NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 2099

BILL EVANS

VERSUS

TIMOTHY B. CUNNINGHAM,
PROGRESSIVE INSURANCE COMPANY AND
HERTZ CORPORATION

Judgment Rendered: September 15, 2006.

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On Appeal from the
22nd Judicial District Court,
Parish of St. Tammany,
State of Louisiana
Trial Court No. 2004-12792

The Honorable William J. Burris, Judge Presiding

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Marti Tessier Mandeville, La.	Attorney for Plaintiff/Appellant, Bill Evans
Reneé Clark McGinty Metairie, La.	Attorney for Defendants/Appellees, Timothy B. Cunningham and Progressive Northeastern Insurance Company

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BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

CARTER, C.J.

Plaintiff, Bill Evans, appeals the grant of defendants' partial motion for summary judgment and the dismissal of defendant, Timothy B. Cunningham. For the following reasons, we affirm.

FACTS

On June 21, 2003, Cunningham was traveling on the interstate near Slidell when an accident occurred. Observing traffic congestion and stopped vehicles on the roadway in front of his vehicle, Cunningham slowed and was in the process of stopping his vehicle in the travel lane. Vincent Navarre was driving a vehicle behind Cunningham. Unable to stop, Navarre struck Cunningham's vehicle from the rear. Evans, a front-seat passenger in the Cunningham vehicle, was injured in the rear-end collision.

Evans brought this action against Cunningham and Cunningham's insurer, Progressive Northeastern Insurance Company (collectively defendants).[1] Defendants filed a motion for summary judgment, asserting Cunningham was free from fault. After a hearing, the trial court granted the partial motion for summary judgment, finding Cunningham free from fault and dismissing Evans' claims against Cunningham. Evans appeals.

LAW AND DISCUSSION

Appellate courts review summary judgments *de novo* under the same criteria that govern the trial court's determination of whether a summary judgment is appropriate. **Duplantis v. Dillard's Department Store**, 02-0852 (La. App. 1 Cir. 5/9/03), 849 So.2d 675, 679, writ denied, 03-1620 (La. 10/10/03), 855 So.2d 350. A motion for summary judgment should only be granted if the pleadings, depositions, answers to interrogatories and

[1] Evans also named Hertz Corporation as a defendant. Hertz was subsequently dismissed.

admissions on file, together with any affidavits, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966B.

In **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 751, the Louisiana Supreme Court stated a "genuine issue" is a "triable issue." The court continued, "[a]n issue is genuine if reasonable persons could disagree. If on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue." **Smith**, 639 So.2d at 751. The court further explained that a "fact is 'material' when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery." **Smith**, 639 So.2d at 751.

The initial burden of proof is on the moving party. However, on issues for which the moving party will not bear the burden of proof at trial, the moving party's burden of proof on the motion is satisfied by pointing 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 support sufficient to establish that it will be able to satisfy its evidentiary burden of proof at trial; failure to do so shows there is no genuine issue of material fact. LSA-C.C.P. art. 966C(2).

Under our *de novo* review, we find the record reveals no genuine issue of material fact in dispute. Louisiana Revised Statutes 32:81A provides, "The 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." In **Mart v.**

Hill, 505 So.2d 1120, 1123 (La. 1987), the Louisiana Supreme Court observed that Louisiana courts have uniformly held that a following motorist in a rear-end collision is presumed to have breached the standard of conduct prescribed in Section 32:81 and is presumed negligent.

There is no dispute concerning Navarre's negligence in rear-ending Cunningham's vehicle. However, Evans asserts Cunningham should have perceived the danger and avoided the collision. Evans posits that Cunningham was inattentive; and if Cunningham had been more attentive, he would have observed Navarre's progress, perceived the need to move out of the travel lane, exited onto the median strip, and thereby avoided the rear-end collision. Yet, Evans offers no evidence to corroborate his hypothesis, only speculation as to possible negligent conduct by Cunningham. Such speculation falls far short of the factual support required to establish that Evans will be able to satisfy his evidentiary burden of proof at trial. See **Jones v. Estate of Santiago**, 03-1424 (La. 4/14/04), 870 So.2d 1002, 1008-1009; **Babin v. Winn-Dixie Louisiana, Inc.**, 00-0078 (La. 6/30/00), 764 So.2d 37, 40.

CONCLUSION

For the foregoing reasons, we affirm the grant of defendants' motion for summary judgment. Bill Evans is cast with all costs of this appeal.[2]

AFFIRMED.

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[2] This memorandum opinion is issued in compliance with URCA Rule 2-16.1.B.