EDGAR B. HARRELL, ET AL : NUMBER: 526,470-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

THE CITY OF SHREVEPORT : CADDO PARISH, LOUISIANA

 **REASONS FOR JUDGMENT**

Trial was held on February 8, 2011. The Court heard testimony from Edgar B. Harrell, Jr., Nancy Harrell, Cpl. Ron Herkey, Erin Dennen, and Kimberly Olds. The Court received into evidence numerous exhibits, notably photographs of the site and of plaintiff’s vehicle, medical reports issued by Drs. Thomas Worgul, Pierce Nunley, Robert Holladay, and David Waddell, medical invoices, and progress reports issued by Tri-State Physical Therapy. For reasons which follow, the Court concludes that Judgment should be rendered in favor of Edgar B. Harrell, Jr. and Nancy Harrell and against City of Shreveport.

 **APPLICABLE LAW**

This case involves a collision on November 20, 2007 at Youree and Millicent between Shreveport Police Department Cpl. Ron Herkey and Edgar B. Harrell, Jr. Because Officer Herkey was on duty, in his patrol car, responding to an emergency call, R.S. 32:24 is applicable. The statute provides:

A. The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to, but not upon returning from, a fire alarm, may exercise the privileges set forth in this Section, but subject to the conditions herein stated:

B. The drive of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the provisions of this Chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down or stopping as may be necessary for safe operation;

(3) Exceed the maximum speed limits so long as he does not endanger life or property;

(4) Disregard regulations governing the direction of movement or turning in specified directions.

C. The exceptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible or visual signals sufficient to warn motorists of their approach, except that a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

D. The following provisions shall not relieve the driver of an authorized vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

In Pope v. City of Shreveport, 37,395, (La. App. 2 Cir 8/20/03) 852 So.2d 1213, the Second Circuit Court of Appeal wrote the following as to this applicable standard of care under R.S. 32:24:

The driver of an emergency vehicle is accorded particular driving privileges when responding to an emergency call. La. R.S. 32:24 A. These privileges include exceeding the maximum speed limits “so long as he does not endanger life or property.” R.S. 32:24 B(3). However, this privilege applies “only when such vehicle is making use of audible or visual signs sufficient to warn motorist of [its] approach, except that a police vehicle need not be equipped with or display a red light visible from the front of the vehicle.” R.S. 32:24 C; *Lenard v. Dilley,* 2001-1522 (La. 1/15/02), 805 So.2d 175, 179.

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[t]hese special driving privileges do not “relieve the driver of an authorized vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provision protect the driver from the consequences of his reckless disregard for the safety of others.” R.S. 32:24 D; *Lenard, supra.*

In effect, R.S. 32:24 D sets out two standards of care for emergency vehicle drivers, depending on the circumstances. If, and only if, an emergency vehicle driver’s actions fit into subsections A, B and C, will an emergency vehicle driver be held liable only for his actions which constitute reckless disregard for the safety of others. On the other hand, if the emergency vehicle driver’s conduct does not fit subsections A, B and C, such driver’s actions will be gauged by an ordinary negligence standard. *Lenard* at 178.

[6] A breach of the duty to drive with due regard for the safety of others as set forth in R.S. 32:24 by an emergency responder driver will result in a finding of actionable negligence on the part of the driver. *Butcher v. City of Monroe,* 31,932 (La.App. 2 Cir. 5/5/99), 737 So.2d 189, 193, *writ denied,* 99 1608 (La.9/17/99), 747 So.2d 566; *United Bilt Homes, Inc. v. Schmitt,* 29,837 (La.App. 2 Cir. 9/24/97), 699 So.2d 1167, 1168.

 **FINDINGS OF FACT REGARDING LIABILITY**

Mr. Harrell had been at computer lab at LSUS where he was preparing a class project, just prior to the accident. There is no question that Mr. Harrell had the green light as he entered the Youree Drive/Millicent intersection and that Cpl. Ron Herkey was responding to an emergency call as he entered that intersection. The clear preponderance of the evidence is that Cpl. Herkey had his emergency lights activated, a fact agreed upon by Cpl. Herkey and the independent witnesses, Erin Dennen and Kimberly Olds. A critical question is whether Cpl. Herkey had his siren activated as he proceeded south on Youree through the red traffic light. On this issue, Cpl. Herkey testified in the affirmative; however, both Mr. Dennen and Mrs. Olds testified that Cpl. Herkey did not have his siren activated. Mr. Harrell could not testify as to activation of either signal. The Court is of the impression that Cpl. Herkey is a good officer; however, in light of the independent and credible witnesses on the siren issue, it is the Court’s opinion that Cpl. Herkey is mistaken. The testimonial evidence of Mr. Dennen and Mrs. Olds is compelling and therefore accepted by the Court. The other issue is whether the use of visual lights alone on Cpl. Herkey’s patrol unit was sufficient under the circumstances to warn motorists of its approach. The Court is not convinced that, as Cpl. Herkey proceeded into the intersection, he slowed down as contemplated by R.S. 32:24 B(2); he was clearly exceeding the speed limit, probably traveling 60-65 in the 45 mph zone. There was testimony from Mrs. Olds, who was directly behind Mr. Harrell, that the police vehicle “came out of nowhere...it happened so fast...”. The Court is also concerned about the lack of skid marks by the patrol unit. Based on the totality of the evidence, the Court concludes that (1) Cpl. Herkey was exceeding the speed limit by 15-20 mph; (2) Cpl. Herkey did not slow his vehicle as he approached the light; and (3)the visual lights alone under the circumstances were not sufficient to warn motorists of the patrol unit’s approach into and through the intersection. Accordingly, Mr. Harrell has carried his burden of proof and Cpl. Herkey and City of Shreveport are therefore liable for the accident of November 20, 2007.

