

NOT DESIGNATED FOR PUBLICATION

PRISCILLA COSTON * **NO. 2010-CA-1757**
VERSUS *
* **COURT OF APPEAL**
GLENN GREEN, ABC *
INSURANCE COMPANY, * **FOURTH CIRCUIT**
EDDIE JORDAN, THE *
DISTRICT ATTORNEY OF * **STATE OF LOUISIANA**
NEW ORLEANS, AND THE * * * * *
DISTRICT ATTORNEY'S
OFFICE OF NEW ORLEANS
AND/OR THE CITY OF NEW
ORLEANS AND/OR THE
STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2005-13112, DIVISION "H-12"
Honorable Michael G. Bagneris, Judge

* * * * *

Judge Patricia Rivet Murray

* * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Terri F. Love, Judge Roland L. Belsome)

Louis A. Gerdes, Jr.
1739 St. Bernard Avenue
New Orleans, LA 70116-2244

COUNSEL FOR PLAINTIFF/APPELLANT PRISCILLA COSTON

Bernard L. Charbonnet, Jr.
LAW OFFICES OF BERNARD L. CHARBONNET, JR.
365 Canal Street
One Canal Place, Suite 1155
New Orleans, LA 70130

COUNSEL FOR DEFENDANT/APPELLEE DISTRICT ATTORNEY'S
OFFICE OF NEW ORLEANS

AFFIRMED

The plaintiff, Priscilla Coston, appeals the trial court's judgment finding no liability on the part of defendants for her injuries. For the reasons that follow, we affirm.

FACTS AND PROCEEDINGS BELOW

On December 9, 2004, Ms. Coston, who was riding a bicycle, was involved in a collision with an Orleans Parish District Attorney's Office vehicle driven by defendant Glen Green. Mr. Green, an employee of the District Attorney's Office, was returning to that office; his friend, the Rev. Marc Napoleon, to whom he was giving a ride, was in the front passenger seat. As Mr. Green was exiting the I-10 West down ramp at Orleans Avenue and proceeding to turn right onto Orleans, he struck Ms. Coston's bicycle, which was proceeding down Orleans Avenue from Claiborne Avenue towards N. Broad Street. Mr. Green stopped his vehicle and waited at the scene with Ms. Coston until an ambulance arrived to take her to the hospital, where she was diagnosed with a right lumbar muscle strain and contusions to her right hip, leg and ankle.

On December 8, 2005, Ms. Coston filed the instant lawsuit against Mr. Green, Eddie Jordan (then the District Attorney of New Orleans), the District Attorney's Office/ City of New Orleans, and related insurer(s) seeking damages for her injuries. Pursuant to a consent judgment, the trial court granted an exception of no cause of action filed by the City of New Orleans and dismissed with prejudice the plaintiff's claims against the City. The remaining defendants asserted a motion for summary judgment, which the trial court denied on January 31, 2008. The matter was tried without a jury on December 12, 2009. The sole witnesses were Ms. Coston, Mr. Green and his passenger, Rev. Napoleon. On December 14, 2009, the trial court rendered judgment for the defendants. In accompanying written Reasons for Judgment, the trial court found the testimony and physical evidence indicated that, at the time of the accident, Mr. Green was properly proceeding through a green light and Ms. Coston was not in his immediate view while he was descending the exit ramp and/or making his legal right turn onto Orleans Avenue. The court therefore concluded the plaintiff had failed to meet her burden of proving Mr. Green was negligent in causing her injuries. Ms. Coston now appeals that judgment.

ISSUE

On appeal, Ms. Coston contends the trial court committed manifest error by failing to find Mr. Green to be fully or at least comparatively at fault for the accident and by failing to award her any damages.

STANDARD OF REVIEW

An appellate court may not set aside a trial court's finding of fact unless it is manifestly erroneous or clearly wrong. *Stobart v. State through Dept. of Transp. and Development*, 617 So.2d 880, 882; *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1089). Under this standard, the issue to be resolved is not whether the trial court was right or wrong, but whether its conclusion was a reasonable one. *Stobart*, 617 So.2d at 882 (citations omitted). Where conflict exists in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review even if the appellate court believes that its own evaluations and inferences are more reasonable than those of the fact finder. *Rosell*, 549 So.2d at 844; *Arceneaux v. Domingue*, 365 So.2d 1330, 1333 (La. 1978). This well-settled principle of review is based not only upon the trial court's better capacity to evaluate live witnesses (as opposed to the appellate court's access to a cold record), but also upon the proper allocation of trial and appellate functions between the respective courts. *Stobart*, 617 So.2d at 883; *Canter v. Koehring*, 283 So.2d 716, 724 (La. 1973).

DISCUSSION

In the instant case, the trial court heard the testimony of three fact witnesses and considered physical evidence including photographs and a diagram of the accident scene that was attached to the police report. In his testimony, Mr. Green maintained that he had the green light to proceed with his turn. He also testified that he had looked to the left when his vehicle was about three car lengths from the

intersection and had seen that the cross traffic was stopped at the light; however, he never saw the bicycle until it crossed in front of his lane of travel, at which point he “locked” his brakes. He testified his vehicle hit the bicycle at an angle, and he did not know where the bicycle had come from. He further testified that after the accident occurred, he stopped and insisted that Ms. Green, whom had been knocked off the bicycle, wait for the ambulance he had called to check her out, even though she did not want to stay.

In contrast, Ms. Coston testified that she had turned onto Orleans from Claiborne Avenue, and that she had the green light to proceed through the intersection with the I-10 ramp. She also indicated that Mr. Green’s vehicle hit her bicycle from behind after he had already completed his turn onto Orleans; she stated that she had turned her head to look back at his car behind her and when she did so, she noticed that he was not looking ahead but had turned his head to the right and was talking to his passenger. Ms. Coston testified that she was thrown from the bicycle and fell to the ground hitting her head, hip and ankle. She described Mr. Green as having been very reassuring after the accident and confirmed that he waited with her for the ambulance.

The third witness was Rev. Marc Napoleon, Mr. Green’s passenger, who testified he was the pastor of the Nazareth Baptist Church as well as a private security officer. He testified that was not talking with Mr. Green at the time the collision occurred. Rather, according to Rev. Napoleon, he had just finished having a conversation with someone else on his cell phone and was laughing at

something that person had said. He did not see the bicycle until the impact occurred. He stated that after the accident, Ms. Coston was laughing, appeared glassy-eyed, and could not sit still, appearing to him to be intoxicated. He corroborated Mr. Green's testimony that Ms. Coston had wanted to leave the scene immediately on her dented bicycle, but that he and Mr. Green had insisted she wait for the ambulance they had called. Finally, he characterized Ms. Coston's testimony that the car had struck the bicycle from the rear as "not logical" because if that had happened, the collision would have occurred on the passenger side of the front of the car (where he himself was sitting), but instead it had occurred on the driver's side of the front.

In the Reasons for Judgment, the trial court characterized this case as "a classic swearing contest." The court noted that although the plaintiff's version of how the accident happened was plausible, the defendants' version was more plausible and was much more consistent with the facts and the physical evidence. For this reason, the court found that the plaintiff had failed to carry her burden of proof to show that Mr. Green was at fault and that his fault "more probably than not" caused and/or contributed to the accident.

We recognize that the trial court's decision in this case was necessarily dependent upon evaluations of credibility it made as the fact finder. Upon review, we cannot say those evaluations are unreasonable in light of the record as a whole. Therefore, we find no manifest error in the trial court's judgment.

CONCLUSION

Accordingly, the judgment of the trial court is affirmed.

AFFIRMED