



Rivas v. Martinez

United States District Court for the Western District of Texas, El Paso Division

September 16, 2024, Decided; September 16, 2024, Filed

CAUSE NO. EP-24-CV-70-KC

Reporter

2024 U.S. Dist. LEXIS 166366 *; 2024 WL 4206122

RAYMUNDO RIVAS, Plaintiff, v. JOSE ROLANDO MARTINEZ, Defendant.

Core Terms

negligence per se claim, negligence per se, alleges, regulation, drivers, motion to dismiss, circumstances, safely, skills, factual allegations, standard of conduct, standard of care, motor carrier, referenced, driving, prudent

Counsel: [*1] Raymundo Rivas, Plaintiff, Pro se.

Judges: KATHLEEN CARDONE, UNITED STATES DISTRICT JUDGE.

Opinion by: KATHLEEN CARDONE

Opinion

ORDER

On this day, the Court considered Defendant Jose Rolando Martinez d/b/a J & X Trucking's [Rule 12\(b\)\(6\)](#) Partial Motion to Dismiss Plaintiff Raymundo Rivas' Negligence Per Se Claims ("Motion to Dismiss"), ECF No. 2. Upon due consideration, the Motion to Dismiss is **GRANTED**.

I. BACKGROUND

The following facts are derived from Plaintiff's Petition, ECF No. 1-1, and are taken as true for purposes of adjudicating the Motion to Dismiss. See [Calhoun v. Hargrove](#), 312 F.3d 730, 733 (5th Cir. 2002). The suit arises from a motor vehicle accident that occurred on March 11, 2022, in El Paso County, Texas. Pet. 2. Plaintiff was traveling northbound in the right lane of the

9000 block of North Desert Boulevard. *Id.* Martinez, driving a tractor trailer in the left lane and also traveling northbound, "failed to remain in his lane and struck Plaintiff's vehicle." *Id.* Plaintiff sustained physical injuries as a result of the collision. *Id.* Plaintiff alleges Martinez is an employee of J & X Trucking¹ and was operating the commercial vehicle while acting in the course and scope of his employment. *Id.*

On January 8, 2024, Plaintiff filed suit in the 171st Judicial District Court [*2] of El Paso County, Texas, raising direct liability claims against Martinez for negligence and negligence per se. See *generally* Pet. Plaintiff also brings these claims against J & X Trucking under a theory of vicarious liability. *Id.* at 2.

On March 6, 2024, Martinez filed a Notice of Removal, ECF No. 1. Martinez then filed this Motion to Dismiss, seeking dismissal of Plaintiff's negligence per se claim, only. Plaintiff filed a Response, ECF No. 4, to which Defendant filed a Reply, ECF No. 5.

II. DISCUSSION

A. Standard

A motion to dismiss pursuant to [Rule 12\(b\)\(6\)](#) challenges a complaint on the basis that it fails to state a claim upon which relief may be granted. [Fed. R. Civ. P. 12\(b\)\(6\)](#). In ruling on a [Rule 12\(b\)\(6\)](#) motion, "the court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff." [Calhoun](#), 312 F.3d at 733; [Collins v. Morgan Stanley Dean Witter](#), 224 F.3d 496, 498 (5th Cir. 2000). Though a complaint need not contain "detailed" factual allegations, a plaintiff's complaint must allege sufficient

¹The Court infers from Plaintiff suing "Martinez d/b/a J & X Trucking," that J & X Trucking is Martinez's sole proprietorship.

facts "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); *Colony Ins. Co. v. Peachtree Constr., Ltd.*, 647 F.3d 248, 252 (5th Cir. 2011). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

"[A] plaintiff's obligation [*3] to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation and internal quotation marks omitted); *Colony Ins. Co.*, 647 F.3d at 252. Ultimately, the "[f]actual allegations [in the complaint] must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555 (citation omitted). Nevertheless, "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Id.* at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974)).

B. Analysis

Martinez argues that the Court should dismiss Plaintiff's claims for negligence per se because Plaintiff's allegations are conclusory and because Plaintiff fails to provide sufficient notice of the statutes that Martinez is alleged to have violated. See Mot. Dismiss 4-7. Plaintiff argues in response that his Petition "cites numerous specific provisions" of state and federal laws and regulations that support his negligence per se claims. Resp. 1.

