

**DAWN FROMMEYER, WIFE
OF/AND GERARD W.
FROMMEYER,
INDIVIDUALLY AND ON
BEHALF OF THEIR MINOR
SON, GERARD J.
FROMMEYER**

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NO. 2002-CA-0070

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COURT OF APPEAL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

VERSUS

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**APRIL J. STEVENSON AND
U.S.A.A. CASUALTY
INSURANCE COMPANY**

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-5584, DIVISION "J-13"
Honorable Nadine M. Ramsey, Judge**

JOAN BERNARD ARMSTRONG

JUDGE

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones
and Judge David S. Gorbaty)

GORBATY, J., CONCURS IN THE RESULT

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AFFIRMED

This is a motor vehicle personal injury action. The trial court found that symptoms caused by the accident at issue continued until past the time of a second accident which occurred a little over two months later. The appellant argues that the trial court erred in finding that the plaintiff's symptoms from the accident at issue had not resolved as of the time of the later accident. Because we do not find that the trial court was clearly wrong-manifestly erroneous, we will affirm the judgment of the trial court.

Plaintiff Gerard Frommeyer was involved in the accident at issue on April 10, 1998. He suffered injuries to his head, neck, back and chest. He was seen at a hospital emergency room. He also was treated by Dr. Alain Cracco on April 14, April 28 and June 2, 1998.

Mr. Frommeyer was involved in a second automobile accident on June 15, 1998. He saw Dr. Cracco, for the last time, on June 16, 1998. Mr. Frommeyer then changed physicians and was seen by Dr. D. L.

Kewalramani beginning on June 23, 1998 and continuing through the time of trial.

In connection with the accident at issue in the present case, the April 10, 1998 accident, Mr. Frommeyer sued the motorist who struck his car, April Stevenson. Mr. Frommeyer also sued USAA Insurance Company both in its capacity as Ms. Stevenson's liability insurer and in its capacity as Mr. Frommeyer's uninsured/underinsured motorist insurer. The claims against Ms. Stevenson, and against USAA as Ms. Stevenson's liability insurer, were settled. The case proceeded to trial on Mr. Frommeyer's claim against USAA as his UM carrier.

At trial, USAA contended that Mr. Frommeyer's symptoms from the accident at issue, the April 10, 1998 accident, had resolved by the time of the second accident, the June 15, 1998 accident, and that any symptoms of Mr. Frommeyer from June 15, 1998 onward were attributable solely to the June 15, 1998 accident. The trial court rejected USAA's contention and found that Mr. Frommeyer's symptoms from the April 10, 1998 accident persisted until September 10, 1998 -- a period of five months. Based upon that factual finding, the trial court awarded (after credits for amounts paid) \$5,000 in

general damages and \$2,469.50 in medical expenses.

USAA relied upon the testimony of Dr. Cracco. Mr. Frommeyer relied upon the medical records of Dr. Kewalramani. Dr. Cracco believed that Mr. Frommeyer's symptoms from the April 10, 1998 accident would be expected to have resolved in six weeks. However, Dr. Cracco admitted that Mr. Frommeyer had never reported that his symptoms from the April 10, 1998 accident had resolved. Also, Dr. Cracco last saw Mr. Frommeyer on June 16, 1998 and never reviewed the medical records of Mr. Frommeyer's later treatment by Dr. Kewalramani. Additionally, Dr Cracco never reviewed the results of a nerve conduction test and a MRI that were performed upon Mr. Frommeyer. Dr. Cracco testified that he had no method to allocate Mr. Frommeyer's symptoms as between the April 10, 1998 accident and the later accident. In contrast, Dr Kewalramani had Mr. Frommeyer rate his symptoms before and after the second accident. Lastly, Mr. Frommeyer testified that his symptoms from the April 10, 1998 accident continued until after the second accident. The trial court expressly found Mr. Frommeyer to be credible.

We may not disturb the trial court's finding of fact that Mr.

Frommeyer's symptoms from the April 10, 1998 accident continued for about five months unless that factual finding is clearly wrong-manifestly erroneous. E.g. Stobart v. State, DOTD, 617 So.2d 880 (La. 1993), Rosell v. ESCO, 549 So.2d 840 (La. 1989). So long as the trial court's factual finding is reasonable, we must uphold it, regardless of how we might have found as an original matter. Id.

Based upon the evidentiary record discussed above, we cannot say that the trial court was clearly wrong-manifestly erroneous in finding that Mr. Frommeyer's symptoms from his April 10, 1998 accident continued until about September 10, 1998. Therefore, the judgment of the trial court is affirmed.

AFFIRMED