

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 1675

STANLEY J. DEROUEN, JR.

VERSUS

**CHARLES JAGERS, MILLER TRANSPORTERS, INC.
AND GREENWICH INSURANCE COMPANY**

—
**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 608,864, Division "M"
Honorable Kay Bates, Judge Presiding**
—

**Gregory P. DiLeo
Benjamin W. Gulick
Julie M. Jochum
New Orleans, LA**

**Attorneys for
Plaintiff-Appellee
Stanley J. Derouen, Jr.**

and

**John W. DeGravelles
DeGravelles, Palmintier, Holthaus & Frugé, L.L.P.
Baton Rouge, LA**

**Kirk A. Patrick, III
Heather A. Cross
R. Heath Savant
Blake A. Altazan
Donohue Patrick & Scott, P.L.L.C.
Baton Rouge, LA**

**Attorneys for
Defendants-Appellants
Charles Jagers,
Miller Transporters, Inc., and
Greenwich Insurance Company**

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

Judgment rendered NOV 03 2014

RHP by GJG
GJG
EGD by GJG

PARRO, J.

The defendants appeal the judgment of the trial court, which granted the plaintiff's motion for partial summary judgment on the issue of liability and found the defendant, Charles Jagers, to be 100% liable for the automobile accident at issue. For the reasons that follow, we reverse and remand.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This matter arises out of an accident that occurred on February 7, 2011, between an eighteen-wheel tractor-trailer driven by the plaintiff, Stanley Derouen, Jr., and another eighteen-wheel tractor-trailer driven by one of the defendants, Charles Jagers. On that date, Mr. Derouen was driving his vehicle northbound on Interstate 110 in Baton Rouge, Louisiana, when he exited the interstate at the Chippewa Street exit. He continued northbound on the service road toward its intersection with Chippewa Street, where he intended to make a left turn.

At this intersection, the service road contains three lanes: (1) the far-left lane, which is for left turns only; (2) the center lane, which is for traveling straight ahead only; and (3) the far-right lane, which is for right turns only. Because he intended to make a left turn on to Chippewa Street, Mr. Derouen was in the far-left lane as he came to a full stop at the intersection and waited for the red light to change.

Mr. Jagers was also traveling on the service road on the same date and at the same time as Mr. Derouen. However, Mr. Jagers was traveling in the center lane, which was marked for straight-ahead travel only through the intersection. Nevertheless, Mr. Jagers intended to make a left turn on to Chippewa Street at the intersection, despite being in the improper lane and despite knowing that making such a turn from the center lane was unlawful. Mr. Jagers testified in his deposition that he chose to make the left turn from the center lane simply because it was easier.

After the light at the intersection turned green, Mr. Derouen began making his left turn on to Chippewa Street from the far-left lane, and Mr. Jagers began making his illegal left turn on to Chippewa Street from the center lane. As the two vehicles continued making their turns, they collided, causing Mr. Derouen to suffer both personal injury and

property damage.

Mr. Derouen filed a petition against Mr. Jagers, seeking recovery for his damages. In addition, the petition named as defendants Miller Transporters, Inc. (Miller), Mr. Jagers' employer, and Greenwich Insurance Company (Greenwich), their liability insurer. The petition alleges that, at all times pertinent to the litigation, Mr. Jagers was acting in the course and scope of his employment with Miller. The defendants filed answers to the petition, generally denying the allegations of the petition and further alleging that Mr. Derouen's damages should be barred or proportionately reduced due to his comparative fault. Specifically, the defendants contend that Mr. Derouen was at fault: (1) in failing to see what he could have and should have seen; (2) in failing to keep a proper lookout; (3) in failing to operate the vehicle in a safe and prudent manner; and (4) in other acts of negligence, which the defendants intended to prove at trial.

Mr. Derouen subsequently filed a motion for partial summary judgment on the issue of liability. After a hearing, the trial court granted the motion, finding that Mr. Jagers was 100% liable for the accident. The judgment was designated as a final, appealable judgment in accordance with LSA-C.C.P. art. 1915(B)(1). The defendants have appealed.

SUMMARY JUDGMENT

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by LSA-C.C.P. art. 969; the procedure is favored and shall be construed to accomplish these ends. LSA-C.C.P. art. 966(A)(2). Summary judgment shall be rendered in favor of the mover if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B)(2).

An appellate court's review of a summary judgment is a *de novo* review based on the evidence presented to the trial court, using the same criteria used by the trial court in deciding whether a summary judgment should be granted. Buck's Run Enterprises, Inc. v. Mapp Const., Inc., 99-3054 (La. App. 1st Cir. 2/16/01), 808 So.2d 428, 431. In ruling on

a motion for summary judgment, the judge's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable or material fact. All doubts should be resolved in the non-moving party's favor. Hines v. Garrett, 04-0806 (La. 6/25/04), 876 So.2d 764, 765.

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 at trial on the matter that is before the court on the motion for summary judgment, the moving party's burden on the motion is to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See LSA-C.C.P. art. 966(C)(2).

