

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2014-4475

DIVISION "F"

SECTION 7

CELESTINE CASIMIRE AND REINA CASIMERE

VERSUS

CANAL INSURANCE COMPANY, LEC TRUCKING, AND RICKY HARBIN

FILED: _____

DEPUTY CLERK

REASONS FOR JUDGMENT

Celestine Casimire ("C. Casimire") and her daughter, Reina Casimire ("R. Casimire") claim they were injured on June 13, 2013, when an 18 wheeler tractor-trailer, operated by Ricky Harbin ("Harbin"), slammed into the left rear of the vehicle Ms. C. Casimire was driving. Ms. C. Casimire testified that she and her daughter were coming from R. Casimire's home on the Westbank. According to the Casimires, they were going shopping in the Metairie area. Ms. C. Casimire stated that she was driving in the left when she observed a service vehicle ahead of her directing traffic to move right. Ms. C. Casimire moved to what she described as the "second" lane. She said she remained in the "second" lane past the Slidell exit. After passing the Slidell exit Ms. C. Casimire observed an eighteen wheeler in her rear view mirror coming up behind her vehicle at a fast speed. At that point, she activated her right turn blinker. Her daughter advised her that she could not enter the right lane because it was ending. Ms. C. Casimire turned her signal off and continued forward. C. Casimire testified that she was hit in the rear by the tractor-trailer, and that the driver of the tractor-trailer did not stop after the collision.

Ms. C. Casimire testified that following the alleged accident, she initially recommended to her daughter that they continue on their shopping adventure because they were okay; however, R. Casimire disagreed noting that they should follow the tractor-trailer to ensure that the driver was held accountable. While R. Casimire called 911, Ms. C. Casimire proceeded to follow the tractor-trailer until her daughter was advised by the 911 dispatcher to back off. R. Casimire recorded the license plate number of the trailer and also the tractor's DOT registration number. Trooper Brandon Beaudoin was dispatched by the Louisiana State Police to speak with the Casimires. Ms. C. Casimire stated that she was extremely upset and had difficulty communicating with the trooper.

Trooper Beaudoin testified that he had independent recollection of his investigation. He

interviewed Ms. C. Casimire who described making a number of lane changes preceding the accident. Both Ms. C. Casimire and R. Casimire testified that C. Casimire did not change lanes after passing the service vehicle. According to Trooper Beaudoin, Ms. C. Casimire advised him that she had changed lanes before the impact and ended up next to the tractor-trailer when she realized she was in an exit only lane. Ms. C. Casimire then merged into the same lane as the tractor-trailer. Trooper Beaudoin recounted that Ms. C. Casimire told him she sped up as she entered the lane but was hit in the rear, and that the tractor-trailer driver fled the scene. Trooper Beaudoin examined the rear of Ms. C. Casimire's vehicle. She advised him that the vehicle had pre-existing damage but a portion of the bumper was damaged by the accident. Ms. C. Casimire testified that the damage was to the driver's side rear of her vehicle. Trooper Beaudoin made contact with Mr. Harbin and LEC Trucking, Inc., the owner of the truck and Mr. Harbin's employer. LEC Trucking, Inc. confirmed that Mr. Harbin was operating the truck identified by the trooper. Trooper Beaudoin made contact with Mr. Harbin who denied being involved in an accident. Mr. Harbin testified that he was not contacted until a week after the alleged incident. He sent Trooper Beaudoin pictures of the front of his tractor. The photographs were admitted into evidence. The photographs do not depict any visible sign of damage to his front bumper.

Mr. Harbin testified that he began his day in Chalmette, Louisiana. He then headed to the Port of New Orleans where he picked up two empty containers. Mr. Harbin was taking the containers to Memphis, Tennessee. He was familiar with the area where the accident allegedly occurred. Mr. Harbin stated that he was not involved in any collision or near misses on the alleged date of loss. He was not contacted by LEC Trucking, Inc., even though his wife was the dispatcher for the company. It was not until Sunday, a week later, that he spoke to anyone about the accident.

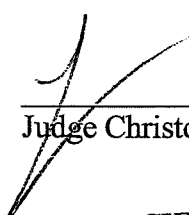
The medical records introduced into evidence indicate that Ms. R. Casimire told Dr. Alden on June 25, 2013, that she "was merging into lane and was hit by an 18 wheeler." Ms. C. Casimire told the emergency room doctor at the Interim LSU Public Hospital that she was rear ended by an 18 wheeler tractor trailer "at interstate speed." In their initial response to discovery, the Casimires were asked to describe the events leading up to the accident. They answered as follows: "[P]lease refer to the attached police report." In response to Trooper Beaudoin's recollection of her statement about changing lanes, which was given to him at the time of the accident, Ms. C. Casimire professed that she did not recall telling him that. Her other

explanation was that the Trooper misunderstood what she was telling him. Ms. C. Casimire offered that the Trooper probably confused a statement by her that she had changed lanes or maybe she was trying to suggest that Mr. Harbin may have thought she was changing lanes when he sped up.

Under Louisiana law, the Casimires bear the burden of proving that the conduct of Mr. Harbin was a cause-in-fact of their injuries. *See generally Riley v. Salley*, 2003-1601 (La. App. 4 Cir. 4/21/04), 874 So.2d 874, 876. Cause-in-fact is generally a “but for” inquiry: if the plaintiff probably would not have been injured but for the defendant’s substandard conduct, such conduct is a cause-in-fact. *Coffey v. Mushatt*, 2003-0232 (La. App. 4 Cir. 10/01/03), 859 So.2d 727, 731. The inquiry is whether the defendant contributed to the plaintiff’s harm. *Id.* Thus, this case boils down to whether Mr. Harbin’s vehicle struck the rear of Ms. C. Casimire’s vehicle.

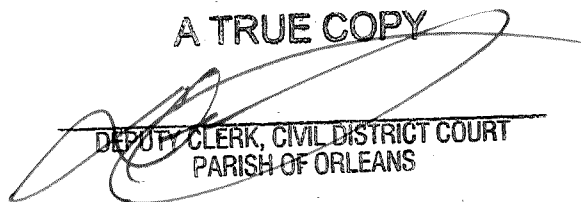
Ms. C. Casimire and her daughter have not carried their burden of proof. The Casimires’ testimony is not credible on the claimed impact. Ms. C. Casimire stated that she was struck at highway speed yet there is no evidence of any damage to Mr. Harbin’s bumper. Highway speed would be in the range of sixty-five to seventy miles per hour.¹ Ms. C. Casimire did not offer any photographs documenting her physical damage. Additionally, Ms. C. Casimire told Trooper Beaudoin that she had made a number of lane changes prior to the impact. Her daughter told her treating physician that her mother was merging into traffic when the impact occurred which is consistent with Trooper Beaudoin’s recollection. Lastly, Ms. C. Casimire, despite stating that the impact occurred at highway speed, was quite content to continue on to her shopping trip. It is simply not believable that her vehicle was struck at highway speed by the tractor trailer without bumper of the truck showing some damage. The court finds that Ms. C. Casimire moved her vehicle in the path of the tractor trailer after realizing she was in an exit only lane. The tractor trailer did not make contact with her vehicle. The Casimires’ case is dismissed with prejudice. All court costs are to be borne by the Casimires.

Signed this 21ST day of September, 2016, at New Orleans, Louisiana.


Judge Christopher J. Bruno

JUDGE
CHRISTOPHER J. BRUNO
DIVISION “F”

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DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS

¹ La. R.S. 32:61.