

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30645
Summary Calendar

MAX C. MILLER
and
RACHEL MILLER,

Plaintiffs-Appellants,

VERSUS

FRANK EVINS, SCOTT EXPRESS COMPANY, INC.,
and
TRANSAMERICA INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 93 4213 J(2/1))

March 28, 1995

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

The plaintiffs appeal a summary judgment entered in this diversity case involving a traffic accident. We affirm, essentially for the reasons given by the district court in its comprehensive order, entered on November 10, 1995, granting reconsider-

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 Pursuant to that rule, the court has determined that this opinion should not be published.

ation of its previous denial of summary judgment.

This is an easy case. The plaintiff driver apparently fell asleep and collided with defendants' truck that had been parked, out of the lane of traffic, because it had run out of fuel. The driver was away from the vehicle, trying to get fuel, when the accident occurred. The accident happened during daylight on a clear day.

The district court discussed Louisiana cases indicating, in its words, that "a parked vehicle that does not present an obvious, dangerous traffic condition for anyone using the highway in a reasonable manner is not a hazard to public safety." We agree with this reasoning, as a matter of both common sense and Louisiana law.

The summary judgment is AFFIRMED.