

LLOYD RICHARD

NO. 15-CA-559

VERSUS

FIFTH CIRCUIT

DONALD HAWTHORNE, HERIA WILLIAM,
CLAUDE LOUIS, EVANS JOSEPH,
ST. JAMES PARISH SHERIFF
DEPARTMENT AND THEIR INSURER

COURT OF APPEAL
STATE OF LOUISIANA

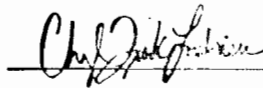
ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES, STATE OF LOUISIANA
NO. 32,935, DIVISION "D"
HONORABLE JESSIE M. LEBLANC, JUDGE PRESIDING

MAY 12, 2016

COURT OF APPEAL
FIFTH CIRCUIT

FILED MAY 12 2016

ROBERT M. MURPHY
JUDGE


CLERK
Cheryl Quirk Lawson

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Robert M. Murphy

JOHNSON, J., DISSENTS WITH REASONS

LLOYD RICHARD #125784
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AFFIRMED

RMM
SME

Plaintiff/appellant, Lloyd Richard (“Richard”) appeals the trial court’s judgment in his personal injury lawsuit, which dismissed the petition with prejudice following a bench trial. For the reasons that follow, the judgment of the trial court is affirmed.

FACTS AND PROCEDURAL HISTORY

The instant civil matter has been the subject of several prior writ applications and stems from events recounted by this Court in Richard’s criminal appeal.¹ Richard was arrested in St. James Parish on January 26, 2008, on charges of attempted second degree murder and aggravated burglary. On January 2, 2009, Richard filed a civil suit in proper person, alleging that he had been injured during his arrest, when the police cruiser he was being transported in backed into a ditch.² The matter proceeded to a bench trial on May 12, 2015.

¹ See *State v. Richard*, 12-310 (La. App. 5 Cir. 4/24/13), 115 So.3d 86, 94, writ denied, 13-1220 (La. 12/2/13), 126 So.3d 497.

² In a subsequent motion to amend his petition, filed on January 20, 2015, Richard further alleged that members of the St. James Parish Sheriff’s Department denied him medical treatment for injuries to his neck and back resulting from the accident, and that the Sheriff’s Department further conspired to “cover up” the accident through various means. The record reflects, however, that on April 9, 2015, the trial court denied Richard’s Motion To Amend Pleadings as untimely pursuant to its Case Management Order of December 10, 2014. This Court upheld the trial court’s denial of Richard’s Motion To Amend Pleadings in *Richard v. St. James Par. Sheriff’s Office*, 14-775 (La. App. 5 Cir. 10/28/14) (unpublished writ disposition). Thus, these claims were not before the court at the

John Dunn testified at trial that on January 26, 2008, while on duty, he was the driver of the police vehicle that transported Richard after he was taken into custody. While backing up the vehicle “to go on LA 44 from Fields Street,” Dunn’s “right back tire went into the ditch on top of the culvert” and had to be pulled out later by a wrecker. Dunn stated that when the vehicle backed into the ditch, he saw Richard in the rear view mirror slide “over to the middle” of the back seat while calling out to his friends through the window, saying, “You see this?” Dunn testified that after he had backed on top of the culvert, Richard did not tell him that he had sustained neck and back injuries, but asked to be “checked out.” There was no noticeable injury to Richard at that time. On cross examination, Dunn testified that he was going “very slow” as he backed up from Fields Street on to LA 44. Dunn stated that the only impact when entering the ditch occurred when the rear tire “went straight down” onto the culvert; there was no motion forward or backward.

Chief of Deputies Heria Williams, was present at the scene on January 26, 2008, when Richard was taken into custody. Williams testified that he did not see Dunn back the tire over the culvert in the ditch, but he observed the car after it had happened. He did not recall seeing that anything was “physically wrong” with Richard after the car backed into the ditch, and Richard did not complain to him about any pain in his neck or back. Williams stated that he told a guard that if Richard complained of injuries, to take him to the doctor. Williams was never informed as to whether Richard received medical attention at the jail. Williams did not recall meeting with anyone to discuss the incident regarding the vehicle backing into the ditch.

time of trial, and cannot be addressed by this Court for the first time on appeal. *See* Uniform Rules -- Courts of Appeal, Rule 1-3.

