". The signature is written in a cursive style with a horizontal line underneath.

CURTIS B. PURSELL
CLERK OF COURT

25-C-63

E-NOTIFIED

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