

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1844

**ROSEMARY BOURGEOIS ON BEHALF OF THE MINOR
CHILDREN, MANDY ASHLYN BILLIOT AND
DANIEL JOSEPH BILLIOT**

VERSUS

**STATE OF LOUISIANA, THROUGH THE LOUISIANA
DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT**



Judgment Rendered: NOV - 3 2006

On Appeal from the 21st Judicial District Court
In and For the Parish of Tangipahoa, State of Louisiana
Trial Court No. 02-002563, Division "H"

Honorable Zorraine M. Waguespack, Judge Presiding

George J. Nalley, Jr.
Dona J. Dew
Metairie, LA

Counsel for Plaintiff/Appellee
Rosemary Bourgeois, On Behalf of
The Minor Children, Mandy Ashlyn
Billiot and Daniel Joseph Billiot

Peter G. Carmichael
Baton Rouge, LA

Counsel for Defendant/Appellant
State of LA, Through the Department
of Transportation & Development

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

HUGHES, J.

This is an appeal from a judgment awarding damages in a suit arising out of an automobile accident, involving fatalities, which was allegedly due to defective roadway conditions. In a bench trial, the judge found the roadway at issue was defective, citing several conditions presenting an unreasonable risk of harm for motorists. The trial judge found that the defendant, the State of Louisiana, through the Department of Transportation and Development (State), was liable for the defects, had actual or constructive knowledge of the defects and failed to take timely corrective measures, and that the defects caused the damages at issue. The State has appealed this judgment. We affirm.

A court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). The supreme court has announced a two-part test for the reversal of a factfinder's determinations: (1) the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and (2) the appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). **Stobart v. State, through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). See also **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). Thus, the issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Stobart**, 617 So.2d at 882. Where factual findings are based on determinations regarding the credibility of witnesses, the trier of fact's findings demand great deference. **Boudreaux v. Jeff**, 2003-1932, p. 9 (La. App. 1 Cir. 9/17/04), 884 So.2d 665, 671; **Secret Cove, L.L.C. v. Thomas**,

2002-2498, pp. 6-7 (La. App. 1 Cir. 11/7/03), 862 So.2d 1010, 1016, writ denied, 2004-0447 (La. 4/2/04), 869 So.2d 889. Thus, where two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Stobart**, 869 So.2d at 883. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. **Rosell**, 549 So.2d at 844.

There was lay and expert testimony that the location where the accident occurred had been the scene of many accidents over the years, and at the time of this accident, presented an unreasonable risk of harm to motorists. After a thorough review of the record before this court, we are unable to say the trial court committed manifest error or was clearly wrong in its judgment against the State. Therefore, we affirm the judgment rendered by the trial court in accordance with the Uniform Rules – Courts of Appeal, Rule 2-16.2(A)(2), (4)-(8). All costs of this appeal are assessed in the amount of \$3,868.50 against the State.

AFFIRMED.