

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0541

MICHELLE ADAMS DUHON

VERSUS

WILLIAM S. DUNCAN AND CYNTHIA DUNCAN

Judgment Rendered: October 29, 2010

AMY
Ⓚ
RHP

Appealed from the
Sixteenth Judicial District Court
In and for the Parish of St. Mary
State of Louisiana
Suit Number 114,147

Honorable Keith R. J. Comeaux, Judge

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Plaintiff/Appellant
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Defendants/Appellees
William S. Duncan,
Cynthia Duncan, and
State Farm Fire and
Casualty Company

* * * * *

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

Plaintiff appeals a trial court judgment finding her sixty-five percent responsible for injuries she suffered as a result of falling off the elevated porch of a cabin located on land in the Atchafalaya Basin. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

In the spring of 2005, Michelle Adams Duhon, now Romero, along with her two children and then fiancé, Andrew Romero, visited a camp owned by Cynthia and William S. Duncan in the Atchafalaya Basin in St. Mary Parish.¹ The camp was only accessible by boat. Mrs. Romero arrived at the camp just as it was beginning to turn dark and observed that the raised-frame cabin in which they would be staying was elevated above the ground on pilings, and the steps ascending to the porch of the cabin lacked handrails. Moreover, the steps were only partially aligned to the opening on the porch that was framed as a doorway. The alignment of the steps was such that a person ascending the steps would have to approach towards the left side of the doorway (descending, a person would have to exit on the right side of the doorway), because the steps only extended in front of one-half of the doorway opening. The other half of the doorway faced empty space, as no portion of the step extended in front of that portion of the opening. Later that day, after it had turned dark, Mrs. Romero went through the opening on the side of the doorway where the steps did not extend and fell, sustaining several injuries.

As a result of her fall, Mrs. Romero sued the Duncans and the case eventually proceeded to a bench trial. After considering the testimony and other evidence submitted by the parties, the trial court rendered judgment in favor of Mrs. Romero,

¹ Throughout this opinion, the structure referred to as a "camp" is actually a cabin located on land that the Duncans leased from the State of Louisiana.

awarding her general damages in the amount of \$30,000 and special damages in the amount of \$13,800.16. However, the trial court reduced the amounts awarded to Mrs. Romero by 65 percent, finding her to be that degree at fault in causing the accident. It is from this judgment that Mrs. Romero appeals.

DISCUSSION

In this appeal, Mrs. Romero alleges that the trial court failed to use the factors enunciated in Watson v. State Farm Fire and Casualty Insurance Company, 469 So.2d 967, 974 (La. 1985), in allocating fault in this case, and, therefore, committed legal error. We find no merit in this contention.

While the trial court did not specifically refer to the Watson factors in comparing the fault of the parties, a review of the trial court's reasons for judgment reveal that the trial court clearly considered the principles outlined in Watson in allocating fault. Thus, as the law provides that we must give great deference to the allocation of fault as determined by the trier of fact, we cannot disturb the trial court's allocation of fault on appeal absent a finding that the allocation is clearly wrong. See Fontenot v. Patterson Insurance, 09-0669, p. 22 (La. 10/20/09), 23 So. 3d 259, 274.

An appellate court's determination of whether the trial court was clearly wrong in its allocation of fault is guided by the factors set forth in Watson. Duncan v. Kansas City Southern Railway Co., 00-0066, p. 11 (La. 10/30/00), 773 So. 2d 670, 681; see also Estate of Francis v. City of Rayne, 07-359, p. 16 (La. App. 3d Cir. 10/3/07), 966 So. 2d 1105, 1115, writ denied, 07-2119 (La. 2/15/08), 976 So. 2d 176. In Watson, the Court found that "various factors may influence the degree of fault assigned," including:

- (1) whether the conduct resulted from inadvertence or involved an awareness of the danger, (2) how great a risk was created by the conduct, (3) the significance of what was sought by the conduct, (4) the capacities of the actor, whether superior or inferior, and (5) any

extenuating circumstances which might require the actor to proceed in haste, without proper thought. And, of course, as evidenced by concepts such as last clear chance, the relationship between the fault/negligent conduct and the harm to the plaintiff are considerations in determining the relative fault of the parties.

Watson, 469 So. 2d at 974.

In making its assessment of fault, the trial court found:

Michelle's own [action] of leaving her dog in the entry way of the camp was the primary cause of the accident. She would not have tripped if not for the dog in the entry way. However, had the defendants constructed a porch rail or handrails on the stairs, it is possible that she could have grabbed a rail to balance herself or the rail could have stopped plaintiff's fall off the porch and therefore, her injuries would have been less traumatic.

We have examined the trial court's allocation of fault in light of the Watson factors set forth above. Based on the facts of this case, we do not find the allocation of fault constituted manifest error. Considering the record in its entirety, we are satisfied that it reasonably supports the conclusion that Mrs. Romero was 65 percent at fault in causing the accident. This assignment of error is without merit.

CONCLUSION

For these reasons, the trial court's judgment is affirmed. Appeal costs are assessed to the appellant, Michelle Adams Duhon Romero.

AFFIRMED.