Opinion filed August 27, 2020

In The

Eleventh Court of Appeals

No. 11-18-00166-CV

RUBY FLORES, INDIVIDUALLY AND AS NEXT FRIEND OF CORY ALMANZA, AND CORY ALMANZA, Appellants

V.

JESUS VERASTEGUI AND CITY OF ABILENE, Appellees

On Appeal from the 42nd District Court
Taylor County, Texas
Trial Court Cause No. 49368-A

M E M O R A N D U M O P I N I O N

This appeal arises from a jury trial to allocate liability between two defendants, Jesus Verastegui and the City of Abilene, after a vehicular accident involving a City truck. Appellants are Cory Almanza and his mother, Ruby Flores. Almanza was severely injured as a result of the accident. Appellees are the City of Abilene and Jesus Verastegui.

Appellants brought a negligence claim against Appellees based on the acts and omissions of Verastegui and an employee of the City. Verastegui and the City's employee were the two drivers involved in the collision. The jury determined that the negligence, if any, of the City's employee was not a proximate cause of the accident. Because the jury determined that no negligence on the part of the City's employee was a proximate cause, it did not answer a question to apportion responsibility between Verastegui and the City.

The trial court entered a final judgment against Verastegui in the amount of $17,450,438. Appellants challenge the judgment by asserting that the trial court abused its discretion in admitting expert opinion testimony, reports, and an animation prepared by the City's expert. Appellants also assert that the evidence was factually insufficient to support the jury's failure to find that any negligence on the part of the City was a proximate cause of the accident. We affirm.

Background Facts

On the morning of May 5, 2014, Verastegui, Almanza, and Kristian Price left an early morning football practice in Verastegui's Suburban and headed to McDonald's to get some breakfast before school started. Verastegui drove, Almanza sat in the front seat, and Price sat in the back seat.

After leaving the school, Verastegui turned right onto North 1st Street and drove in the right, outer lane. This area of North 1st Street between the school and the McDonald's is five lanes wide, with two proceeding west, two proceeding east, and a left-turn lane dividing them. As Verastegui approached an intersection, he noticed a City roll-off style garbage truck ahead of him in the same lane. Verastegui decided to switch to the left, inside lane in order to pass the truck.

Soon after Verastegui noticed the City truck, it began to make a wide right turn into a parking lot, moving partially into the left, inside lane to make the turn. Verastegui believed that the City truck was changing lanes from the right, outer lane

to the left, inside lane. Based on this belief, Verastegui changed lanes to the right, outer lane to pass the truck on the right. However, the City truck did not leave the right, outer lane as it was completing its turn to the right. When the City truck began turning right, Verastegui attempted an evasive maneuver to the left by moving to the inside lane. However, the front passenger side of his Suburban collided with the rear of the City truck. The collision severely injured the front-seat passenger, Almanza, and the back-seat passenger, Price.

Almanza and Flores originally sued Verastegui, Verastegui's parents, and the City. Verastegui's parents were subsequently dropped from the suit. The trial was solely to allocate liability between Verastegui and the City because the parties stipulated before trial that Appellants' damages were $17,450,438.

The City called Dr. Jahan Rasty to testify as to what he believed to be the cause of the accident. Appellants objected to the admissibility of Dr. Rasty's opinion testimony, expert reports, and an animation that he prepared. The trial court overruled all of Appellants' objections to Dr. Rasty's testimony, as well as the objections to his three reports and the animation.

Issues

Appellants present five issues for our review: (1) whether the trial court abused its discretion in admitting Dr. Rasty's opinion testimony; (2) whether the trial court abused its discretion in admitting Dr. Rasty's expert reports; (3) whether the trial court abused its discretion in admitting Dr. Rasty's animation depicting the collision; (4) whether cumulative error exists in connection with the evidence from Dr. Rasty; and (5) whether the evidence was factually sufficient to support the jury's failure to find that negligence on the part of the City was a proximate cause of the collision.

