

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1850

AMIE' GUIDRY

VERSUS

**KERRY AUTHEMENT, CECIL AUTHEMENT,
FARM BUREAU INSURANCE COMPANY AND
ALLSTATE INSURANCE COMPANY**

Judgment rendered: September 20, 2006

**On Appeal from the 32nd Judicial District Court
Parish of Terrebonne, State of Louisiana
Number 141,732**

The Honorable Robert J. Klees, Pro Tempore Judge Presiding

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Amie' Guidry**

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Kerry Authement, Cecil Authemont
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Company**

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**Counsel for Defendant/Appellee
Allstate Insurance Company**

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

J. M. Pettigrew J. concurs with result

DOWNING, J.

The sole issue presented on appeal is whether the trial court erred in failing to find that Louisiana Farm Bureau Insurance Company (Farm Bureau) violated La.R.S. 22:1220(B), which allows penalties pursuant to La.R.S. 22:1220(C). For the following reasons, we affirm the judgment.

On the day of trial, November 17, 2004, the parties settled their dispute. In open court Farm Bureau agreed to tender an amount totaling \$34,832.13. The parties also agreed each would bear its own costs and agreed that plaintiff would absorb the jury costs for that court day.

Farm Bureau issued a check to plaintiff within the thirty-day grace period, but two miscalculations resulted in a shortage to plaintiff in the amount of four thousand one hundred seventy-five dollars (\$4,175.00). The first error was corrected on December 30, 2004, and the second error was corrected on March 11, 2005.

Before the final check was sent, on February 10, 2005, plaintiff filed a motion to enforce the settlement, praying for statutory penalties, general damages, and costs. The matter was heard on April 29, 2005. The trial court ruled in favor of Farm Bureau finding that it did not “knowingly fail to consummate the settlement timely.” The motion was dismissed; judgment was signed, and from that judgment plaintiff appealed.

Louisiana Revised Statute 22:1220 provides in pertinent part:

- A. An insurer ... owes to his insured a duty of good faith and fair dealing. The insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach.
- B. Any one of the following acts, *if knowingly committed* or performed by an insurer, constitutes a breach of the insurer’s duties imposed in Subsection A:

...

(2) Failing to pay a settlement within thirty days after an agreement is reduced to writing.

- C. In addition to any general or special damages to which a claimant is entitled for breach of the imposed duty, the claimant ***may be awarded penalties*** assessed against the insurer in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater. ... (Emphasis added).

Plaintiff argues that the court erred in ruling that Farm Bureau did not “knowingly” violate the statute. He contends that it took seventeen days to correct the first so-called “clerical error” and much longer to remedy the second “clerical error.” Plaintiff argues that pursuant to the Louisiana Supreme Court holding in *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 03-0360 (La. 12/3/03), 860 So.2d 1112, she is entitled to the five thousand dollars in penalties as prescribed in the statute.

We disagree with plaintiff’s broad interpretation of *Sultana* that would require all settlements that are not paid within the thirty-day period to trigger the penalty statute. The word “knowingly” is not to be read out of the statute. It is presumed that every word was intended to serve a useful purpose and to be given effect. *Sultana* at 03-0360, p. 9, 860 So.2d at 1119.

In *Sultana* the court recognized that some clerical errors rise to the level sufficient to trigger penalties provided for under the statute. However, the facts in *Sultana* are quite different than the facts of the case before us. In *Sultana* the court ruled that the plaintiff was entitled to seek damages including the penalties provided for under La.R.S. 22:1220(C) when payment was not issued within thirty days due to secretarial oversight in light of the statute’s requirement to promptly pay settlements. *Sultana*, 03-0360 at p. 10, 860 So.2d at 1119.

Here, the question is whether it was manifestly erroneous for the trial court to determine that Farm Bureau's errors in calculating plaintiff's settlement payment constituted knowing violations of the settlement agreement. As the trial court pointed out, Farm Bureau adequately explained that the first error resulted when it inadvertently tendered five-thousand dollars to plaintiff's med-pay subrogation insurer instead of the one-thousand dollars that was actually due. The other mistake involved a miscalculation of jury costs that plaintiff had agreed to absorb.

As expressed in *Multi-Care, Inc. v. State of Louisiana, Department of Health and Hospitals*, 00-2001, p. 4 (La.App. 1 Cir. 11/9/01), 804 So.2d 673, 675, Louisiana's three-tiered court system allocates the fact finding function to the trial courts. Because of that allocation of function (as well as the trial court's normal procedure of evaluating live witnesses), great deference is accorded to the trial court's factual findings, both express and implicit, and reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on appellate review of the trial court's judgment.

Therefore, a court of appeal may not set aside a trial court's findings of fact in the absence of manifest error or unless it is clearly wrong. *Stobart v. State, Department of Transportation and Development*, 617 So.2d 880, 882 (La. 1993). The trial court found as a fact that Farm Bureau did not knowingly withhold the payment and thus violate the settlement agreement. After a careful review of the record, we find that the trial court was not manifestly erroneous in making this determination. Accordingly, the trial court judgment is affirmed.

We issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B. The cost of this appeal is assessed against the plaintiff/appellant, Amie' Guidry.

AFFIRMED