On cross examination, Williams testified that Dunn did not appear impaired prior to or after he backed into the ditch. Williams was aware of another incident during which Richard could have been injured that day. Williams stated that the victim of the crime for which Richard was convicted, had indicated that she fought Richard off as he tried to sexually assault and stab her. The victim also said that during the struggle, Richard wound up on the floor after she threw him off.³

Detective Claude Louis testified that he was the investigating officer at the time of Richard's arrest. Richard was already in a police unit by the time that Louis arrived on the scene. Detective Louis did not see the car back into the ditch. Later that day, Detective Louis interviewed Richard, and at no time did Richard request medical attention. Detective Louis was shown a transcript of his prior testimony at Richard's criminal trial, wherein he indicated that Richard had a scratch under his eye and on his finger at the time Richard was interviewed after being arrested. Detective Louis attributed these scratches to the victim, who indicated that she had scratched defendant while she fought him off.⁴

Evans Joseph testified that he was assisting officers who were searching for Richard on the date Richard was arrested. Joseph went to Fields Street on that day to transport Richard after his arrest. Richard did not seem to be injured when he was placed in Joseph's car, and Richard did not complain of any injuries while in Joseph's custody. Joseph said that if Richard had demonstrated any injuries, the jailers "would not have accepted" him, and he would have been transported to the hospital.

³ While Williams' statement about what the victim told him is hearsay, we note that no objection to this testimony was made at trial. Further, as noted below, Richard himself acknowledged that the victim of the crime for which he was convicted had alleged that she fought with Richard at the time he attacked her.

⁴ As with Williams' statement above, Detective Louis' statement about what the victim told him is hearsay. However, no objection to this testimony was made at trial.

Richard testified at trial. He stated that at the time the police car “hit the ditch,” he was thrown forward “into the bars of the vehicle.” He said that he told Williams that his neck and back were hurting and that he needed medical attention. He said that he told each officer he was in contact with that he was hurt. Richard asserted that the officers’ testimony at trial that day was false. Richard recounted two prior incidents where he had received a back injury. The first was in a car accident in 1979. Next, in 2005, while in Orleans Parish jail, he was knocked to the floor from the top bunk of a bed by another inmate. Richard also acknowledged that the victim of the crime, for which he was charged and convicted, had indicated that there was an altercation with Richard on the day he attacked her. Richard further stated that he was a boxer who had been knocked down many times. Richard gave contradictory statements about the cause of the scratch on his face, first testifying that he got the scratch in the police car when it rolled into the ditch, and then asserting that he got the scratch as retaliation from jail personnel for making a claim that he was injured.

Richard testified about the doctors who treated him for his alleged injuries after January 26, 2008. Richard’s first medical request form was filled out three days after he claims he was injured. Richard stated that from 2008 until trial, he could not turn his neck, and his shoulders constantly hurt him. Richard said that 20 days after his arrest, he saw Dr. Carl Poche, who diagnosed him with lumbar strain and a sprained neck. He was given pain pills and a muscle relaxer, as well as a sheet with exercises he was supposed to perform. Richard had one follow up visit with Dr. Poche’s office. Richard stated that Dr. Poche’s report was inaccurate in stating that Dr. Poche had found no muscle spasm, that Richard was able to bend down almost completely to touch his toes, and that he had found a full range of motion in Richard’s head and neck. In December of 2008, Richard was examined

at Chabert Hospital, after which he was diagnosed with muscle spasm and “degenerative disc disease.”

In making its determination of whether to impose liability under La. C.C. art. 2315, the trial court correctly employed the duty/risk analysis and referenced the five separate elements that a plaintiff is required to prove in a negligence case: (1) the defendant had a duty to conform his or her conduct to a specific standard of care (the duty element); (2) the defendant failed to conform his or her conduct to the appropriate standard (the breach of duty element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and, (5) actual damages (the damages element).

The court first made a finding that Dunn had breached his duty to operate his vehicle “in conformity with the laws and regulations of this state and in a reasonable manner” by backing his vehicle into a ditch, thus satisfying elements one and two of the duty/risk analysis.

With regard to causation for Richard's alleged injuries, which encompassed elements three through five of the duty-risk analysis, the trial court first referenced a standard used by this Court in *Cannet v. Franklynn Pest Control Co.*, 08-56 (La. App. 5 Cir. 04/29/08), 985 So.2d 270, 276, wherein we noted that, “Expert medical testimony is required when the conclusion regarding medical causation is one that is not within common knowledge.” The trial court also referenced the case of *Kliebert v. Breaud*, 13-655 (La. App. 5 Cir. 01/31/14), 134 So.3d 23, in which we recognized that when a plaintiff provides no medical testimony to establish a causal relationship between an accident and a claimed injury, the court is required to make a credibility determination regarding a plaintiff's testimony about his

