

DOLORES SENTMORE

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NO. 2000-CA-2534

VERSUS

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COURT OF APPEAL

**JOHN DOE I,
ADMINISTRATOR OF THE
ESTATE OF HIS MINOR
CHILD, TRAVIS BARBER AND
THE ORLEANS PARISH
SCHOOL BOARD**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 98-20112, DIVISION "D-16"
Honorable Lloyd J. Medley, Judge

**Charles R. Jones
Judge**

(Court composed of Judge Charles R. Jones, Judge James F. McKay III, and
Judge David S. Gorbaty)

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AFFIRMED

This case arose out of a personal injury claim filed by the Appellee, Dolores Sentmore, against the Orleans Parish School Board and the administrator of the estate of the minor child, Travis Barber. The Appellant, the Orleans Parish School Board, appeals the judgment of the district court finding in favor of Ms. Sentmore and assessing 100% fault to the Orleans Parish School Board. We affirm.

On December 1, 1997, Travis Barber, a mentally impaired 16-year-old male, was riding in an Orleans Parish School bus. At the time of the incident, a driver, an aide, and seven to eight other mentally impaired teenagers with noted behavioral problems also occupied the bus. The Orleans Parish School Board (hereinafter "OPSB") employed both the bus driver and the aide.

Ms. Sentmore, a fifty-seven year old woman, was walking on Paris Avenue toward her home when she was struck in the head by a hazard warning device thrown from the school bus window by Travis Barber. The device struck Ms. Sentmore's forehead rendering her unconscious.

Accepted testimony at trial revealed that the hazard device was stored in an unlocked container in the back of the bus where Travis was sitting. The students had complete access to the device. The aide and the bus driver were aware of Travis' propensity to throw objects from the bus window because he had done so on an earlier date. At the time of the incident, the aide was sitting in the second seat from the front of the bus on the passenger's side facing forward.

After the incident, Ms. Sentmore was taken to a hospital emergency room where she was treated for her injuries. She has since complained of severe and disabling injuries to her mind, head and body including trauma, severe headaches, depression and dizziness.

Ms. Sentmore filed a Petition for Personal Injuries and Damages against the OPSB and Travis Barber named in the lawsuit through the administrator of his estate, Tamia Wade. Trial in this matter was held on June 29, 2000 in Civil District Court for the Parish of Orleans. The OPSB submitted a post trial memorandum wherein they acknowledged that Travis negligently threw the hazard device out of the bus window. The OPSB further suggested in their post trial memorandum that the district court find Travis at least 60% at fault. However, the district court's judgment rendered the OPSB 100% at fault awarding Ms. Sentmore \$3,048.71 in medical

expenses and \$18,000 in general damages. It is from this judgment the OPSB takes this appeal.

The OPSB contends that the district court committed manifest error in failing to allocate fault to all persons causing or contributing to Ms. Sentmore's injuries in accordance with La. Civ. Code. Art 2323 as amended by Act 3 of the 1996 Legislature, which states in pertinent part:

Comparative Fault.

A. In any action for damages where a person suffers injury, death, or loss, the degree of percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death or loss.

The OPSB further argues that by amending La. Civ. Code art 2324, the Legislature eliminated solidarity of negligent tortfeasors.

Liability as solidary or joint and divisible obligation.

A. He who conspires with another person to commit an intentional or willful act is answerable in solido with that person for damages caused by such act.

B. If liability is not solidary pursuant to

Paragraph A, then liability for damages caused by two or more persons shall be a joint and divisible obligation. A joint tortfeasor shall not be liable for more than his degree of fault and shall not be solidarily liable with any other person for damages attributable to the fault of such other person, including the person suffering injury, death, or loss, regardless of such person's insolvency, ability to pay, degree of fault, immunity by statute or otherwise, including but not limited to immunity as provided in R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. *La. C.C. art 2324*

The OPSB relies on *Veazy v. Elmwood Plantation Associates, Ltd.*, 93-2818 (La. 1994), 650 So.2d 712, wherein the Supreme Court found that comparative fault under La. C.C. art 2323 is broad enough to encompass both unintentional and intentional conduct and that it should be left to the court's discretion to determine in what contexts the doctrine of comparative negligence should be applied. Therefore, the OPSB essentially argues that both an intentional tortfeasor and the negligent tortfeasor should be assigned a portion of fault; Travis Barber being the intentional tortfeasor.

The court in *Veazy* reasoned that the district court was correct in finding the apartment complex wherein Ms. Veazy was raped 100% at fault allocating no fault to the rapist. The court further concluded that "the only issues we consider herein are whether the fault of an intentional tortfeasor and a negligent tortfeasor: (1) can; and (2) should, be compared by the

finder of fact”. This argument is also supported in *Green v. USAA Gas Ins. Co.*, 668 So. 2d 397 (La. App. 4 Cir. 1996) wherein a jury apportioned fault to both a negligent and intentional tortfeasor.

However, it is well established that questions of fault are left up to the discretion of the district court’s factual determinations on a case-by-case basis which is an argument supported by *Green*. In the instant case, the district court reasoned that the testimony of the witnesses was credible and revealed undisputed evidence that (1) Travis was in the custody of the OPSB employees; (2) the reflector was the property of the OPSB; (3) Pierre and Slugger were aware that the reflector was on the bus and that the reflector was in an unlocked container; (4) the students had access to the open container; (5) the OPSB was aware of the potential of the students to throw objects from the bus because of a previous incident in close proximity to the accident in question; and (6) the OPSB did not provide training to the bus driver or student aide concerning the supervision of mentally disabled children”.

The law is very settled that the allocation of fault is a factual determination and subject to the trial court’s great discretion. *Clement v. Frey*, 666 So. 2d 607, (La. 1996); *Towns v. Georgia Cas. & Sur. Co.*, 459 So.2d 124 (La. App. 2 Cir. 1984). Factual findings are not disturbed on

appeal absent manifest error. *Sims v. State Farm Auto. Ins. Co.*, 731 So.2d 197 (La. 1999); *Stobert v. Sate*, 617 So.2d 880 (La. 1993). When there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on review. *Sims*, supra; *Arceneaux v. Domingue*, 365 So.2d 1330 (La. 1978).

Thus, for the reasons set forth herein, we find that there was no manifest error by the district court in finding the OPSB 100% at fault in causing Ms. Sentmore's injuries. Further, there was no error by the district court in concluding that Travis Barber was in the custody of the OPSB employees and that the OPSB employees failed to provide proper supervision over Travis Barber and the device that was thrown causing Ms. Sentmore's injuries. We affirm the judgment of the district court.

AFFIRMED