A general negligence claim is premised on the breach of a duty of care. See *Kroger Co. v. Elwood*, 197 S.W.3d 793, 794 (Tex. 2006) (citing *Werner v. Colwell*, 909 S.W.2d 866, 869 (Tex. 1995)). Ordinarily, one's duty of care is to act as would a reasonably prudent person under [*4] the circumstances. See *Duarte v. St. Paul Fire & Marine Ins. Co.*, No. 3:14-cv-305-KC, 2016 U.S. Dist. LEXIS 195102, 2016 WL 4257752, at *6 (W.D. Tex. Mar. 29, 2016) (citing *Ciguero v. Lara*, 455 S.W.3d 744, 748 (Tex. App. 2015)). By contrast, a claim for negligence per se treats a "legislatively imposed standard of conduct as defining the conduct of a reasonably prudent person." *Cerda v. RJL Ent., Inc.*,

443 S.W.3d 221, 226 (Tex. App. 2013) (citing *Moughon v. Wolf*, 576 S.W.2d 603, 604 (Tex. 1978)). But when a statute or regulation sets forth only a generalized standard of care equivalent to the reasonable person standard, the legislative standard is "subsumed under a general negligence standard." *Johnson v. Cont. Freighters, Inc.*, No. 21-cv-879, 2022 U.S. Dist. LEXIS 194552, 2022 WL 12097254, at *2 (S.D. Tex. July 26, 2022) (citing *Supreme Beef Packers, Inc. v. Maddox*, 67 S.W.3d 453, 456 (Tex. App. 2002)), adopted, 2022 U.S. Dist. LEXIS 193619, 2022 WL 12097200 (Aug. 11, 2022). As a matter of law, therefore, a legislatively imposed standard of conduct that redundantly "imposes the reasonably prudent person standard . . . cannot support a negligence per se claim." *Ordonez v. Ausby*, No. 3:21-cv-77-DCG, 2023 U.S. Dist. LEXIS 8338, 2023 WL 310442, at *6 (W.D. Tex. Jan. 18, 2023) (collecting cases).

Plaintiff contends that Martinez's actions constitute negligence per se because they violate portions of the Texas Transportation Code ("TTC"), the *Federal Motor Carrier Safety Act ("FMCSA")*, and Federal Motor Carrier Safety Regulations ("FMCSRs"). Pet. 3-4.

1. Texas Transportation Code

Plaintiff first alleges Martinez violated [sections 545.062, 545.151, 545.105](#), 545.008, [545.351](#), and [545.361 of the TTC](#). See Pet. 2-4. Where the TTC requires or prohibits a specific course of conduct that "leav[es] the driver no discretion or room for the exercise of judgment," a negligence per se claim is appropriate. *Supreme Beef Packers*, 67 S.W.3d at 456 (citation omitted). But [*5] where the Code requires "a person to exercise his or her judgment . . . the statute reflects a standard of care that is no different from the ordinarily prudent person standard" and cannot provide the basis for negligence per se liability. *Id.*

Several of the sections of the Texas Transportation Code referenced by Plaintiff require operators to use their judgment to determine how to conduct themselves safely. [Section 545.062\(a\)](#) requires drivers to "maintain an assured clear distance between the two vehicles so that, considering the speed of the vehicles, traffic, and the conditions of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway." [Tex. Transp. Code § 545.062\(a\)](#). And [section 545.105](#) outlines the obligations of an operator in the event of sudden or un-signaled stops. *Id.*

[§ 545.105](#). The statute requires a signal to be given when "there is an opportunity" to do so. *Id.* Both statutes require operators to exercise their judgment to determine if they can "safely stop" or if "there is an opportunity to give [a] signal." *Id.* [§§ 545.105, 545.062](#).

Neither regulation prescribes a mandatory standard of conduct that would bar the exercise of judgment by operators. See [Supreme Beef Packers, 67 S.W.3d, at 457-58](#). Instead, **[*6]** the regulations require an operator to make a judgment call regarding how to act safely, "impos[ing] on the driver a duty of reasonable care, thus precluding a negligence per se" claim. See [La.-Pac. Corp. v. Knighten, 976 S.W.2d 674, 675 & n.1 \(Tex. 1998\)](#). Indeed, many Texas courts have rejected [section 545.062](#) as a basis for negligence per se liability. See [Agee v. Hartford Accident & Indem. Co., No. 22-cv-1697, 2023 U.S. Dist. LEXIS 123308, 2023 WL 4595195, at *6 \(N.D. Tex. July 18, 2023\)](#) (collecting cases). As for [section 545.105](#), neither party has referenced any cases deciding whether it may provide a basis for negligence per se liability, and the Court has found none. However, the Texas Court of Civil Appeals has held that it was incorrect for a trial court to permit the plaintiff to use a prior codification of [section 545.105](#) to establish negligence per se. [Perkins v. Fisher, 395 S.W.2d 657, 660-61 \(Tex. Civ. App. 1965\)](#). The Court finds [Perkins](#) persuasive and holds that Plaintiff cannot use [sections 545.062](#) or [545.105](#) to support his negligence per se claim.

