

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

4-15-2010

### Summary of Posas v. Horton, 126 Nev. Adv. Op. No. 12

Amy C. Ma  
*Nevada Law Journal*

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the **Torts Commons**

---

#### Recommended Citation

Ma, Amy C., "Summary of Posas v. Horton, 126 Nev. Adv. Op. No. 12" (2010). *Nevada Supreme Court Summaries*. 327.

<https://scholars.law.unlv.edu/nvscs/327>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

# **Posas v. Horton, 126 Nev. Adv. Op. No. 12 (April 15, 2010)<sup>1</sup>**

## **TORT LAW – SUDDEN-EMERGENCY JURY INSTRUCTION**

### **Summary**

Appeal from a district court judgment entering a jury verdict in favor of the defendant, where the district court gave the jury sudden-emergency instruction for an automobile collision case.

### **Disposition/Outcome**

The Court reversed the judgment and remanded for a new trial, holding that because Respondent was negligent and did not exercise reasonable care, the district court abused its discretion by giving sudden-emergency jury instruction that prejudiced the appellant.

### **Factual and Procedural History**

Appellant Emilia Posas was driving in her vehicle when a jaywalking pedestrian pushing a stroller crossed the street in front of her vehicle. When Posas abruptly stopped her vehicle in order to avoid hitting the pedestrian, Respondent Nicole Horton subsequently hit the rear of Posas's vehicle with the front-end of her vehicle. Although Horton was following Posas's vehicle by three to four feet, she did not notice the pedestrian cross the street directly in front of Posas' vehicle before the accident. Also, Horton admitted that she had made a mistake by following Posas' vehicle too closely.

Posas brought a personal injury action against Horton, and the district court supplied the jury with a sudden-emergency instruction.<sup>2</sup> The jury returned a verdict in favor of Horton and the district court denied Posas' motion for a new trial, as well as Posas' NRCP 60(b) motion.

### **Discussion**

#### **The sudden-emergency doctrine is not applicable**

The Court considered the applicability of the sudden-emergency doctrine to this case, and found that sudden-emergency jury instruction is only appropriate when the party requesting the instruction demonstrates that: (1) unexpected conditions were present through no negligence of the requesting party; and (2) the requesting party exercised reasonable care.

In this case, Horton maintained that she was not at fault because the pedestrian created a sudden emergency, she did not cause the pedestrian to cross the street, and she acted as a reasonable prudent person by abruptly stopping her vehicle. However, the Court reasoned that because Horton was following Posas' vehicle too closely, Horton did not meet the second element of the sudden-emergency doctrine. The Court held that Horton's negligence, as opposed to the jaywalking pedestrian, placed her in a position of peril.

---

<sup>1</sup> By Amy C. Ma.

<sup>2</sup> "The sudden-emergency instruction stated: A person confronted with a sudden emergency which he does not create, who acts according to his best judgment or, because of insufficient time to form a judgment fails to act in the most judicious manner, is not guilty of negligence if he exercises the care of a reasonably prudent person in like circumstances." Posas v. Horton, 126 Nev. Adv. Op. No. 12, 2-3 n.1 (Apr. 15, 2010).

### Adoption of *Templeton* Analysis

The Court noted that although Nevada has utilized the sudden-emergency jury instruction, the law is unclear when it is appropriately given. . In turn, the Court adopted the analysis found in *Templeton v. Smith*, where a defendant collided with the vehicle in front of her because the defendant was looking in her rearview mirror.<sup>3</sup> The trial court gave the jury sudden-emergency instructions, and the jury returned a verdict for the defendant.<sup>4</sup> However, the appellate court reversed the judgment and reasoned that when a person engages in certain activities, he must be prepared to confront emergencies that are likely to arise while engaging in the activity.<sup>5</sup> In turn, a driver must be able to anticipate the occurrence of sudden obstacles and sudden stops.<sup>6</sup> Consequently, the occurrence of these anticipated events do not constitute an actual emergency.<sup>7</sup> Finally, the Court found that the emergency must affect the actor, and the sudden-emergency doctrine does not apply to a person who has created or caused the emergency to occur.

### Conclusion

The sudden-emergency jury instruction only applies when a party acted due to a valid emergency, did not create the emergency, and exercised reasonable care. If a party fails to exercise reasonable care, then the use of a sudden-emergency jury instruction is prejudicial.

---

<sup>3</sup> *Templeton v. Smith*, 744 P.2d 1325, 1326 (Or. Ct. App. 1987).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*