UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-3814

(Summary Calendar)

MAGGIE WILLIAMS, Individually and
as Natural Guardian of Leroy Williams,

Plaintiff-Appellant,

versus

LEROY WILLIAMS, ET AL.,

Defendants,

WILLIE BROWN, JAMES FOREMAN
and GUARANTY NATIONAL INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court
For the Middle District of Louisiana
CA 91 194 A M2

June 22, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Maggie Williams, individually and as natural guardian of the deceased, appeals summary judgment of her negligence action against Willie Brown, Brown's employer James Foreman, and Foreman's

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* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

insurance company Guaranty National ("defendants"). Finding no error, we affirm.

The parties are in agreement as to the underlying facts, as recounted by the district court:

> [Willie] Brown[, while driving an 18-wheel rig] was proceeding in a northerly direction [on Louisiana Highway 19], having delivered a load of wood chips to a facility in Port Hudson. Brown was travelling approximately 50 to 55 miles per hour at a distance of 50 to 60 yards behind another truck that had made a delivery at the same facility. Shortly before the accident, the driver in the lead truck informed Brown on his CB radio that there was a southbound vehicle in his lane of traffic. As it turns out, [the deceased] was driving that vehicle.
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> Within seconds, Brown looked up and saw the headlights of an oncoming vehicle swerve off the other side of the road them come back on the road, crossing over into his lane. According to Brown's undisputed testimony, he took his foot off the accelerator and began to pull off onto the shoulder when it appeared that the car was heading toward him. The point of collision (established by the testimony of Brown and the state trooper who investigated the accident) was about one to two feet from the shoulder of the northbound lane.

Record Excerpts tab. 2, at 2.

Williams brought suit against the defendants, alleging that Brown's "unresponsive" actions, particularly his failure to apply the brakes, caused the accident. The defendants moved for summary judgment. Finding no genuine issue of material fact, the district court entered summary judgment for the defendants. Williams filed a timely notice of appeal.

We review the district court's grant of a summary judgment motion de novo. *Davis v. Illinois Cent. R.R.,* 921 F.2d 616, 617-18 (5th Cir. 1991). Summary judgment is appropriate if the record discloses "that there is no genuine issue of material fact and that

the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). While we must "review the facts drawing all inferences most favorable to the party opposing the motion," *Reid v. State Farm Mut. Auto. Ins. Co.,* 784 F.2d 577, 578 (5th Cir. 1986), that party may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986). Although we recognize that summary judgment is often inappropriate in negligence cases, *see Lavespere v. Niagara Mach. Tool Works, Inc.,* 910 F.2d 167, 178 (5th Cir. 1990) (citing cases), we have nevertheless upheld summary judgment where the plaintiff has failed to produce evidence which would tend to establish an essential element of his negligence claim. *See, e.g., Washington v. Armstrong World Industries, Inc.,* 839 F.2d 1121, 1123 (5th Cir. 1988) (affirming summary judgment where plaintiff failed to produce evidence regarding causation element of negligence claim); *Fontenot v. Upjohn Co.,* 780 F.2d 1190, 1192 (5th Cir. 1986) (same).

Williams's main argument on appeal is that a genuine issue of material fact exists as to whether Brown acted reasonably in failing to brake upon seeing the deceased's vehicle swerve out of control.[1] *See* Brief for Williams at 10-11. Applying Louisiana law

[1] Williams also argues that Foreman's failure to comply with federal highway safety regulations was a disputed issue of material fact. *See* Brief for Williams at 11-12. We agree, however, with the district court's finding that compliance was not material to the issue of Brown's negligence, particularly as to causation. Williams has produced no evidence suggesting that any failure to comply with safety regulations caused the accident.

to this diversity case,[2] we note that the driver of the vehicle in the wrong lane at the time of a collision is presumed to be at fault. *Porteau v. State Farm Mut. Auto Ins. Co.,* 572 So. 2d 328, 330 (La. Ct. App. 3d Cir. 1990). "[I]f a motorist finds himself in a position of peril, not of his own making, *and without sufficient time* to consider the best means of avoiding the danger, he is not guilty of negligence if he fails to follow what subsequently may appear to have been a safer course of conduct." *Id.* The undisputed facts show that Brown took evasive action))by taking his foot off the accelerator and angling toward the right shoulder))as soon as it appeared that the deceased's vehicle was heading toward him in the wrong lane. *See* Record Excerpts tab. 5, at 13-16 (deposition of Brown). Because it is undisputed that Brown had only a few seconds to react, we cannot second guess his actions. *See Porteau,* 572 So. 2d at 330. Consequently, we conclude that the undisputed facts show that Brown acted reasonably under the circumstances.[3] Moreover, even assuming *arguendo* that Brown may have acted unreasonably by not braking, Williams has failed to show how Brown's failure to brake caused the accident, an essential element of her negligence claim. *See Washington,* 839 F.2d at 1123 (holding that where plaintiff "never actually demonstrates causation and never states that he could produce evidence of

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[2] *See Ideal Mut. Ins. Co. v. Last Days Evangelical Ass'n, Inc.,* 783 F.2d 1234, 1238 (5th Cir. 1986) (applying substantive law of forum state to diversity suit).

[3] In addition, Williams does not state, and we cannot comprehend, why braking would have been a more reasonable action.

causation at trial, [plaintiff] has failed to carry his burden of proof on an essential element").

We therefore hold that Williams has not demonstrated a genuine issue of material fact. Accordingly, we **AFFIRM** the district court's summary judgment.