Analysis

In their first issue, Appellants assert that the trial court abused its discretion by admitting Dr. Rasty's opinion testimony at trial without limitation. The decision to admit or exclude evidence is reviewed for an abuse of discretion. *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9, 27 (Tex. 2014); *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998). A trial court abuses this discretion when it acts without reference to any guiding rules or principles; in other words, when the trial court acts arbitrarily or unreasonably. *U-Haul Int'l, Inc. v. Waldrip*, 380 S.W.3d 118, 132 (Tex. 2012); *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). Merely because a trial court may decide a matter within its discretion in a different manner than an appellate court would in a similar circumstance does not demonstrate that an abuse of discretion has occurred. *Downer*, 701 S.W.2d at 241.

Appellants primarily contend that Dr. Rasty's expert opinions were not based on a reliable foundation as required by Rule 702. *See* TEX. R. EVID. 702. Qualified experts may offer opinion testimony if that testimony is both relevant and based on a reliable foundation. *Id.*; *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 499 (Tex. 2001). When an opposing party objects to proffered expert testimony, the proponent of the expert testimony bears the burden of demonstrating its admissibility. *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995). Because jurors may place great weight on expert testimony, trial judges have a heightened responsibility to ensure that expert testimony is both relevant and reliable. *Id.* at 553–54.

Appellants challenge the reliability of Dr. Rasty's opinion testimony, arguing that Dr. Rasty's testimony was unreliable because Dr. Rasty reached his opinions and conclusions without examining all the available data, without independently verifying the information he relied upon, by assuming unsupported and contested

facts, and by ignoring contrary evidence. "Admission of expert testimony that does not meet the reliability requirement is an abuse of discretion." *Gharda USA, Inc. v. Control Sols., Inc.*, 464 S.W.3d 338, 347–48 (Tex. 2015) (quoting *Cooper Tire & Rubber Co. v. Mendez*, 204 S.W.3d 797, 800 (Tex. 2006)). Courts generally determine the reliability of an expert's chosen methodology by applying the *Robinson* factors.[1] *Id.* at 348; *Helena Chem. Co.*, 47 S.W.3d at 499. The factors "will differ with each particular case." *Gharda USA*, 464 S.W.3d at 348; *Robinson*, 923 S.W.2d at 557.

Whether an expert's testimony is reliable is based on more than whether the expert's methodology satisfies the *Robinson* factors. *Gharda USA*, 464 S.W.3d at 348; *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 637–38 (Tex. 2009). "Expert testimony is unreliable 'if there is too great an analytical gap between the data on which the expert relies and the opinion offered.'" *Gharda USA*, 464 S.W.3d at 349 (quoting *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 904–05 (Tex. 2004)). Whether an analytical gap exists is largely determined by comparing the facts the expert relied on, the facts in the record, and the expert's ultimate opinion. *Id.* We do not determine if the expert's opinions are correct, but instead, we determine only whether the analysis used to reach the opinions is reliable. *Id.* (citing *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 629 (Tex. 2002)).

The Texas Supreme Court addressed the reliability of an accident reconstruction expert's testimony in *TXI Transportation Co. v. Hughes*. 306 S.W.3d 230, 235 (Tex. 2010). The court noted that the *Robinson* "methodology" factors are

[1]These factors include, but are not limited to, (1) the extent to which the theory has been tested or can be tested, (2) the extent to which the technique relies upon the subjective interpretation of the expert, (3) whether the theory has been subjected to peer review or publication, (4) the technique's potential rate of error, (5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community, and (6) the nonjudicial uses which have been made of the theory or technique. *Robinson*, 923 S.W.2d at 557.

"particularly difficult to apply in vehicular accident cases involving accident reconstruction testimony." *Id.* Therefore, in accident reconstruction cases, rather than focus entirely on the reliability of the underlying technique used to generate the challenged opinion, as in *Robinson*, the supreme court has found it appropriate "to analyze whether the expert's opinion actually fits the facts of the case." *Id.* In other words, we focus on determining "whether there are any significant analytical gaps in the expert's opinion that undermine its reliability." *Id.* Analytical gaps arise when experts improperly apply otherwise sound principles and methodologies, the expert's opinion is based on incorrectly assumed facts, or the expert's opinion is based on tests or data that do not support the conclusions reached. *Gharda USA*, 464 S.W.3d at 349.

