

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 0050

VIRGINIA G. GRANITE, ET AL.

VERSUS



USAA CASUALTY INSURANCE COMPANY



Judgment Rendered: June 10, 2011

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 550,885

Honorable Todd W. Hernandez, Judge

J. Donald Cascio
Denham Springs, LA

Attorney for
Plaintiffs – Appellants
Virginia G. Granite, John M. Granite,
Sr., and Anthony Thomas Granite

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Defendants – Appellees
Cheryl Baughman, Individually and
on behalf of her Minor Son,
Christopher Baughman and USAA
Casualty Ins. Co.

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Defendant – Appellee
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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

Plaintiffs, Virginia Granite, John Granite, Sr., and Anthony Thomas Granite, appeal a summary judgment granted in favor of defendants, Cheryl Baughman, individually and on behalf of her minor son, Christopher Baughman (Chris), and USAA Casualty Insurance Company (sometimes collectively referred to as "USAA"), dismissing defendants from this personal injury lawsuit. We reverse.

BACKGROUND

On January 5, 2006, Mrs. Granite was driving her 2004 Chevrolet truck west on Interstate-12 when a Nissan Pathfinder driven by Jess Gile (Jess), a minor, struck the side of Mrs. Granite's truck. It is not disputed that prior to the accident, Jess and Chris, also a minor who was driving a Honda Accord, were engaged in a game of "lane jockeying" on the interstate in which they attempted to "box in" Mrs. Granite's vehicle in order to prevent her from passing their vehicles. Plaintiffs filed this lawsuit for damages arising from the collision against Jess' mother and State Farm Mutual Automobile Insurance Company, the insurer of the vehicle Jess was driving, along with Chris' mother and USAA, which provided a policy of liability insurance on the vehicle Chris was driving.

In their petition, plaintiffs alleged that the accident was caused by the negligence of Chris and Jess in: (1) engaging in lane jockeying; (2) travelling at excessive rates of speed; and (3) inhibiting the movement of other vehicles. Plaintiffs asserted that the driving patterns of Jess and Chris prior to the accident presented a foreseeable risk of harm to other drivers and passengers in the vicinity of their vehicles immediately preceding the collision and that but for their driving manners, the collision would not have occurred.

Plaintiffs settled with the Giles and State Farm and dismissed those defendants from the litigation. Thereafter, USAA filed a motion for summary judgment, asserting that Chris' actions were not a cause in fact of the accident.

USAA insisted that its evidence in support of the motion for summary judgment demonstrated that Chris had withdrawn from the lane jockeying activity prior to the collision. It maintained that while Chris' conduct prior to the accident may have been substandard as it pertained to his personal driving habits, that conduct was not the cause-in-fact of the accident forming the basis for this lawsuit. Rather, USAA urged, the cause-in-fact of the accident was the impact of Jess' vehicle with Mrs. Granite's vehicle. USAA supported its motion with the deposition testimony of Chris, Jess, Mrs. Granite, and Nellie McCool, a passenger in the Granite vehicle.

In opposition to the motion for summary judgment, plaintiffs submitted the affidavit of Mrs. Granite and Kerry Barnes, who attested that he was driving on the I-12 and observed the actions of the drivers leading up to the collision. Plaintiffs submitted that their evidence showed that Chris and Jess were engaging in the game of lane jockeying at the time of the collision and that their driving maneuvers caused the collision.

Following a hearing, the trial court granted the motion for summary judgment, dismissing the remaining defendants from the lawsuit. In reasons for judgment, the trial court concluded that Jess' conduct in striking Mrs. Granite's vehicle was the only cause of the collision. In this appeal, plaintiffs submit that material facts pertinent to the liability issue are in dispute, such as whether Chris did discontinue lane jockeying before the collision and whether his conduct in lane jockeying contributed to the collision, making summary judgment improper.

DISCUSSION

A summary judgment is reviewed on appeal *de novo*, viewing the record and all reasonable inferences that may be drawn from it in the light most favorable to the non-movant and using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Hines v. Garrett**, 2004-0806, p. 1 (La. 6/25/04), 876 So.2d 764, 765; **Samaha v. Rau**, 2007-1726,

pp. 3-4 (La. 2/26/08), 977 So.2d 880, 882-83. A motion for summary judgment is warranted only if there is no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(C). In ruling on a motion for summary judgment, the trial judge's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. All doubts should be resolved in the non-moving party's favor. **Hines**, 2004-0806 at p. 1, 876 So.2d at 765.

