

NOT DESIGNATED FOR PUBLICATION

CHARAN B. MARIGNY	*	NO. 2000-CA-1990
VERSUS	*	COURT OF APPEAL
ALLSTATE INSURANCE	*	FOURTH CIRCUIT
COMPANY, STATE OF	*	STATE OF LOUISIANA
LOUISIANA THROUGH THE	*	
DEPARTMENT OF	*	
TRANSPORTATION AND	*	
DEVELOPMENT AND RALPH	*	
S. BOYD, SR.	*	
	* * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 90-19158, DIVISION "H-12"
HONORABLE MICHAEL G. BAGNERIS, JUDGE
*** * * * ***
JUDGE MAX N. TOBIAS, JR.
*** * * * ***

(Court composed of Judge Charles R. Jones, Judge Max N. Tobias, Jr., and Judge David S. Gorbaty)

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AFFIRMED

Charan B. Marigny was injured in a four-car accident on the Earhart Expressway in Jefferson Parish. She appeals the granting of a summary judgment and dismissal of her claim against the State of Louisiana, Department of Transportation and Development (hereinafter, "DOTD").

As noted in a previous appeal arising out of the accident, the facts are not in dispute. We quote from our earlier opinion, *Marigny v. Allstate Ins. Co.*, 95-0952 (La. App. 4 Cir. 1/31/96), 667 So. 2d 1229:

At approximately 12:55 p.m. on April 14, 1990, Trina Cage was travelling west in the left lane of [the] Earhart Expressway, which has three lanes at that point. She was directly behind a white vehicle, whose driver was never identified. Travelling behind Ms. Cage was Charan Marigny, and Sandra McG[e]hee's vehicle was in the far right lane, slightly behind the other cars. No one was in the center lane, and none of these four cars was exceeding the posted speed limit.

As the vehicles approached a curve in the roadway, a car driven by Ralph Boyd suddenly

appeared in the left lane heading in the wrong direction and straight toward the white car, Ms. Cage and Ms. Marigny. The white car, which was the first car in the lane to confront Mr. Boyd's car, pulled into the center lane and drove off. Ms. Cage, who was confronted by Mr. Boyd's car when the white car took evasive action, also attempted to turn into the center lane, but she lost control and her car spun into Ms. McGehee's car in the right lane. Ms. Marigny, who had been directly behind Ms. Cage, was unable to take evasive action and was hit head-on by the Boyd vehicle.

The thrust of Ms. Marigny's claims against the DOTD is that the DOTD was negligent in owning, controlling and maintaining a roadway that allowed operators of vehicles to mistakenly travel on the wrong side of the road without warnings that they are travelling in the wrong direction, and failing to place warning devices, such as "Do Not Enter" or "Wrong Way" signs, to prevent confused and inattentive drivers from travelling in the wrong direction. Ms. Marginy's theory is that Mr. Boyd entered the Earhart Expressway by entering in the wrong direction at the Cleary Avenue exit ramp because other entranceways, located at Clearview Parkway and Hickory Avenue, are farther away and thus other drivers on the expressway should have encountered Mr. Boyd sooner. The accident occurred approximately one-half mile from the Cleary Avenue exit. She asserts that the signage used to alert those entering the expressway in the wrong

direction at the exit is improperly marked, misleading and confusing.

Ms. Marigny is unable to produce any eyewitness who can testify as to how Mr. Boyd came to travel in the wrong direction (entering west-bound lanes heading east) on Earhart. At the time of the accident, Mr. Boyd was 76 years of age, legally blind in one eye, not wearing his eyeglasses, and intoxicated with a blood alcohol level of 0.12 (measured at 3:25 p.m. on the date of the accident). Louisiana State Police Trooper Kenneth J. Curlee, an investigating officer at the scene, noted the presence of either a “Canal Villere” or “Superstore” grocery bag in Mr. Boyd’s car. (The record is silent as to whether the bag was filled with anything.) Because Mr. Boyd lived in Orleans Parish right off the Earhart Expressway, Trooper Curlee assumed that he entered the expressway in the wrong direction at Cleary because a “Superstore” is located close to the Cleary exit off the Earhart Expressway. Mr. Boyd’s statement was never taken and he died shortly after the accident.

No evidence establishes how Mr. Boyd wound up proceeding in the wrong direction on the Earhart Expressway. It is equally possible that he entered the expressway in the wrong direction at the Cleary Avenue, Clearview Parkway, or Hickory Avenue exits, or made a U-turn on the expressway and proceeded in the opposite direction from that which he was initially headed. To the extent that Mr. Boyd’s counsel might have a

statement from him, such a statement is subject to an attorney-client privilege and the privilege survives the death of the client. La. C.E. art. 506; *Succession of Norton*, 351 So. 2d 107 (La. 1977).

Proof that establishes only possibility, speculation or unsupported probability does not suffice to establish a claim. *Todd v. State, through Dept. of Social Services*, 96-3090 (La. 9/9/97), 699 So. 2d 35; *West Jefferson Levee District v. Coast Quality Const. Corp.*, 93-1718 (La. 5/23/94), 640 So. 2d 1258. Proof that something is possible is of insufficient probative value relating to the ultimate issue, unless reasonable certainty makes all other alternatives impossible. *Todd, supra*. A plaintiff's case fails if the evidence shows only a possibility of a causative accident or leaves it to speculation or conjecture. *Todd, supra*.

Our *de novo* review of the record before us establishes that Ms. Marigny's claims against the DOTD are based entirely upon speculation and possibility. No evidence establishes that she will be able to prove her claims against the DOTD by a preponderance of the evidence to establish that Mr. Boyd entered the Earhart Expressway at Cleary. Thus, we find that the trial court did not err by granting the DOTD's motion for summary judgment. Accordingly, we affirm the judgment of the trial court dismissing Ms. Marigny's claims against the DOTD.

AFFIRMED