

SUPREME COURT OF LOUISIANA

NO. 96-C-1027

KIMBERLY SYRIE ET AL.

V.

VICTOR R. SCHILHAB ET AL

c/w

ROBERT SIDNEY ETIE ET AL.

V.

VICTOR R. SCHILHAB ET AL.

ON WRIT TO CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF LAFAYETTE, STATE OF LOUISIANA

MARCUS, Justice*

These consolidated cases arise out of a multi-vehicular accident which occurred on November 19, 1989, on the eastbound side of Interstate 10 in Iberville Parish, Louisiana, on an elevated part of the highway over the Atchafalaya Basin approximately three miles east of the Whiskey Bay Bridge. Gail Hart was traveling east on Interstate 10 about three-thirty in the afternoon when she lost control of her Honda automobile and collided with the left guard rail of the two-lane eastbound side of the interstate sustaining damage to the left front of the vehicle. Neither she nor her twelve year old son who was a passenger in the vehicle sustained injuries. A passing motorist assisted Ms. Hart in moving her vehicle to the right shoulder facing westward in the direction of oncoming traffic.

An Iberville Parish deputy sheriff arrived at the accident scene followed by State Trooper Jacob Segura. Trooper Segura

* Watson, J., not on panel. Rule IV, Part II, §3.

parked his police unit on the right shoulder with the blue strobe lights flashing about one hundred fifty feet west of Ms. Hart's Honda. Trooper Segura called for wrecker assistance to tow the vehicle to Lafayette. The motorist who assisted Ms. Hart offered her and her son a ride to Baton Rouge but they preferred to stay with the vehicle. The motorist and the deputy sheriff left. About thirty to forty-five minutes elapsed before Dewey Touchet from Guy's Towing Service arrived at the scene. He parked the tow truck with its flashing yellow beacon lights on the outside right shoulder between the police car and Ms. Hart's vehicle facing Ms. Hart's vehicle with about fifty feet between them. After observing the situation, Mr. Touchet thought that the best position to tow the Honda was from the front end to avoid damage to the transmission. After discussing the matter with Trooper Segura, it was decided to turn the Honda around rather than the tow truck because it would take less maneuvering. Trooper Segura would stop the traffic in both lanes of the interstate and then signal Mr. Touchet who would turn Ms. Hart's vehicle around ending up behind the wrecker. Trooper Segura told Ms. Hart and her son to "stay out of the way" until the maneuver was completed.

When the procedure commenced it was overcast and almost dusk and the rain had stopped but the highway was damp and the shoulders were wet. Trooper Segura entered the right lane of the interstate waving a flashlight covered with a reddish-orange cone. There was no traffic in the right lane. Trooper Segura let the first vehicle in the left lane continue past him because it was going too fast. He then stepped into the left lane to stop the flow of traffic. At least four or five vehicles stopped one behind the other in the left lane without incident. A blue Mazda driven by Kimbrly Syrie was preparing to stop in the left lane when it pulled from behind the vehicles already stopped in front of it and changed to the unoccupied right lane and stopped about even with the second or third vehicle in the left lane.

Trooper Segura turned back toward Mr. Touchet in the Honda. Mr. Touchet then began to move the Honda from the shoulder into the right lane. A seventy-five foot eighteen-wheeler tractor-trailer truck driven by Victor Schilhab and owned by Maverick Truck Lines, Inc., which had been proceeding in the left lane, switched to the right lane and began to honk its horn. The truck did not stop. Trooper Segura shouted and motioned to Ms. Syrie to move forward to attempt to get her out of the truck's path but she remained stopped in the right lane. The truck struck the Mazda from the rear and propelled it forward until it struck the parked wrecker. Ms. Hart who had been standing behind or downstream from the wrecker was pinned between the wrecker and the Mazda and received fatal injuries. Her son was seated in the wrecker and was not injured. Ms. Syrie received severe injuries in the accident.

Wrongful death and survivor actions were filed by Ms. Hart's children against Victor Schilhab, Maverick Truck Lines, Inc., Guy's Towing Service, Dewey Touchet, various insurers, the State of Louisiana through the Department of Public Safety and Corrections, Office of State Police (the State) and Trooper Jacob Segura. Kimberly Syrie filed a separate suit for personal injuries against the same defendants. The cases were consolidated and plaintiffs settled with all defendants prior to trial except Trooper Segura and the State. The issues of liability and damages were bifurcated. Following the liability phase of the trial, the trial judge rendered judgment in favor of Trooper Segura and the state and against plaintiffs, finding that plaintiffs failed to prove that the actions of Trooper Segura caused the accident and that the sole cause of the accident was the negligence of Victor Schilhab in traveling at an excessive speed under the circumstances and failing to bring his vehicle to a stop when required. Plaintiffs appealed. The court of appeal in a 3-2 decision reversed, finding that the trial court erred in assessing fault solely against Mr. Schilhab.¹

¹ 94-957 (La. App. 3d Cir. 2/27/96); 679 So. 2d 143.

