

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2632

DONNA UNDERWOOD PALMER, INDIVIDUALLY AND ON
BEHALF OF HER DECEASED SON, BRIAN PALMER

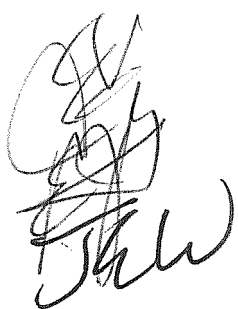
VERSUS

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT, GENERAL MOTORS
CORPORATION, AND ABC INSURANCE COMPANY

DATE OF JUDGMENT: November 3, 2006

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 79-425), PARISH OF WASHINGTON
STATE OF LOUISIANA

HONORABLE REGINALD BADEAUX, JUDGE



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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: AFFIRMED IN COMPLIANCE WITH LA. URCA RULE 2-16.1.B.

KUHN, J.

Plaintiff-appellant, Donna Underwood Palmer appeals the trial court's judgment granting a motion for summary judgment filed by defendant-appellee, General Motors Corporation (General Motors). We affirm.

On October 1, 1998, Brian Palmer died after he was ejected from his 1994 Pontiac Grand Am, which veered off the Highway 10 roadway west of Bogalusa in Washington Parish, rolled over several times, and landed in a ditch. On September 29, 1999, Mrs. Palmer filed this lawsuit naming General Motors as a defendant.¹

According to the allegations of her petition, General Motors was liable to her for:

- A. Failure to design and manufacture a vehicle which would not roll over under the conditions in which a vehicle should not roll over;
- B. Design and manufacture of a vehicle with a center of gravity too high to prevent rollover;
- C. Failure to install anti-rollover devices on the vehicle;
- D. Failure to manufacture and design a vehicle with an adequate restraint system, including without limitation, door latches and seatbelts, which would prevent its occupants from being ejected during an accident;
- E. Failure to manufacture and design a crashworthy vehicle;
- F. Failure to warn users of the vehicle and/or others similarly situated of defects in the vehicle; and
- G. Any and all other acts of negligence which may be shown through discovery and/or at the trial of this matter.

In January 2000, General Motors answered the lawsuit, generally denying liability, and filed its first discovery requests. Averring, among other things, that Mrs. Palmer was unable to prove an unreasonably dangerous condition in her son's

¹ Mrs. Palmer also named the State of Louisiana and General Motors's insurer as defendants.

Grand Am caused or contributed to his accident, General Motors moved for summary judgment on September 7, 2004, asking to be dismissed from the lawsuit. A hearing originally set for October 6, 2004, was continued until February 10, 2005, "to allow for the expert's report." The trial court granted General Motors summary judgment, dismissing Mrs. Palmer's claims against this defendant. This appeal by Mrs. Palmer follows.

Mrs. Palmer concedes that General Motors has borne its burden of showing an absence of factual support for one or more elements of her claim,² in particular that the 1994 Grand Am contained a defect for which General Motors is liable.³ Nevertheless, Mrs. Palmer maintains that the trial court erred by failing to allow her additional time to present expert testimony to support a finding that a defect existed in the seatbelt/restraint system that caused Brian's death, suggesting that "rather than allowing [her] ... time to fully explore all theories of recovery, as required by law, the trial court simply granted the motion for summary judgment." Thus, as posited by Mrs. Palmer, the issue before us is whether she was given adequate time to conduct discovery prior to rendition of the motion for summary judgment.

² See La. C.C.P. art. 966C(2).

³ In support of its motion for summary judgment, General Motors included, among other things, an affidavit of the mechanical engineer who inspected the 1994 Grand Am. The expert concluded there was no physical evidence indicating that the door latch did not perform in accordance with the manufacturer's specifications and opined that neither the door latch nor the seatbelt was unreasonably dangerous. See generally the Louisiana Products Liability Act, La. R.S. 9:2800.51-2800.60. Additionally, General Motors's expert attested that there was no evidence Brian Palmer was wearing his seatbelt at the time of the accident, which was the same conclusion reached by the state trooper who investigated the accident whose deposition testimony was also submitted in support of summary judgment. Mrs. Palmer failed to produce any factual support to counter either of these showings by General Motors.

Louisiana Code of Civil Procedure article 966(C)(1) expressly predicates the granting of a motion for summary judgment upon "adequate discovery" having been accomplished, or a party at least having been afforded the opportunity to undertake adequate discovery. But there is no absolute right to delay action on a motion for summary judgment until discovery is completed. *Judson v. Davis*, 04-1699, p. 13 (La. App. 1st Cir. 6/29/05), 916 So.2d 1106, 1115-16, *writ denied*, 05-1998 (La. 2/10/06), 924 So.2d 167. The only requirement regarding discovery in the context of summary judgment is that the parties be given a fair opportunity to present their claims. *Id.*, 2004-1699 at p. 13, 916 So.2d at 1116. In this case, the record shows that General Motors did not move for summary judgment until nearly five years after Mrs. Palmer filed her petition for damages. General Motors's numerous discovery requests required multiple hearings on the manufacturer's motions to compel. Essentially, General Motors attempted to narrow the scope of Mrs. Palmer's allegations that the 1994 Grand Am contained a defect for which the manufacturer was liable to her. As of August 16, 2002, based on the opinion of her expert, Andrew Gilberg, Mrs. Palmer had averred,

[T]he door latch of this vehicle [is] improper/defectively designed. [Mrs. Palmer] allege[s] that what occurred in this accident was "outside handle linkage" activation. This means that the outside skin of the driver's side door, damaged in the accident, moved the handle toward the latch with the rod that holds them together, which activates the latch release lever, causing the latch to release and the door to open. This caused Brian Palmer to be ejected, injured, and inevitably, killed.

[Mrs. Palmer] further allege[s] that the system in question should have been designed such that damage to the outside of the door would not cause the door latch to release.

At the February 10, 2005 hearing, counsel for Mrs. Palmer stated,

I had retained an expert to determine if the door latch was defective. In forming his opinion, which I just received -- not in writing, but verbally -- he has determined that he sees a seatbelt failure. ... He's looked at the seatbelt, the positioning, and he said there's a seatbelt failure. I've already retained a seatbelt expert. ... I literally just talked to [my expert] maybe two, three days ago and that's what he tells me - - that he sees [a] possible seatbelt failure.

Mrs. Palmer did not submit anything in opposition to General Motors's motion. She neither verbally nor formally requested a continuance.

Under these circumstances, Mrs. Palmer has been given a fair opportunity to present her claim. Mrs. Palmer had "maybe two, three days" from the time her expert verbally communicated his opinion of "a seatbelt failure" in the 1994 Grand Am until the hearing. Yet, in opposition to General Motors's motion for summary judgment, Mrs. Palmer did not file her expert's affidavit either setting forth the expert's opinion of "a seatbelt failure" or stating a reasonable need for additional time to fully articulate that opinion. Mindful that prior to the February 10, 2005 hearing, Mrs. Palmer had been granted a four-month continuance to obtain an expert report, we cannot say the trial court abused its discretion in granting summary judgment.

For these reasons, the trial court's judgment granting summary judgment and dismissing General Motors from this lawsuit is affirmed. Appeal costs are assessed against Mrs. Palmer.

AFFIRMED IN COMPLIANCE WITH LA. URCA RULE 2-16.1B.