Dr. Rasty is a professor of mechanical engineering at Texas Tech University. He is also the director of the graduate forensic engineering program at Texas Tech, which is a program that trains engineering students to do accident reconstruction. Dr. Rasty expressed two opinions at trial: Verastegui's speed was a causative factor in the collision, and the City's truck driver made a safe, wide right turn. Dr. Rasty based these conclusions on the following resources: (1) his analysis and review of the Event Data Recorder (EDR) from Verastegui's Suburban; (2) the responding police officers' notes of the scene and notes regarding the Suburban's drag coefficient; (3) photographs taken the day of the collision; (4) witnesses' statements; (5) deposition testimony; (6) Officer Tyson Kropp's report; and (7) Dr. Rasty's testing of the City truck's turn radius. The EDR showed the Suburban's speed and what the brakes and steering were doing immediately before the accident. Dr. Rasty testified that all of this information is the type that is normally relied upon by accident reconstructionists.

Using this information and the scientific principles of speed, time, and distance, Dr. Rasty determined that Verastegui could have avoided the accident if

Verastegui had been traveling at the speed limit of forty miles per hour rather than traveling in excess of the speed limit as indicated by the EDR. Furthermore, Dr. Rasty determined that the City's truck driver made a safe, wide right turn based on his analysis of the truck's turning radius, the entry location for the business that the truck was pulling into, Verastegui's affidavit stating that Verastegui had seen a blinking light on the right side of the truck, and the truck driver's statement that he had turned on his right blinker before he began the turn.

The record indicates that, in forming his opinions, Dr. Rasty relied on scientific principles and data that are accepted and generally used by accident reconstructionists. Officer Kropp relied on almost identical data as the foundation for his conclusions regarding who was at fault for this accident. The EDR data from the Suburban showed that Verastegui was speeding prior to the accident, and mathematical analysis showed that, if Verastegui had not been speeding, he could have avoided the accident.[2] Additionally, Verastegui stated that he had seen a blinking light on the "right side" of the City truck, and the City's truck driver testified that he had activated his turn signal and checked his mirrors prior to making the turn.

Appellants' challenges to Dr. Rasty's opinions are the type which go to the weight and not the admissibility of the evidence. *See LMC Complete Auto., Inc. v. Burke*, 229 S.W.3d 469, 478 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) ("The weakness of facts in support of an expert's opinion generally goes to the weight of the testimony rather than the admissibility."). For example, there is a factual dispute concerning whether and when the City's truck driver turned on his right turn signal and whether it was visible from the rear of the City truck. Deficits

[2]Appellants' accident reconstructionist, John Painter, also opined that "if [Verastegui] would have been traveling near the speed limit, it would be unlikely that the collision would have occurred."

of this type in an expert's opinion are more appropriately pointed out by vigorous cross-examination and the presentation of contrary evidence. *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 596 (1993).

For the matters in dispute, the statements of Verastegui and the City's truck driver supported Dr. Rasty's opinions and conclusions. Based on the data that Dr. Rasty relied upon, there are no significant analytical gaps in Dr. Rasty's opinion that undermines his testimony's reliability. We conclude that the trial court did not abuse its discretion by admitting Dr. Rasty's opinion testimony at trial because his opinion "fits the facts" of this case. *See TXI Transp.*, 306 S.W.3d at 235.

Alternatively, Appellants argue that the trial court should have excluded or limited Dr. Rasty's trial testimony under Rule 403. Rule 403 of the Texas Rules of Evidence permits a trial court to exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence. TEX. R. EVID. 403. However, Appellants did not object to Dr. Rasty's oral testimony on the basis that its admission violated Rule 403.[3] In order to preserve a complaint for appellate review, the record must show that the complaint was made to the trial court and that the trial court ruled on the request, objection, or motion. *See* TEX. R. APP. P. 33.1(a). Additionally, the objection made at trial must comport with the issue presented on appeal. *See Moran v. Mem'l Point Prop. Owners Ass'n*, 410 S.W.3d 397, 407 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *Basic Energy Serv., Inc. v. D–S–B Props., Inc.*, 367 S.W.3d 254, 264 (Tex. App.—Tyler 2011, no pet.). By not objecting to Dr. Rasty's oral testimony under Rule 403, Appellants did not preserve this complaint for appellate review. We overrule Appellants' first issue.