The evidence on the motion for summary judgment reveals that prior to the accident, Jess and Chris and their girlfriends had attended a movie at the Rave Theater. Mrs. Granite, then 42 years old, and her sister, Nellie McCool, went to the Rave Theater that evening in a Chevrolet pickup truck to pick up Mrs. Granite's niece and nephew and their friends. Jess, who was driving a Nissan Pathfinder, Chris, who was driving a Honda Accord, and Mrs. Granite were all stopped at a red light before entering Interstate-12. Soon after all three vehicles entered the interstate, a three-lane highway, Chris and Jess began to attempt to block Mrs. Granite's vehicle from passing them with their vehicles. In so doing, Chris and Jess switched lanes every time Mrs. Granite would move her vehicle in order to box Mrs. Granite's vehicle in. Not long after Chris and Jess started their lane jockeying maneuvers, Jess ran into Mrs. Granite's truck.

Differing versions of the events unfolding on the interstate prior to the collision were offered into evidence. According to Mrs. Granite, soon after entering the interstate and driving a short distance, the drivers later identified as Chris and Jess began their game of lane jockeying with her. She stated that no matter what lane she got in, the two vehicles would attempt to block her from getting over. Mrs. Granite stated that she was trying to get into the far left lane to get away from the vehicles and managed to do so despite the efforts of the other drivers to box her in. She stated that as soon as she got into the far left lane, her

vehicle was hit, and estimated that the accident occurred only a few minutes after she got on the interstate. According to Mrs. Granite, there was never a period of time before that accident that the two vehicles did not try to keep her vehicle boxed in, and it was her belief that the two vehicles were engaged in their escapade at the time her vehicle was crashed into.

Chris admitted that he and Jess were trying to keep the truck being driven by Mrs. Granite from passing them on the interstate. When asked why they chose to drive in this manner, Chris stated that the boys had been "goofing around" with some of the kids who had gotten into Mrs. Granite's truck in the parking lot at the theater, and they were just being "stupid." He testified that after entering the interstate, he and Jess drove side by side, and whatever lane Mrs. Granite went in, they would switch lanes to get in front of her. He stated that if he was in the far left lane and Mrs. Granite was in the middle, Jess would get in front of her and if she went to the far right lane to go around them, Jess would get in the far right lane and he would get in the middle lane in order to keep Mrs. Granite boxed in. Chris testified that when Mrs. Granite tried to go around them and went to the far left lane, he went back to the far left and Jess went to the middle lane. He explained that the collision occurred when Mrs. Granite and Jess "went to go fight for the middle lane" and Jess ran straight into the side of the Granite vehicle. Chris insisted that he slowed down and "backed off" while in the far left lane prior to the collision and allowed Mrs. Granite to pass his vehicle. He explained that he felt the driving maneuvers were unsafe, and he was concerned for the safety of the female in the vehicle with him. Chris testified that he was in the left lane when he backed off, allowing Mrs. Granite to pass him, and he moved over to the center lane, where he was driving at the time of the collision. He stated that he did not know how long before the accident he had "backed off" but estimated he was a "pretty good ways" behind the vehicles when they collided and noted that he was

able to slow his vehicle to a stop without having to slam on the brakes.

In his deposition, Jess testified that after entering the interstate, he and Chris were going lane to lane to prevent the Chevrolet truck from passing them. At some point, he stated, the truck passed and went into the far left lane, where the collision occurred. Jess stated that ten seconds before the collision, he was driving behind the truck in the far left lane and Chris was driving in the middle lane. Jess estimated that his vehicle and the truck were travelling about 75 m.p.h. at the time that he began to attempt to enter the center lane in which Chris was riding to go past the truck. According to Jess, as he started to enter the center lane, so did the truck, and upon seeing the brake lights of the truck, Jess hit his brakes and lost control of his vehicle, hitting the back of Mrs. Granite's truck. Jess could not state how far Chris was behind his vehicle at the time of impact, but acknowledged that prior to the accident, Chris, who was travelling in the middle lane, had to be going slower in order for Jess to get into the middle lane to get around the truck. He added that after he pulled his vehicle off to the side following the collision, he saw that Chris' vehicle was about a quarter of a mile behind his vehicle.

