

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2018 CA 1634

ERIN AND OWEN C. SKETCHLER, INDIVIDUALLY AND ON BEHALF OF
THEIR MINOR SON, OLIVER SKETCHLER

VERSUS

DANIEL HERNANDEZ, OCTABIO HERNANDEZ, LOUIS C. PAXTON, AUDWIN D. FINLEY,
ADF ENTERPRISES, INC., OLD AMERICAN COUNTY MUTUAL FIRE INSURANCE
COMPANY, NATIONAL GENERAL INSURANCE COMPANY, COOPER INSURANCE &
ASSOCIATES, INC., THE STATE OF LOUISIANA THROUGH THE LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, GRACO CHILDREN'S
PRODUCTS, INC. & AMERICAN HONDA MOTOR CO., INC.

SEP 04 2020

Decision Rendered _____

Handwritten signature: M.C. (by JMM)

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On Appeal from the 21st Judicial District Court
Tangipahoa Parish, Louisiana
No. 2015-0001152, Div. E

The Honorable Brenda Bedsole Ricks, Judge Presiding

* * * * *

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* * * * *

BEFORE: McDONALD, CRAIN,¹ and HOLDRIDGE, JJ.

¹ Justice Will Crain is serving as judge ad hoc by special appointment of the Louisiana Supreme Court.

Handwritten notes:
Crain, J. concurs. (by JMM)
Holdridge, J. dissents and will assign reasons. (by JMM)

McDONALD, J.

The plaintiffs, Erin and Owen C. Sketchler, individually and on behalf of their minor son, Oliver, appeal a summary judgment in favor of the defendants, Louis C. Paxton, and his insurer, National General Assurance Company, dismissing the plaintiffs' claims against them with prejudice.² We amend the judgment and affirm it as amended.

FACTUAL AND PROCEDURAL HISTORY

This matter arises out of a motor vehicle accident that occurred on April 18, 2014, in Tangipahoa Parish. Daniel Hernandez was traveling westbound in the left lane on Interstate 12 when he allegedly rear-ended a vehicle driven by Mr. Paxton. The Hernandez vehicle then crossed the median and entered the eastbound left lane, whereupon it crashed into the rear of an 18-wheeler driven by Audwin D. Finley. After striking the Finley vehicle, the Hernandez vehicle struck the vehicle driven by Mr. Sketchler and in which Mrs. Sketchler and Oliver Sketchler were passengers. Each member of the Sketchler family was injured in the accident.

The Sketchlers filed suit against multiple defendants, including Mr. Paxton and National General Assurance Company. Ultimately, these defendants filed a motion for summary judgment on the issue of liability, seeking dismissal from the action with prejudice. The plaintiffs opposed the summary judgment, essentially disputing that Mr. Hernandez rear-ended the Paxton vehicle and contending that the Paxton vehicle swerved into Mr. Hernandez's pathway on the shoulder of the interstate, causing the accident.

The trial court held a hearing on the motion for summary judgment. Later, the trial court issued reasons for judgment, finding the plaintiffs did not offer sufficient evidence to show that the accident was not a rear-end collision and that they did not rebut the presumption of fault on the following driver in the accident. The trial court indicated it would grant the defendants' motion for summary judgment and dismiss

² Although the plaintiffs' petition and the judgment named National General Insurance Company as a defendant, the insurer's correct name is National General Assurance Company.

them from the action upon submission of a proper judgment. On January 19, 2018, the trial court signed the judgment.

The plaintiffs appeal, raising three assignments of error. They contend the trial court erred in granting the defendants' motion for summary judgment, because there were genuine issues of material fact as to the nature and location of the collision between the Paxton and Hernandez vehicles. They alternatively contend the trial court wrongly disregarded their expert's second affidavit by determining that there was an insufficient basis for his opinion without following the procedures set forth in La. C.C.P. art. 1425(F). Lastly, they contend the trial court erred in denying their motion for a new trial. Our resolution of the appeal does not require that we address the assignments of error individually.