[3]As set forth in our discussion of Appellants' third issue, Appellants presented a Rule 403 objection to the animation that Dr. Rasty prepared.

In their second issue, Appellants assert that the trial court abused its discretion in admitting Dr. Rasty's three written expert reports. Appellants contend that Dr. Rasty did not base the opinions and conclusions expressed in the reports on a reliable foundation. They also assert that the reports constituted inadmissible hearsay. Appellants argue on appeal that the trial court should have excluded the reports under Rule 403.

Appellants assert that the foundation for Dr. Rasty's reports was unreliable for essentially the same reasons that the foundation for Dr. Rasty's opinion testimony was unreliable. The opinions and conclusions as expressed in Dr. Rasty's reports are virtually identical to the opinions and conclusions Dr. Rasty expressed in his oral testimony. We have already determined in our disposition of Appellants' first issue that Dr. Rasty had a reliable foundation for his opinions. Thus, we conclude that he based his reports on a reliable foundation. With respect to Appellants' Rule 403 contention, Appellants have not preserved this contention for appellate review because they did not object to Dr. Rasty's reports on this basis. *See* TEX. R. APP. P. 33.1(a); *Moran*, 410 S.W.3d at 407.

With respect to Appellants' hearsay objection, hearsay is an out-of-court statement offered in evidence to prove the truth of the matter asserted. TEX. R. EVID. 801(d). At the time that it offered the reports into evidence, the City asserted that the reports were admissible as the written opinion of an expert made on reliance of facts or data reasonably relied upon by experts in the field. It appears that the City made this argument to address hearsay statements contained within Dr. Rasty's reports. However, Appellants appear to have been objecting to the opinions of Dr. Rasty as expressed in his reports based upon Appellants' contention that Dr. Rasty was "not unavailable."

Even if we assume that the trial court erred by overruling Appellants' hearsay objections to Dr. Rasty's written reports, the ruling does not constitute reversible

error. The erroneous admission or exclusion of evidence requires reversal only if the error probably caused the rendition of an improper judgment. *State v. Cent. Expressway*, 302 S.W.3d 866, 870 (Tex. 2009); *Nissan Motor Co. v. Armstrong*, 145 S.W.3d 131, 144 (Tex. 2004). Exclusion or admission of evidence is likely harmless if the evidence was cumulative. *Cent. Expressway*, 302 S.W.3d at 870; *Reliance Steel & Aluminum Co. v. Sevcik*, 267 S.W.3d 867, 873 (Tex. 2008); *Discovery Operating, Inc. v. BP Am. Prod. Co.*, 311 S.W.3d 140, 170 (Tex. App.—Eastland 2010, pet. denied).

Dr. Rasty's opinions that were expressed in his reports were virtually identical to the opinions expressed in his live testimony. Furthermore, the data set out in his reports was cumulative of other evidence offered at trial. Accordingly, any error in the admission of Dr. Rasty's written reports was harmless. We overrule Appellants' second issue.

Appellants' third issue concerns the admission of a video animation prepared by Dr. Rasty. Appellants contend that the trial court abused its discretion in admitting Dr. Rasty's video animation because the opinions and conclusions expressed in the video were not based on a reliable foundation, presumed facts not in evidence, and misstated the evidence. Appellants challenge the manner in which the animation depicts the right rear turn signal, arguing that the animation is disingenuous because it shows the signal as an orange flashing light on the rear of the truck when testimony does not prove that the light was there. Appellants also take issue with how the video depicts heavy cloud conditions that make the rear turn signal stand out as more visible, the path of the vehicles after the collision, the point where the City truck begins its turn, the exact turn radius of the City truck, the view from the Suburban leading up to the collision, the speed of the City truck, and the cleanliness of the truck and lights. Appellants also objected to the animation under Rule 403, asserting that its prejudicial effect outweighed its probative value.

We have addressed in criminal cases the admissibility of an animation to recreate an accident. *Pugh v. State*, No. 11-17-00216-CR, 2019 WL 4130793 (Tex. App.—Eastland Aug. 30, 2019, pet. granted) (mem. op., not designated for publication); *Murphy v. State*, No. 11-10-00150-CR, 2011 WL 3860444 (Tex. App.—Eastland Aug. 31, 2011, no pet.) (mem. op., not designated for publication). We have upheld the admissibility of an animation to recreate the scene of an accident so long as the animation is based on objective data. *Pugh*, 2019 WL 4130793, at *2.[4] The San Antonio Court of Appeals has determined that a computer animation that recreates a vehicular accident is admissible if it is based on calculations derived from inanimate objects and quantifiable measurements. *Venegas v. State*, 560 S.W.3d 337, 346–48 (Tex. App.—San Antonio 2018, no pet.).

