

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 1010

CHARLES WRIGHT, SR.

VERSUS

TOWN OF MARINGOUIN AND JOHN SIMIEN, INDIVIDUALLY

Judgment Rendered: JAN 06 2016

APPEALED FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF IBERVILLE
STATE OF LOUISIANA
DOCKET NUMBER 66,676, DIVISION B
HONORABLE J. ROBIN FREE, JUDGE

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Town of Maringouin and
John Simien, Individually

J. Theriot concurs

BEFORE: McDONALD, McCLENDON, AND THERIOT, JJ.

McDONALD, J.

This is an appeal by the defendant, John Simien, the Chief of Police for the Town of Maringouin, from a bench trial verdict in which he was found liable for injuries sustained by the plaintiff, Charles Wright, Sr., in an incident occurring on June 30, 2007. Mr. Wright answers the appeal, requesting an increase in the general damage award. For the following reasons, we amend the judgment of the trial court, affirm as amended, and deny the answer to the appeal.

Mr. Wright (formerly the Mayor of Maringouin) and his wife, Brenda Gray Wright, had separated and Mrs. Wright had a restraining order against Mr. Wright. Chief Simien was Mrs. Wright's cousin and was a friend of Mr. Wright. On June 30, 2007, Chief Simien received a call from Mrs. Wright, who was very upset and was yelling, and asking him to come to the house. Chief Simien arrived at the Wright's house and asked Mr. Wright to take a ride with him so that Mrs. Wright and their children could collect some clothes and medication from the house. They went in Chief Simien's private vehicle and rode around for several hours, during which time Chief Simien called the Sheriff's substation several times to see if Mrs. Wright and the children were finished at the house. Mr. Wright also talked on the phone to a neighbor numerous times during the ride to find out what was happening at the house. They then stopped at Mr. Wright's mother's house for about twenty minutes before going back to the Wright's house.

When the two men arrived at the house, Mrs. Wright, Mr. and Mrs. Wright's son, Charles Wright, Jr. (C.J.), and Mrs. Wright's brother, Maxie Gray, were still there with a pickup truck, loading the home's washer and dryer onto the truck. At this point, Mr. Wright testified that he started to get out of the car and that Chief Simien grabbed him by both wrists and "snatched" him back into the car. Mr. Wright testified that Chief Simien had grabbed him so violently that it felt like a

“shock wave” to his brain. He also testified that C.J. came to the car and grabbed him around the neck and that Mr. Gray hit him on the leg and was pushing him back into the car. He testified that he was held in the car for ten minutes with Chief Simien holding his wrists, C.J. holding him around the neck, and Mr. Gray pushing the door against his right leg. Mr. Wright testified that he woke up the next morning in pain and unable to move.

Chief Simien testified that he put his right hand onto Mr. Wright’s left shoulder and his left hand onto Mr. Wright’s left wrist and told him not to get out of the car. Chief Simien testified that C.J. was in a rage at the house, that C.J. came and pinned Mr. Wright down in the car, and that eventually Mr. Gray pulled C.J. off of Mr. Wright.

Thereafter, Mr. Wright filed suit against the Town of Maringouin, and against John Simien individually. After a trial, the trial court ruled in favor of Mr. Wright and against the defendants, awarding Mr. Wright \$50,000.00 in general damages and \$15,536.10 in medical expenses. The Town of Maringouin and Chief Simien are appealing that judgment. They make the following assignments of error:

1. The trial court committed manifest error in determining that Charles Wright, Sr. was a credible witness, when his trial testimony is illogical and contrary to his prior statements.
2. The trial court committed manifest error in finding that Charles Wright, Sr. had met his burden of proving that John Simien assaulted him.
3. The trial court committed manifest error in finding that Charles Wright, Sr. had met his burden of proving that John Simien’s actions were the legal cause of his alleged injuries.

Mr. Wright filed an answer to the appeal, asking that his damage award be increased to \$100,000.00, plus medical expenses.

ASSIGNMENTS OF ERROR NOS. 1 AND 2

In assignments of error numbers one and two, the defendants assert that the trial court committed manifest error in determining that Mr. Wright was a credible witness and in finding that Mr. Wright met his burden of proving that Chief Simien assaulted him.

A court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." . . . The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. (Citations omitted).

Stobart v. State through Dept. of Transp. and Development, 617 So.2d 880, 882 (La. 1993).

The trial court was presented with two different versions of events. Mr. Wright testified that as he turned to get out of the car Chief Simien violently snatched him back by the wrists, and causing him to experience intense pain. He also testified that C.J. came to the car and grabbed him around the neck to pull him back into the car, as Mr. Gray hit him on the leg and pushed him back into the car.

Chief Simien testified that he merely put his hands on Mr. Wright's left shoulder and wrist and told him not to get out of the car. Chief Simien testified that Mr. Gray came to the car to tell Mr. Wright not to get out of the car, and then C.J. came and pinned Mr. Wright down in the car.

C.J. testified that the night before the incident Mr. Wright told Mrs. Wright that he wanted a divorce, and she had left the home. The next morning, when C.J. and Mrs. Wright went back to pick up clothes and belongings, the locks to the house had been changed. C.J. testified that his father wouldn't answer the door, so he went to the shed and tore down the doors to look for a shovel to break the house

door down. C.J. testified that the Iberville Parish Sheriff's Deputies arrived and calmed him down. C.J. testified that he was escorted away from the premises, while his father left with Chief Simien. Then C.J. returned to the home, and the door was unlocked. C.J. also testified that he dented the hood of his father's truck by banging on it with his fists. C.J. stated that after the two men returned, Chief Simien was trying to keep Mr. Wright in the car out of fear that C.J. would harm Mr. Wright. C.J. testified that his father got out of the car in a rage, as if to "do something" to Mrs. Wright, and he then told his father to get back in the car, blocked him from getting out, and put him back in the car.