injuries. The court then recounted the evidence and witness testimony, and noted that as to the crime that Richard had been convicted of, the victim had testified at the criminal trial that she believed she had scratched Richard and pushed him from the bed onto the floor. When Detective Louis noticed the scratch under defendant's eye and on his finger, based upon the victim's statement, Detective Louis attributed the injuries to the victim fighting off Richard. The court found that Richard had testified "in a contradictory manner" about the cause of his injuries at trial, first stating that he had received the scratches from hitting his face on the cage of the police unit when the vehicle went off the road, and then claiming that the scratches were "caused by police officers at the jail." The court recalled that the testimony of Dunn, Louis and Williams was that Richard did not complain to them about injuries after the car had gone off of the road. The court found that were "multiple possible causes" for Richard's neck and back pain, which included his history as a boxer, a medically-documented degenerative disc disease, and a struggle on the night before the accident with the victim of the crimes for which he was charged. The court determined that while the St. James Sheriff's Department had "breached its duty to operate the vehicle in a safe manner," the breach of that duty was not "a substantial factor in the cause of Mr. Richard's injuries."

At the conclusion of trial, the trial judge designated her oral reasons for judgment as her written reasons. The Judgment rendered on May 12, 2015, indicated that "the Court finds in favor of the Defendants and against the Plaintiff, as the Plaintiff has failed to meet his burden of proof on the issue of causation." Richard timely filed a motion for the instant appeal, which was granted.⁵

⁵ Richard represented himself at trial, and also is in proper person on appeal.

ASSIGNMENT OF ERROR

Where *pro se* litigants are concerned, in the interest of justice, Louisiana appellate courts will read *pro se* filings indulgently and attempt to construe a brief as though assignments of error were properly made.⁶ *Greenwood Cmty. Ctr. v. Calep*, 48,737 (La. App. 2d Cir. 1/15/14), 132 So.3d 470. In this matter, after affording a liberal construction to appellant's pleadings, Richard essentially argues that the trial court erred in finding that he failed to meet his burden of proof on the issue of causation.

LAW AND DISCUSSION

It is well settled that a court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). This test dictates that a reviewing court must do more than simply review the record for some evidence that may controvert the trial court ruling. Rather, it requires a review of the entire record to determine whether manifest error has occurred. Thus, the issue before the court of appeal is not whether the trier of fact was right or wrong, but whether the fact-finder's conclusion was a reasonable one. *Clay v. Our Lady of Lourdes Regional Medical Center*, 11-1797 (La. 5/8/12), 93 So.3d 536, 543. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Pinsonneault v. Merchants &*

⁶ However, even with the leeway or patience extended to a *pro se* litigant in the form of liberally construed pleadings, the *pro se* claimant is still required to meet his burden of proof. See *Greenwood Cmty. Ctr. v. Calep*, *supra*. Notwithstanding that a layman who represents himself cannot be held to the same standards of skill and judgment which must be attributed to an attorney, he assumes responsibility for his own inadequacy and lack of knowledge of both procedural and substantive law. See *Cutler v. McGee*, 09-1290 (La. App. 3 Cir. 5/5/10), 38 So.3d 481, *writ denied*, 10-1879 (La. 11/19/10), 49 So.3d 393.

Farmers Bank & Trust Co., 01-2217 (La. 4/3/02), 816 So.2d 270, 278-79;

Tompkins v. Savoie, 08-808 (La. App. 5 Cir. 3/24/09), 10 So.3d 294.

In this case, the trial court found that Richard had not met his burden of proof on the issue of causation. Our review of the record reveals the following: While Richard asserted that he was hurt when the cruiser backed over the culvert, witnesses at trial testified that Richard appeared uninjured and did not request medical attention. Richard's account regarding the range of motion in his neck and shoulders following the accident was contradicted by his own medical records. A reading of the trial transcript clearly supports the trial court's finding that Richard gave contradictory statements and testimony at trial regarding the cause of the scratch that was observed on the day of his arrest. The record further contains an admission by Richard that he had sustained back injuries prior to the alleged injury of January 26, 2008. Richard also acknowledged that the victim of the crime, for which he was convicted, had indicated that during a struggle with Richard she threw him from a bed and on to the ground.

In the instant case, after considering the entire record, as well as the testimony and evidence presented at trial, we find the trial court's conclusion, that Richard failed to prove causation of his alleged injury, to be reasonable and not manifestly erroneous.

CONCLUSION

For the foregoing reasons, we affirm the trial court's May 12, 2015 judgment.

