

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 2443

JESSIE M. WALKER, WIFE OF AND, RODNEY WALKER

VERSUS

NATIONAL AUTOMOTIVE INSURANCE COMPANY, EVELYN L. THOMAS
AND GEICO INDEMNITY COMPANY

Judgment Rendered: November 3, 2006

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Docket Number 2002-002953

Honorable Zorraine M. Waguespack, Judge

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Plaintiffs/Appellees
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Evelyn L. Thomas and
National Automotive
Insurance Company

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

McClendon, J. concurs and assigns reasons.

GUIDRY, J.

In this matter, an insurer appeals a trial court's judgment in favor of a left-turning motorist. Having thoroughly reviewed the evidence in the record before us and finding no error in the factual determinations of the trial court, we affirm.

Jessie M. Walker and Rodney Walker filed a petition for damages against Evelyn L. Thomas,¹ National Automotive Insurance Company (National Automotive), Ms. Thomas's insurer, and GEICO Indemnity Company,² the Walkers' uninsured/underinsured motorist insurer. They sought recovery for injuries and property damage sustained in an automobile accident that occurred on June 14, 2002, at the intersection of North Street and Scenic Highway in Baton Rouge, Louisiana. Ms. Thomas and National Automotive answered the petition denying liability and asserting the comparative negligence of Mrs. Walker as completely or partially causing the accident at issue. A trial in this matter was held on March 2, 2005, wherein the trial court rendered judgment in favor of the Walkers against National Automotive for \$20,000.00, plus legal interest and court costs. The trial court signed a written judgment in accordance with its oral decree on April 18, 2005. National Automotive suspensively appeals, asserting that the trial court erred in finding that Ms. Thomas caused the accident at issue.

Under the manifest error standard of review, an appellate court must review the record in its entirety to determine whether a reasonable factual basis existed for the finding of the trial court and whether the trial court's finding was not clearly wrong. Mart v. Hill, 505 So. 2d 1120, 1127 (La. 1987); Arceneaux v. Domingue, 365 So. 2d 1330, 1333 (La. 1978). In addition, the Louisiana Supreme Court, in

¹ It was noted at trial that Evelyn Thomas had acquired the new last name of Carter; however, for the purposes of this opinion, we will refer to her as Ms. Thomas.

² GEICO filed an answer denying liability for the damages claimed in the plaintiffs' petition; however, prior to trial, the trial court issued a partial judgment dismissing all of the demands against GEICO. Accordingly, GEICO is not a party to this appeal.

Rosell v. ESCO, 549 So. 2d 840, 844-845 (La. 1989), stated the following regarding the manifest error standard of review:

[W]here there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable.... Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong.

* * *

When findings are based on determinations regarding credibility of witnesses, the manifest error - clearly wrong standard demands great deference to the trier of fact's findings; for only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. Where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable fact finder would not credit the witness's story, the court of appeal may well find manifest error or clear wrongness even in a finding purportedly based upon a credibility determination. But where such factors are not present, and a factfinder's finding is based on its decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous or clearly wrong. [Citations omitted.]

The evidence presented at trial consisted of the testimony of the Walkers and Ms. Thomas, the Walkers' medical records, an accident report, and stipulations as to the Walkers' medical records and damages and the amount and source of compensation received by the parties relative to the accident as of the date of trial. Of key importance to our consideration of the subject appeal is the testimony of the parties regarding the accident at issue.

At trial, Ms. Thomas testified that on the date of the accident, she was traveling in the left-hand lane of North Street heading west, which was the only direction traffic could travel on North Street as it is a one-way street. Ms. Thomas stated that she was very familiar with the area in which she was driving that day, because she traveled on North Street when going to her place of employment; however, on the date of the accident, Ms. Thomas was not traveling to work, but to the credit union. She also stated that she was driving her son's car, an Infiniti J30.

Ms. Thomas testified that when she approached the intersection of North Street and Scenic Highway, the signal light was red, so she brought her vehicle to a stop. While waiting at the signal light, she noticed a black "Expedition" stopped alongside her in the right-hand lane. Ms. Thomas testified that when the light turned green, "I wasn't able to even get across, from the light that's up here. So, when the light turned green, I mean, I really didn't even get a chance to even go across. You know, the Expedition just came and hit me." She said her vehicle was hit twice, first on the front end on the passenger's side of the car near the door and then again on the back end of the car by the back door. She described the collision as being a "hard hit" that resulted in her son's car being declared a total loss.