In his affidavit, Mr. Barnes stated he was driving west on I-12 and observed a Nissan Pathfinder and Honda Accord swerving in and out of traffic and using their vehicles to block a Ford pickup truck from changing lanes, almost causing it to crash. Immediately after that vehicle escaped, the drivers of the Nissan and Honda began to attempt to contain a Chevrolet truck. Mr. Barnes stated that the Chevrolet truck got into the far left lane, at which time the Honda was behind it but in the center lane in position to advance to the passenger side of the truck to pen it in, and the Nissan was in the center lane behind the Honda. The Nissan then moved to the left lane behind the truck and accelerated, passing the Honda on its left side headed directly toward the Chevrolet truck until it was close to the rear of the truck when it jerked toward the center lane, the driver of the Nissan lost control

of the vehicle and collided with the passenger side of the Chevrolet truck. Mr. Barnes stated that based on his observations of the manner in which the vehicles were operated, at the time of the accident, the Nissan was in the process of moving to the front of the Chevrolet truck to block it in and the Honda was in position to move forward to block the Chevrolet truck on its right side, thus preventing it from leaving its lane. He attested that he did not observe either vehicle "back off" or give any indication of abandoning their lane jockeying activities prior to the accident.

USAA insists that under the undisputed facts of this case, plaintiffs cannot prove that Chris' actions caused or contributed to the accident in any way. USAA relies primarily on: (1) the fact that Chris' vehicle did not collide with Mrs. Granite's vehicle; (2) the alleged absence of evidence showing that his actions had any influence on either Jess or Mrs. Granite's driving that ultimately led to the collision; and (3) Chris' testimony that upon realizing his behavior was unsafe, he dropped back on the interstate and allowed Mrs. Granite to safely pass him. Moreover, USAA attacks the affidavit of Mr. Barnes as consisting almost entirely of inadmissible speculation and insufficient to overcome the overwhelming evidence it claims was submitted in support of the motion for summary judgment establishing that Chris' vehicle played no part in causing the collision.

Plaintiffs, on the other hand, insist that summary judgment was inappropriate because there are factual issues in dispute, such as whether Chris in fact discontinued "lane jockeying" prior to the collision and if so, how long before the collision, and whether his conduct caused or contributed to the collision. Moreover, they submit, Chris' testimony regarding the movement of the vehicles was at odds with that offered by Jess, Mr. Barnes, and Mrs. Granite.

We agree that the trial court erred in granting summary judgment in this case. In order to recover, plaintiffs must demonstrate that Chris was negligent and

that his substandard conduct was a cause-in-fact of the collision. See Rando v. Anco Insulations Inc., 2008-1163, p. 27 (La. 5/22/09), 16 So.3d 1065, 1086. There can be more than one cause of an accident as long as each cause bears a proximate relation to the harm which occurs and it is substantial in nature. **Davis v. State Farm Insurance Company**, 558 So.2d 636, 640 (La. App. 1st Cir. 1990). In this case, there were differing versions of the events leading to the collision. Chris claimed that he abandoned the lane jockeying game prior to the collision; however, Mr. Barnes' testimony and Jess' testimony regarding the position of the vehicles prior to the collision and the reason Chris may have slowed his vehicle down before the collision give support to plaintiffs' claim that Chris was involved in the dangerous game of lane jockeying with Mrs. Granite's vehicle at the time of the collision. The resolution of the different versions of the accident requires a credibility determination by the trier of fact. Because there are genuine issues of material fact as to how the accident occurred and whether Chris' conduct played a causative role in the collision, the trial court committed legal error in granting the motion for summary judgment on the issue of causation.

CONCLUSION

For the foregoing reasons, the judgment appealed from is reversed. The case is remanded to the trial court for proceedings consistent with this opinion. All costs of this appeal are assessed to defendants, Cheryl Baughman and USAA Casualty Insurance Company.

REVERSED AND REMANDED.