

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5082
Summary Calendar

MARCELINE LASATER,
Individually and as Executrix of
Estates of John Bell Lasater & Margaret Evelyn Lasater,
Plaintiff-Appellant,

VERSUS

CITY OF TYLER and HAROLD RICHEY,
Individually and in His Official Capacity,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
91 CV 443

June 7, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

I.

On July 29, 1989, Larry Brock killed John and Margaret Lasater by driving his car in the oncoming lane of traffic and colliding with the Lasaters' car head-on. Marceline Lasater brought this

* 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 Pursuant to that rule, the court has determined that this opinion should not be published.

action individually and as executrix of the Lasaters' estate. The defendant, police officer Harold Richey of the City of Tyler, had been pursuing Brock at the time of the accident. Lasater brought this action against Richey and the city, alleging violations of 42 U.S.C. § 1983, the Texas Tort Claims Act, and Texas law.

According to Richey's testimony, his shift ended at 10:00 p.m., and he left the police station wearing his uniform in an unmarked vehicle. He intended to pick up his lawnmower to mow the police shooting range because the department's mower was broken. Officer Richey claims he was traveling north on East Gentry when he noticed a car without functioning taillights. He would later learn that Brock was driving that car. After passing through the signal at Martin Luther King Boulevard, Brock's car crossed over the centerline as though it were going to turn into a gas station. Brock then crossed back over the centerline, crossed over two lanes of traffic, and pulled onto the emergency lane. Officer Richey stated that he did not stop because Brock appeared to be attempting to fix a short in his electrical system.¹

After passing Brock, Richey claims that he proceeded north on Highway 271 and stopped at a red light at Loop 323. At this point, Richey checked his rearview mirror and observed Brock approaching from behind at a high rate of speed. Although Richey feared he would be struck from behind, the Brock veered around him and went through the red light. Richey testified that he waited until the

¹ Under Tyler law, Richey did have the authority to stop Brock even though he was off duty.

light turned green to pursue Brock. Another witness, Michael Jasper, claims that Richey was not stopped at this light but was already pursuing Brock and followed him through the red light.

After passing through the intersection, Brock did not return to the correct side of the road and even ran off the roadway onto the shoulder of the oncoming lanes at one point. Richey tried to get Brock's attention by flashing his high-beam headlights. As Brock rounded a curve about two miles north of the intersection where the chase began, he collided with the Lasaters head-on.

The case proceeded to trial on September 29, 1992. At the close of the plaintiff's case, the district court granted a directed verdict for the defendants on the ground that Richey did not have a legal duty to stop Brock when he saw him pulled over and that there was no evidence from which a reasonable jury could conclude that Officer Richey's conduct was a proximate cause of the accident.

II.

Plaintiff's first theory of recovery was that Richey's failure to stop and investigate Brock when Brock was parked next to the highway constituted negligence and a violation of the Lasaters' constitutional rights. The district court held that Brock had no legal duty to stop and investigate. Because the lack of a duty is a legal determination, we review the district court's decision de novo.

Plaintiff cites no authority for the proposition that a police

officer has a duty to stop and investigate minor traffic violations. We can find no Texas caselaw that even suggests police officers have a duty to stop and investigate such violations, nor do we think Texas would adopt such a rule. Richey was not even on duty at the time the incident occurred. If Texas imposed a duty on off-duty officers to stop and investigate minor traffic violations that indicate potential danger to other drivers, officers might never reach their homes when leaving duty. The district court did not err by holding that Richey did not have a duty to stop and investigate.

III.

Plaintiff's second theory of recovery was that Richey acted negligently by chasing Brock and flashing his lights. The district court held as a matter of law that plaintiff could not establish that Richey's actions were the proximate cause of the collision. We agree.

No evidence in the record suggests that Brock even knew he was being pursued by the police. Richey flashed his lights for a substantial distance, and Brock kept driving on the wrong side of the road and even on the shoulder. All of the relevant witnesses testified that Brock did not respond to Richey's actions. No witness suggested that the collision was avoidable. Officer Richey attempted to avoid this tragedy by trying to get Brock's attention. He did not cause the collision. We agree with the conclusion of the district court, "This clearly was a tragedy, but all tragedies

are not redressable under our system."

The judgment is AFFIRMED.