Detective Brett M. Stassi, Jr., with the Iberville Parish Sheriff's Office, testified that the Sheriff's office was called out to the Wright home on multiple occasions on that day. The first call was because C.J. had kicked in the door of the shed, pulled a shovel out, and threatened Mr. Wright with it. Detective Stassi testified that the incident ended when C.J. put the shovel down and Mr. Wright said that he didn't want to press charges. Detective Stassi testified that Chief Simien then asked Mr. Wright to go ride with him while his Mrs. Wright and C.J. gathered their belongings to prevent any further confrontation. Later that night Detective Stassi returned to the Wright home after a call came in about damage of property and theft. He testified that when he arrived Mr. Wright was sitting in the kitchen and Chief Simien was sitting on the couch in the den, which adjoined the kitchen. Detective Stassi testified that the Sheriff's office was called because the family had done more than just take their belongings. The damage to the shed doors was estimated at \$200.00, and the damage to the hood of Mr. Wright's truck was estimated at \$1,800.00. An hour later, when Detective Stassi returned to the Wright home a third time, Mr. Wright was there alone, and Mr. Wright reported that he had received a threat from Todd Harris, Jr., identified as a black male who

lived in Maringouin, who came to his home and told him not to file charges against C.J.

After a thorough review of the evidence, we find that we cannot say that the trial court erred in finding that Mr. Wright was a credible witness and that he met the burden of proving that Chief Simien assaulted him. A thorough review of the record shows that emotions were running high on the day of the incident. Mrs. Wright called Chief Simien “in a rage”, and he went to the home to try to keep Mr. Wright away from Mrs. Wright while she and C.J. gathered their belongings. When Chief Simien and Mr. Wright returned from their drive, Chief Simien, C.J., and Mr. Gray were all trying to keep Mr. Wright away from Mrs. Wright. They were all apparently afraid that Mr. Wright would hurt Mrs. Wright, and the three of them held him back in the car. Thus, we find no merit to this assignment of error.

ASSIGNMENT OF ERROR NO. 3

In assignment of error number three, the defendants assert that the trial court committed manifest error in finding that Charles Wright, Sr. proved that Chief Simien’s actions were the legal cause of his alleged injuries.

The trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relationship between the conduct and the damages claimed. **Clement v. Frey**, 95-1119, 95-1163 (La. 1/16/96) 666 So.2d 607, 611, citing **Watson v. State Farm Fire and Casualty Ins. Co.**, 469 So.2d 967, 971 (La. 1985).

Dr. Thad Broussard, Mr. Wright’s treating orthopedic surgeon of thirty years, testified that Mr. Wright had a thirty-three year history of spine problems, that he had surgery on his lower back in 1974 and in 1987, and that he was not a candidate for another back surgery. He testified that based on Mr. Wright’s history of the incident, the incident aggravated his pre-existing cervical and lower back

problems. Dr. Broussard testified that Mr. Wright's treatment both before and after the incident was the same but perhaps more frequent after the accident, consisting mainly of non-narcotic medication.

After thoroughly examining the record, we find that this assignment of error has merit and that the trial court was clearly wrong in finding that Chief Simien was 100% at fault for Mr. Wright's injury. Mr. Wright testified that C.J. grabbed him around the neck and that when Dr. Broussard checked his neck after the incident Dr. Broussard said the pain was "just from my son holding it the way he held it." It is clear from the record that C.J. was enraged at his father at the scene, as C.J. tore down the doors to the shed to retrieve a shovel to break open the door to the house and pounded upon the hood of Mr. Wright's truck hard enough to dent it. C.J. thereafter grabbed his father around the neck and held him that way for ten minutes. Meanwhile, Chief Simien also held Mr. Wright, and Mr. Gray kept the car door pressed closed to keep Mr. Wright from getting out and confronting Mrs. Wright.

After the court of appeal finds a "clearly wrong" apportionment of fault, it should adjust the award, but only to the extent of lowering or raising it to the highest or lowest point respectively which is reasonably within the trial court's discretion. **Clement v. Frey**, 666 So.2d at 611. After a thorough review of the evidence, we find that the highest amount of fault that the trial court could reasonably apportion to Chief Simien for Mr. Wright's injuries under the circumstances was 50% fault, and we find that C.J. was also 50% at fault for Mr. Wright's injuries.

THE ANSWER TO THE APPEAL

In his answer to the appeal, Mr. Wright asserts that the award for his general damages should be increased from \$50,000.00 to \$100,000.00.

[T]he discretion vested in the trier of fact is “great,” and even vast, so that an appellate court should rarely disturb an award of general damages. Reasonable persons frequently disagree about the measure of general damages in a particular case. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award.

Youn v. Maritime Overseas Corp., 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994).

In this case, the trial court determined that \$50,000.00 was an appropriate amount of damages for Mr. Wright’s aggravation of a pre-existing spinal condition. Dr. Broussard testified that the treatment for Mr. Wright’s spinal problems was the same after this incident as it was before the incident. After a thorough review, we cannot say that this award is less than that which a reasonable trier of fact could assess for the effects of this particular injury to this particular plaintiff; thus, the answer to the appeal asking for an increase in general damages is denied.

CONCLUSION

For the foregoing reasons, the trial court judgment is amended to assess fault for Mr. Wright’s injuries 50% to John Simien and 50% to Charles Wright, Jr. Because Charles Wright, Jr. is not a party to this suit, judgment cannot be rendered against him. The answer to the appeal is denied. Costs of this appeal are assessed against Charles Wright, Sr.

**JUDGMENT AMENDED, AND AS AMENDED, AFFIRMED.
ANSWER TO APPEAL DENIED.**