

NUMBER 05-303

COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

RUSSELL PAULETTE LEBOUF ISTRE, ET AL.

VERSUS

DANIEL MECHE, ET AL.

PETERS, J., dissenting.

I respectfully disagree with the majority in this matter and would reverse the trial court's grant of the summary judgment in favor of Officer Buchanan and the City of Rayne. I find that there are clearly genuine issues of material fact that must be determined by a trier of fact at a trial on the merits and that summary judgment is not appropriate at this stage of the proceedings.

The trial court initially rejected the defendants' motion for summary judgment based primarily on the issue of whether Officer Buchanan violated departmental policy in participating in the high-speed chase which resulted in the plaintiffs' injuries. The trial court then reversed its prior ruling after considering the holding in *Jones v. Congemi*, 01-1345, 02-148, 02-149, pp. 11-12 (La.App. 5 Cir. 5/13/03), 848 So.2d 41, 47, *writ denied*, 03-1647 (La. 10/10/03), 855 So.2d 354, to the effect that "when determining the scope of duty owed by law enforcement officers and whether such duty was breached, the legal question is whether or not a police officer's actions were reasonable, not whether he complied with departmental policies."

I agree that the court in *Jones* correctly stated the legal question to be considered. However, "the duty is one of reasonableness under the totality of the circumstances." *Courville v. City of Lake Charles*, 98-73, p. 14 (La.App. 3 Cir. 10/28/98), 720 So.2d 789, 797. Whether a given action is reasonable under the

circumstances is a factual determination which should not be made in the context of a summary judgment proceeding. In my opinion, that is exactly what the trial court and the majority have done in this case—made factual determinations in the context of a summary judgment proceeding.

I do not find that the *Jones* decision stands for the proposition that a violation of departmental policy should not be considered in determining the reasonableness of the police action at issue. Unlike the cross-country, high-speed chase in the matter now before us, the accident at issue in *Jones* occurred almost immediately after the pursuit began in earnest. I believe the trial court was correct in its first ruling on the motion for summary judgment, and I would reverse the matter and remand the case for further proceedings.