AFFIRMED

LLOYD RICHARD

NO. 15-CA-559

VERSUS

FIFTH CIRCUIT

DONALD HAWTHRONE, HERIA
WILLIAM, CLAUDE LOUIS, EVANS
JOSEPH, ST. JAMES PARISH SHERIFF
DEPARTMENT AND THEIR INSURER

COURT OF APPEAL
STATE OF LOUISIANA



JOHNSON, J., DISSENTS WITH REASONS

I, respectfully, dissent from the majority opinion in this matter because I am of the opinion that Plaintiff, Lloyd Richard, met his burden of proving that he sustained injuries during his transport by the St. James Sheriff's Department ("St. James") on January 26, 2008, and had damages resulting from that incident.

At trial, Mr. Richard¹ presented his testimony stating that he incurred neck and back injuries from the accident. In support of his claims, Mr. Richard presented a medical request form that showed he had, at least, a lumbar sprain and a sprained neck as a diagnosis from Dr. Carl Poche. The history and physical exam portion written by Dr. Poche detailed that Mr. Richard was in a motor vehicle accident on January 26, 2008, and he developed neck and back pain.

In an attempt to discredit Mr. Richard's evidence, St. James presented testimony from Deputy Heria Williams that the victim of Mr. Richard's criminal case stated that she pushed him onto the floor during their encounter. However, Dep. Williams also testified that he did not observe any injuries to Mr. Richard from that encounter with the victim. St. James also elicited testimony from Mr. Richard that he had been

¹ I note that Mr. Richard represented himself during the trial.

involved in a prison fight some years prior to the accident at issue. But, St. James did not present medical evidence that correlated Mr. Richard's neck and back injuries with the prison fight. During that line of questioning, Mr. Richard was insistent that the fight did not cause his neck and back injuries. Additionally, St. James had Mr. Richard testify that he had fallen several times during his time as a boxer. Again, St. James failed to present any medical evidence of injuries that could have occurred to Mr. Richard through his boxing career, and Mr. Richard was adamant that his injuries were not resultant of his boxing career.

In a personal injury action, the plaintiff must prove by a preponderance of the evidence that the claimed injuries resulted from the accident at issue. *Tamayo v. Am. Nat'l Gen. Ins. Co.*, 14-130 (La. App. 5 Cir. 9/24/14); 150 So.3d 459, 467, *citing Harrington v. Wilson*, 08-544 (La. App. 5 Cir. 1/13/09); 8 So.3d 30, 38-39. If the medical testimony establishes that it is more probable than not that subsequent injuries were caused by the trauma suffered in the incident, the burden of proof is satisfied. *Id.* A presumption of causation will aid a plaintiff in meeting this burden, if before the accident, the injured person was in good health, but, commencing with the accident, the symptoms of the disabling condition appear and continuously manifest themselves afterwards, providing that the medical evidence shows there to be reasonable possibility of a causal connection between the accident and the disabling condition. *Id.*, *citing Housley v. Cerise*, 579 So.2d 973 (La.1991). To rebut this presumption, the defendant must show that some other particular incident could have caused the injury in question. *Id.*

In this matter, Mr. Richard met his burden of proving by a preponderance of the evidence that he sustained neck and back injuries

from the January 28th accident. His testimony recounted the accident and how he was injured. The medical documentation Mr. Richard presented corroborated that his injuries were sustained as a result of the accident. At that point, the law supported a ruling in favor of Mr. Richard. Although the trial court found there were multiple causes of Mr. Richard's neck and back pain, there was absolutely no evidence (medical or otherwise) presented by St. James that those other possible causes were attributable to Mr. Richard's injuries. The failure to present any evidence that correlated the other possible causes to Mr. Richard's injuries means that St. James failed to rebut the presumption his injuries were sustained during the accident. It also means that the trial court committed a legal error by considering those other causes, ignoring Mr. Richard's evidence, and concluding that Mr. Richard failed to meet his burden of proof. Moreover, even assuming that Mr. Richard had sustained injuries from other incidents, the accident would have been an aggravation of his previous injuries. Thus, he would have still been entitled to an award in his favor.

Therefore, for the foregoing reasons, I would find that the trial court erred in finding Mr. Richard failed to meet his burden of proving causation for his injuries.

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 2-20** THIS DAY **MAY 12, 2016** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in cursive script, appearing to read "Cheryl Q. Landrieu".

CHERYL Q. LANDRIEU
CLERK OF COURT

15-CA-559

E-NOTIFIED

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