

NUMBER 04-203

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

ANNA ELDRIDGE AND HARDY ELDRIDGE

Plaintiffs - Appellants

Versus

CHARLES D. CARRIER, ET AL.

Defendant - Appellee

On appeal from the 33rd Judicial District Court [No. 2001-386], for the Parish of Allen, State of Louisiana; the Honorable Joel G. Davis, District Judge, presiding.

Woodard, J., dissenting.

I respectfully dissent from the majority's opinion.

This case's resolution does not require the manifest-error review because the material facts concerning how the accident happened are not in dispute. Rather, the jury failed to apply the law. In this instance, due to the unusually high duty of care a backing motorist owes when entering a favored street from an unfavored private parking area and given Mr. Carrier's acknowledgment that, while backing up, he never saw Mrs. Eldridge's truck approaching, he must bear liability. Our supreme court in *Turner v. New Orleans Public Service Inc.*¹ held that backing up without knowing if it can be done safely is an example of gross negligence.² "Furthermore, it is only in the exceptional case where the right-of-way motorist could have avoided

¹476 So.2d 800 (La.1985).

²See *Andrews v. Mosley Well Serv.*, 514 So.2d 491 (La.App. 3 Cir.), writ denied, 515 So.2d 807 (La.1987). See also *Francis v. Commercial Union Ins. Co.*, 594 So.2d 1025 (La.App. 3 Cir. 1992).

the accident by the exercise of the very slightest degree of care that he will be considered guilty of negligence.”³

Mr. Carrier testified that, after he entered 6th Avenue and put his foot on the brake, Mrs. Eldridge’s truck struck his car in the rear and nearly pushed it back to its previous parked position. At trial, he gave forthright responses to questions regarding the accident:

Q All right. Now let me ask you, are you claiming, Mr. Carrier, that you backed all of the way out and put your car in drive and had turned your [steering wheel] and were headed forward when this accident occurred?

....

A I had not backed all the way out.

....

Q This is all I want to know. When you backed up out of that spot, are you telling the jury that you turned your [steering wheel] to go forward . . . ?

A I can’t truthfully answer that question.

Also noteworthy is his acknowledgment that he never saw Mrs. Eldridge’s truck approaching until the moment of impact. Furthermore, at trial, he did not allege that Mrs. Eldridge was speeding or violating any law.

In *Shelvin v. Allstate Ins. Co.*,⁴ we noted the difference between a motorist’s duty of care when s/he is traveling with the right of way and the duty of care owed when a motorist enters or crosses a highway from a less favored position:

A motorist who is about to enter a roadway from a private driveway is required to yield the right of way to all approaching vehicles so close as to constitute an immediate hazard. *Unusual, extreme, and high* care toward favored traffic is required of such a motorist under the case law. Conversely, the duty of the driver on the favored street toward the intruding motorist is the much lesser ordinary care and that driver generally may rely on the assumption or presumption that those vehicles

³*Shelvin*, 747 So.2d at 162.

⁴99-833 (La.App. 3 Cir. 11/3/99), 747 So.2d 160.

entering the roadway from less favored positions such as a private drive will not drive into the path of favored traffic. The motorist who is otherwise proceeding lawfully on the favored street is not required to look out for or search in anticipation of careless drivers who might enter his right of way from a private driveway in violation of [La.R.S. 32:124]. . . . The presumption or assumption may *not* be relied on by a motorist who is proceeding unlawfully before or after he sees the intruding vehicle.[⁵]

The act of backing up a vehicle is not inherently negligent, but a backing motorist must exercise ordinary care to see that the maneuver will not injure the person or property of others.⁶ However, the law mandates that a motorist, who backs from a private driveway into a main thoroughfare, exercise an unusually high degree of care; when executing such a maneuver s/he must proceed with the utmost caution to ensure that s/he can accomplish it without interfering with other vehicles.⁷ The high degree of care imposed upon backing drivers or motorists entering a public road from a private lot protects those drivers traveling with the right of way from unexpected intrusions or hazards.⁸

“A backing motorist under this rule may be negligent for failing to observe traffic approaching on the right-of-way street in time to interfere with its passage[.]”⁹ Therefore, the backing motorist has a duty to observe any vehicles immediately to his/her rear and must maintain a constant lookout during the entire process of backing the vehicle.¹⁰

It is clear, after comparing Mrs. Eldridge’s testimony, as the majority quotes, with Mr. Carrier’s candid responses detailed above, that all determinative facts related to the accident are undisputed. Thus, credibility determinations are not at issue, and, I do not find evidence in the record that supports the jury’s fault allocation.

⁵*Id.* at 162 (quoting *Valin v. Barnes*, 550 So.2d 352, 355-56 (La.App. 3 Cir.), writ denied, 552 So.2d 399 (La.1989)).

⁶*Roy v. United Gas Corp.*, 163 So.2d 587 (La.App. 3 Cir.), writ denied, 165 So.2d 485 (La.1964).

⁷*Id.*; *Schackai v. Tenneco Oil Co.*, 436 So.2d 729 (La.App. 4 Cir.), writ denied, 440 So.2d 759 (La.1983).

⁸*Taylor v. Chism*, 27186 (La.App. 2 Cir. 8/23/95), 660 So.2d 145.

⁹*Roy*, 163 So.2d at 593.

¹⁰*Id.*

Accordingly, I believe that the jury's fault allocation was manifestly erroneous and would assess Mr. Carrier with liability.