

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-7492  
Summary Calendar

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JAVIER ESTRADA AND JULIA  
ESTRADA, Individually and  
as next friends of YVONE  
ESTRADA, Deceased,

Plaintiffs-Appellants,

versus

CARPENTER BODY WORKS, INC.,  
ET AL.,

Defendants,

CARPENTER BODY WORKS, INC.,

Defendant-Appellee.

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Appeals from the United States District Court for the  
Southern District of Texas  
(CA-B-89-093)

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(February 24, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

Javier and Julia Estrada, individually, and as next friends of their daughter, Yvone Estrada, who died as the result of injuries sustained when she jumped or fell out of the emergency exit of a

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<sup>1</sup> 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 Pursuant to that rule, the court has determined that this opinion should not be published.

school bus designed and manufactured by Carpenter Body Works, Inc., appeal from the summary judgment in favor of Carpenter, dismissing both of the claims -- negligence and strict liability. We **AFFIRM**.

I.

On March 15, 1989, a school bus owned by the Brownsville Independent School District (BISD), and driven by Jose Zamarripa, was taking students, including the 13-year-old decedent, Yvone Estrada, home from school. Because the students were misbehaving, Zamarripa decided to return them to the school for discipline by the principal. While the bus was stopped at a stop sign, two male students jumped out the rear emergency exit. Then, when the bus began moving again, Yvone Estrada either jumped or fell out of the same emergency exit, sustaining injuries from which she died a week later.

The Estradas filed a complaint in Texas state court against BISD, and Zamarripa (the driver), seeking recovery for negligence, gross negligence, and civil rights violations, and against Carpenter, for negligence and strict liability. The case was removed to federal court; and the Estradas settled with BISD and Zamarripa.

Carpenter moved for summary judgment in early April 1991. On September 17, having received no response from the Estradas, the district court entered an order, reviewing the evidence in detail and stating that it was inclined to grant Carpenter's motion; but, it gave the Estradas ten days within which to file a response. They did so on September 27. The district court granted

Carpenter's motion in April 1992 and, that July, denied the Estradas' motion to reconsider.

II.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Our review of summary judgment is plenary, and we view all facts, and the inferences to be drawn from those facts, in the light most favorable to the non-movant. **LeJeune v. Shell Oil Co.**, 950 F.2d 267, 268 (5th Cir. 1992). If the summary judgment evidence could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial. *E.g.*, **Matsushita Elec. Indus. Co. v. Zenith Radio Corp.**, 475 U.S. 574, 587 (1986).

In their complaint, the Estradas claimed that the bus was unreasonably dangerous and defectively designed, and that Carpenter was negligent in designing, manufacturing, and marketing the bus, asserting that (1) the emergency exit alarm buzzer could be disabled by inserting an object, such as a pencil, into the latch area, allowing the door to be opened without triggering the alarm; (2) the emergency exit door could be opened while the bus was moving; and (3) there were no warnings advising the owner, driver, or passengers that the door could be opened while the bus was moving.

In support of its summary judgment motion, Carpenter presented, among other items, the deposition testimony of Zamarripa, the bus driver, and Omar and Brenda Rodriguez, two of the students on the bus at the time of the accident. Brenda testified that the alarm buzzer sounded when the two boys opened the emergency exit and jumped off the bus while it was stopped at a stop sign; and that no one told the driver about the boys jumping out, because he had seen them get off the bus. According to Brenda, the door closed and the alarm stopped when the bus began moving. She testified that, as the bus started going faster, Yvone opened the door and jumped out; and that the alarm sounded when Yvone opened the door. Brenda described the alarm as "real loud".

Omar Rodriguez testified that the boys left the emergency door open after they jumped; and that, after the boys jumped, he was looking toward the rear of the bus and wondering if the driver was going to stop to close the door. He assumed that the bus driver was aware that the door was open, because he saw him look back. He testified further that some students told the driver that the door was open, but that the driver just murmured something and kept going. Omar heard the alarm sound when the boys opened the emergency exit; and he heard Yvone scream that she was going to jump. When he saw Yvone do so, the alarm was still sounding.