Plaintiff next references [section 545.351](#), which prohibits operators from driving "at a speed greater than is reasonable and prudent under the circumstances." [Tex. Transp. Code § 545.351](#). As courts have recognized, this section of the statute "simply 'incorporate[s] the common law's ordinary standard of care.'" [Ordonez, 2023 U.S. Dist. LEXIS 8338, 2023 WL 310442, at *7](#) (first quoting [Trinh v. Hunter, No. 5:20-cv-725-JKP, 2022 U.S. Dist. LEXIS 185248, 2022 WL 6813293, at *6 \(W.D. Tex. Oct. 11, 2022\)](#); and then citing [Donahoe v. Jones, No. 15-cv-191, 2016 Tex. App. LEXIS 2137, 2016 WL 796892, at *3 \(Tex. App. Mar. 1, 2016\)](#)). Thus, Plaintiff cannot rely on [section 545.351](#) to support his negligence per se claim, either.

Plaintiff also alleges that Martinez failed to "keep a proper lookout" or **[*7]** to "pay attention" in violation of [section 545.151](#). See Pet. 3. But the referenced statute does not contain a requirement to do either. See [Tex. Transp. Code § 545.151](#). Instead, this section pertains to the conduct required when an operator approaches or enters an intersection. See *id.* Plaintiff's Petition

contains no mention of an intersection. See *generally* Pet. Nor does it make any allegations from which to plausibly infer that this section could apply to the conduct alleged to have caused the collision. See *id.* Thus, this statute cannot provide the foundation for Plaintiff's negligence per se claim. See [Schmieding v. Mission Petro. Carriers, Inc., No. 07-11-0151-CV, 2012 Tex. App. LEXIS 7907, 2012 WL 4092716, at *2 \(Tex. App. Sept. 18, 2012\)](#) (finding [section 545.151](#) inapplicable to negligence per se claim that did not occur at an intersection).

Similarly, Plaintiff cites [section 545.361](#), which pertains to special speed limitations required when operating "a moped or a motorcycle," "a vehicle equipped with solid rubber or cushion tires," "self-propelled agricultural machinery," or when "driving over a bridge or other elevated structure that is a part of a highway." [Tex. Transp. Code § 545.361](#). Plaintiff does not allege that any of the particular circumstances identified in this section existed when Defendant failed to remain in his lane while operating a tractor-trailer.

Finally, Plaintiff alleges Defendant violated **[*8]** Section 545.008 of the Texas Transportation Code by "[f]ail[ing] to honk or give adequate warning of the impending danger" and generally "[f]ail[ing] to warn of the dangers." However, the referenced subsection of [Chapter 545 of the Texas Transportation Code](#) does not exist, and the Court has been unable to identify another provision setting such a standard. In his Response, Plaintiff does not offer an alternative statute that could provide the basis for this claim. Absent a citation to any existing law, "the Court is unable to determine whether the facts alleged state a violation of any statute." [Del Castillo v. PMI Holdings N. Am. Inc., No. 14-cv-03435, 2016 U.S. Dist. LEXIS 91051, 2016 WL 3745953, at *5 \(S.D. Tex. July 13, 2016\)](#).

In sum, [sections 545.062, 545.151, 545.105, 545.351, and 545.361 of the Texas Transportation Code](#), as well as the fictitious 545.008, cannot support Plaintiff's negligence per se claim.

2. Federal Motor Carrier Safety Regulations

In addition to state law, Plaintiff also seeks to establish a negligence per se claim through alleged violations of federal law. Plaintiff cites only one federal regulation, [49 C.F.R. § 383.113](#), but also alludes to other provisions of the FMCSA and FMCSRs without explicitly referencing particular sections. Pet. 2-4. "[W]hile citing to a

particular statute when pleading a negligence per se claim is no doubt best practice, the failure to do so is not necessarily fatal." [Ordonez, 2023 U.S. Dist. LEXIS 8338, 2023 WL 310442, at *9](#). So long as the plaintiff puts forth factual allegations of particular conduct that unquestionably [*9] violates a statute or regulation such that the defendant is put on notice of the plaintiff's claims, omission of the exact statute is not alone dispositive. *Id.*

First, as to the section of the FMCSRs that Plaintiff explicitly references, [§ 383.113](#) "sets forth general testing standards for CDL applicants—the knowledge they must demonstrate and the practical skills tests that they must pass to acquire their license." [Almanzar v. Eaglestar, No. 3:20-cv-117-KC, 2021 U.S. Dist. LEXIS 254678, 2021 WL 7184209, at *5 \(W.D. Tex. Dec. 21, 2021\)](#) (citing [49 C.F.R. § 383.113\(a\)](#)). Plaintiff alleges that Defendant failed to "educate and train its drivers 'safe driving skills' under the FMCSA, [§ 383.113\(b\)](#)." See Pet. 4. Plaintiff also alleges that Defendant failed to "train drivers on the FMCSA 'required knowledge elements' including but not limited to fatigue management[.]" Pet. 4.

