

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2005 CA 2063**

**WILBERT FOSTER**

**VERSUS**

**RISK MANAGEMENT, INC.,  
TOWN OF AMITE CITY, AND MICHAEL SMITH**

**Judgment rendered: September 20, 2006**

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**On appeal from the 21<sup>st</sup> Judicial District Court  
Parish of Tangipahoa, State of Louisiana  
Number 2004-000417  
The Honorable Robert H. Morrison, III, Judge Presiding**

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**Richard D. McShan  
Amite, LA**

**Counsel for Plaintiff/Appellee  
Wilbert Foster**

**J. Scott Thomas  
Baton Rouge, LA**

**Counsel for Defendants/Appellants  
Town of Amite City and  
Michael Smith**

**BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.**

Handwritten initials and scribbles on the left margin, including what appears to be 'RR' and a circular mark.

**DOWNING, J.**

**MEMORANDUM OPINION**

This appeal challenges a trial court's allocation of fault in a vehicular collision. We affirm.<sup>1</sup>

On June 10, 2003, at approximately 5:30 a.m., a truck driven by Michael Smith and owned by the Town of Amite City struck the driver's side of a truck driven by Wilbert Foster. The accident occurred at the intersection of Highway 51 and Chestnut Street in Amite, Louisiana. This lawsuit, filed by Foster against Smith and the Town of Amite City, followed.

Both drivers claimed to have the right of way. Foster testified that he entered the intersection on a green light, and did not see the truck driven by Smith until it was in the middle of the intersection. Smith testified that he approached and entered the intersection on a yellow light. He could not recall how long the light had been yellow when he saw it. Smith admitted that he did not look to his left or right as he approached the intersection, and apparently believed he could cross the intersection before the light turned red. Officer Ray Henry, who investigated the accident, testified that based on the circumstances and his experience and knowledge of the intersection, one of the vehicles must have driven through the red light.

Following the presentation of evidence, the trial judge found that Smith was solely at fault in causing the accident. In written reasons for judgment, the judge focused on Foster's testimony that the light was green for some distance before he entered the intersection. However, the judge noted, Smith's testimony was unclear as to the distance from his vehicle to the intersection at the time the light turned yellow, or of the time that elapsed

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<sup>1</sup> This memorandum opinion is issued in compliance with Uniform Rules - Courts of Appeal Rule 2-16.1.B.

from the time the light turned yellow until he entered the intersection. Foster was awarded \$85,000.00 in general damages, along with special damages.

This appeal, taken by the Town of Amite City and Smith, followed. Appellants insist that the trial judge committed manifest error in assessing 100% fault to Smith, and should have assessed the greater percentage of fault to Foster, or at least should have apportioned fault 50/50.

A determination of the allocation of fault by the trier of fact is a factual finding, governed by the manifest error standard of review. The issue to be resolved by this court is not whether the trial judge was right or wrong in its assessment of fault, but whether the judge's conclusion was a reasonable one. **Jefferson v. Soileau**, 2003-0541 (La. App. 1<sup>st</sup> Cir. 12/31/03), 864 So.2d 250, 253, writ denied, 2004-0594 (La. 4/23/04), 870 So.2d 306. Based on the evidence in the record, it was reasonable for the trial judge to conclude that either Smith had a red light at the time he entered the intersection, or had the yellow light at the time he approached the intersection and attempted to "beat the red light" without first ascertaining whether traffic was approaching, and in so doing, bore the sole responsibility for the collision.

Accordingly, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellants, Town of Amite City and Michael Smith.

**AFFIRMED**