

NOT DESIGNATED FOR PUBLICATION

COURT OF APPEALS
FIFTH CIRCUIT

OCT 29 2002

JERRY MURRELL

NO. 02-CA-513

VERSUS

FIFTH CIRCUIT

AMERICAN ALTERNATIVE INSURANCE
COMPANY, NINE MILE POINT
VOLUNTEER FIRE CO. #1 AND DAVID
BILLIOT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE SECOND PARISH COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 80140, DIVISION "B"
HONORABLE STEPHEN C. GREFER, JUDGE PRESIDING

OCTOBER 29, 2002

**WALTER J. ROTHSCHILD
JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr., Sol Gothard
and Walter J. Rothschild

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AFFIRMED

WAR
East
Ag

In this automobile accident case, defendants appeal the trial court's apportionment of fault. We affirm.

The facts of this case are not in dispute:

On August 24, 1999, plaintiff, Jerry Murrell was operating his vehicle in a northerly direction along Signette Avenue when he crossed the intersection of U.S. 90B East and collided with a 1981 Grumman Fire Truck driven by defendant, David Billiot and owned by defendant Nine Mile Point Volunteer Fire Company No. 1. At the time of the accident, Mr. Billiot was responding to a call of a structural fire at a nearby apartment complex.

The record indicates that the plaintiff Jerry Murrell had a green light to cross the intersection of Signette and U.S. 90B East, and defendant David Billiot was proceeding eastbound in the left lane of U.S. 90B East and was faced with a red light. Mr. Billiot testified at trial that the lights and sirens on the fire truck were operating as he proceeded on U.S. 90B. He also testified that as he reached the intersection of Signette, he came to a stop because the light at that intersection was red. He stated that he waited until the traffic at that intersection yielded him the right of way, and he proceeded through the intersection. At this point, the fire truck Mr. Billiot was operating was struck by the vehicle being driven by plaintiff.

Both Mr. Billiot and plaintiff testified that they did not see the other vehicle before the collision.

As a result of injuries sustained in this accident, Jerry Murrell filed the instant suit for damages against David Billiot, Nine Mile Point Volunteer Fire Company #1 and its insurer, American Alternative Insurance Company. Following a bench trial, the trial court rendered judgment in favor of plaintiffs and against defendants, assigning comparative fault to David Billiot at 90% and to plaintiff at 10%.

Defendants now appeal from this judgment on the basis that the trial court failed to correctly apply the provisions of La. R.S. 32:24. Specifically, defendants contend that the trial court committed legal error by misinterpreting the respective duties of the driver of an emergency vehicle and the duties of an ordinary motorist. The amount of damages awarded to plaintiff is not at issue here.

The trial court gave the following factual findings which are not contested by defendants:

Testimony with respect to that issue is that plaintiff and the witness testified consistently that they were stopped at the red signal light controlling U.S. 90B and Bayou Segnette Boulevard at which time the signal light turned green. Apparently a pickup truck, a Ford F-150 as it was described in the left-hand lane proceeded into that intersection and then stopped and the plaintiff's vehicle proceeded into the intersection along with the pick up truck and continued through that intersection.

The Court is of the opinion, based upon the testimony of all parties including the fire truck driver, Mr. Billiot, who testified that he did not see the plaintiff's vehicle until such time as the impact had occurred, that the plaintiff's vehicle was in effect hidden for all practical purposes by the presence of the truck entering and crossing through that intersection. As a result, the fire truck driver probably did not see the plaintiff's vehicle prior to the collision, nor did the plaintiff's vehicle see the fire truck prior to the collision.

As a result, there was a collision which took place when the plaintiff was proceeding under a green traffic signal and the fire truck driver was operating through a red traffic signal.

Although defendants do not dispute these factual findings, they contend that the trial court failed to correctly apply the duties of a driver of an emergency vehicle as contained in La. R.S. 32:24. That statute provides as follows:

§ 24. Emergency vehicles; exceptions

A. The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to, but not upon returning from, a fire alarm, may exercise the privileges set forth in this Section, but subject to the conditions herein stated.

B. The driver of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the provisions of this Chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down or stopping as may be necessary for safe operation;

(3) Exceed the maximum speed limits so long as he does not endanger life or property;

(4) Disregard regulations governing the direction of movement or turning in specified directions.

C. The exceptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible or visual signals sufficient to warn motorists of their approach, except that a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

D. The foregoing provisions shall not relieve the driver of an authorized vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(Emphasis added.)

Defendants contend by this appeal that the trial court failed to apply the correct standard of care in this case. We disagree.

Under the above-cited statute, Mr. Billiot as the driver of an emergency vehicle is relieved of the more stringent duties applicable to ordinary motorists. However, he is not relieved of his duty to drive with due regard to the safety of others. Nelson v. State, Dept. of Public Safety, 581 So.2d 344, 346-7 (La.App. 3 Cir. 1991), writ denied, 586 So.2d 551 (La. 1991).

In the present case, the trial court specifically noted the application of the state statute regarding emergency vehicles to this case. However, the trial court concluded, after hearing all the testimony and viewing the evidence, that the operator of the fire truck in this case had breached the standard of care required by the statute. The trial court stated as follows:

Under those circumstances, the Court finds that upon preponderance of the evidence as presented at trial that the fire truck driver, Mr. Billiot, was not operating in a manner which was necessary for safe operation of the vehicle at the time of the accident in that the intersection was apparently not cleared for him to proceed through under the red traffic signal at the time the collision occurred.

The standard of care as set forth by statute for operators of emergency vehicles is to “drive with due regard for the safety of all persons.” La. R.S. 32:24(D). Although the statute authorizes the driver of an emergency vehicle to proceed past a red signal, he may do so only as may be necessary for safe operation. La.R.S. 32:24(B)(2). The record indicates that the trial court applied the appropriate standard of care to the facts of this case, and we fail to find any legal error in the trial court’s judgment.

An appellate court may not set aside a trial court’s finding of fact in the absence of manifest error or unless it is clearly wrong. Rosell v. ESCO, 549 So.2d 840, 844 (La. 1989). We have carefully reviewed the record and exhibits in this case, and we fail to find the trial court’s findings to be manifestly erroneous. The trial court specifically found that Mr. Billiot was not operating in a manner which

was necessary for safe operation of the vehicle. As the record shows that the intersection which Mr. Billiot was attempting to cross had not yet cleared of passing vehicles, the trial court's finding that the fire truck driver breached the duty to safely operate the vehicle is a reasonable one. The record supports the trial court's finding that Mr. Billiot proceeded into the intersection without stopping for a length of time as was necessary for safe operation.

Accordingly, for the reasons assigned herein, the trial court's judgment is affirmed. Defendants shall bear all costs of this appeal.

AFFIRMED



EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

SOL GOTHARD
JAMES L. CANNELLA
THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. MCMANUS
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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY OCTOBER 29, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

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