This allegation could be read as a reference to [§ 383.111](#), which works in tandem with [§ 383.113](#) and establishes twenty general areas of knowledge that are required of operators of commercial vehicles. See [49 C.F.R. § 383.111](#); [Roberts v. Sunbelt Rentals, Inc., No. 5:14-cv-00040, 2016 U.S. Dist. LEXIS 41897, 2016 WL 1259414, at *13 \(W.D. Va. Mar. 30, 2016\)](#); [Espinal v. Wright, No. 09-cv-861, 2012 U.S. Dist. LEXIS 33343, 2012 WL 864783, at *2 \(W.D. Ky. Mar. 13, 2012\)](#) ("[Part 383 of the FMCSRs] pertain[s] to the skills that states are required to test for when issuing CDLs[.]"). Together, these two sections provide the "specific types of items that a State must include in the knowledge and skills tests that it administers to CDL applicants." [49 C.F.R. § 383.110](#). Courts, including [*10] this Court, have rejected [§§ 383.111](#) and [383.113](#) as bases for negligence per se liability, because they prescribe only licensing and knowledge requirements, not "a standard of conduct." See, e.g., [Almanzar, 2021 U.S. Dist. LEXIS 254678, 2021 WL 7184209, at *4](#) (quoting [Claybrook v. Time Definite Servs. Transp., LLC, No. 15-cv-763, 2016 U.S. Dist. LEXIS 95308, 2016 WL 3963025, at *3 \(N.D. Tex. July 21, 2016\)](#)). Regulations that do not mandate a specific standard of care cannot be the "freestanding source of negligence per se liability." [2021 U.S. Dist. LEXIS 254678, \[WL\] at *5](#). The Court finds these decisions persuasive and follows them here.

And in the alternative, even if [§§ 383.111](#) and [383.113](#) could provide the basis for negligence per se liability in some circumstances, Plaintiff would still fail to state a claim under either regulation. Plaintiff does not allege that Defendant failed to possess or demonstrate any of the seven basic motor skills or twenty areas of knowledge established by the regulations. See generally Pet. He only alleges that J & X Trucking failed to train Martinez on those areas of skill and knowledge. Pet. 4. But neither section contains any requirement that an operator's employer provide such training. See generally [49 C.F.R. §§ 383.111, 383.113](#). Absent "an allegation that a statute has been violated, a complaint cannot state a claim for negligence per se." [Del Castillo, 2016 U.S. Dist. LEXIS 91051, 2016 WL 3745953, at *5](#). Therefore, Plaintiff has failed to state a negligence per se claim under [§§ 383.111](#) and [383.113](#). See [Molina v. B2B Xpress Inc., No. 3:23-CV-70-KC, 2023 U.S. Dist. LEXIS 140905, 2023 WL 5090819, at *4 \(W.D. Tex. Aug. 9, 2023\)](#) (dismissing negligence [*11] per se claim where the plaintiff "failed to allege any facts beyond bare conclusions" showing a provision of the FMCSRs was violated).

To the extent Plaintiff brings a claim under [§ 391.11](#), it fails for largely the same reasons. Plaintiff alleges, without citation to any particular provision, that Defendant both operated a commercial vehicle "without qualifying" and failed to "properly qualify drivers in accordance with the FMCSA." Pet. 3-4. The Court presumes these allegations allude to [§ 391.11 of the FMCSRs](#), which outline seven requirements necessary to qualify drivers, including conditions that drivers be over the age of twenty-one, can sufficiently read and speak English, meet certain physical qualifications, hold a valid commercial driver's license, and have completed a driver's road test. See [49 C.F.R. § 391.11](#). In addition, it prohibits motor carriers from allowing anyone to drive a commercial vehicle without satisfying these requirements. *Id.*

It is doubtful that [§ 391.11](#) could provide a basis for negligence per se liability under any circumstance. [Ellis v. Klawonn, No. 21-cv-977, 2023 U.S. Dist. LEXIS 104332, 2023 WL 3993043, at *5 \(E.D. Tex. June 8, 2023\)](#) ("[Section 391.11] does not impose any particular standard of care." (emphasis omitted)). Even assuming it could, Plaintiff does not allege which, if any, of the particular qualifications in [section 391.11](#) Defendant [*12] lacked, much less how the lack of said qualification was causally connected to the accident at issue in this case. See generally Pet. Therefore, to the extent Plaintiff has brought such a claim, it fails. See

