

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0794

VALERIE A. LOWERY, SR. AND BETTY LOWERY

VERSUS

**CITY OF BATON ROUGE THROUGH THE DEPARTMENT OF
PUBLIC WORKS, PARISH OF EAST BATON ROUGE,
STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT, ENTERGY
CORPORATION, AND GULF STATES, INC.**

Judgment rendered: March 28, 2007

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number 476,034; Division F #22
The Honorable Timothy E. Kelley, Judge Presiding**

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**Counsel for Plaintiffs/Appellants
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BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

John A. Pettigrew J. Concurs

DOWNING, J.

This matter arises from an automobile accident where the jury found the driver of the vehicle to be totally at fault in causing the accident. The jury also found that the roadway had a defective condition but that the City/Parish could not be held liable because it had no notice of the defect.

Lionel Lowery was the driver of the vehicle and his brother, Valerie Lowery, his guest passenger, was injured in the accident. Valerie and his wife Betty, appeal the judgment that memorialized the jury verdict.

In their four assignments of error, they argue that the jury erred in not finding that the City/Parish had actual or constructive knowledge of the obstructed view of the stop sign; that the City/Parish had an opportunity to remedy the condition; that the jury erred in not finding that the defect was the cause of the accident; and that the jury erred in finding Lionel Lowery to be totally at fault in causing the accident.

This accident occurred at 8:13 P.M. on September 6, 1999, at the intersection of Christian Street and Perkins Road in Baton Rouge. Lionel ran the stop sign at the intersection and collided with two vehicles. Lionel testified that he was not familiar with the intersection even though Valerie and Betty had lived on Christian Street for over twenty-five years.

The matter was tried April 11 – 13, 2005, wherein the jury found that the site of the accident had a defective condition creating an unreasonable risk of harm, but that the City/Parish had no notice of the defect and could not be found to be liable. The jury also found the driver of the vehicle, though not sued, to be totally at fault in causing the accident. The damage award totaled \$130,384.69.

Valerie and Betty's main argument is that at the time of the accident the stop sign at issue was obscured by vines and thus created a dangerous

condition. They argue that the photographs clearly show the vines and that the City/Parish had no rebuttal witness to contest that the foliage had been present for at least one and a half years prior to the accident. They contend that the jury was obviously confused by the notice requirement and did not understand that the City/Parish breached its duty by allowing a “vision obscurement” to exist preceding the accident.

However, courts have found that even if the intersection is uncontrolled, a driver traveling the minor street has a duty to determine if he can proceed safely before entering the intersection of the major street. As discussed in *Wilson v. Transportation Consultants, Inc.*, 04-0334, 04-0335, p. 7 (La.App. 4 Cir. 3/2/05), 899 So.2d 590, 597, when approaching an “uncontrolled intersection” with a street of dignity, the driver of a vehicle still has a duty to determine if he can cross safely before proceeding into the intersection. The *Wilson* court further stated that regardless of an obscured stop sign, the driver should treat the intersection as if there were yield signs present. *Id.*

In this case, Christian Street is a narrow street running under the I-10 freeway and dead-ending where Perkins Road runs over the overpass. This portion of Perkins Road is a major thoroughfare with commercial businesses lining each side. Christian Street is basically residential. Perkins Road is obviously “a street of dignity” and Christian Street is obviously not. The driver should have treated the intersection as if there were yield signs present even if he could not see the stop sign. After a thorough review of the record, we conclude that the assignments of error are without merit as the jury had a reasonable basis to make its determination.

Thus, the district court's judgment is affirmed in accordance with Uniform Rules - - Courts of Appeal Rule 2-16.1B. The cost of this appeal is assessed against the plaintiffs/appellants, Valerie and Betty Lowery.

AFFIRMED