

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

GRANITE STATE INSURANCE
COMPANY

CIVIL ACTION NO. 08-1958 c/w
09-0065

VERSUS

JUDGE S. MAURICE HICKS, JR.

CLARENCE TYLER

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before this Court is a Motion for Determination of Competency or, Alternatively, Motion for Appointment of Expert to Evaluate Competency [Record Document 37], filed on behalf of the plaintiff, Granite State Insurance Company (“Granite”). Granite seeks a determination of the competency of LeKecia Harris, an alleged material witness, to testify in this matter on the grounds that she is moderately mentally retarded. Defendant opposes this motion. See Record Document 39.

Rule 601 of the Federal Rules of Evidence provides:

Every person is competent to be a witness except as otherwise provided in these rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.

In Louisiana, Article 601 of the Louisiana Code of Evidence provides “[e]very person of proper understanding is competent to be a witness except as otherwise provided by legislation.” Similarly, Louisiana Revised Statute 13:2665 provides that a “competent witness in any civil proceeding in court or before a person having authority to receive evidence shall be a person of proper understanding.”

After a thorough review of the arguments and the evidence submitted by both parties, including Mrs. Harris deposition testimony and the report of Dr. Gary Milford, a psychologist, the Court finds Mrs. Harris is a “person of proper understanding” and appears to have the ability to testify with a reasonable degree of clarity regarding the events surrounding the automobile accident. While Mrs. Harris’s intelligence may be limited, this matter goes to her credibility, not to her competency. See State v. Wilkerson, 448 So.2d 1355, 1361-62 (La.App. 2. 1984) (citing State v. Lockett, 327 So.2d 365, 372 (La. 1976)); see also, State v. Leonard, 543 So.2d 975, 978 (La.App. 3 Cir. 1989).

Accordingly,

IT IS ORDERED that Granite’s Motion for Determination of Competency or, Alternatively, Motion for Appointment of Expert to Evaluate Competency [Record Document 37] be and is hereby **DENIED**.

THUS DONE AND SIGNED in Shreveport, Louisiana on this 7th day of December, 2009.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE