NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 0874

RUBIE RICHARDSON

VERSUS

DEREK PRICE, NICOLE FRANKLIN, RESA S. BARBER, STATE FARM INSURANCE COMPANY, AND ALLSTATE INSURANCE COMPANY

Judgment Rendered: SEP 2 0 2006

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On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 502,068

Honorable William A. Morvant, Judge Presiding

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BEFORE: WHIPPLE, KUHN, GUIDRY, McCLENDON, AND WELCH, JJ.

Welch, J. dissents with reasons.
Kuhn, J dissents

McCLENDON, J.

In this matter, plaintiff challenges the trial court's judgment granting summary judgment in favor of defendants and dismissing her claim against them for damages. For the reasons that follow, we affirm in part, reverse in part, and remand.

FACTS AND PROCEDURAL HISTORY

This litigation arose out of an automobile accident that occurred on December 3, 2001. Immediately prior to the accident, four vehicles were traveling in a northerly direction on Plank Road in Baton Rouge. The first vehicle was driven by Resa Barber, and the second vehicle was driven by Luther Richardson, Jr. The plaintiff, Rubie Richardson, was a guest passenger in the vehicle driven by her son, Mr. Richardson. The third vehicle was driven by Derek Price, and the fourth vehicle was driven by Sheila Patrick.

According to Mr. Richardson, Ms. Barber, "made a quick stop and a sharp left turn." Mr. Richardson, the driver of the second vehicle, applied his brakes to avoid hitting Ms. Barber's car and was able to stop. Mr. Price, the driver of the third vehicle also applied his brakes and was able to make a full and complete stop behind Mr. Richardson's vehicle. Thereafter, Mr. Price's car was struck from behind by the vehicle driven by Ms. Patrick, and was pushed into the rear of Mr. Richardson's vehicle. Ms. Barber's vehicle was not hit.

Ms. Richardson filed suit for her damages as a result of the accident, naming as defendants: Mr. Price; Ms. Barber; Nicole Franklin, the owner of the vehicle Ms. Barber was driving; State Farm Mutual Automobile Insurance Company, as the liability insurer of Resa Barber and also as the liability insurer of Derek Price; and Allstate Insurance Company, as the

liability insurer of Mr. Richardson, and as Ms. Richardson's uninsured/underinsured carrier.[1] Mr. Richardson was not a named defendant.

State Farm, in its capacity as the liability insurer of Ms. Barber, State Farm, in its capacity as the liability insurer of Mr. Price, and Allstate, in its capacity as the liability insurer of Mr. Richardson, filed separate motions for summary judgment. The motions were consolidated and heard on December 28, 2004. Plaintiff's counsel was not present at the hearing. Following argument by defendants' counsel, and after considering the law and the evidence, for reasons assigned, the trial court granted the motions for summary judgment, finding that the accident was caused by the sole negligence of Ms. Patrick and that the movers were entitled to judgment as a matter of law. Judgment was signed on January 18, 2005, dismissing, with prejudice, State Farm as the insurer of Ms. Barber, State Farm as the insurer of Mr. Price, and Allstate as the insurer of Mr. Richardson.[2] Plaintiff now appeals asserting that the trial court erred in granting the summary judgment.[3]

SUMMARY JUDGMENT

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. **Johnson v. Evan Hall Sugar Co-op., Inc.**, 01-2956, p. 3 (La.App. 1 Cir. 12/30/02), 836 So.2d 484, 486. Summary judgment is properly granted if the pleadings,

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[1] In her petition, plaintiff identified State Farm Mutual Automobile Insurance Company as State Farm Insurance Company.

[2] Allstate also filed a motion for summary judgment as the uninsured/underinsured carrier for Ms. Richardson. Judgment on the motion was rendered on March 21, 2005, in favor of Allstate, but this judgment is not part of this appeal and is not presently before the court.

[3] On June 15, 2005, the trial court signed an Order of Finality with regard to the January 18, 2005 judgment, finding that in accordance with LSA-C.C.P. art.1915(B) there was no just reason to delay the appeal.

depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B). Summary judgment is favored and is designed to secure the just, speedy, and inexpensive determination of every action. LSA-C.C.P. art. 966(A)(2); **Thomas v. Fina Oil and Chemical Co.**, 02-0338, pp. 4-5 (La.App. 1 Cir. 2/14/03), 845 So.2d 498, 501-502.

On a motion for summary judgment, the burden of proof is on the mover. If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the mover's burden on the motion does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. LSA-C.C.P. art. 966(C)(2); **Robles v. ExxonMobile**, 02-0854, p. 4 (La.App. 1 Cir. 3/28/03), 844 So.2d 339, 341.

