

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

NUMBER 2016 CA 0355

SCOTT LOWE AND BETH LOWE

VERSUS

NOBLE, LLC, ET. AL

Judgment Rendered: DEC 22 2016

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Appealed from the
Twentieth Judicial District Court
In and for the Parish of West Feliciana
State of Louisiana
Suit Number 21767

Honorable Kathryn J. Jones, Presiding

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* * * * *

BEFORE: WHIPPLE, C.J., GUIDRY, AND CHUTZ, JJ.

GUIDRY, J.

In this case arising out of a multi-vehicle accident, plaintiffs, Scott Lowe and Beth Lowe, appeal from a judgment of the trial court granting summary judgment in favor of defendant, Tony Crawley. For the reasons that follow, we vacate the trial court's judgment.

FACTS AND PROCEDURAL HISTORY

On December 29, 2011, Scott Lowe was a guest passenger in a vehicle driven by David Porter (Porter vehicle), traveling westbound on Interstate 10 in New Orleans, Louisiana. At approximately 4:00 a.m., the Porter vehicle encountered a dense cloud made up of a mixture of fog and smoke. Although Porter began braking, he nonetheless rear-ended the vehicle in front of him owned by Max Trans, LLC and operated by Tommy Lee Marshall (Marshall truck), which was obstructing one or more lanes of travel. The Marshall truck apparently had also encountered the cloud of smoke and fog and had rear-ended a vehicle owned by Clayton Harper and operated by Crawley, which was also obstructing one or more lanes of the highway. Immediately after the collision between the Porter vehicle and the Marshall vehicle, the Porter vehicle was struck from the side and/or from behind by two vehicles—one vehicle owned by Noble and operated by Roy E. Poole and another vehicle owned and operated by James Pitts. Finally, in an effort to avoid colliding with other vehicles, a vehicle owned by Saia Motor Freight Line, LLC and operated by Ernest Wilkes (Saia vehicle), caused the Noble truck to collide into another vehicle owned by James Pitts, further causing both vehicles to collide with the Porter vehicle.

On December 20, 2012, Lowe and his wife, Beth Lowe, filed a petition for damages against multiple defendants asserting that the second collision caused by the Saia vehicle caused the Porter vehicle to go underneath the Marshall vehicle, resulting in severe injuries to Lowe. Particularly as to defendant, Crawley,

plaintiffs asserted that the second collision was caused in whole or in part by the negligence of Crawley in obstructing the lane of travel when it was unsafe and unreasonable to do so, in violation of La. R.S. 32:64 and 32:141, and entering a dense cloud of smoke and fog that reduced visibility.

Thereafter, Crawley filed a motion for summary judgment, asserting that no genuine issue of material fact had been raised to place fault on Crawley. Particularly, Crawley asserted that he safely brought his vehicle to a complete stop so as to avoid colliding with forward vehicles, and that there is no law requiring a motorist who stops behind a line of stopped vehicles to maintain a certain distance behind the forward stopped vehicles. The trial court subsequently denied Crawley's motion, finding that additional discovery was needed.

On September 23, 2015, Crawley re-urged his motion for summary judgment, asserting again that he safely brought his vehicle to a complete stop, that given the conditions present, it was unsafe for him to cross lanes of travel to stop on the shoulder of the roadway, and that the "special hazard" present, *i.e.*, zero visibility, exempted him from the requirements of La. R.S. 32:64 and La. R.S. 32:141.

Sometime following the filing of the second motion for summary judgment and prior to the hearing on the motion, Crawley passed away. Although a legal successor was not substituted for Crawley, the matter proceeded before the trial court. Following a hearing on the motion for summary judgment, the trial court signed a judgment granting summary judgment in favor of Crawley and dismissing plaintiffs' claims against him with prejudice.

Plaintiffs now appeal from the trial court's judgment, raising several assignments of error. Additionally, plaintiffs assert that because Crawley is deceased, and a legal successor has not been substituted as a party defendant, the trial court's judgment in his favor is an absolute nullity.

DISCUSSION

Upon the death of a litigant, a proper party must be substituted to allow the action to continue. La. C.C.P. art. 801; Tauzier v. St. Patrick Parade Committee of Jefferson, Inc., 01-1138, p. 9 (La. App. 5th Cir. 1/29/02), 807 So. 2d 1106, 1111. A judgment rendered for or against a deceased party is an absolute nullity. Carr v. Hibernia National Bank, 95-1342 (La. App. 1st Cir. 9/25/98), 720 So. 2d 81, 82; Gibson v. Leson Chevrolet Company, Inc., 94-804 (La. App. 5th Cir. 2/15/95), 652 So. 2d 69, 70; Charia v. Allstate Insurance Company, 93-1230 (La. App. 4th Cir. 3/29/94), 635 So. 2d 370, 372. As there is no dispute that Crawley was deceased at the time the trial court rendered judgment in his favor, and there has been no substitution of parties, the trial court's judgment is an absolute nullity. Accordingly, we vacate the trial court's judgment granting summary judgment in favor of Crawley.

However, because, La. C.C.P. arts. 802 and 803 provide for the issuance and service of a summons ordering a legal successor of a deceased party to appear and substitute himself for the deceased party, we remand this matter to the trial court to allow substitution as provided by law.

CONCLUSION

For the foregoing reasons, we vacate the trial court's judgment and remand this matter to the trial court to allow substitution of a legal successor for Crawley.

JUDGMENT VACATED AND REMANDED.