

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 1930

JOSE MELENDEZ, JR. AND OSCAR FERNANDEZ

VERSUS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, ET AL.

Judgment Rendered: September 15, 2006

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 500,573

Honorable Kay Bates, Judge

* * * * *

Anthony M. Butler
Baton Rouge, LA

Attorney for Appellees
Defendants-in-Reconvention
Oscar Fernandez and Allstate Ins. Co.

Kenneth R. Williams
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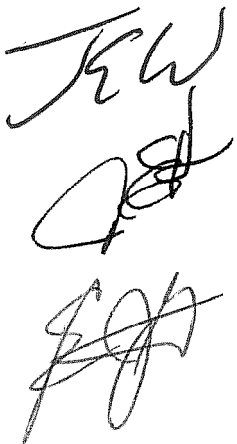
Attorney for Appellant
Plaintiff-in-Reconvention
James Johnson

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Attorney for Appellee
Defendant-in-Reconvention
State Farm Mutual Automobile Ins. Co.

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.



WELCH, J.

James Johnson, the plaintiff-in-reconvention, appeals the judgment of the trial court dismissing his claim for damages and finding that the evidence showed more probable than not that the accident at issue was caused solely by Mr. Johnson's negligence in rear-ending the original plaintiffs' vehicle. A thorough review of the record reveals that the trial court was presented with two permissible, yet, conflicting versions of how an accident occurred, given by the two respective drivers involved in that accident. The only other evidence presented was that of the investigating officer, Trooper P.L. Bellue, who testified that his investigation was inconclusive regarding the primary disputed fact – whether the taillights of the lead vehicle were operating at the time of the collision.

The law controlling the disposition of this case is abundantly clear and settled in Louisiana: where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. **Stobart v. State, DOTD**, 617 So.2d 880 (La. 1993). In this case, the trial court was presented with the testimony of Mr. Johnson, plaintiff-in-reconvention, (who bore the burden of proof), that he rear-ended the plaintiffs' vehicle because it was stopped in the roadway with no lights on, and he could neither see it nor stop in time to avoid a collision. In direct conflict with this version, the plaintiff/driver, Mr. Fernandez, testified that he was legally stopped with his vehicle's lights on and illuminated, waiting for the flashing lights at the railroad crossing, when he was suddenly impacted from behind by Mr. Johnson's vehicle. The investigating officer testified that although he performed certain tests and investigated the functioning of the lead vehicle's lights prior to impact, his investigation was inconclusive and he was unable to determine if the lights were on at the time of the impact.

Based on the foregoing evidence, the trial judge (finder-of-fact) chose to believe Mr. Fernandez's testimony and reject Mr. Johnson's. As both views were permissible based on the evidence presented, we simply cannot overturn the trial court's findings. Accordingly, that judgment is affirmed in accordance with Rule 2-16.2A(2) and (8) of the Uniform Rules of Louisiana Courts of Appeal. Costs of this appeal are assessed to Mr. Johnson.¹

AFFIRMED.

¹ We pretermitt any discussion of appellant's remaining assignments of error, other than to note they are wholly without factual or legal support. As to the trial court's inability to properly assess the credibility of a witness "because he testified through an interpreter," this is simply a bald allegation with no factual or support from the record and requires no review. Regarding the failure to call the guest passenger as a witness, we simply note that as the rear-ending driver, Mr. Johnson bore the burden of exculpating himself from any fault in causing the accident and he simply failed to do so.