

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 1708

ROBERT DEVANCE

VERSUS

JAMMIE HAUCK, THOMAS MILLER, AND
HAMMOND CITY POLICE DEPARTMENT

Judgment Rendered: JUN 05 2015

Appealed from the
21st Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Trial Court Number 2007-0003246
Honorable M. Douglas Hughes, Judge

George R. Tucker
Hammond, LA

Attorney for Appellant
Plaintiff - Robert DeVance

Andre Coudrain
Hammond, LA

Attorney for Appellees
Defendants - City of Hammond,
Adam Sibley, Chad Hill and Glenn
Hauck, Jr.

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

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gdp

WELCH, J.

Plaintiff, Robert DeVance, appeals from a judgment granting a peremptory exception raising the objection of prescription in favor of defendants, the City of Hammond, Glenn Hauck, Jr., Chad Hill, and Adam Sibley and also finding no liability on the part of the remaining defendants. We affirm, and we issue this memorandum opinion in compliance with Uniform Rules—Court of Appeal Rule 2-16.1.B.

On October 16, 2007, Mr. DeVance filed this lawsuit against the Hammond City Police Department and two of its officers, Jammie Hauck and Thomas Miller, alleging that he was falsely arrested by the officers on April 3, 2007, and that while he was handcuffed, he was beaten. On March 5, 2009, Mr. DeVance filed an amended petition naming as defendants Hammond City Police Department officers Glenn Hauck, Jr., Adam Sibley, Chad Hill, and the City of Hammond. Therein, Mr. DeVance alleged that he was “hogtied” by the officers while he was incarcerated, which caused him to suffer severe injuries. The newly added defendants filed an exception of prescription, and the parties disputed whether the amended petition related back to the date of the timely filed original petition.

The trial court entered judgment sustaining the defendant’s exception of prescription. It further ruled that the incident was handled properly and was not done in a negligent manner so as to create liability. Mr. DeVance appeals both rulings.¹

At trial, Mr. DeVance claimed that while he was incarcerated in a holding cell in the Hammond City Jail following his arrest on April 3, 2007, Officer Adam Sibley placed handcuffs too tightly around his wrists, causing him to sustain injuries to both wrists, which necessitated numerous surgeries. During a two-day

¹ Because we find no error in the trial court’s liability determination, we preterm discussion of Mr. DeVance’s challenge to the trial court’s prescription ruling.

bench trial, Mr. DeVance and a number of law enforcement officers gave conflicting versions of the incident in question. Officers testified that after being placed in the holding cell, Mr. DeVance became angry because he did not want to be in the holding cell, and he began to violently beat on the cell walls and doors. This conduct continued despite the officers' attempts to calm Mr. DeVance down and warnings that he would be restrained if the behavior continued. Mr. DeVance admitted that he was angry, but indicated it was because he was not allowed to make a telephone call. He admitted that he struck the door with his feet on two occasions. Officer Sibley testified that he placed the restraints on Mr. DeVance to prevent Mr. DeVance from harming himself. He testified that when he handcuffed Mr. DeVance, he left a two-finger space between the handcuffs and Mr. DeVance's wrists and double locked the handcuffs and checked them accordingly; testimony showed that is the appropriate manner to apply handcuffs.

Mr. DeVance testified that he told Officer Sibley the handcuffs were too tight when they were placed on him; however, Officer Sibley denied ever being told that the handcuffs were too tight or there was any problem with the handcuffs. Also at trial, expert medical testimony was introduced indicating that if Mr. DeVance's version of the incident was accepted and Officer Sibley did in fact place the handcuffs too tightly on Mr. DeVance's wrists, the handcuffs could have put pressure on the nerves in Mr. DeVance's wrists, causing injury.

In finding no negligence on the part of the defendants, the trial obviously court accepted the testimony of the law enforcement officers, particularly Officer Sibley's testimony that he appropriately handcuffed Mr. DeVance. The trial court's determination is subject to review for manifest error. The issue to be resolved by this court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Adams v. Rhodia, Inc.**, 2007-2110 (La. 5/21/08), 983 So.2d 798, 806; **Stobart v. State, Department of**

Transportation and Development, 617 So.2d 880, 882 (La. 1993). If the factual findings are reasonable in light of the record reviewed in its entirety, a reviewing court may not reverse even though convinced that sitting as the trier of fact, it would have weighed the evidence differently. **Stobart**, 617 So.2d at 882-883. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. *Id.* at 883. Additionally, where findings are based on determinations regarding the credibility of witnesses, the manifest error standard demands great deference to the trial court's findings. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Where the factfinder's determination is based on its decision to credit the testimony of one or more witnesses, that finding can virtually never be manifestly erroneous. **Adams**, 983 So.2d at 807.

After thoroughly reviewing the record, we find no error in the trial court's liability determination. All costs of this appeal are assessed to plaintiff, Robert DeVance.

AFFIRMED.