

ENTERED

January 22, 2021

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[REDACTED]

Plaintiff,

VS.

[REDACTED]

Defendants.

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CIVIL ACTION NO. [REDACTED]

ORDER

Pending before the Court is the Defendants' [REDACTED] (collectively, the "Defendants"), Motion for Summary Judgment (Doc. No. 5). The Plaintiff [REDACTED] did not file a response. After considering the motion, arguments, summary-judgment evidence, and applicable law, the Court GRANTS the Defendants' motion.

I. Background

This case arises out of a motor-vehicle accident. According to [REDACTED] state court petition, the facts are simple and are as follows:

At the time of the accident, Plaintiff was in his vehicle traveling west in the 2600 Block of I-10 in the far-right lane. At the same time Defendant [REDACTED] was traveling west in the 2600 Block of I-10.

Suddenly and without warning, Defendant [REDACTED] attempted to change lanes in an unsafe manner and collided with Plaintiff's vehicle, striking Plaintiff's door.

(Doc. No. 1-4 at 3). [REDACTED] was [REDACTED]'s employer and [REDACTED] was driving [REDACTED]'s vehicle at the time of the accident. (*Id.* at 4). The Defendants removed this action pursuant to diversity jurisdiction and have now moved for summary judgment contending that the summary-judgment evidence, which includes dash-cam footage of the accident (Doc. No. 5, Ex. A), shows as a matter of law that [REDACTED] was not negligent in the operation of his vehicle (Doc. No. 5).

II. Legal Standard

Summary judgment is warranted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). “The movant bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact.” *Triple Tee Golf, Inc. v. Nike, Inc.*, 485 F.3d 253, 261 (5th Cir. 2007) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986)). Once a movant submits a properly supported motion, the burden shifts to the non-movant to show that the Court should not grant the motion. *Celotex*, 477 U.S. at 321–25. The non-movant then must provide specific facts showing that there is a genuine dispute. *Id.* at 324; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A dispute about a material fact is genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court must draw all reasonable inferences in the light most favorable to the nonmoving party in deciding a summary judgment motion. *Id.* at 255. The key question on summary judgment is whether there is evidence raising an issue of material fact upon which a hypothetical, reasonable factfinder could find in favor of the nonmoving party. *Id.* at 248.

Local Rules 7.3 and 7.4 of the Southern District of Texas state that a response to a motion will be submitted to the judge within 21 days after filing and that the failure to respond will be taken “as a representation of no opposition.” Rule 7.4(a) plainly states that such responses must be filed by the submission date; which in this case passed long ago. Therefore, the local rules would allow the Court to grant Defendants’ motion as it should be considered unopposed. Nevertheless, the Fifth Circuit has explained that, although it “has recognized the power of district courts to ‘adopt local rules requiring parties who oppose motions to file statements of opposition,’” it has

not “approved the automatic grant, upon failure to comply with such rules, of motions that are dispositive of the litigation.” *Johnson v. Pettiford*, 442 F.3d 917, 918 (5th Cir. 2006) (quoting *John v. Louisiana*, 757 F.2d 698, 709 (5th Cir. 1985)). A motion for summary judgment is such a dispositive motion; consequently, the Court will consider the merits of Defendants’ motion.

III. Analysis

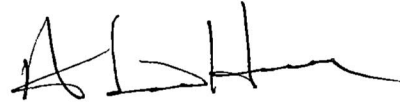
The elements of a negligence cause of action in Texas are “the existence of a legal duty, a breach of that duty, and damages proximately caused by the breach.” *Gharda USA, Inc. v. Control Sols., Inc.*, 464 S.W.3d 338, 352 (Tex. 2015). The Defendants contend that the summary-judgment evidence—primarily the dash-cam footage—shows that [REDACTED] did not breach any duty because he operated the vehicle carefully, negating an essential element of [REDACTED]’s claim. They also argue that the footage conclusively demonstrates, instead, that “[REDACTED] himself changed lanes in an unsafe manner and was the sole cause of the accident.” (Doc. No. 5 at 3).

The Court has reviewed the summary judgment evidence provided by the Defendants, including the footage. The video proves without a doubt that [REDACTED] was driving in his lane and did not leave it. It further proves that [REDACTED]’s vehicle entered [REDACTED]’s lane and the side of his car struck [REDACTED]’s vehicle. There is certainly no evidence that [REDACTED] operated his vehicle negligently. (Further, [REDACTED] has provided the Court no evidence providing a different account or contradicting the video.) Based upon the summary-judgment evidence, no reasonable juror could conclude after viewing the Defendants’ evidence that [REDACTED] acted negligently in the operation of the vehicle. Accordingly, summary judgment is warranted.

IV. Conclusion

For the foregoing reasons, the Court GRANTS the Defendants' motion for summary judgment.

Signed at Houston, Texas, this 21st day of January, 2021.



Andrew S. Hanen
United States District Judge