

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #020

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **13th day of May, 2021** are as follows:

PER CURIAM:

2020-CC-01278

SYNIKIA HESTER INDIVIDUALLY AND ON BEHALF OF KUNTA HESTER, JR., KALEN HESTER AND KAYDON HESTER VS. BRYANT WALKER, BLUELINX CORPORATION AND ZURICH AMERICAN INSURANCE COMPANY (Parish of Orleans Civil)

REVERSED. SUMMARY JUDGMENT GRANTED. SEE PER CURIAM.

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-CC-01278

**SYNIKIA HESTER INDIVIDUALLY AND ON BEHALF OF KUNTA
HESTER, JR., KALEN HESTER AND KAYDON HESTER**

VS.

**BRYANT WALKER, BLUELINX CORPORATION AND ZURICH
AMERICAN INSURANCE COMPANY**

On Supervisory Writ to the Orleans Civil District Court,
Parish of Orleans Civil

PER CURIAM

At issue in this case is whether defendants violated any duty to plaintiffs under the provisions of La. R.S. 32:141(A), which prohibits the stopping or parking of a vehicle in the travelled portion of a roadway. For the reasons that follow, we conclude defendants are entitled to summary judgment.

FACTS AND PROCEDURAL HISTORY

Bryant Walker was employed as an eighteen-wheeler tractor-trailer driver for BlueLinx Corporation (“BlueLinx”). BlueLinx’s facility is located in New Orleans on Almonaster Avenue, a four-lane road divided by a median.

On the day in question, Mr. Walker was attempting to make a left turn into the driveway of BlueLinx’s facility. He activated his left turn signal and stopped his tractor-trailer in the left lane, approximately sixty feet from a break in the median, in order to wait for another vehicle to exit the driveway. Before Mr. Walker could make his turn, his tractor-trailer was struck from behind by a vehicle driven by Kunta Hester. Mr. Hester died as a result of the accident.

Subsequently, Mr. Hester's survivors filed the instant suit against Mr. Walker, BlueLinx, and its insurer. Plaintiffs alleged defendants breached their duty to Mr. Hester because Mr. Walker negligently stopped his vehicle on a public roadway in violation of La. R.S. 32:141(A).

Following discovery, defendants moved for summary judgment. They argued the evidence established Mr. Walker did not breach any duty under La. R.S. 32:141(A) because Mr. Walker did not stop, park, or leave his tractor-trailer standing in the roadway. In support of their motion, defendants relied on Mr. Walker's deposition. Mr. Walker testified that twenty-five seconds before impact he activated his turn signal, slowed, and brought his tractor-trailer to a complete stop; waited for oncoming traffic (a white van) to clear; and waited for one of the two tractor-trailers blocking the driveway to exit, so he could turn into BlueLinx's driveway. Mr. Walker stated his sole intent was to turn left into the facility and reload his tractor-trailer.

Defendants also relied on the testimony of NOPD's investigating officer, Detective Danny Ellis. Detective Ellis, a certified accident reconstructionist, determined the causative factors in the accident were speed and operator error on Mr. Hester's part. He concluded the damage to the vehicles, in particular that the front of Mr. Hester's vehicle which was "embedded" into the rear of the tractor-trailer, indicated Mr. Hester was possibly traveling almost twenty miles over the 35 mph speed limit. Detective Ellis noted other "tell-tale" signs of Mr. Hester's speed included: the broken windows, the smashed vehicle interior, the deployed airbags, and the extraction of Mr. Hester's body from the vehicle. Detective Ellis indicated that even if Mr. Hester was driving ten miles over the speed limit the damage to his vehicle would not have been that extensive. Further, Detective Ellis noted he visually inspected the inside of Mr. Hester's vehicle and noticed a cell phone case in his right hand.

Additionally, defendants submitted testimony from their transportation and safety expert, Rex Smith, who stated Mr. Walker followed proper driving practices and made the left turn maneuver in the manner of a reasonably prudent commercial motor vehicle operator. Finally, defendants submitted real-time video of the accident from surveillance cameras in front of BlueLinx's facility, as well as the affidavit of BlueLinx's branch manager who authenticated the video.

