

STEPHANIE M. BOYD

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NO. 2015-CA-1085

VERSUS

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COURT OF APPEAL

**ANDREW CEBALO AND
TULANE UNIVERSITY OF
LOUISIANA**

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2014-04298, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge

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Judge Roland L. Belsome

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(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome,
Judge Sandra Cabrina Jenkins)

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REVERSED AND REMANDED

MARCH 16, 2016

This appeal arises from the trial court's grant of an exception of no cause of action, dismissing the plaintiff's claims against the Administrators of the Tulane Educational Fund (Tulane) with prejudice. For the reasons that follow we reverse and remand.

As a student of Tulane, Stephanie Boyd resided in a dormitory on campus. Her residence was a two-room suite that was adjoined by a shared bathroom. The defendant Andrew Cebalo was also a Tulane student. Mr. Cebalo was a guest of one of Ms. Boyd's suitemates. Mr. Cebalo accessed Ms. Boyd's room through the adjoining bathroom door, which could only be locked from inside the bathroom. According to Ms. Boyd, once inside her room, Mr. Cebalo entered her bed while she was sleeping and inappropriately touched her.

Subsequently, Ms. Boyd filed suit against Mr. Cebalo and Tulane. Ms. Boyd's original petition alleged that Tulane was negligent in failing to: 1) properly secure the premises; 2) provide a safe housing environment; and 3) comply with industry standards regarding door locks and other security measures. In response,

Tulane filed an exception of no cause of action. Shortly thereafter, Ms. Boyd filed an opposition to the exception of no cause of action and an amended and supplemental petition. In the amended and supplemental petition, Ms. Boyd further alleged that Tulane failed to provide a safe campus and failed to implement measures to protect students in residence halls from foreseeable criminal events. Tulane responded to the amended and supplemental petition with a second exception of no cause of action.

The trial court heard arguments from the parties on the exception of no cause of action and ruled in favor of Tulane. Ms. Boyd's claims against Tulane were dismissed with prejudice. This appeal followed.

It is well established that an exception of no cause of action raises a question of law and the trial court's ruling is reviewed *de novo* on appeal.¹ This Court's *de novo* review is limited to reviewing the four corners of the petition to determine whether on its face the petition states a cause of action.² This Court accepts all well-pleaded facts in the petition as true for purposes of determining the issues raised by an exception of no cause of action.³ The mover bears the burden of proving that the petition states no cause of action; and our *de novo* review does not take into consideration whether the party will be able to prevail on the merits.⁴

¹ *Winstead v. Kenyon*, 15-0470, p. 6 (La.App. 4 Cir. 12/2/15), 182 So.3d 1087, 1091.

² *Id.*

³ *Id.*

⁴ *Id.*

In response to Ms. Boyd's allegations against Tulane alleging negligence, Tulane maintains that Mr. Cebalo's actions created an intervening and superseding cause of Ms. Boyd's injuries; thus relieving Tulane from all potential liability.⁵ Tulane further contends that under the allegations of this case it owed no legal duty to Ms. Boyd.

To support its position, Tulane relies heavily on the opinion in *Hall v. Board of Supervisors Southern University*.⁶ In *Hall*, a student was shot by a nonstudent in the lobby of her dormitory. The lower court dismissed the action finding no breach of duty. In affirming the lower court's ruling, the opinion briefly discusses some previous criminal activity on campus and then quickly concludes that the spontaneous nature of the shooting could not have been prevented regardless of the level of security; therefore, no breach of duty and no liability on the part of the university.⁷

This case is distinguishable. First, it is unclear from the *Hall* opinion whether the dismissal of the plaintiff's claims was pursuant to an exception of no cause of action. A close reading of the opinion indicates that evidence was presented, which would further indicate that the court looked beyond the four corners of the petition in reaching its conclusion. Additionally, Ms. Boyd has claimed that the alleged tortious/criminal activity could have been prevented had

⁵ Ms. Boyd's original and amended petitions make further allegations against Mr. Cebalo, the alleged tortfeasor, for: (1) assault; (2) battery; (3) false imprisonment; (4) negligent infliction of emotional distress; and (5) any and all other acts of negligence and/or imprudence and/or lack of care. However, for the purposes of this opinion we focus on the allegations made against Tulane.

⁶ 405 So.2d 1125 (La.App. 1 Cir. 1981).

⁷ *Id* at 1126.

Tulane provided a locking mechanism for the bathroom door on the interior of the dorm room. A locking mechanism on a door hardly rises to the level of “sophisticated security forces” referenced in *Hall*.

Ms. Boyd cites to the more recent case of *Williams v. State* in support of the legal sufficiency of her petition.⁸ In *Williams*, a student at the University of Louisiana at Monroe brought a negligence action against the university after he was assaulted at gunpoint and robbed in his dormitory room. The trial court dismissed the plaintiff’s petition on an exception of no cause of action. The appellate court reversed that ruling and found that “the university had a duty to implement reasonable measures to protect [the] student in his dormitory room from criminal acts when those acts were foreseeable.”⁹ Accordingly, the court found that the plaintiff’s allegations stated a cause of action in negligence against the university.¹⁰

The *Williams* court looked to the Louisiana Supreme Court’s opinion in *Posecai v. Wal-Mart Stores, Inc.* for guidance.¹¹ Although the *Posecai* case involved a business owner rather than a university, the principles can easily be applied to a university setting like in *Williams*. In *Posecai*, the Supreme Court discussed duty and foreseeability stating:

The foreseeability and gravity of the harm are to be determined by the facts and circumstances of the case. The most important factor to be considered is

⁸ 34,691 (La.App 2 Cir. 5/9/01), 786 So.2d 927.

⁹ *Id.* at 932.

¹⁰ *Id.*

¹¹ 99-1222 (La. 11/30/99), 752 So.2d 762.

the existence, frequency and similarity of prior incidents of crime on the premises, but the location, nature and condition of the property should also be taken into account.¹²

In the instant case, the trial court's dismissal of Ms. Boyd's claims against Tulane for failing to state a cause of action was clearly wrong. As the *Williams* court recognized, a third-party's criminal activity does not grant the university absolute immunity from liability. Additionally, if the facts of a case prove the criminal activity was foreseeable, the university may have a duty to protect or warn students. Taking every allegation in the petition as true, there is a stated cause of action against Tulane in negligence. Of course these allegations must be proven for Ms. Boyd to be successful, but on the face of the petition the allegations are legally sufficient to maintain a cause of action.

For these reasons, the trial court's grant of the exception of no cause of action in favor of Tulane is reversed. The matter is remanded for further proceedings.

REVERSED AND REMANDED

¹² *Id.* at 768.