

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2485

MARY ALICE GRAY AND GEORGE GRAY

VS.

PAUL SPARACINO AND STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY

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JUDGMENT RENDERED: NOV - 3 2006

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ON APPEAL FROM THE  
NINETEENTH JUDICIAL DISTRICT COURT  
DOCKET NUMBER 520,197, DIVISION E  
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE WILLIAM A. MORVANT, JUDGE

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STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY AND  
PAUL SPARACINO

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

MCDONALD, J.

Plaintiffs, Mary Alice and George Gray, (Grays) were involved in an automobile accident with defendant, Paul Sparacino (Sparacino). Following a bench trial, the judge dismissed the Grays' lawsuit with prejudice. The Grays appeal, alleging that the trial court was manifestly erroneous in not finding the defendant negligent.

The Grays contend that Sparacino struck the rear of the Grays' vehicle in the automobile collision, giving rise to a presumption of negligence on his part. A legal presumption exists that a following motorist who collides into the rear end of a leading automobile is at fault. *Matherne v. Lorraine*, 2003-2369 (La. App. 1<sup>st</sup> Cir. 9/17/04), 888 So.2d 244, 246. However, in the matter before us, the trial judge found that Sparacino was not a following motorist. Based on the testimony of Sparacino and the police officer investigating the accident, the judge found that the collision occurred when the Gray vehicle moved from the center lane into the right lane in order to make a turn, causing Sparacino to collide with the rear passenger side.

It is well settled that a court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong. *Ferrell v Fireman's Fund Ins. Co.*, 94-1252 (La. 2/20/95), 650 So.2d 742, 745. Where a factfinder's finding is based on a decision to credit the testimony of one witness over another, that finding can virtually never be manifestly erroneous or clearly wrong. *Id.*

After thorough review of the record on appeal, we find no error in the decision of the trial judge. The record supports his conclusions, which were factually sound and legally correct. Therefore, the judgment dismissing the Grays' lawsuit with prejudice is affirmed.

This opinion is issued in accordance with Uniform Rules - Courts of Appeal, Rule 2-16.2.A(5), (6) and (8). Costs are assessed to Mary Alice and George Gray.

**AFFIRMED.**