Plaintiffs opposed the motion. They argued the tractor-trailer was stopped, and was not making a left turn at the time of the accident. Plaintiffs relied on Mr. Walker's testimony, which indicated he stopped approximately sixty feet from the break in the median to wait for one of two tractor-trailers to exit BlueLinx's driveway before he turned in. Further, plaintiffs noted Mr. Walker testified that even after oncoming traffic had passed, he continued to wait until one of the tractor-trailers exited BlueLinx's driveway so he could turn into the facility.

Plaintiffs also asserted defendants offered only conjecture regarding Mr. Hester's rate of speed at the time of the accident. In support, they noted Detective Ellis admitted he was unable to determine Mr. Hester's exact speed.

After a hearing, the district court denied defendants' motion for summary judgment. Defendants sought supervisory review. The court of appeal denied the writ, with one judge dissenting.

Upon defendants' application, we ordered briefing and argument pursuant to the provisions of La. Code Civ. P. art. 966(H).

DISCUSSION

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. *Beer Industry League of Louisiana v. City of New Orleans*, 2018-0280 (La. 6/27/18),

251 So.3d 380, 385–86; *Duncan v. U.S.A.A. Ins. Co.*, 2006-0363 (La. 11/29/06), 950 So.2d 544, 546.

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of civil actions (with the exception of certain domestic matters) and is favored in our law. La. Code Civ. P. art. 966(A)(2); *Murphy v. Savannah*, 2018-0991 (La. 5/8/19), 282 So.3d 1034, 1038; *Kennedy v. Sheriff of East Baton Rouge*, 2005-1418 (La. 7/10/06), 935 So.2d 669, 686.

A summary judgment is reviewed on appeal de novo, with the appellate court using the same criteria that govern the trial court’s determination of whether summary judgment is appropriate; i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Wright v. Louisiana Power & Light*, 2006-1181 (La. 3/9/07), 951 So.2d 1058, 1070. A court must grant a motion for summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law.” La. Code Civ. P. art. 966(B); *Kennedy*, 935 So.2d at 686.

On a motion for summary judgment, the burden of proof remains with the movant. However, if the moving party will not bear the burden of proof on the issue at trial and points out an absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense, then the non-moving party must produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the opponent of the motion fails to do so, there is no genuine issue of material fact and summary judgment will be granted. La. Code Civ. P. art. 966(D)(2); *Bufkin v. Felipe’s Louisiana, LLC*, 2014-0288 (La. 10/15/14), 171 So.3d 851, 854; *Schultz v. Guoth*, 2010-0343 (La. 1/19/11), 57 So.3d 1002, 1006.

Because plaintiffs will bear the burden of proof at trial, defendants' burden on summary judgment is to show an absence of factual support for one or more elements essential to plaintiffs' claim. Defendants assert they have satisfied this burden through uncontroverted evidence showing they did not breach any duty under La. R.S. 32:141(A) because Mr. Walker did not stop, park, or leave his tractor-trailer standing in the roadway.

A threshold issue in any negligence action is whether the defendant owed the plaintiff a duty. *Lemann v. Essen Lane Daiquiris, Inc.*, 2005-1095 (La. 3/10/06), 923 So.2d 627, 633; *Meany v. Meany*, 1994-0251 (La. 7/5/94), 639 So.2d 229, 233. Whether a duty is owed is a question of law. *Peterson v. Gibraltar Savings and Loan*, 1998-1601, 1998-1609 (La. 5/18/99), 733 So.2d 1198, 1204; *Mundy v. Department of Health and Human Resources*, 620 So.2d 811, 813 (La. 1993); *Faucheaux v. Terrebonne Consolidated Government*, 615 So.2d 289, 292 (La. 1993). In deciding whether to impose a duty in a particular case, the court must make a policy decision in light of the unique facts and circumstances presented. *Lemann*, 923 So.2d at 633; *see also Socorro v. City of New Orleans*, 579 So.2d 931, 938 (La. 1991).

Plaintiffs assert defendants violated the duty imposed by La. R.S. 32:141(A), which provides:

A. Upon any highway outside of a business or residence district, **no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the highway when it is practicable to stop, park or so leave such vehicle off such part of said highway**, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such highway. [emphasis added].

We have long held that this statute is designed to protect against the risk that a driver, whether cautious or inattentive, would collide with a stationary vehicle.

Laird v. Travelers Insurance Co., 263 La. 199, 211, 267 So.2d 714, 718 (1972); *Dixie Drive It Yourself System v. American Beverage Co.*, 242 La. 471, 488, 137 So.2d 298, 304 (1962).