It concluded that Trooper Segura breached his legal duty to the plaintiffs and his conduct along with that of Mr. Schilhab constituted negligence. It remanded the case to the district court for the allocation of fault and the assessment of damages. Upon application by Trooper Segura and the State, we granted certiorari to review the correctness of that decision.²

The sole issue for our determination is whether the court of appeal erred in reversing the trial judge's finding that Trooper Segura was not negligent and that the sole cause of the accident was the negligence of the truck driver, Mr. Schilhab.

A court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989). This court has announced a two-part test for the reversal of the factfinder's determinations: (1) the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and (2) the appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). Stobart v. State, Through DOTD, 617 So. 2d 880, 882 (La. 1993). The issue to be resolved by the reviewing court is not whether the trier of fact is right or wrong but whether the factfinder's conclusion was a reasonable one. Id. at 882. Where the testimony of expert witnesses differ, it is the responsibility of the trier of fact to determine which evidence is the most credible. Theriot v. Lasseigne, 93-2661, p. 9 (La. 7/5/94); 640 So. 2d 1305, 1313. The reviewing court must always keep in mind that if the trial court's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as trier of fact, it would have weighed the evidence differently. Sistler v. Liberty Mutual Ins. Co., 558 So. 2d 1106,

² 96-1027 (La. 6/7/96); 674 So. 2d 974. An application by plaintiffs was denied. 96-0995 (La. 6/7/96); 674 So. 2d 974.

1112 (La. 1990).

In order to determine whether liability exists under the facts of a particular case, our court has adopted a duty-risk analysis. Under this analysis, plaintiff must prove that the conduct in question was a cause-in-fact of the resulting harm, the defendant owed a duty of care to the plaintiff, the requisite duty was breached by the defendant and the risk of harm was within the scope of protection afforded by the duty breached. Berry v. State, Through Dept. of Health and Human Resources, 93-2748, p.4 (La. 5/23/94); 637 So. 2d 412, 414; Mundy v. Dept. of Health and Human Resources, 620 So. 2d 811, 813 (La. 1993). Under the duty-risk analysis, all four inquiries must be affirmatively answered for plaintiff to recover. Mathieu v. Imperial Toy Corp., 94-0952, p.4 (La. 11/30/94); 646 So. 2d 318, 322.

In deciding this case through the application of the duty-risk analysis, we choose first to examine the issue of what was the duty Trooper Segura owed to Ms. Hart and to Ms. Syrie. We stated in Blair v. Tynes, 621 So. 2d 591, 596 (La. 1993), that the legislature has given law enforcement officers the exclusive power to regulate traffic and the public has a corresponding obligation to follow traffic regulations. Law enforcement officers are duty bound to exercise this power reasonably to protect life and limb and to refrain from causing injury or harm. When a law enforcement officer becomes aware of a dangerous traffic situation, he has the affirmative duty to see that motorists are not subjected to unreasonable risks of harm. Monceaux v. Jennings Rice Drier, Inc., 590 So. 2d 672, 675 (La. App. 3d Cir. 1991). In Mathieu, 94-0952 at 10, 646 So. 2d at 325, this court stated that the scope of an officer's duty is to choose a course of action which is reasonable under the circumstances. In other words, the scope of an officer's duty to act reasonably under the circumstances does not extend so far as to require that the officer always choose the "best" or even a "better" method of approach.

Next, we must determine whether Trooper Segura breached this duty. Plaintiffs, through the testimony of various experts, contended that Trooper Segura breached his duty because he did not use flares or cones or wear reflective clothing and he did not call for back-up assistance. They argue that he should have used his police unit rather than himself to create a road block, he should have closed only one lane of interstate traffic, he should have secured the pedestrian (Ms. Hart) at the scene of the accident or required her to leave. In sum, plaintiffs and their experts attempted to prove that Trooper Segura breached his duty to plaintiffs and was negligent by showing that "different" or "better" options were available. However, our task is not to determine whether Trooper Segura should have acted differently or if there were better options available to him but only whether his actions were reasonable under the totality of the circumstances.

Trooper Segura, a state trooper for fifteen years, testified that the decision was made in conjunction with the wrecker driver, Dewey Touchet, to turn the Honda around to end up behind the wrecker for towing purposes. He estimated the maneuver to take less than thirty seconds. The Honda was damaged and leaking fluid as a result of the earlier accident. He considered the better approach to the situation was to stop both lanes of traffic in case the maneuver could not be completed by using only the right lane or in the event the damaged vehicle could not complete the maneuver. Mr. Touchet agreed with the decision to stop both lanes of traffic to perform the task. Trooper Segura asked Ms. Hart and her son to stay out of the way during the procedure. He testified that he could see almost three miles back to the Whiskey Bay Bridge. He waited for a break in the traffic to start the maneuver.

