

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0338

NATIONAL INDEMNITY COMPANY

VERSUS

**STATE OF LOUISIANA, THROUGH THE DEPARTMENT
OF TRANSPORTATION AND DEVELOPMENT,
AND STEPHEN L. JONES**

CONSOLIDATED WITH

NO. 2014 CA 0339

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

VERSUS

**STEPHEN JONES, OCCLA, LLC D/B/A BATON ROUGE READY
MIX, YEARN THOMAS, NATIONAL LIABILITY & FIRE
INSURANCE COMPANY, STATE OF LOUISIANA, THROUGH THE
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT,
AND THE LOUISIANA OFFICE OF RISK MANAGEMENT**

CONSOLIDATED WITH

NO. 2014 CA 0340

BREANNA CLOUD

VERSUS

**STEPHEN L. JONES, STATE OF LOUISIANA, THROUGH THE
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT,
THOMAS YEARN, BATON ROUGE READY MIX, LLC, AND
NATIONAL INDEMNITY COMPANY**

Justice, P. concurs.

Mr. [Signature]

CONSOLIDATED WITH

NO. 2014 CA 0341

YEARN THOMAS

VERSUS

**STEPHEN JONES, STATE OF LOUISIANA, THROUGH THE
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT,
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, AND NATIONAL FIRE AND MARINE
INSURANCE COMPANY**

Judgment Rendered:

JAN 07 2015

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**Appealed from the
21st Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Case No. 129688, 129701, 129728, 129743, Div. "H"**

The Honorable Zorraine Waguespack, Judge Presiding

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

THERIOT, J.

The State of Louisiana, through the Department of Transportation and Development (DOTD), appeals the judgment notwithstanding the verdict (JNOV) of the Twenty-First Judicial District Court in favor of the plaintiff/appellee, Yearn Thomas.¹ For the following reasons, we reverse the JNOV and reinstate the verdict rendered by the jury.

FACTS AND PROCEDURAL HISTORY

On or about August 13, 2009,² Yearn Thomas operated a 2007 Peterbilt truck mixer owned by OCCLA, LLC d/b/a Baton Rouge Ready Mix, while in the course and scope of his employment with the same. Thomas was travelling southbound on Louisiana Highway 1026 in Livingston Parish, behind a 2006 Nissan Altima operated by Breanna Cloud. Cloud and Thomas approached a John Deere tractor owned by DOTD and operated by DOTD employee Stephen Jones, which was using a bush hog to cut grass along the right southbound shoulder of the highway. Thomas and Cloud claimed that Jones unexpectedly swerved into the roadway from the shoulder and caused a multiple-vehicle accident when the DOTD tractor collided with Cloud, causing Thomas to subsequently collide with Cloud, then overturn into a ditch.

Thomas and Cloud both sustained injuries due to the accident, and both filed suit against DOTD and Jones. The matter proceeded to trial by jury, and on April 11, 2013, the jury returned a verdict, which found Jones to be zero percent at fault. The verdict was reduced to a judgment and signed

¹ The other plaintiffs in this case settled prior to the trial and are not parties to this appeal.

² The original petition for damages filed by National Indemnity Company gives the date of the accident as August 16, 2009; however, evidence produced at the trial corroborates the date August 13, 2009, which is the date agreed upon by the other plaintiffs in their original petitions for damages.

by the trial court on May 8, 2013. Thomas filed a motion for judgment notwithstanding the verdict on April 25, 2013.

On July 29, the trial court granted the JNOV following a hearing, finding the evidence produced at trial overwhelmingly indicated that Jones was forty percent at fault, and vacated the jury verdict and assigned fault accordingly.³ On December 2, 2013, the trial court signed the judgment granting the JNOV, ordering that DOTD and Jones be held liable to Thomas in the amount of \$932,634.77 in special and general damages in favor of Thomas.⁴ DOTD timely filed an appeal of the trial court's judgment on January 2, 2014.⁵

ASSIGNMENTS OF ERROR

DOTD cites four assignments of error:

1. The trial court erred in granting a JNOV, which effectively deprived DOTD of a trial by jury.
2. The trial court awarded damages pursuant to the JNOV, which are excessive and not in keeping with the evidence presented.
3. The trial court erred in denying DOTD the right to call Larry Peterson, a proposed expert witness.
4. The trial court erred when it denied DOTD's request to proffer Larry Peterson's testimony, outside of the presence of the jury.

STANDARD OF REVIEW

The standard of review for a JNOV on appeal is twofold. First, the appeals court determines whether the jury verdict is supported by competent evidence and is not wholly unreasonable. *Daigle v. U.S Fidelity & Guar. Ins. Co.*, 94-304 (La. App. 1 Cir. 5/5/95), 655 So.2d 431, 436. The appeals

³ The trial court found Thomas to be sixty percent at fault and Cloud zero percent at fault. The trial court signed another judgment on December 16, 2013 to this effect. This judgment appears to be the same as the December 2, 2013 judgment, except for the deletion of \$63,092.00 to be paid by the State of Louisiana pursuant to La. R.S. 39:1533.0.