Summary judgments are reviewed on appeal *de novo*. An appellate court thus asks the same questions as does the trial court in determining whether summary judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. **Ernest v. Petroleum Service Corp.**, 02-2482, p. 3 (La.App. 1 Cir. 11/19/03), 868 So.2d 96, 97, writ denied, 03-3439 (La. 2/20/04), 866 So.2d 830. A "genuine" issue is a triable issue, that is, an issue is genuine if

reasonable persons could disagree. In determining whether an issue is genuine, courts cannot consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. A fact is "material" when its existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery. Simply put, a material fact is one that would matter on the trial on the merits. **Smith v. Our Lady of the Lake Hosp., Inc.**, 93-2512, pp. 26-27 (La. 7/5/94), 639 So.2d 730, 751. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Davis v. Specialty Diving, Inc.**, 98-0458, 98-0459, p. 5 (La.App. 1 Cir. 4/1/99), 740 So.2d 666, 669, writ denied, 99-1852 (La. 10/8/99), 750 So.2d 972.

DISCUSSION

Louisiana law requires that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway." LSA-R.S. 32:81(A). As our supreme court explained in **Eubanks v. Brasseal**, 310 So.2d 550, 553 (La. 1975), "a following motorist who strikes a preceding motorist from the rear is presumed to have breached the standard of conduct prescribed in R.S. 32:81 and, hence, is presumed negligent." **Matherne v. Lorraine**, 03-2369, p. 2 (La.App. 1 Cir. 9/17/04), 888 So.2d 244, 246. Thus, when a following vehicle rear-ends a vehicle ahead of it, the following vehicle is presumed to be at fault. **Mart v. Hill**, 505 So.2d 1120, 1123 (La. 1987).

In this matter, plaintiff asserts that the trial court erred in finding that only the driver of the rear-most vehicle was at fault in causing the accident. She asserts that genuine issues of material fact exist with regard to the

comparative fault of the other drivers involved. Particularly, plaintiff asserts that Ms. Barber was also at fault in causing the accident insofar as she may have stopped too quickly or failed to adequately signal her intention to turn, citing LSA-R.S. 32:104 in support thereof. Louisiana Revised Statutes 32:104 provides, in part, that:

> A. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in R.S. 32:101, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.
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> B. Whenever a person intends to make a right or left turn which will take his vehicle from the highway it is then traveling, he shall give a signal of such intention in the manner described hereafter and such signal shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.
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> C. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

In support of its motion for summary judgment, State Farm, as Mr. Price's insurer, introduced into evidence the deposition of Mr. Richardson and the affidavit of Derek Price. State Farm, as Ms. Barber's insurer, offered Mr. Richardson's deposition and plaintiff's deposition in support of its motion for summary judgment. Allstate, as Mr. Richardson's insurer, submitted excerpts from Mr. Richardson's and plaintiff's depositions in support of its motion for summary judgment. In opposition to the motions, plaintiff offered excerpts from her deposition and from the deposition of her son. She also attached to her memorandum a document entitled "Uniform Motor Vehicle Traffic Crash Report," containing written statements from each of the drivers involved, made at the time of the accident.

Mr. Richardson testified in his deposition that he was driving down Plank Road when a small car in front of him "made a quick stop and a sharp left turn." Mr. Richardson stated that he applied his brakes to avoid hitting the vehicle. He stated he had come to a complete stop when his vehicle was hit in the rear by the car behind him after that vehicle was hit from behind. Mr. Richardson stated that his car did not hit the car in front of him and he would not have hit it even if it had not turned. He testified that he did not slam on his brakes and had time to stop. Mr. Richardson further stated that the vehicle in front of him did not have its turn signal light on and that the responding police officer gave the driver of the car in front of him a ticket.

In his affidavit, Mr. Price stated that on the date of the accident he was traveling northbound on Plank Road at approximately 25-30 mph behind Mr. Richardson's vehicle when it stopped. Mr. Price attested that he came to a full and complete stop behind Mr. Richardson and was able to observe the rear bumper and license plate of Mr. Richardson's car. After he stopped, Mr. Price was rear-ended by a vehicle driven by Ms. Patrick and was pushed into Mr. Richardson's car. Mr. Price stated that it was only after he was hit from behind that he then made contact with Mr. Richardson's vehicle. This statement was uncontroverted.

Plaintiff testified in her deposition that she was resting so what she remembers about the accident is that her car stopped suddenly and it was hit from behind.

In our *de novo* review, we agree with the trial court that State Farm, in its capacity as the liability insurer of Mr. Price, and Allstate, in its capacity as the liability insurer of Mr. Richardson, met their initial burden of proof on their motions for summary judgment. The depositions and affidavit show that there is an absence of factual support for plaintiff's contention that Mr.

Richardson and Mr. Price had any fault in causing the accident. Thus, with regard to these defendants, the burden shifted to plaintiff to produce countervailing evidence to set forth specific facts showing that there was a genuine issue for trial.