DISCUSSION

The defendants have assigned various errors on appeal, which essentially contend that the trial court erred in granting the motion for summary judgment, because it improperly weighed conflicting evidence at the hearing on the motion. According to the defendants, the trial court improperly ignored conflicting testimony concerning causation and erred by evaluating the merits, the credibility of the witnesses, and the weight of conflicting evidence.

The parties do not dispute that Mr. Derouen was in the only appropriate lane to make a left turn on to Chippewa Street or that Mr. Jagers made an illegal left turn from the center lane. However, Mr. Jagers described the accident as occurring as follows:

There's also a stop sign right there at the end of where the off-ramp is, and I came up to the stop sign. They had four vehicles in the left lane, two cars and two trucks. I'm in the center lane. So there's a red light up ahead. I leave the – they stop there at the red light – for the red light. I'm at the stop sign. So I pull off from the stop sign, come on up. By the time I get to the red light, the light changed to green. I dropped the gear, stayed to the right and went on over to the far lane, made the left turn. I was – I had occupied the right lane. Me and the second car made the turn together. So I'm straight in my lane, in this lane, in the right lane, and he comes across (indicating). He blows his horn a couple of times. Then he comes on and just runs right into the side of the trailer.

So when I left the stop sign, I came on up; the light changed; I had already put my signal light on; I stayed way over and turned into this lane here, the far right – which would be the far right lane, knowing that they could also make the turn into the left lane. And the car did, the first car. Me and the second car went in the curve together. I'm looking out my window watching it. Then I went on into the lane and started on to the red light.

Well, by this time, I hear a horn blow. I said, what in the world they're blowing the horn for? And I'm watching the red light up ahead. All of a sudden, I hear a crash and, you know, a tug on the truck. I'm thinking I'm hit from behind, you know, because there was no way that he could have caught up with me at that point from a dead stop, and I'm already moving, you see.

He deliberately sped up and ran into the side of the trailer, because he said that he was going into that lane, that that was his lane, that he was going into that lane. I said, well, Driver, I'm already in the lane; you know, I'm already in this lane; we both can't occupy the same lane at the same time, bottom line.

In contrast, Mr. Derouen simply testified that he had been stopped at the red light controlling the intersection between the service road and Chippewa Street, waiting to make a left turn. While he was waiting at the light, he saw another eighteen-wheel tractor-trailer approaching from behind him in the center lane at a high rate of speed. He stated that he paid very little attention to the vehicle, because it was in the center lane, and he assumed that it was going to travel straight ahead as required by the markings for that lane. Therefore, when the light turned green, he simply proceeded to make his left turn without checking again for the location of that vehicle. As he proceeded into his turn, he heard his father honking his horn in the vehicle behind him,¹ and he turned to his left to see what the issue could be. When he did not see anything, he turned back toward his right just as he hit Mr. Jagers' vehicle.

Clearly, the testimony of Mr. Derouen and Mr. Jagers concerning how the accident occurred is conflicting. Furthermore, LSA-C.C. art. 2323(A) provides:

In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not

¹ Mr. Derouen's father, Stanley Derouen, Sr., was also driving an eighteen-wheel tractor-trailer and was directly behind him on the service road when the accident occurred.

known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.

The assignment of the comparative fault of the parties, if any, is not something that can be decided on a motion for summary judgment, because it, along with the resolution of conflicting testimony, requires the weighing of evidence and the evaluation of witness credibility. Such issues are not appropriate for a motion for summary judgment. See Smith v. Our Lady of the Lake Hospital, Inc., 93-2512 (La. 7/5/94), 639 So.2d 730, 751; see also Coleman v. Stephens, 48,993 (La. App. 2nd Cir. 6/4/14), 142 So.3d 363, 368, writ denied, 14-1439 (La. 10/3/14), ___ So.3d ___; Hines v. Garrett, 876 So.2d at 765.

In this matter, although Mr. Jagers clearly broke the law in making his left turn from an improper lane, he has raised issues through his deposition testimony concerning Mr. Derouen's intent as he completed his turn on to Chippewa Street. In addition, Mr. Jagers has contended that he had already completed his turn and that he completely occupied the lane before Mr. Derouen entered his lane and hit his vehicle.² Accordingly, we find that genuine issues of material fact remain in this matter and that the trial court erred in granting partial summary judgment on the issue of liability.

DECREE

For the foregoing reasons, we reverse the judgment of the trial court, which granted the motion for partial summary judgment and determined that the defendant, Charles Jagers, was 100% liable for the accident. We remand this matter to the trial court for further proceedings consistent with this opinion. All costs of this appeal are assessed to the plaintiff, Stanley J. Derouen, Jr.

REVERSED AND REMANDED.

² While we understand Mr. Derouen's argument regarding preemption, the doctrine of preemption does not address the allegation Mr. Jagers has raised that Mr. Derouen allegedly sped up and crossed into his lane to hit his vehicle on purpose. We take no position on Mr. Jagers' allegation; we simply note that his version of how the accident occurred is different from that of Mr. Derouen and that such issues cannot be resolved on summary judgment.