[*Rodriguez v. Transportes de Carga FEMA, S.A. de C.V.*, No. 5:18-cv-114, 2020 U.S. Dist. LEXIS 224884, 2020 WL 6938330, at *11-12 \(S.D. Tex. Sept. 30, 2020\)](#) (dismissing negligence per se claim predicated on violation of [§ 391.11](#) for insufficient factual allegations); [*Heard v. Loughney*, No. 16-cv-487, 2016 U.S. Dist. LEXIS 195725, 2016 WL 10179246, at *3-4 \(D.N.M. July 14, 2016\)](#) (same).

Finally, Plaintiff alleges that Defendant failed "to maintain its vehicles in accordance with the Federal Motor Carrier Safety Act." Pet. 4. [Section 396.3 of the FMCSRs](#) establishes that "[e]very motor carrier . . . must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to its control." [49 C.F.R. § 396.3\(a\)](#). It also specifies that "[p]arts and accessories shall be in safe and proper operating condition at all times." *Id.* But it is well established that [§ 396.3](#) does "not confer a 'specific standard of conduct' upon carriers and drivers for purposes of a negligence per se claim." [Rayner v. Claxton](#), 659 S.W.3d 223, 251 (Tex. App. 2022) (citing [Omega Contracting, Inc. v. Torres](#), 191 S.W.3d 828, 843 (Tex. App. 2006)). Rather, "[d]etermining what is or is not safe in these circumstances bears practically no difference from what is or is not reasonable," for purposes of an ordinary negligence claim. [Omega Contracting](#), 191 S.W.3d at 843. Thus, any negligence per se claim predicated [*13] on a violation of these maintenance and inspection rules fails as a matter of law. See *id.*

In sum, every discernible basis for Plaintiff's negligence per se claim either cannot support such a claim under any circumstances or cannot do so here because it is unaccompanied by factual allegations that the standard was actually breached and caused Plaintiff injury. Thus, Plaintiff has failed to state a claim for negligence per se. The Motion to Dismiss is granted and Plaintiff's negligence per se claims are dismissed.

3. Leave to Amend

Lastly, if the Court dismisses his claims, Plaintiff seeks leave to file an amended complaint. Resp. 8-9. Courts "should freely give leave [to amend] when justice so requires." [Fed. R. Civ. P. 15\(a\)\(2\)](#). But a court may deny leave to amend for any "substantial reason, such as undue delay, repeated failures to cure deficiencies, undue prejudice, or futility." [United States ex rel. Spicer v. Westbrook](#), 751 F.3d 354, 367 (5th Cir. 2014) (citing

[United States ex rel. Steury v. Cardinal Health, Inc.](#), 625 F.3d 262, 270-71 (5th Cir. 2010)). Amendment is futile if any "amended complaint would fail to state a claim upon which relief could be granted." [Stripling v. Jordan Prod. Co.](#), 234 F.3d 863, 873 (5th Cir. 2000) (collecting cases). Thus, the standard for whether amendment would be futile is "the same standard of legal sufficiency as applies under [Rule 12\(b\)\(6\)](#)." *Id.* (citations omitted).

Because they cannot support a negligence per [*14] se claim under any circumstances, any amendment related to [sections 545.062](#), [545.105](#), or [545.351](#), as well as the fictitious section 545.008 of the Texas Transportation Code and [sections 383.111](#), [383.113](#), and [396.3 of the FMCSRs](#) would be futile. But it is possible that additional factual allegations could rectify deficiencies related to Plaintiff's claims under [sections 545.151](#) and [545.361 of the Texas Transportation Code](#) and [Section 391.11 of the FMCSRs](#). Therefore, the Court grants Plaintiff leave to file an amended complaint only as it relates to such claims.

IV. CONCLUSION

For the foregoing reasons, the Motion to Dismiss, ECF No. 2, is **GRANTED**. Plaintiff's negligence per se claim is **DISMISSED** without prejudice. Plaintiff's claims for ordinary negligence remain pending.

IT IS FURTHER ORDERED that if Plaintiff wishes to file an amended complaint in accordance with this Order, he may do so **by no later than October 7, 2024**.

SO ORDERED.

SIGNED this 16th day of September, 2024.

/s/ Kathleen Cardone

KATHLEEN CARDONE

UNITED STATES DISTRICT JUDGE

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