DISCUSSION

An appellate court reviews a summary judgment de novo under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. In conducting this review, we consider the substantive law applicable to the case. *See Neeb Service, LLC v. Foster*, 17-0860 (La. App. 1 Cir. 1/29/18), 242 So.3d 586, 589.

Under La. R.S. 32:81A, a following motorist has a duty not to 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. Additionally, a motorist also has a duty to maintain a careful lookout, observe any obstructions present, and exercise care to avoid them. *Lawrence v. McKenzie*, 17-1131 (La. App. 1 Cir. 2/21/18), 2018 WL 990304, *8. When the lead vehicle obstructs the following motorist's view ahead, the following motorist has a duty to leave sufficient space between himself and the lead vehicle to stop in case of an unexpected hazard in the road ahead. *Roberts v. Rudzis*, 13-0538 (La. App. 1 Cir. 5/28/14), 146 So.3d 602, 611. As Louisiana courts have uniformly held, a following motorist in a rear-end collision is presumed to have breached his duty and, hence, is presumed negligent. *Lawrence*, 2018 WL 990304, *8. A rear-ending motorist, however, may rebut the presumption of

negligence by proving that he had his vehicle under control, closely observed the preceding vehicle, and followed at a safe distance under the circumstances. A following motorist may also avoid liability by proving that the driver of the lead vehicle negligently created a hazard that he could not reasonably avoid, otherwise known as the sudden emergency doctrine. *Id.*

In this case, the evidence shows Mr. Paxton was traveling at about 60 mph, noticed traffic was building, began to slow his speed, and the Hernandez vehicle struck the Paxton vehicle on the left rear quarter panel. Under La. R.S. 32:81A as applicable here, Mr. Hernandez, as the following motorist is presumed negligent, not Mr. Paxton. *See Lawrence*, 2018 WL 990304, *8. Thus, to defeat summary judgment, the Sketchlers were required to produce factual support sufficient to establish a disputed factual issue as to Mr. Paxton's fault. *See* La. C.C.P. art. 966D. The Sketchlers submitted two affidavits of V.O. "Dean" Tekell, Jr., a registered professional civil engineer specializing in traffic and transportation engineering and accident reconstruction. The Sketchlers argue Mr. Tekell's opinion creates a genuine issue of material fact as to whether Mr. Paxton's actions contributed to the accident in which the Sketchlers were injured. However, even if Mr. Tekell's version of the Paxton/Hernandez collision is admissible and accepted as true, we do not find that his opinion defeats summary judgment. Mr. Tekell's ultimate conclusion in his second affidavit was:

Mr. Paxton swerved to the left shoulder and median of I-12 West. Mr. Hernandez must steer his vehicle further to the left to make the collision marks that are demonstrated on the Paxton vehicle. Therefore Mr. Paxton's movement to the left is a contributing factor to the loss of control experienced by [Mr.] Hernandez before his vehicle entered the lane of I-12 East.

After a de novo review, we conclude that, even if Mr. Paxton swerved to the left shoulder and median, there are no facts showing he created a sudden emergency that Mr. Hernandez could not avoid. There are no facts showing that Mr. Paxton's swerve was negligent; nor are there facts showing Mr. Paxton's swerve caused Mr. Hernandez to steer his vehicle even further left into the shoulder and/or median, or that Mr. Paxton's swerve caused Mr. Hernandez to lose control of his vehicle, resulting in the Hernandez/Sketchler collision. Thus, the trial court correctly granted summary

judgment in favor of the defendants, because Mr. Tekell's affidavits do not create genuine issues of material fact that Mr. Paxton's actions contributed to the accident causing the Sketchlers' injuries.

CONCLUSION

We affirm the summary judgment in favor of Louis C. Paxton and National General Assurance Company. We amend the judgment to correct the insurer's name to National General Assurance Company. We assess costs of this appeal to Erin and Owen C. Sketchler.

AMENDED, AND AS AMENDED, AFFIRMED.