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May 22, 2019

Tractor-Trailer Driving into Gore Point was not the Proximate Cause of the Accident

In *Stephen Taulbee v. EJ Distribution Corp.*, the Court of Appeals found that the trial court did not err when it declined to instruct the jury that defendant could also be found negligent per se for driving into the gore point to park his tractor-trailer, in violation of Vehicle Code section 21615.

On August 20, 2012, plaintiff Stephen Taulbee suffered catastrophic injuries after driving his Jeep into the back of a tractor-trailer that was parked in a gore point. Plaintiff and his wife sued the truck driver (Aldana) and his employer (EJ Distribution) alleging that the truck driver was negligent in parking his tractor-trailer in a gore point, rather than the shoulder. Plaintiffs argued that, even if Aldana needed to stop due to a mechanical failure in his tractor, he could have stopped on the shoulder rather than in the gore point.

Plaintiffs' trucking safety expert testified that Aldana was negligent for stopping in the gore point instead of a shoulder, even in an emergency, because the shoulder is safer for the driver and emergency vehicles than the gore point. Plaintiffs' traffic engineering expert testified that the gore point is more dangerous because vehicles are known to frequently cross gore areas.

Conversely, defense experts opined that once the red light indicator appeared in defendant's tractor, that his first priority was to identify a safe location to get out of the travel lanes. The gore point was the appropriate place for Aldana to park because it was a sure thing as it was immediately in front of him and large enough to accommodate his tractor-trailer.

The Court allowed a jury instruction for negligence per se based on Vehicle Code section 21718 but not section 21615. The jury was instructed: "No person shall stop, park, or leave standing any vehicle upon a freeway, except when necessary to avoid injury or damage to persons or property, or when any vehicle is so disabled that it's impossible to avoid temporarily stopping and another vehicle has been summoned to render assistance to the disabled vehicle or driver of the disabled vehicle."

The Court declined to give additional negligence per se jury instructions for driving into the gore point because, as a matter of law, that conduct was not the proximate cause of the traffic collision. The undisputed testimony was that Aldana had driven into the gore point in violation of Vehicle Code section 21651, five to eight minutes before plaintiff drove into the same gore point. Accordingly, there was no evidence that Aldana's violation of section 21651 proximately caused the collision between plaintiff's Jeep and Aldana's tractor-trailer.

Rather, the evidence suggests that if any distraction occurred with Aldana's tractor-trailer in the gore point, it was based on it being parked there, and not the tractor-trailer driving into the gore point. Therefore, an additional instruction for 21718 (the act of driving into the gore point) would be superfluous because anyone who had parked in the gore point would necessarily have also violated section 21651 by getting to that spot.

Ultimately, the jury found that Aldana was not negligent for parking in the gore point. Accordingly, any error in failing to give the jury instruction was harmless given the jury's finding that Aldana was not negligent in parking in the gore

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point.