Zamarripa, the driver, testified that he did not see the boys open the emergency door. However, he later heard someone yelling that the emergency door was open and that someone had jumped. He

testified that he heard the alarm, and told the students to close the door.

Carpenter also presented the affidavits of Dirk Verheul and Troy Martin. Verheul, senior consultant for technical affairs at Carpenter, stated that he was familiar with the design and specifications for the emergency door. He further stated:

It was not defective for the school bus ... to have an emergency exit door that could be opened while the bus was moving. The purpose of the door is to provide passengers with an emergency exit. Designing a door that could not be opened while the bus is moving would totally negate the door's utility as an emergency exit, and would violate the requirements of the Code of Federal Regulations, Title 49, Paragraph 571.217, Section S5.2.3.2, attached hereto as Exhibit 1. Essentially, such a door would have absolutely no utility as an emergency exit while the bus was moving. Designing an emergency exit door that will operate while the bus is moving is, therefore, both reasonable and necessary.

In this regard, the school bus ... was designed by Carpenter ... to conform with specifications generated by the federal government and the State of Texas. Such specifications require that all school buses be designed with an emergency exit door at the rear of the bus. They also require that such doors be fully functional while the buses are in operation. Hence, if the door of the school bus at issue ... had been designed such that it could not be opened while the bus is in use, the bus would not have been in conformity with the state's specifications and the state's purchasing department would have rejected the bus as being unsafe.

The regulation attached to Verheul's affidavit provides, in pertinent part: "The engine starting system of a school bus shall not operate if any emergency exit is locked from either inside or outside the bus...." 49 C.F.R. ¶ 571.217(c), § S5.2.3.2.

Martin, specification/inspection chief for the State of Texas Purchasing Department, stated that he was familiar with the specifications for emergency exit doors on school buses. He further stated:

According to state specifications, all school buses purchased for use by independent school districts in the State of Texas must have an emergency exit door at the rear of the bus. Such doors must be fully functional while the bus is moving. It could not be defective for a school bus to have an emergency exit door that can be opened while the bus is moving. The very purpose of such a door is to provide passengers with an emergency exit. Designing a door that cannot be opened while the bus is moving would totally negate the door's utility as an emergency exit. If a school bus is designed with an emergency exit door that could not be opened while the bus was moving such a bus would be rejected for use by any school district in the State of Texas. Such a bus would not comply with Texas specifications.

In response to Carpenter's motion, the Estradas presented the cover affidavit and incorporated report of Dr. Gary Nelson, a safety engineer; the affidavit of a student, Elizabeth Rivera; the deposition of Robert Bowman, director of transportation for the BISD at the time of the accident; and the unsworn, handwritten statements of students on the bus at the time of the accident. Because the Estradas had the burden of proof at trial, they were required to "set forth specific facts showing that there is a genuine issue for trial". Fed. R. Civ. P. 56(e). They fail to satisfy this requirement.

Dr. Nelson's affidavit and incorporated report contain his qualifications, a list of the documents he relied on in making his report, a lengthy, abstract comment on the "basic" principles of

safety engineering, and his opinions and conclusions. The report had been prepared in December 1990, over nine months prior to being submitted in response to the April 1991 motion and supporting evidence. After opining that Carpenter either knew or should have known about the safety engineering principles described in his report, and knew or should have anticipated that pre-teens and teenagers would open the emergency exit, Dr. Nelson concluded that Carpenter "failed to provide bus drivers with an adequate warning associated with the opening of the rear emergency door" and "failed to provide student bus riders with an environment free of recognized hazards". He further concluded that the design defects and unreasonably dangerous condition of the bus, as well as Carpenter's negligent acts and omissions, were the proximate cause of Yvone's accident and fatal injuries.