While the plaintiff alleges that the crash report, submitted in opposition to the motions, contains information which raises genuine issues of material fact as to these defendants, the crash report does not comply with the requirements of LSA-C.C.P. arts. 966 and 967. Pursuant to Article 966(B), a summary judgment should be granted only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law." Moreover, Article 967 provides, in pertinent part, as follows with regard to the requirements for affidavits and evidence in support thereof:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. . . . Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

Articles 966 and 967 do not permit a party to utilize unsworn and unverified documents as summary judgment evidence. A document that is not an affidavit or sworn to in any way, or which is not certified or attached to an affidavit, is not of sufficient evidentiary quality to be given weight in determining whether there are remaining genuine issues of material fact. **Sanders v. J. Ray McDermott, Inc.**, 03-0064, pp. 6-7 (La.App. 1 Cir. 11/7/03), 867 So.2d 771, 775. Thus, we are unable to consider the crash report submitted by Ms. Richardson, as it was not verified or in affidavit form.

The remaining evidence offered by plaintiff to oppose the summary judgment motions were the pages from her son's deposition and from her own deposition, which were the same pages relied on by State Farm and Allstate. This evidence does not overcome the proof offered by State Farm for Derek Price or by Allstate for Luther Richardson, Jr. Therefore, we find that plaintiff failed to present evidence sufficient to satisfy her evidentiary burden of proof at trial, and, accordingly, we find that no genuine issue of material fact remains as to the liability of Mr. Richardson and Mr. Price. State Farm, as the liability insurer of Derek Price, and Allstate, as the liability insurer of Luther Richardson, Jr., are entitled to judgment as a matter of law.

However, with regard to State Farm, as the liability insurer of Resa Barber, we find that State Farm did not meet its initial burden of showing that there were no genuine issues of material fact as to Ms. Barber's liability. Mr. Richardson testified that the car in front of him "made a quick stop and a sharp left turn." He further stated that the vehicle in front of him did not have its turn signal light on and that the driver of the car in front of him was given a traffic ticket. Similarly, Ms. Richardson testified that her car stopped suddenly before being hit. Thus, while State Farm argues that there is an absence of factual support that Ms. Barber contributed to the accident in any way, the above testimony sufficiently establishes that a factual issue exists regarding Ms. Barber's fault in the accident. Accordingly, summary judgment is inappropriate as to State Farm, as the liability insurer of Resa Barber.

CONCLUSION

For the above reasons, we affirm the judgment of January 18, 2005, granting summary judgment in favor of State Farm Mutual Automobile

Insurance Company as the insurer of Derek Price, and Allstate Insurance Company as the insurer of Luther Richardson, Jr., dismissing plaintiff's case against them with prejudice. We reverse the judgment insofar as it grants summary judgment in favor of State Farm Mutual Automobile Insurance Company as the insurer of Resa Barber, and remand for further proceedings. Costs of this appeal are assessed equally between Rubie Richardson and State Farm, as the insurer of Resa Barber.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

RUBIE RICHARSON **NUMBER 2005 CA 0874**

FIRST CIRCUIT

VERSUS

DEREK PRICE, NICOLE FRANKLIN, RESA S. BARBER, STATE FARM INSURANCE COMPANY, AND ALLSTATE INSURANCE COMPANY **COURT OF APPEAL**

STATE OF LOUISIANA

WELCH, J., DISSENTING.

I respectfully dissent because I find no genuine issue of *material* fact remains regarding the legal and proximate cause of the accident at issue. Notwithstanding the evidence in the record that Ms. Barber made a "quick stop and a sharp left turn," the record firmly established that the two vehicles immediately following Ms. Barber's "suddenly stopping and turning" vehicle were able to slow down and stop in time to avoid a collision. In **Welch v. Thomas,** 263 So.2d 427 (La. App. 1st Cir.), writs denied, 262 La. 1132, 1137, & 1143, and 266 So.2d 434, 436, & 438, this court recognized the jurisprudence of this State, which in my opinion is directly applicable under the facts and circumstances herein, to the effect that in a chain collision accident, as the one that occurred in this case, when the driver of the second vehicle is able to bring his car to a stop after an abrupt or illegal maneuver by the first car, the driver of the third vehicle, who is unable to stop and actually makes the initial contact between the autos, is solely liable for the damages caused thereby. See also **Hernandez v. Pan American Fire & Casualty Co.**, 157 So.2d 923 (La. App. 1st Cir. 1963); **Staehle v. Marino,** 201 So.2d 212 (La. App. 4th Cir. 1967); **Gandy v. Arrant,** 50 So.2d 676 (La. App. 2nd Cir. 1951).

Notwithstanding the uncontradicted evidence that Ms. Barber made a sudden stop and sharp left turn, the uncontradicted evidence also established that Mr. Richardson, immediately behind Ms. Barber was able to make a full and complete stop without impact. *Additionally,* in this case, the third vehicle, driven by Mr.

Price was also able to make a full and complete stop without impact behind Mr. Richardson. Applying the aforementioned jurisprudential rule of law, the defendant has been able to show an absence of factual support for the contention that the actions of Ms. Barber in this case were the legal or proximate cause of this accident. Rather, the law dictates a finding under these facts and circumstances that the sole cause of the accident was the driver of the rear-most vehicle, as correctly found by the trial court.

Accordingly, I would affirm the judgment of the trial court granting summary judgment in favor of all the appellees, including Resa Barber.