The statute does not delineate any temporal period for determining whether a vehicle has been stopped. Nonetheless, the jurisprudence has recognized this provision does not apply to vehicles which are stopped on a highway on a temporary or momentary basis while waiting to turn. *See Jenkins v. Hernandez*, 2019-0874 (La. App. 1 Cir. 6/3/20), 305 So.3d 365, 373 (explaining the term “park” as used in La. R.S. 32:141(A) “does not comprehend or include a mere temporary or momentary stoppage, but rather connotes a stoppage with the intent of permitting the vehicle to remain standing for an appreciable length of time”); *see also Garcia v. Stalsby*, 2011-0350 (La. App. 3 Cir. 12/14/11), 78 So.3d 873, 877, *writ denied*, 2012-0422 (La. 4/9/12), 85 So.3d 703 (“We have found no case wherein this provision was applied to a situation where a vehicle is stopped in the roadway while waiting to turn.”).

We believe the reasoning of these cases is consistent with the spirit of the legislation, which is to prevent vehicles from causing an obstruction on the traveled portion of the roadway. Any interpretation which would apply the statute to a brief temporary stop made as a matter of necessity in the course of ordinary traffic would result in absurd consequences. It is a well-settled principle of statutory interpretation that “where a literal interpretation would produce absurd consequences, the letter must give way to the spirit of the law and the statute construed so as to produce a reasonable result.” *First National Bank of Boston v. Beckwith Machinery Co.*, 1994-2065 (La. 2/20/95), 650 So.2d 1148, 1153 (quoting *Smith v. Flournoy*, 238 La. 432, 451, 115 So.2d 809, 814 (1959)).

Applying this interpretation to case at bar, we find Mr. Walker’s testimony establishes he activated his left turn signal and was in the process of turning left into

the BlueLinX facility when the accident occurred. Mr. Walker's testimony is corroborated by the surveillance video of the accident, which shows his tractor-trailer was stopped for only a very short period of time (approximately twenty-seven seconds) prior the collision. Plaintiffs have presented no contrary evidence establishing Mr. Walker intended to remain stopped for any appreciable period of time after it became safe for him to complete his turn. Therefore, we find no factual support for plaintiffs' assertion that defendants breached any duty under La. R.S. 32:141(A).¹

Moreover, La. R.S. 32:81(A) provides, "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway." Our jurisprudence has long recognized "that a following motorist in a rear-end collision is presumed to have breached the standard of conduct prescribed in La. Rev. Stat. Ann. 32:81 and hence is presumed negligent." *Mart v. Hill*, 505 So. 2d 1120, 1123 (La. 1987).

The testimony of the investigating officer in this case indicates Mr. Hester's speed and inattention were the sole causes of the accident. Although the officer could not determine Mr. Hester's exact rate of speed, he concluded the damage to the vehicles indicated Mr. Hester was possibly traveling almost twenty miles over the speed limit. He noted the impact evidence shows the front driver's side corner of Mr. Hester's vehicle collided with the right rear corner of Mr. Walker's tractor-trailer, suggesting Mr. Hester made a last-second attempt to avoid the collision by swerving into the unobstructed right lane. The officer also noticed a cell phone case

¹ We further see no merit to plaintiffs' alternative argument that defendants breached 49 C.F.R. §392.22(a), which provides that a driver of a commercial motor vehicle stopped upon the traveled portion of the highway for any cause "other than necessary traffic stops" has a duty to activate warning devices. As we have explained, the stop in this case was in the nature of a brief and necessary traffic stop in connection with a turn.

in Mr. Hester's right hand.² Plaintiffs produced no contrary evidence. Under these circumstances, we find plaintiffs have failed to rebut the presumption that Mr. Hester was at fault for the accident.

In conclusion, we find plaintiffs have failed to produce factual support sufficient to establish that they will be able to satisfy their evidentiary burden of proof at trial. Accordingly, summary judgment in favor of defendants is mandated.

DECREE

For the reasons assigned, the writ is granted. The judgments of the lower courts are reversed. Summary judgment is hereby granted in favor of Bryant Walker, BlueLinx Corporation, and Zurich American Insurance Company, dismissing the claims of Synikia Hester, individually and on behalf of Kunta Hester, Jr., Kalen Hester, and Kaydon Hester, with prejudice.

² In his deposition, the officer speculated that the impact of the collision may have knocked the cell phone out of its case.