

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 1014

CLARK NIXON

VERSUS

TERREBONNE LEVEE & CONSERVATION DISTRICT,
ARCH INSURANCE COMPANY AND DAVID DANOS

Judgment Rendered: MAR 08 2017

Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne, Louisiana
Trial Court Number 166888

Honorable Juan W. Pickett, Judge

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Plaintiff – Clark Nixon

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Defendants – Terrebonne Levee &
Conservation District, Arch Insurance
Company and David Danos

BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

WELCH, J.

The plaintiff, Clark Nixon, appeals a judgment in his favor and against the defendants, Terrebonne Levee & Conservation District (“TLCD”), Arch Insurance Company, and David Danos, which awarded Mr. Nixon damages from an accident that occurred between him and Mr. Danos, an employee of TLCD acting in the course and scope of his employment at the time of the accident.

According to the record, Mr. Nixon claimed that on June 1, 2011, he was injured in an accident while working as a dump truck driver at a TLCD job site. At that time, he was employed by The Merlin Group, Incorporated and was working at the job site by virtue of a contractual relationship between his employer and TLCD. Essentially, Mr. Nixon would haul dirt to the job site where dirt was being stockpiled for the purpose of building a levee at a later date. Generally, the dump truck drivers would back their trucks up to the dirt pile and unload dirt, and a bulldozer operator would then push the dirt (from the pile) up a ramp, travel in reverse back down the ramp, and then repeat the process. TLCD also employs a “spotter,” who verifies the dump truck’s load of dirt, documents it, and directs the dump truck drivers where to dump the load of dirt. On the date of the accident, Mr. Nixon had his load verified by the “spotter,” and he proceeded to drive in reverse to the designated dirt pile. At the same time, Mr. Danos was operating the bulldozer and was traveling up and down the ramp moving dirt. The dump truck driven by Mr. Nixon and the bulldozer operated by Mr. Danos collided.

Thereafter, Mr. Nixon alleged that he was injured as a result of the accident and he commenced this suit against the defendants, claiming that the negligence of Mr. Danos and TLCD was the cause of the accident and Mr. Nixon’s resulting injuries. The defendants denied all liability for the accident, claiming the accident occurred solely through the fault of Mr. Nixon or by the actions of persons for whose conduct the defendants were not responsible. After a trial on the merits, the

trial court issued written reasons for judgment finding that the accident was caused by the fault of Mr. Nixon, Mr. Danos, and TLCD and allocating 50% fault to Mr. Nixon and 50% fault to Mr. Danos and TLCD. The trial court determined that Mr. Nixon's total damages were \$343,740.94, but in accordance with its apportionment of fault, reduced Mr. Nixon's damages by 50%. A judgment in accordance with the trial court's written reasons for judgment was signed on December 28, 2015, and it is from this judgment that the plaintiff has appealed, challenging the trial court's apportionment of fault and arguing that the defendants should have been allocated 100% of the fault in causing the accident.

In a companion appeal to this case, **Clark Nixon v. Terrebonne Levee & Conservation District, Arch Insurance, and David Danos**, 2016-1015 (La. App. 1st Cir. 03/08/17) (*unpublished*), the defendants also appealed the December 28, 2015 judgment of the trial court, challenging, among other things, the trial court's allocation of 50% fault to Mr. Danos and TLCD. Therein, this Court found no manifest error in the trial court's factual determinations and allocation of 50% fault to the defendants and affirmed the trial court's December 28, 2015 judgment. **Nixon**, 2016-1015 at p.8.¹

For the reasons set forth in the companion appeal, we likewise find no manifest error in the trial court's factual determinations and allocation of 50% fault to Mr. Nixon and we affirm the trial court's December 28, 2015 judgment in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.2(A)(5), (7), and (8). All costs of this appeal are assessed to the plaintiff/appellant, Clark Nixon.

AFFIRMED.

¹ In the companion case, **Clark Nixon v. Terrebonne Levee & Conservation District, Arch Insurance, and David Danos**, 2016-1015 (La. App. 1st Cir. 03/08/17) (*unpublished*), the defendants also challenged the February 18, 2016 judgment of the trial court, which assessed them with costs. For the reasons set forth therein, that judgment was affirmed in part and vacated in part and the matter remanded with instructions.