

STATE OF LOUISIANA

COURT OF APPEAL, FIRST CIRCUIT

TONYA GORDON SMITH

NO. 2026 CW 0570

VERSUS

JANET SIMMONS
SUPERINT[E]NDENT AND
CUSTODIAN OF RECORDS FOR THE
RECREATION AND PARKS
COMMISSION OF BATON ROUGE
PARISH

JULY 27, 2026

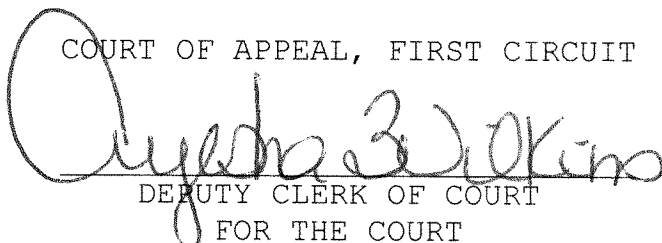
In Re: Janet Simmons, Superintendent and Custodian of Records for the Recreation and Parks Commission for the Parish of East Baton Rouge, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 769956.

BEFORE: PENZATO, GREENE, AND FIELDS, JJ.

WRIT GRANTED. The portion of the trial court's April 27, 2026 judgment granting the motion for new trial filed by plaintiff, Tonya Gordon Smith, is reversed. When a motion for new trial is filed, it is the mover's burden to prove to the trial court she is entitled to a new trial. **Jackson v. Wise**, 2017-1062 (La. App. 1st Cir. 4/13/18), 249 So.3d 845, 856, writ denied, 2018-0785 (La. 9/21/18), 252 So.3d 914. To meet her burden of proof on a motion for new trial based on La. Code Civ. P. art. 1972(2), the mover must show that the newly discovered evidence (1) is not merely cumulative; (2) would tend to change the result of the case; (3) was discovered after trial; and (4) could not, with due diligence, have been obtained before or during trial. **Thomas v. Comfort Ctr. of Monroe, LA, Inc.**, 2010-0494 (La. App. 1st Cir. 10/29/10), 48 So.3d 1228, 1240. When a motion for new trial is based on La. Code Civ. P. art. 1972(2) and (3), the allegations of fact therein shall be verified by the affidavit of the applicant. La. Code Civ. P. art. 1975; see Charpentier v. Louisiana Land & Expl. Co., 415 So.2d 452 (La. App. 1st Cir. 1982); see also Flowers v. Tasker, 2024-0690 (La. App. 1st Cir. 2/28/25), 407 So.3d 927, 947. Accordingly, we find the trial court abused its discretion in granting the motion because plaintiff failed to verify the allegations of fact in the motion by affidavit, and at the hearing, plaintiff failed to show the evidence she asserted was newly discovered would tend to change the result in the case. Therefore, the motion for new trial filed by Tonya Gordon Smith is denied.

AHP
HG
WEF

COURT OF APPEAL, FIRST CIRCUIT



DEPUTY CLERK OF COURT
FOR THE COURT