

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2002 CA 1976

RICHARD CADOR

VERSUS

NEAL'S CYPRESS INN AND
COMMERCIAL UNION INSURANCE COMPANY

JUDGMENT RENDERED ON AUG 20 2003

Appealed from District 5
Office of Workers' Compensation Administration
in and for the State of Louisiana

Docket No. 98-07517

Honorable Anthony P. Palermo, Workers' Compensation Judge

* * * * *

John Lambremont, Sr.
Baton Rouge, LA

Attorney for Appellant
Plaintiff
Richard Cador

Robert May
Metairie, LA

Attorney for Appellees
Defendants
Neal's Cypress Inn and
Commercial Union Ins. Co.

Walter Smith
Baton Rouge, LA

Attorney for Appellees
Defendants
Craig Neal, Linda Neal,
Michael Neal, Jack Neal and
Lisa Neal

Michael Clegg
Baton Rouge, LA

Attorney for Appellee
Defendant
Craig Neal

Christopher Philipp
Lafayette, LA

Attorney for Appellee
Defendant
Mississippi Physicians Insurance

Donald Moore
Gulfport, MS

Attorney for Appellee
Defendant
Neal's Magnolia Inn

Panel composed of Judges FRANK FOIL,
PAGE McCLENDON and WILLIAM F. KLINE, JR.

Judge McCleendon concurs with reasons. MK
Judge Kline, dissents with reasons MK

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Judge William F. Kline, Jr., Retired, serving Pro Tempore by special appointment of the Louisiana Supreme Court.

FOIL, JUDGE.

Claimant, Richard Cador, appeals from a judgment dismissing his claim for workers' compensation benefits against his employer, Neal's Cypress Inn, Inc. (NCI), and several other defendants. We affirm.

NCI, a hotel located in New Roads, Louisiana, employed Mr. Cador as a maintenance worker. The shareholders of NCI also owned Neal's Magnolia Inn, Inc. (NMI), a hotel in Woodville, Mississippi. Mr. Julius Carter owned a building near NMI. Mr. Cador's right leg was fractured in several places when he fell from a ladder while painting Mr. Carter's building.

Mr. Cador filed a workers' compensation claim against NCI, NMI, the individual shareholders of both corporations, as well as various insurers. After a trial, the workers' compensation judge found Mr. Neal had failed to prove he was an employee of NCI, NMI, or any of the corporate shareholders at the time he was injured. Rather, the workers' compensation judge found Mr. Neal was performing work as an independent contractor at the time of his accident. Mr. Cador appeals.

On appeal, Mr. Cador contends the workers' compensation judge erred in finding he was an independent contractor at the time of his accident. Mr. Cador also argues that, even if he were an independent contractor, he is still entitled to workers' compensation benefits under the "manual laborer" exception in La. R.S. 23:1021(6).

An appellate court must affirm a workers' compensation judgment unless it is based on legal error or factual findings that are manifestly erroneous. **Novak v. North Oaks Medical Center**, 00-0005 (La. App. 1 Cir. 9/28/01), 809 So.2d 340, 341. After a thorough review of the record, we conclude the legal conclusions and factual findings of the workers' compensation judge are correct.

Accordingly, we affirm the workers' compensation judgment. Costs of the appeal are assessed to Mr. Cador.

AFFIRMED.

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KLINE, J. dissents

I respectfully dissent and would remand this case to the trial court to determine under the facts or any additional circumstances if the plaintiff is afforded coverage under La. R.S. 23:1021(6), to wit:

'Independent Contractor' means any person who renders service, other than manual labor, for a specified recompense for a specified result either as a unit or as a whole, under the control of his principal as to results of his work only, and not as to the means by which such result is accomplished, and are expressly excluded from the provisions of this Chapter unless a substantial part of the work time of an independent contractor is spent in manual labor by him in carrying out the terms of the contract, in which case the independent contractor is expressly covered by the provisions of this Chapter.

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 McClendon, Judge, concurring.

I respectfully concur. In applying the manifest error rule, a court of appeal may not substitute its own view of the evidence for factual findings of the trier of fact that are reasonable and supported by the evidence. **Rosell v. ESCO**, 549 So.2d 840, 844 (La.1989). Herein, the workers' compensation judge's determination that Mr. Cador was an independent contractor was based heavily on credibility determinations. Therefore, although my opinion may differ, I cannot say that it was manifestly erroneous.