NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0043

JEREMY P. CARPENTER

VERSUS

HALEY R. PENDARVIS, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, JARRON C. HOLDEN, ARROW TRUCK LEASING COMPANY, AND LIBERTY MUTUAL FIRE INSURANCE COMPANY

On Appeal from the 20th Judicial District Court
Parish of East Feliciana, Louisiana
Docket No. 34,045, Division "B,"
Honorable William G. Carmichael, Judge Presiding

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and

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Liberty Mutual Fire Ins. Co.

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Judgment rendered November 3, 2006

PARRO, J.

Jeremy P. Carpenter, the plaintiff in this personal injury suit stemming from an automobile accident, appeals a summary judgment in favor of Jarron C. Holden, Arrow Truck Leasing Company (Arrow), and Liberty Mutual Fire Insurance Company (Liberty), dismissing all claims against them. For the following reasons and in accordance with Uniform Court of Appeal Rule 2-16.1(B), we affirm the judgment.

About 4:30 a.m. on November 1, 2001, Holden pulled out of his parents' driveway and turned left into the southbound lane of Louisiana Highway 67. He was driving an 18-wheeler tractor with no trailer attached, which was owned by Arrow and insured by Liberty. Holden completed his turn and was accelerating in the southbound lane. Carpenter, who had slowed when Holden turned, was behind him in the same lane. About a minute after Holden entered the highway, Haley Pendarvis, who was coming toward them in the northbound lane, abruptly crossed the center line, hit the side of Holden's vehicle, and then hit Carpenter's vehicle.

Carpenter sued Pendarvis and her insurer, State Farm Mutual Automobile Insurance Company, along with Holden, Arrow, and Liberty. Holden, Arrow, and Liberty moved for summary judgment, supported with excerpts from the depositions of Carpenter, Pendarvis, and Holden. They alleged there was no evidence of breach of duty or causation on Holden's part. In oral reasons for judgment, the court stated:

> The pleadings, deposition[s,] and answers which are on file show absolutely no substandard conduct on the part of Mr. Jarron Holden. Ms. Pendarvis ... has no memory of the collision.
>
> Mr. Carpenter ... says he doesn't know what happened. However, in his deposition he did indicate that the collision occurred a minute or so after the Holden vehicle was in "the appropriate lane of travel." The general position of the plaintiff is that when Mr. Holden drove his vehicle onto Highway 67 he did so possibly in the path of the Pendarvis vehicle and, therefore, contributed to the collision. There is no evidence in the record that that's the case. The information contained in the opposition [to the] motion and the exhibits are all conjectural.
>
> As I indicated, the evidence in the record indicates that the collision occurred at least a minute after the turn was made and several hundred feet south of the location of the turn. The plaintiff himself ... said that Mr. Holden was in the appropriate lane of travel. There's no genuine issue of material fact as to the issues of [breach] and cause and, therefore, the liability of Holden.

The judgment dismissed all claims against Holden, Arrow, and Liberty.

Based on our *de novo* review of the record, there was no genuine issue of material fact, and summary judgment was appropriate as a matter of law. See LSA-C.C.P. art. 966(C). Contrary to Carpenter's argument on appeal, the court did not make an improper credibility determination as to any material fact. The only fact upon which Holden and Carpenter differed was whether Holden's entry into the southbound lane made it necessary for Carpenter to brake and slow down before Holden's vehicle picked up speed. Accepting Carpenter's version of events, this difference is immaterial. Both agreed that when the accident occurred, Holden was in the southbound lane ahead of Carpenter and had been there "a minute or so," that both vehicles were traveling under the speed limit and were accelerating when they were hit, that Pendarvis left her lane of travel and struck Carpenter's vehicle in the southbound lane, and that she hit Holden's vehicle several hundred yards beyond where he had entered the highway.[1] Even if Carpenter had to slow down for Holden's vehicle after it turned into his lane and was accelerating, this fact does not establish that Holden breached any duty or caused Pendarvis to leave her lane of travel and hit them. The suggestion that perhaps the rear of his truck was still in the northbound lane of travel at the time of impact is, as the district court noted, simply conjecture.

The evidence submitted in support of the motion negated causation and breach of duty, which were essential elements of Carpenter's claim. He did not produce factual support sufficient to establish that he would be able to satisfy his evidentiary burden of proof on those elements at trial.[2] Therefore, there is no genuine issue of material fact, and summary judgment was appropriate as a matter of law.

The judgment is affirmed and is issued in accordance with Uniform Court of Appeal Rule 2-16.1(B). All costs of this appeal are assessed to Carpenter.

AFFIRMED.

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[1] Holden testified that Pendarvis came across the center line and hit his vehicle in the southbound lane. Carpenter's testimony did not directly refute this statement, as he indicated only that he did not know if she had already crossed the center line when she struck the Holden vehicle.

[2] The defendants urged this court not to review the documents submitted by Carpenter in opposition to their motion, because the opposition was untimely under LSA-C.C.P. art. 966(B), and some of the documents were inadmissible under the criteria of Article 967. These arguments have merit. However, even after perusing those documents, we find they do not create any genuine issue of material fact, and therefore, their admission did not affect the outcome of the motion or this appeal.