⁴ This figure is forty percent of the trial court's total award of \$2,331,586.92.

⁵ Jones is also made an appellant through this appeal.

court considers all of the evidence in the light most favorable to the party opposing the motion. If it is determined that the evidence points so strongly and overwhelmingly in favor of the moving party that reasonable persons could not arrive at a contrary verdict on the issue, the JNOV was properly granted. Second, the JNOV is reviewed pursuant to the manifest error standard of review. *Id.*

DISCUSSION

In the trial court's written and oral reasons in support of the JNOV, it makes note of two "independent" witnesses' consistent testimony that Jones suddenly turned his tractor to the left, cutting in front of Cloud, causing an unavoidable collision. One of these witnesses was Patricia Kent, a driver who witnessed the accident, but was not involved in the accident. The other witness was Cloud, who was involved in the accident, and a plaintiff in her own right.

While the trial court did not consider Cloud's testimony to be self-serving, it did consider Jones's testimony to be self-serving. Jones testified that about two feet of the bush hog extended onto the paved surface where vehicles drove due to the highway being narrow. The trial court characterized this testimony as Jones being "in the middle of the road," which would be negligent "in and of itself." The trial court gave no further explanation as to why Jones's operation of the tractor and bush hog was negligent. Based on this testimony, the trial court found that the evidence presented was overwhelmingly in favor of Thomas.

In reviewing the instant case, we must determine if the jury came to a reasonable conclusion based on all the evidence presented. A jury's finding of fact may not be reversed absent manifest error or unless it is clearly wrong. *Stobart v. State of Louisiana, Through Dept. of Transp. and*

Development, 617 So.2d 880, 882 (La. 1993); *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). Neither the trial court nor this Court can substitute its evaluation of the evidence for that of the jury unless the jury's conclusions totally offend reasonable inferences from the evidence. *Templet v. State ex rel. Dept. of Transp. and Development*, 2000-2162 (La. App. 1 Cir. 11/9/01), 818 So.2d 54, 58. Aside from eyewitness testimony, there is photographic evidence of the scene of the accident before any of the vehicles were towed away. One photograph in particular, Exhibit 6-I, shows how the tractor and bush hog came to rest after the accident, and the photograph corroborates Jones's testimony at trial.

Exhibit 6-I shows that the bush hog was towed from the rear of the tractor. The tractor came to rest in the ditch on the right side of the road, but the bush hog was still facing forward on a parallel path with the road. The bush hog's left edge was even with the white fog line and appears to have been totally off the road. Only the two leftmost of the bush hog's wheels appear to have crossed over the fog line. The exhibit shows damage on the left side of the bush hog, which corroborates Jones's testimony that Cloud collided with it. Jones testified that immediately after the initial impact, he heard the loud noise of Thomas colliding with Cloud, and he reacted by turning his tractor into the ditch on the right to avoid any more damage.

Other photographs of note are photographs 4A and 4B from plaintiff's in globo Exhibit P7. Both photographs show that the vast majority of debris from the collision lay on the right shoulder. A few small pieces are shown lying in the right lane, but no pieces were near the center of the highway. The outline of the bush hog is also clearly visible and shows the tractor and bush hog had moved in a straight path along the shoulder up until the point of impact. While the tractor had veered into the ditch, the bush hog, being

towed from the rear, had turned very little to the right and was still positioned along the cut line. The photographs corroborate Jones's testimony that he veered right to avoid further damage.

CONCLUSION

Without commenting on the correctness of the trial court's own conclusions, we can say with certainty that the jury's verdict was reasonable based on the evidence presented. When there is a jury, the jury is the trier of fact. *Trunk v. Medical Center of Louisiana at New Orleans*, 2004-0181 (La. 10/19/04), 885 So.2d 534, 537. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Rosell*, 549 So.2d at 844. As long as the jury reached a reasonable verdict, we will not replace it with the trial court's evaluation of the evidence, or our own evaluation of the evidence. As such, we need not determine whether or not the trial court's evaluation of the merits is manifestly erroneous, nor do we need to address the assignments of error dealing with the excessiveness of damages or DOTD's proposed expert witness.

DECREE

The trial court's rendition of a judgment notwithstanding the verdict in favor of the appellee, Yearn Thomas, is reversed. The jury's verdict, finding Stephen Jones zero percent at fault, is reinstated. All costs of this appeal are assessed to the appellee, Yearn Thomas.

REVERSED; JURY VERDICT REINSTATED.