

CINDY PEREZ, THROUGH HER NATURAL
TUTRIX AND ADMINISTRATRIX OF HER
ESTATE, EDIS MOLINA

NO. 17-CA-211

FIFTH CIRCUIT

VERSUS

COURT OF APPEAL

MARY B. GAUDIN AND LM GENERAL
INSURANCE COMPANY

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 715-551, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

November 29, 2017

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Robert M. Murphy,
Stephen J. Windhorst, and Hans J. Liljeberg

AFFIRMED

SJW

RMM

HJL

COUNSEL FOR PLAINTIFF/APPELLANT,
CINDY PEREZ

Ivan A. Orihuela

COUNSEL FOR DEFENDANT/APPELLEE,
MARY B. GAUDIN AND LM GENERAL INSURANCE COMPANY

Pamela S. Croft

WINDHORST, J.

In this appeal, Plaintiff, Cindy Perez, seeks review of the trial court's judgment, which found in favor of Defendants and dismissed her claims with prejudice. For the reasons that follow, we affirm the trial court's judgment.

Factual and Procedural History

On June 3, 2012, Ms. Perez filed suit against Defendants, Mary B. Gaudin and LM General Insurance Company, claiming that she had been injured as a result of a car accident.¹ Ms. Perez's Petition alleged that on June 4, 2011, she was a passenger in a vehicle which was rear-ended by a second vehicle, driven by Mary B. Gaudin. Ms. Perez's Petition further alleged that Mary B. Gaudin was insured by LM General Insurance Company at the time of the accident.

The case proceeded to trial on July 20, 2016. In his opening statement, counsel for Ms. Perez conceded that "[t]he only real issue before the Court today is whether or not Ms. Perez was an occupant in the vehicle that was rear-ended by Ms. Gaudin at the time of the accident." At trial, three witnesses testified: Ms. Perez, Ms. Gaudin, and Edis Molina, Ms. Perez's mother, who was a passenger in the car at the time of the accident. Deputy Zlatko Brujic, who investigated the accident shortly after it happened, was unavailable to testify at trial. However, Deputy Brujic was deposed prior to trial and his deposition was entered into evidence.

At his deposition, Deputy Zlatko Brujic testified that he had been employed by the Jefferson Parish Sheriff's Office ("JPSO") for over thirty years, twenty eight of those in JPSO's traffic division. During his tenure with JPSO, Deputy Brujic estimated to have investigated between forty and sixty crashes per month. On the day of the accident in question, Deputy Brujic testified that he arrived approximately

¹ At the time the suit was filed, Ms. Perez was a minor. Accordingly, the suit was filed "through her natural tutrix and administratrix of her estate, Edis Molina." However, by the time of trial, Ms. Perez had attained the age of majority and was substituted as a plaintiff in her own name.

thirteen minutes after the accident. He testified that when he came to the scene of the accident, he observed two vehicles. The first vehicle was operated by Mary B. Gaudin, who was the sole occupant. The second vehicle was operated by Reinaldo Martinez-Perez, and was also occupied by a passenger, Edis Molina. Deputy Brujic testified that there were no other passengers in the second vehicle when he arrived on the scene. Deputy Brujic acknowledged that he did not have any independent recollection of the accident, and that his testimony was based on his written report. He emphasized, however, that had another person been in the vehicle, or if a witness had told him that another person had been in the vehicle, “it would have been added into the report accordingly.” He further testified that he recalled an unidentified older woman coming to the scene of the accident after he arrived, but had no recollection of a person matching Ms. Perez’s description being present at any point during his investigation.

At trial, Edis Molina testified that she was a passenger in a vehicle driven by her husband, Reinaldo Martinez-Perez, at the time of the accident. She also testified that her daughter, Cindy Perez, was sitting in the back seat of the vehicle at the time of the accident. Ms. Molina, who speaks limited English, testified that Ms. Perez, who is bilingual, helped her communicate with Deputy Brujic. She testified that after Deputy Brujic arrived, her sister-in-law brought her insurance cards to the scene of the accident.

At trial, Ms. Perez testified that at the time of the accident, she was a passenger in the vehicle with her parents. According to Ms. Perez, she was injured when a propane tank situated in the back seat of the car hit her arm at the time of the impact. Ms. Perez testified that she stayed in the vehicle until the police arrived, and then began translating for her mother, who was speaking to Deputy Brujic. She testified that the police officer “was Spanish ... but he didn’t want to speak Spanish.” Ms. Perez gave inconsistent answers about whether she was inside or outside of the

vehicle when Deputy Brujic arrived. She further claimed that Deputy Brujic asked what her name was, but did not ask her for identification or any other information. She could not remember what Deputy Brujic looked like, and also testified that she “didn’t really talk” to him.