The first vehicle to stop in the left lane belonged to Mr. Larson. He testified that he saw the blue lights from the police unit on the side of the road about a mile ahead. He saw Trooper Segura about two hundred feet ahead and realized he had to stop his

vehicle. He brought his vehicle to a complete stop without skidding. The next vehicle in the left lane, belonging to Sharon Hartjes, also came to a stop without incident and so did another vehicle belonging to Glenda Adams. Nicole Patin, the driver of another vehicle in the left lane, testified by way of deposition that she saw the flashing lights in the distance and thought that she would eventually have to stop so she slowed down her vehicle and was able to see Trooper Segura from about one-fourth of a mile away standing in the center of the interstate. She brought her vehicle to a stop and parked. Nancy Davison was also able to stop her vehicle slightly angled in the left lane of traffic. Ms. Syrie's Mazda pulled up behind Ms. Davison before pulling out and changing to the right lane.³ Thus, Trooper Segura was able to safely stop at least five vehicles without incident before he turned around in order to signal Mr. Touchet to begin the turnaround maneuver. He then heard a truck horn blowing and saw the tractor-trailer rapidly approaching and realized that it had no intention of stopping.

Stanley Griffin, a state trooper, testified that he had worked the elevated portion of Interstate 10 over the Atchafalaya Basin for over ten years. He testified that it is routine practice to close off both lanes of oncoming traffic while working an emergency situation and he had done so a number of times without assistance and had experienced no accidents or incidents. He further testified that for a short-term maneuver it was easier and faster to work the situation himself than to use the police unit to block traffic. Trooper Summers, a trainer of state troopers qualified in the field of accident scene protection and traffic control, testified that Trooper Segura was correct in leaving his police unit on the shoulder to alert approaching traffic and to protect the disabled vehicle and the wrecker on the right shoulder.

³ Ms. Syrie was not called as a witness because she received head injuries in the accident and has no recollection of the event.

He further testified that the manner in which Trooper Segura had stopped traffic by using his body and hand signals was appropriate and in keeping with recognized standards and procedures of traffic control. John Blunschi, Trooper Segura's training officer, testified that he would request additional assistance or use cones or flashing devices for a long-term operation but not for a short-term maneuver. While plaintiffs presented their own experts who in their opinions would have acted differently under the circumstances, Trooper Segura's associates and defense experts testified that his actions were in conformity with accepted traffic control procedures at the scene of an accident or emergency situation. After reviewing the record in its entirety, we find that the method that Trooper Segura utilized to attempt to remove the Hart vehicle from the shoulder of the interstate was reasonable. Moreover, we find that Trooper Segura acted reasonably in allowing Ms. Hart and her son to remain at the accident scene. Ms. Hart had refused an offer to leave the scene and insisted that she wanted to stay with her vehicle. Trooper Segura warned them to stay out of the way during the maneuver. Even plaintiffs' expert agreed that Ms. Hart could not be forced to leave the accident scene. Accordingly, we conclude that Trooper Segura did not breach any duty imposed upon him. Clearly, the trial judge's finding of no fault on the part of Trooper Segura was not manifestly erroneous.

We consider the sole cause of the accident was the negligence of Victor Schilhab. Mr. Schilhab was driving an eighteen-wheeler tractor-trailer which weighed about 70,000 pounds including its load under wet conditions. He testified by deposition that as he approached the Whiskey Bay Bridge, he heard on his CB radio that a policeman was giving a ticket up ahead. He testified that as he descended the bridge he was in the left lane and going about fifty-five miles per hour, the posted speed limit. He saw the flashing lights on Trooper Segura's police unit on the shoulder and he

applied his "jake brake" and began gearing down.⁴ While some of the witnesses to the accident did not think that the truck was going very fast when it approached the scene, others testified that it was going at a fast rate when it descended the bridge and that the truck seemed out of control. Jeffrey Milburn, an accident reconstructionist for the defense, estimated Mr. Schilhab's speed at the time of impact to be about sixty-three miles per hour. Accordingly, the trial judge's finding that Mr. Schilhab's negligence in traveling at an excessive speed and in failing to stop his vehicle was the sole cause of this accident was not manifestly erroneous.

In sum, Trooper Segura did not breach any duty to plaintiffs. In determining no breach of duty, there can be no finding of liability of Trooper Segura and the State. The sole cause of the accident was the negligence of Victor Schilhab. The court of appeal erred in finding otherwise. We must reverse.

DECREE

For the reasons assigned, the judgment of the court of appeal is reversed. The judgment of the district court dismissing the suit against Trooper Jake Segura and the State of Louisiana is reinstated. All costs are assessed against plaintiffs.

⁴ According to Mr. Schilhab's testimony, a "jake brake" slows the engine compression down which in turn slows the truck down without having to put on the brakes.

