

CAUSE NO. DC-22-01998

GLORIA MYERS	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
vs.	§	
	§	
JOHN ANDREW VILLARREAL and	§	134 th JUDICIAL DISTRICT
GALEN WADE HUDSON and	§	
TEXAS FARM BUREAU	§	
INSURANCE	§	
<i>Defendants.</i>	§	DALLAS COUNTY, TEXAS

PLAINTIFF’S RESPONSE TO DEFENDANT HUDSON’S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Gloria Myers and files this Response to Defendant Hudson’s Motion for Judgment Notwithstanding the Verdict, and in support of such Response would respectfully show the Court the following:

1.00 BURDEN FOR JUDGMENT NOTWITHSTANDING THE VERDICT NOT MET

Defendant Hudson fails to meet the **no evidence** standard for granting a judgment notwithstanding the verdict:

The law is clear in this state that before a trial court can render a judgment non obstante veredicto, based on the absence of evidence, it must determine that there is **no evidence** having probative force upon which the jury could have made the findings relied upon. In making this determination, all evidence must be considered **in a light most favorable to the party whose favor the verdict has been rendered, and every reasonable inference deducible from the evidence is to be indulged in the party’s favor.**

Harbin v. Seale, 461 S.W.2d 591, 592 (Tex. 1970) (emphasis added).

In the present case, the jury – the **“exclusive judge of the credibility of the witnesses and the weight to give their testimony”** – concluded that Defendant Villareal and Defendant Hudson

were negligent, after hearing testimony from both Defendants. *Allesina v. Longshaw*, No. 05-16-01515-CV, 2018 WL 3301588, at *2 (Tex. App.—Dallas July 5, 2018, no pet.).

2.00 DEFENDANT MISINTERPRETS FIVE-PART *SCHNEIDER* TEST

Defendant relies on *Schneider* and its progeny as the basis for its Judgment Notwithstanding the Verdict. *Schneider v. Esperanza. Schneider v. Esperanza Transmission Co.*, 744 S.W.2d 595, 596 (Tex. 1987). *Schneider* outlined five elements to establish an automobile owner's liability when a driver is unlicensed:¹

To establish the automobile owner's liability, there must be a showing of (1) entrustment of a vehicle by the owner; (2) to an unlicensed, incompetent, or reckless driver; **(3) that the owner knew or should have known to be unlicensed;** (4) that the driver was negligent on the occasion in question; and (5) that the **driver's negligence proximately** caused the accident.

Schneider v. Esperanza Transmission Co., 744 S.W.2d 595, 596 (Tex. 1987) (emphasis added).

The *Schneider* test observes that only the proximate cause of the driver is evaluated to establish the automobile owner's liability when a driver is unlicensed. *Schneider*, 744 S.W.2d 595, 596. The *Schneider* court relies on the Texas Supreme Court authority, *Mundy v. Pirie-Slaughter Motor Co.*, to establish its five-part test. *Mundy v. Pirie-Slaughter Motor Co.*, 206 S.W.2d 587, 588 (1947); *Schneider v. Esperanza Transmission Co.*, 744 S.W.2d 595, 596 (Tex. 1987). The *Mundy* court observed:

If such incompetent or reckless driver, through his negligent operation of the automobile, causes damage to a third person, **the owner of the automobile is liable; the negligence of the driver does not break the chain of causation.**

Mundy v. Pirie-Slaughter Motor Co., 206 S.W.2d 587, 588 (1947) (emphasis added).

As observed in *Schneider*, *Mundy* is the leading authority pertaining to proximate cause in

¹ A plaintiff is not required to prove that a driver is incompetent, reckless, and unlicensed.

negligent entrustment cases. Applying *Mundy*, Texas courts observe:

If, after the automobile is knowingly entrusted to an incompetent, reckless or unlicensed driver, and such driver operates it negligently, and thereby causes damages to a third person, the causal connection is shown between the negligence of the owner in entrusting the automobile to him and damage to the third person.

Arias v. Aguilar, 515 S.W.2d 313, 316 (Tex. App.—Corpus Christi 1974, no writ)

We do not believe that it was necessary to submit an issue of ‘proximate cause’ insofar as concerned the owner’s negligence in entrusting the automobile to an unlicensed driver.

McIntire v. Sellers, 311 S.W.2d 886, 892–93 (Tex. App.—Austin 1958, writ ref’d n.r.e.) (emphasis added).

In this case, the jury concluded – based on the evidence – that the actions taken by Defendant Hudson and Defendant Villareal caused Ms. Myers’ significant injuries and trauma.

3.00 DEFENDANT HUDSON IS RESPONSIBLE FOR DRIVER VILLAREAL’S LIABILITY

The Texas Supreme Court observes that an entrustor is responsible for a driver’s liability:

When the driver’s wrong is established, then by negligent entrustment, liability for such wrong is passed on to the owner. We believe the better rule is to apportion fault only among those directly involved in the accident, and **to hold the entrustor liable for the percentage or fault apportioned to the driver.**

F.F.P. Operating Partners, L.P. v. Duenez, 237 S.W.3d 680, 698 (Tex. 2007) (emphasis added).

The Dallas Court of Appeals further noted that once negligent entrustment is established “the owner/employer is liable for the acts of the driver, **and the degree of negligence of the owner/employer is of no consequence.**” *Rosell v. Cent. W. Motor Stages, Inc.*, 89 S.W.3d 643, 657 (Tex. App.—Dallas 2002, pet. denied) (emphasis added).

Defendant Hudson does not dispute Defendant Villareal’s negligence; Defendant Hudson is responsible for the jury’s determination that Defendant Villareal was negligent.

4.00 PRAYER

Plaintiff respectfully requests that this Court deny Defendant’s Judgment Notwithstanding

the Verdict and all other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

SOMMERMAN, MCCAFFITY,
QUESADA & GEISLER, L. L. P.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify by my signature above that a true and correct copy of the foregoing instrument has this date been sent to all attorneys of record in the above-styled and numbered matter, said service being effected in the following manner:

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DATED: November 22, 2024

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