Ms. Gaudin testified at trial that following the accident, she immediately moved her vehicle to the side of the road and motioned the driver of the second vehicle to do the same. Ms. Gaudin testified that after calling the police, and her daughter, she approached the other vehicle and “saw two people, the man driving and the lady sitting in the front passenger seat.” According to Ms. Gaudin, after Deputy Brujic arrived, he approached her vehicle first to speak with her concerning the accident. She testified that Deputy Brujic subsequently approached the other vehicle. She testified that Deputy Brujic spoke to the occupants of the other vehicle while they were “in the car.” She testified that she never saw anyone matching Ms. Perez’s description in the other vehicle at any point following the accident.

Following the trial, the trial court rendered written judgment in favor of Ms. Gaudin and LM General Insurance Company, dismissing Ms. Perez’s suit with prejudice. The instant appeal follows.

Discussion

In her sole assignment of error, Ms. Perez argues that the trial court erred when it rendered judgment in favor of Ms. Gaudin and LM General Insurance Company. Ms. Perez argues that neither the deposition of Deputy Brujic, nor the testimony of Ms. Gaudin is sufficient to refute her testimony or the testimony of her family members.

It is equally well-settled that an appellate court may not set aside a trial court’s finding of fact in the absence of manifest error or unless it is clearly wrong. Further, where two permissible views of the evidence exist, the fact finder’s choice between them cannot be manifestly erroneous or clearly wrong. Cole v. State Department of

Public Safety & Corrections, 2001-2123 (La. 9/4/02), 825 So.2d 1134, 1144, citing Stobart v. State through Dept. of Transp. and Dev., 617 So.2d 880 (La.1993). If the trier of fact's findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Martin v. East Jefferson Gen. Hosp., 582 So.2d 1272, 1276-77 (La. 1991).

In Hasney v. Allstate Ins. Co., 2000-0164 (La. App. 4 Cir. 02/07/01), 781 So.2d 598, the Fourth Circuit Court of Appeal addressed a similar situation. In Hasney, a plaintiff sued a train's operator after he was allegedly injured when the train struck his parked van. Id. at 600. At trial, a Lieutenant with the St. Bernard Parish Sheriff's Office testified that the plaintiff never advised investigating officers at the scene that he was a passenger in the van at the time of the accident. Id. at 601. The report generated by the St. Bernard Sheriff's Office with regard to the accident did not list a driver of the parked van. Id. However, the plaintiff and his brother both testified that the plaintiff was, in fact, in the van at the time of impact. Id. at 601-602. Following a trial, the jury ultimately concluded that the plaintiff was not a passenger in the van at the time of the accident, and therefore was not injured by the named defendants. Id. at 605. In affirming the jury's verdict on appeal, the Fourth Circuit found that the plaintiff "failed to prove by a preponderance of evidence that he was in the van at the moment of the collision" and that "[t]he jury's verdict is in accord." Id. at 606.

Similarly, in Leal v. Dubois, 00-1285 (La. 10/13/00), 769 So.2d 1182, the Louisiana Supreme Court reversed the intermediate appellate court and reinstated a trial court's verdict which found that a plaintiff was not injured in an accident. In Leal, the plaintiff claimed she was injured in a car accident. Id. at 1183. Following a trial, the trial court found in favor of the defendants and dismissed the plaintiff's suit with prejudice. Id. at 1184. The plaintiff appealed, and the Third Circuit Court

of Appeal reversed the trial court's verdict. Id. The Supreme Court reversed the Third Circuit and reinstated the trial court's verdict. Id. at 1185. In its opinion, the Supreme Court specifically found that the Third Circuit had failed to give sufficient deference to the trial court's verdict, which was "unequivocally based on a credibility determination." Id.

Like the factual findings made by the trial courts in Hasney and Leal, the factual findings in the case at bar involve credibility determinations made by the trial court. As in both Hasney and Leal, those credibility determinations are entitled to great deference on appeal. A thorough review of the records shows that a reasonable finder of fact could easily have found Ms. Gaudin and Deputy Brujic's testimony that Ms. Perez was not at the scene of the accident to be credible. Therefore, we find no manifest error in the trial court's judgment in favor of Mary B. Gaudin and LM General Insurance Company. Accordingly, the trial court's judgment is affirmed.

Conclusion

For the foregoing reasons, the trial court's judgment dismissing Ms. Perez's claims against the defendants in this matter is affirmed.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 29, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-CA-211

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
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