

JOE LOUIS BURNS

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NO. 2000-CA-1262

VERSUS

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COURT OF APPEAL

**DIXIE TRANSPORTATION,
INC.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 99-53069, SECTION "C"
Honorable Sonja M. Spears, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,
and Judge Dennis R. Bagneris, Sr.)

MURRAY, J., CONCURS WITH REASONS

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AFFIRMED

Defendant/Appellant, Dixie Transportation, appeals the judgment of the city court finding it responsible for damages incurred by Plaintiff/Appellee, Joe Burns, as a result of a truck damaging electrical lines in his neighborhood. Following a review of the record, we affirm the judgment of the city court.

Facts and Procedural History

Andrea Paul, Appellee's daughter, was a resident of the property in question. She testified that while inside her residence she heard a loud boom and the lights in her apartment went out. Ms. Paul ran outside to see what was the matter and she noticed that a large truck had pulled down the electrical lines near her residence and she saw the driver of the truck fleeing the scene. Ms. Paul further testified that she got the license plate number of the truck from a neighbor and reported the incident to the New Orleans Police Department. Consequently, Ms. Paul lost electrical power in her home for a period of nine days and was forced to live in a hotel. Neither the

neighbor nor the police officers investigating the case testified at trial. Thus, Dixie Transportation argued there was no evidence to identify Dixie Transportation as the tortfeasor.

Joe Burns, Plaintiff/Appellee, a resident of the building (although not in the same apartment as his daughter), was not at home at the time of the incident. However, his apartment sustained damage as well and he was forced to relocate for the nine days until the electricity in his apartment was restored. During that period, Mr. Burns stayed with Ms. Stokes, his sister, and he paid her a total of \$450.00 for room and board.

After hearing Mr. Burns' case, Dixie Transportation moved for Directed Verdict because of a lack of evidence identifying them as the tortfeasor. The court denied the motion, re-opened the case for new evidence and subsequently found in favor of Mr. Burns. It is from this judgment Dixie Transportation appeals.

Argument

The issue in this case is whether the city court erroneously denied a Motion for Directed Verdict based on insufficient evidence to make a prima facie case and allowing the re-opening of evidence following the city court's denial of said motion.

Dixie Transportation further argues that there was no evidence

identifying it as the alleged tortfeasor, and as a result the city court should have granted their Motion for Directed Verdict. Additionally, Dixie Transportation argues that since Mr. Burns did not prove the tortfeasor's identity, the city court abused its discretion by re-opening the case for additional evidence.

Mr. Burns argues that Dixie Transportation did not offer any contradictory testimony, and that the court's decision to re-open evidence was within its discretion.

The city court relied on the testimony of Mr. Burns' witnesses in this case. Mr. Burns' daughter testified that when the incident occurred she ran outside to see what was the matter and she noticed that a large truck had pulled down the electrical lines near her residence. She saw the driver of the truck fleeing the scene. Ms. Paul testified that she recorded the license plate number of the truck in question and called the New Orleans Police Department. Further, Mr. Burns introduced a receipt, which Ms. Stokes had signed, as well as a photograph of the electrical damage sustained to the apartment. Ms. Stokes testified and corroborated the plaintiff's testimony as to living expenses incurred. Dixie Transportation did not call any witnesses. At the close of the plaintiff's case, Dixie Transportation's counsel offered a motion for a directed verdict based on the Mr. Burns' failure to prove a

prima facie case. The city court then found that Mr. Burns had proved his case by a preponderance of the evidence.

“An appellate court must defer to the factfinder’s decision absent the decision’s being manifestly erroneous or clearly wrong.” *Stobart v. State, Department of Transportation and Development*, 617 So.2d 880, 884 (La. 1993).

Also, “[t]he decision to reopen a case for the production of additional evidence after all parties have rested is within the sound discretion of the trial court and will not be disturbed on appeal unless manifestly erroneous.” *Custom-Bilt Cabinet & Supply, Inc. v. Quality Built Cabinets, Inc.*, 32,441, p.13 (La. App. 2 Cir. 12/8/99)748 So.2d 594, 603, *citing*, *Antley v. Brantly*, 28,049, p.4 (La.App.2d Cir.2/28/96), 669 So.2d 685, 688.

Based on the record, we find no manifest error. The record provided sufficient evidentiary bases for the city court's judgment. Therefore, we also find that the city court acted within its sound discretion by denying the motion and re-opening the case for more evidence.

DECREE

For the foregoing reasons, we affirm the judgment of the city court.

AFFIRMED