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INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

Florida's High Court Set to Tackle Scope of Rear-End Collision Presumption

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In *Cevallos v. Rideout*, No. SC09-2238 (*review granted* Apr. 20, 2010), the Florida Supreme Court must determine how, or if, the rebuttable presumption that a rear-driver was the sole, proximate cause of rear-end collision applies when the rear-driver was the plaintiff. The lower court decision is reported at 18 So. 3d 661 (Fla. 4th DCA 2009). Oral argument took place on February 8, 2011. Before discussing the actual case under review, it might be useful to discuss the history of Florida law on this issue and where it stands today.

HISTORY OF THE REAR-END COLLISION PRESUMPTION

The rear-end collision rule was recognized by Florida appellate courts in 1958 and approved by the supreme court shortly thereafter in 1959. The rule arose to fill the evidentiary void created by a lead-driver's inability to explain the reason for the rear driver's collision with his or her vehicle. That is, while a plaintiff ordinarily bears the burden of proving the four elements of negligence, obtaining proof of a breach and causation in a rear-end collision is difficult because while a plaintiff-driver may know he or she has been rear-ended, the plaintiff usually does not know why.

THE REBUTTABLE PRESUMPTION TODAY

Florida law currently presumes that the driver of a rear vehicle was negligent unless that driver provides a substantial and reasonable explanation as to why he or she was not negligent, in which case the presumption would vanish and the case could go to the jury on the merits. Stated another way, there is a rebuttable presumption that the negligence of the rear driver in a rear-end collision was the sole proximate cause of the accident. This presumption may be rebutted when the defendant produces evidence that the rear-end collision was not the result of the rear-driver's negligence. Florida courts have recognized three specific fact patterns which may rebut this presumption:

(1) affirmative testimony regarding a mechanical failure (*e.g.*, brake failure);

(2) affirmative testimony of a sudden and *unexpected* stop or unexpected lane change by the car in front; and

(3) when a vehicle has been illegally and, therefore, unexpectedly stopped.

THE DISTRICT COURT'S DECISION

As noted above, this case involves the reverse situation in which the presumption ordinarily is applied: A rear-driver *plaintiff* sued a lead-driver defendant. The district court appeared to preclude any evidence of the lead driver's negligence when it stated:

> Where the plaintiff is the rear driver, however, the rear-driver plaintiff, like the rear-driver defendant, must prove that the lead-driver stopped *abruptly and arbitrarily* to rebut the presumption that the plaintiff's own negligence was the *sole proximate cause* of the accident. Phrased another way, the evidence must establish that the rear-driver plaintiff cannot reasonably have been expected to anticipate the lead driver's sudden stop.

The Court also rejected plaintiff's argument that the rebuttable presumption of the rear-driver's negligence does not apply to bar a claim by a rear-driver plaintiff (*i.e.*, the lead-driver cannot use the presumption as a "shield" to require a rear-driver plaintiff to "establish the absence of negligence on her own part to pursue" her claim). In the end, the Fourth District affirmed the directed verdict entered in favor of the defendant lead-driver because the plaintiff failed to adduce evidence from which it could be reasonably inferred that the lead-driver defendant's sudden stop was one which could not reasonably be anticipated.

THE CONFLICT DECISION

The Florida Supreme Court's jurisdiction is premised on conflict with the Fifth District's decision in *Charron v. Birge*, 37 So. 3d 292 (Fla. 5th DCA 2010). In *Charron*, the Fifth District, consistent with one of its earlier decisions, cast doubt on the reasoning of *Cevallos*. To put it simply, the *Charron* Court takes issue with limiting a rear-driver plaintiff to only proving that the lead driver abruptly stopped at a location he could not anticipate to rebut the presumption. The *Charron* Court believes that the inquiry should be broader, including whether the lead driver was simply negligent. In other words, the *Charron* Court believes that the presumption should not relieve a lead driver from operating a vehicle in a reasonably prudent manner. As a corollary, it may be argued that the ruling in *Cevallos* offends the doctrine of comparative fault.

The Appellate Strategist is currently tracking the status of this case and provides periodic updates on the link to the pending Florida Supreme Court cases. Once a decision is released, it will be linked there.