The City's attorney stated that the City was offering the animation to depict that Verastegui could have avoided the collision with the City truck if Verastegui had not been traveling in excess of the posted speed limit. In that regard, the animation showed multiple views of a Suburban traveling at fifty-two miles per hour colliding with a truck making a turn to the right. Afterwards, a caption in the animation posed the following question: "What would have happened if the Suburban was traveling at an appropriate speed?" The animation then displayed another caption stating that Verastegui's excessive speed prevented him from taking effective action and that, had he been traveling near the speed limit, "the Suburban would have been able to come to a stop prior to colliding with the truck, even if [Verastegui] made the same judgement mistake and reacted/braked in the same manner as he did in the actual situation." The animation then showed multiple views

[4]The Texas Court of Criminal Appeals has granted the defendant's petition for discretionary review in *Pugh*, wherein the defendant asserts that an animation depicting a human's appearance, movement, and behavior should be inadmissible. In his petition, the defendant in *Pugh* distinguishes animations that only depict inanimate objects such as vehicles.

of a Suburban traveling the speed limit of forty miles per hour and avoiding the collision by stopping short of the truck making the turn to the right.

Dr. Rasty testified that he based the animation on objective data and measurements obtained from the police reports, witness statements, and the EDR data from the Suburban. Accordingly, the trial court did not abuse its discretion by determining that Dr. Rasty's animation had a reliable foundation.

Alternatively, Appellants assert that the trial court erred by overruling their Rule 403 objection because the probative value of the animation was significantly outweighed by the danger of unfair prejudice, confusion of the issues, and potential to mislead the jury because the animation bears little resemblance to the actual evidence and testimony in this case. "[Evidence] is not inadmissible on the sole ground that it is 'prejudicial' because in our adversarial system, much of a proponent's evidence is legitimately intended to wound the opponent." *Bay Area Healthcare Grp., Ltd. v. McShane*, 239 S.W.3d 231, 234 (Tex. 2007). "Rather, *unfair* prejudice is the proper inquiry." *Diamond Offshore Servs. Ltd. v. Williams*, 542 S.W.3d 539, 549 (Tex. 2018). "'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *Id.* (quoting *Old Chief v. United States*, 519 U.S. 172, 180 (1997)). "When determining admissibility of evidence under Rule 403, trial judges must balance the probative value of the evidence against relevant countervailing factors." *JBS Carriers, Inc. v. Washington*, 564 S.W.3d 830, 836 (Tex. 2018).

With respect to the animation's probative value, it closely resembled Dr. Rasty's opinions and conclusions as expressed in his live testimony and reports. Appellants assert that the animation was unduly prejudicial because of the factual discrepancies in the evidence. Appellants contend that the animation improperly resolved these discrepancies in the City's favor, primarily the visibility of the light

displayed on the rear of the City truck and the location of the City truck in the two westbound lanes of travel as it was making its right turn.

We disagree that the depiction of these factual discrepancies rendered the animation inadmissible for being unduly prejudicial. As was the case with Dr. Rasty's opinions in general, the animation's depiction of the factual discrepancies was a matter pertaining to the weight of the animation, rather than its admissibility. Appellants were able to challenge these discrepancies through rigorous cross-examination and the presentation of rebuttal evidence. In this regard, Appellants called their expert, Painter, as a rebuttal witness to challenge Dr. Rasty's opinions and animation. Accordingly, the trial court did not abuse its discretion by overruling Appellants' objections to the animation. We overrule Appellants' third issue.