The Walkers' testimony differed significantly from that of Ms. Thomas. The couple stated that they had driven to Baton Rouge to obtain a copy of their daughter's birth certificate. At the time of the accident, Mrs. Walker was driving a black Ford Explorer, in which Mr. Walker rode as a passenger, westbound on North Street in the left-hand lane. The Walkers unequivocally maintained that at no time did they travel in the right-hand lane of North Street. Instead, they testified that they entered North Street in the left-hand lane and remained in that lane of travel.

As they traveled west on North Street towards the intersection with Scenic Highway, the Walkers acknowledged that the light was red. Consequently, Mrs. Walker began to decelerate as they approached the intersection; however, prior to arriving at the intersection, the light turned green, at which time Mrs. Walker engaged her left turn signal and commenced turning left onto Scenic Highway when the collision occurred. The Walkers emphatically stated that Mrs. Walker never brought the vehicle to a complete stop at the intersection because the light had turned green before they arrived at the intersection.

Mr. and Mrs. Walker both testified that they did not observe the Thomas vehicle prior to the collision. Mrs. Walker testified that she did not see the Thomas vehicle approaching her vehicle from behind and that she first noticed Ms. Thomas "[w]hen I got hit." Mr. Walker likewise testified, "[s]he was flying 'cause she come out of nowhere and didn't nobody see her. All we know is a last second impact." In describing the actual collision, Mr. Walker testified,

It was hard. ... it hit hard enough where it knocked [the Explorer] up in the air. We almost flipped over. It was just a blessing that it fell back on the two wheels. It was that hard of an impact. ... And why [it] was [hit] twice is she hit the front side and almost flipped the truck, and the back-end spinned into her car. That's what made it hit twice. ... Hit the front and spinned the truck around to the back and hit the side of her car. That would make it two impacts."

The Walkers' vehicle sustained \$10,000 worth of property damage.

The Walkers described that portion of North Street approaching the intersection with Scenic Highway as being quite wide, with Mrs. Walker declaring that two cars could fit in each lane. Mr. Walker further stated that he thought Ms. Thomas "wasn't really watching where she was going and as soon as she seen us at the last minute, she went to her left trying to go around us."

At trial, two different versions of the automobile accident were presented. More specifically, two views existed as to where the vehicles were traveling at the time of the collision. As a court of appeal, when there is conflict in the trial testimony, we are not permitted to disturb reasonable evaluations of credibility and reasonable inferences of fact absent manifest error, and when two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly wrong. Considering the testimony presented and the extent of damage sustained by the vehicles involved in the accident, we find no manifest error in the trial court assessing Ms. Thomas with the entire fault in causing the subject accident.

Despite the trial court's conclusion being substantially based on a credibility determination, National Automotive nevertheless argues that the trial court's determination was clearly wrong because objective evidence in the record contradicts the Walkers' version of how the accident occurred. The objective evidence referred to by appellants consists of the accident report issued by the police officer that investigated the accident. We find no merit in this assertion. As observed by the trial court, the police officer that investigated the incident did not actually observe the accident; rather, the officer's conclusions regarding the accident, as documented in the accident report, were based on his investigative analysis, and not firsthand knowledge. Further, such investigative reports are considered inadmissible hearsay and as such, standing alone, are insufficient to contradict the trial court's credibility determination. See Maricle v. Liberty Mutual Insurance Co., 04-1149, pp. 12-14 (La. App. 3rd Cir. 3/2/05), 898 So.2d 565, 574-575; La. C.E. art. 803(8)(b)(i).

After a thorough review the record in its entirety, and giving the required deference to the trial court's province as fact finder, we find there is sufficient evidence in the record to support the trial court's determination of liability. Accordingly, we affirm the judgment of the trial court. All costs of this appeal are to be borne by the appellant, National Automotive Insurance Company.

AFFIRMED.

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 **McCLENDON, J., concurs, and assigns reasons.**

As an appellate court we cannot set aside the trial court's factual findings unless we determine that there is no reasonable factual basis for the findings and the findings are clearly wrong (manifestly erroneous). **Stobart v. State, Dep't of Transp. and Dev.**, 617 So.2d 880, 882 (La.1993). If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Rosell v. ESCO**, 549 So.2d 840, 844 (La.1989). Accordingly, I concur with the result reached by the majority.