Nelson's report, however, contains no explanation of how or why the abstract principles of safety engineering he relied on support the opinions and conclusions he reached, or how those conclusions follow from the facts of the case. Moreover, as noted, the report fails to address, much less rebut, the expert testimony presented by Carpenter -- that, obviously, in order to have any utility as a safety device, an emergency exit door on a school bus must be designed so that it can be opened while the bus is moving. Nelson's report likewise ignores the federal standards, attached to Verheul's affidavit, regarding the design of emergency exit doors on school buses, and fails to explain why Carpenter should have designed the emergency exit door in violation of those standards.

(As noted, the report was prepared before Carpenter moved for summary judgment.) His conclusion that the alarm system was defectively designed is immaterial, in light of Zamarripa's testimony that the alarm was sounding.

The Estradas submitted the affidavit of Elizabeth Rivera, a student on the bus at the time of the accident, in which she stated that she saw Yvone fall (rather than jump) from the back of the emergency door. Because it is immaterial whether Yvone fell or jumped from the bus, the Rivera affidavit presents no genuine issue of material fact.

The Estradas also submitted the deposition of Robert Bowman, director of transportation for BISD at the time of the accident. Bowman testified that he investigated the accident, that his investigation revealed allegations that the alarm had been tampered with, and that he was able to cause the alarm to malfunction by inserting a pencil into the latch mechanism. He further testified ("[i]f I remember correctly") that, during his investigation, the driver, Zamarripa, stated that he did not hear the alarm buzzer. Although he conceded that the law requires that the emergency door be able to be opened while the bus is operated, he stated that he could not imagine why anyone would want to open the door while the bus was in motion, unless the bus was "going over a cliff or off a bridge or something".

Bowman's testimony is insufficient to preclude summary judgment for Carpenter. The fact that Bowman was able to cause the alarm buzzer to malfunction during his investigation is irrelevant,



because Zamarripa testified that he heard the buzzer.<sup>2</sup> Zamarripa's testimony was corroborated by the deposition testimony of Omar and Brenda Rodriguez, both of whom testified that the alarm buzzer was sounding prior to Yvone's accident. Bowman's testimony, that he could think of no reason why anyone would want to be able to open an emergency exit while a bus is moving, contradicted the affidavits of Carpenter's two experts. Bowman's testimony regarding the design of the emergency exit does not raise a genuine issue of material fact.

Next, the Estradas referred to an alleged inconsistency between the deposition testimony of Omar and Brenda Rodriguez, the handwritten statements of various students on the bus, and the testimony of the driver. According to the Estradas, the driver claimed that he heard the alarm go off only once, and did not recall anyone else leaving the bus or jumping out of the emergency exit prior to the accident; but Omar and Brenda Rodriguez, as well as some of the students, stated that two boys jumped out of the emergency exit prior to the accident. Any inconsistency regarding whether Zamarripa was aware that two students had jumped out of the

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<sup>2</sup> Bowman's testimony that, during his investigation, Zamarripa stated that he did not hear the buzzer, is inadmissible hearsay. See Fed. R. Civ. P. 56(e); Fed. R. Evid. 802. In any event, Bowman's testimony was most equivocal. After testifying that, "[i]f [he] remember[ed] correctly", Zamarripa stated that he did not hear the alarm, Bowman later testified that Zamarripa stated that he "heard a buzzer go off slightly and he looked up and didn't see anything and then he didn't hear anything else, or something to that nature. *I don't remember the exact statement by the driver.*" (Emphasis added.)

emergency exit prior to the accident is immaterial, in light of Zamarripa's undisputed testimony that he heard the alarm.

Based on our review of the summary judgment evidence, we conclude that the Estradas failed to present evidence demonstrating the existence of a genuine issue of material fact. Accordingly, the district court correctly granted summary judgment.

III.

The judgment of the district court is

**AFFIRMED.**