In their fourth issue, Appellants assert that the cumulative effect of the trial court's multiple erroneous rulings concerning Dr. Rasty resulted in harmful error and the rendition of an improper judgment. Courts refer to an issue of this type as the "cumulative error" doctrine, which recognizes that while each individual error, when analyzed separately, may be harmless, their combined effect could constitute harmful error. *In re E.R.C.*, 496 S.W.3d 270, 281 (Tex. App.—Texarkana 2016, pet. denied). As noted in *E.R.C.*, the cumulative error doctrine "has found little favor with appellate courts." *Id.* (quoting *Caro v. Sharp*, No. 03-02-00108-CV, 2003 WL 21354602, at *8 (Tex. App.—Austin June 12, 2003, pet. denied) (mem. op.)). "[B]efore errors can be cumulated, they must first be shown to exist." *Id.*

In this case, we have only found one potential error in the admission of Dr. Rasty's opinions—the admission of his reports over Appellants' hearsay objection. Thus, this is not a case with multiple errors that must be considered for their cumulative effect. *See id.* Accordingly, we overrule Appellants' fourth issue.

In their fifth issue, Appellants challenge the factual sufficiency of the evidence supporting the jury's finding that the City employee's negligence, if any, was not a proximate cause of the accident. Appellants contend that the jury's finding was so against the great weight and preponderance of the evidence as to be manifestly unjust.

"When a party attacks the factual sufficiency of an adverse finding on an issue on which [the party] has the burden of proof, [the party] must demonstrate on appeal that the adverse finding is against the great weight and preponderance of the evidence." *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001). "The court of appeals must consider and weigh all of the evidence, and can set aside a verdict only if the evidence is so weak or if the finding is so against the great weight and preponderance of the evidence that it is clearly wrong and unjust." *Id.* We do not pass upon the witnesses' credibility or substitute our judgment for that of the jury, even if the evidence would support a different result. *Gonzalez v. McAllen Med. Ctr., Inc.*, 195 S.W.3d 680, 681 (Tex. 2006) (per curiam).

To prevail on a negligence claim, a plaintiff must establish a duty, a breach of that duty, and damages proximately caused by the breach. *Kroger Co. v. Milanes*, 474 S.W.3d 321, 335 (Tex. App.—Houston [14th Dist.] 2015, no pet.). In light of the broad-form submission in this case, the jury's "no" answer could have been based upon the jury's refusal to find either that the City employee was negligent or that any such negligence was a proximate cause of the accident. *See Faust v. BNSF Ry. Co.*, 337 S.W.3d 325, 338 (Tex. App.—Fort Worth 2011, pet. denied). Thus, to sustain this issue, the evidence must be factually insufficient to support the jury's refusal to find both that the City employee was negligent and that any such negligence was a proximate cause of the accident. *See id.*

To establish a breach of duty for a negligence action, the plaintiff must show either that the defendant did something an ordinarily prudent person exercising

ordinary care would not have done under those circumstances or that the defendant failed to do that which an ordinarily prudent person would have done in the exercise of ordinary care. *Caldwell v. Curioni*, 125 S.W.3d 784, 793 (Tex. App.—Dallas 2004, pet. denied). Proximate cause consists of two elements: cause in fact and foreseeability. *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762, 774 (Tex. 2010). An occurrence may have more than one proximate cause. *Id.*

Appellants assert that the overwhelming weight of the evidence established that the City employee was negligent because there was testimony that the turn signal was not visible on the City truck and because there was evidence that the City truck was partially in the inside lane as it made the right turn. However, there was evidence that the City employee signaled that he was making a turn to the right, and Verastegui stated in his affidavit that he saw a flashing orange or yellow light. Furthermore, there was evidence that it was not possible for the City truck to make the turn without going into the inside lane.

Even if the jury believed that the City employee was negligent, there was still the issue of proximate cause. The issue of proximate cause was a question of fact to be resolved by the jury. *See id.* Given the fact that Verastegui approached the City truck from behind traveling at an excessive speed, the jury's determination that the City employee's actions were not a proximate cause of the accident was not against the great weight and preponderance of the evidence. In this regard, there is evidence that Verastegui could have avoided colliding with the City truck had he been traveling the speed limit, irrespective of whatever actions were taken by the City employee. Accordingly, we overrule Appellants' fifth issue.

This Court's Ruling

We affirm the judgment of the trial court.

JOHN M. BAILEY

CHIEF JUSTICE

August 27, 2020

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.[5]

Willson, J., not participating.

[5]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.