 **COMPARATIVE FAULT OF EDGAR B. HARRELL, JR.**

In its Answer, the City has pled negligence of the plaintiff, Edgar B. Harrell, Jr. The Court notes that this accident occurred near midnight and that Mr. Harrell had been working late that evening in the computer lab at LSUS on a project due in one of his classes. Under these circumstances, a reasonable inference is that Mr. Harrell was, more likely than not, fatigued as he left the university. The Court also believes that while Mr. Harrell entered the intersection pursuant to the green traffic light, he relied exclusively on the light and did not look to his right or left. In fact, on cross examination, Mr. Harrell conceded, “I didn’t look around”. The Court believes that, under these several circumstances, Mr. Harrell was comparatively negligent and assigns fault to him at 33 1/3 %. As for the City’s contention that Mr. Harrell’s car seat was “reclined” such that Mr. Harrell’s view was obstructed and such that he was not actively engaged in the operation of his vehicle, the Court concludes otherwise. Mr. Harrell testified, “I’m a straight up driver” and the Court does not therefore believe that Mr. Harrell’s seat was improperly reclined prior to the point of impact. The seat could have been extended as Mr. Harrell exited the totaled vehicle.

 **QUANTUM REGARDING EDGAR B. HARRELL, JR.**

In his pre-trial brief counsel for Mr. Harrell has requested special damages of $20,164.00 and general damages in the amount of $55,000.00. The reports from Drs. Pierce Nunley and David Waddell, both of whom are highly regarded orthopedic specialists or sub-specialists, corroborate Mr. Harrell’s complaints of low back and left knee pain. In fact, an MRI revealed “L4-5 posterior annular tear with contained disk herniation” and L5-S1 disk herniation on the right which appears to be probably contained but extruded to some degree and displacing the right S1 nerve root and mild neuroforaminal narrowing bilaterally”. Furthermore, Mr. Harrell’s compliance with his medical specialists’ directives and his affirmative efforts to recover are evidenced in his 47 treatments at Tri State Physical Therapy. The Court has accorded proper consideration to the report of the independent medical examiner, Dr. Robert Holladay; however, two first class conservative specialists, Drs. Waddell and Nunley, examined Mr. Harrell and treated him over time and the Court accepts their findings. Finally, it should be noted that Mr. Harrell’s life style is significantly altered; he is no longer able to stand most of the day while

teaching, or to work-out and enjoy his previous vigorous lifestyle, all as a result of the injuries sustained. Accordingly, general damages are set in the amount of $50,000.00, subject to the apportionment of fault.

**QUANTUM REGARDING NANCY HARRELL**

In his pretrial brief counsel has submitted that Mrs. Harrell should be awarded $5,000.00 for loss of consortium damages. The Court found Mrs. Harrell credible and believes that she genuinely has been adversely impacted by the injuries sustained by Mr. Harrell. He was very engaged in household services and it appears that her husband was an energetic partner. Based on all of the evidence the Court sets consortium damages of Mrs. Harrell in the amount of $2,500.00, subject to the assignment of fault.

**LOST WAGES**

 Although Mr. Harrell has requested lost wages in the amount of $5,949.64, the Court concludes that lost wages should be granted only as to the time frame of December 17-21, which was authorized by Dr. Worgul. Counsel shall calculate that amount - again, subject to the apportionment of fault.

 **CONCLUSION**

 Edgar B. Harrell, Jr. is a public school teacher who has a focus in special education. Prior to the accident, he was extremely active, lifting weights and working out up to 5 days per week. His testimony is credible and compelling. For reasons assigned, there will be judgment in favor of Edgar B. Harrell and Nancy Harrell, and against City of Shreveport with a comparative fault apportionment as set forth.

 Expert witness fees, if any, and costs shall be set by stipulation or rule.

Counsel shall submit a formal judgment in accordance with La. Dist. Ct. R. 9.5.

Signed this 4the day of March, 2011, in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

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