NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 0253

PAULA TURNER

VERSUS

DENNIS A. CHANEY &
AMERICAN ALTERNATIVE INSURANCE COMPANY

Judgment Rendered: November 2, 2012.

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On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Trial Court No. 577, 534

The Honorable R. Michael Caldwell, Judge Presiding

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BEFORE: CARTER, C.J., GUIDRY AND GAIDRY, JJ.

Guidry, J. concurs.

CARTER, C.J.

Paula Turner appeals a judgment dismissing her claims for personal injury damages against the driver of an emergency vehicle and his insurer, Dennis A. Chaney and American Alternative Insurance Corporation, after a finding that Mr. Chaney was afforded immunity pursuant to Louisiana Revised Statutes Section 32:24, and that even if the matter involved ordinary negligence, the plaintiff was responsible for the majority of the fault in causing the motor vehicle accident. We affirm.

FACTS AND PROCEDURAL HISTORY

On the afternoon of April 25, 2008, the Pride Volunteer Fire Department responded to an emergency call at an address on Pride-Port Hudson Road located in East Baton Rouge Parish. Dennis A. Chaney, a firefighter, was driving a rescue unit owned by the city of Pride described as a Ford F-450, with Kenneth Seale, a first responder, riding as a passenger. The unit was equipped with special lighting and a backup alarm, both of which were activated at the time of the accident.

En route to the home of Luther Perkins, the rescue unit proceeded north on Liberty Road. As the rescue unit approached Paula Turner, who was also proceeding north on Liberty Road, she pulled her vehicle over as far to the right as possible to let the rescue unit pass. Both the rescue unit and Ms. Turner turned left onto Pride-Port Hudson Road, which is a rural, two-lane highway. The rescue unit stopped somewhere near the u-shaped driveway of the Perkins's home. Ms. Turner stopped her vehicle near one of the two entrances to the u-shaped driveway at a disputed distance behind the rescue unit. The rescue unit began backing up because, Mr. Chaney

explained, he had passed the driveway for the emergency call, and he intended to turn up one of the entrances to the driveway. As the rescue unit backed up, it collided with Ms. Turner's stopped vehicle.

Ms. Turner filed the instant suit for personal injury damages against Mr. Chaney and his insurer. Mr. Chaney claimed immunity under Louisiana Revised Statutes Section 32:24 and generally denied liability for Ms. Turner's alleged injuries. At the conclusion of the bench trial, the court found that Mr. Chaney was responding to an emergency call at the time of the accident and that the immunity statute applied to the act of backing up the rescue unit in this matter. The court also noted that Louisiana Revised Statutes Section 32:286 requires a civilian vehicle to stay at least 500 feet behind moving emergency vehicles and prohibits a civilian vehicle from driving or parking within a block of an emergency vehicle stopped in answer to an official call. Finally, the court noted it would find little fault on the part of Mr. Chaney and substantial fault on the part of Ms. Turner. Accordingly, on September 21, 2011, the trial court signed a judgment in favor of Mr. Chaney and his insurer, dismissing Ms. Turner's claims against them with prejudice. The trial court denied a motion for new trial stating that the original decision was based more on Mr. Chaney's lack of fault and Ms. Turner's overwhelming fault than upon the immunity statute. Ms. Turner now appeals.

STANDARD OF REVIEW

It is well-settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is conflict in the testimony, reasonable

evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. *Rosell v. ESCO,* 549 So. 2d 840, 844 (La. 1989). Where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous. *Stobart v. State, Department of Transportation and Development,* 617 So. 2d 880, 883 (La. 1993). Moreover, a trier of fact is vested with much discretion in its allocation of fault. *See Clement v. Frey,* 95-1119 (La. 1/16/96), 666 So. 2d 607, 609-10. A trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Therefore, an appellate court should only disturb a trial court's allocation of fault when it is manifestly erroneous. *See Duzon v. Stallworth,* 01-1187 (La. App. 1 Cir. 12/11/02), 866 So. 2d 837, 862, *writs denied,* 03-0589, 03-0605 (La. 5/2/03), 842 So. 2d 1101, 1110. Accordingly, we review the record before us in accordance with these standards.

APPLICATION OF LEGAL PRINCIPLES

Louisiana Revised Statutes Section 32:24 sets forth certain privileges and limited immunity for drivers of emergency vehicles, in pertinent part:

> A. The driver or rider of an authorized emergency vehicle, when responding to an emergency call, ... may exercise the privileges set forth in this Section, but subject to the conditions herein stated.
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> B. The driver or rider of an authorized emergency vehicle may do any of the following:
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> * * *
>
> (4) Disregard regulations governing the direction of movement or turning in specified directions.

> C. The exceptions herein granted to an authorized emergency vehicle shall apply only when such vehicle or bicycle is making use of audible or visual signals, including the use of a peace officer cycle rider's whistle, sufficient to warn motorists of their approach, except that a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.
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> D. The foregoing provisions shall not relieve the driver or rider of an authorized vehicle from the duty to drive or ride with due regard for the safety of all persons, nor shall such provisions protect the driver or rider from the consequences of his reckless disregard for the safety of others.

As explained in *Lenard v. Dilley,* 01-1522 (La. 1/15/02), 805 So. 2d 175, 180, a driver of an emergency vehicle whose actions fall under Section 32:42 will be liable only if his conduct constitutes reckless disregard for the safety of others and thus rises to the level of gross negligence. For a case to fall under this standard, an emergency vehicle must be authorized and: (1) the driver must be responding to an emergency call; (2) the accident must arise out of one of the listed driver actions, including moving against the normal flow of traffic; and (3) the driver must make use of audible or visual signals sufficient to warn motorists of their approach. *Id.* If the emergency vehicle driver's conduct does not fit the statute, his actions must be gauged by a standard of ordinary negligence. *Id.*

Here, it is undisputed that Mr. Chaney was responding to an emergency call, and that at the time he backed the rescue unit he was using visual signals, as his lights were flashing, and audible signals, as an alarm sounded. Plaintiff argues that the act of backing up an emergency vehicle falls outside the scope of La. Rev. Stat. Ann. § 32:24(B)(4), which permits a driver of an authorized emergency vehicle, who is responding to an emergency call, to disregard regulations governing the direction of

movement for vehicles. Ms. Turner argues that this exception is limited to turning the wrong way down a one way street or passing in an oncoming lane but does not contemplate the action of backing.

The function of statutory interpretation and the construction to be given to legislative acts rests with the judicial branch of government. *Rougeau v. Hyundai Motor America,* 01-1182 (La. 1/15/02), 805 So. 2d 147, 151. The starting point in the interpretation of any statute is the language of the statute itself. *Fontenot v. Reddell Vidrine Water Dist.,* 02-0439 (La. 1/14/03), 836 So. 2d 14, 20. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written, and no further interpretation may b e made in search of legislative intent. *Id.* A statute shall be construed to give meaning to the plain language of the statute, and courts may not extend statutes to situations that the legislature never intended to be covered. *Durnin Chrysler-Plymouth, Inc. v. Jones*, 01-0810 (La. App. 1 Cir. 5/10/02), 818 So.2d 867, 870.

When two or more interpretations may be given a law, the interpretation which is reasonable and practical is preferred to that which makes the law ridiculous or meaningless. *Rabalais v. Nash,* 06-0999 (La. 3/9/07), 952 So. 2d 653, 662. In *Rabalais,* the Louisiana Supreme Court noted that "direction of movement" is not defined by Section 32:24(B)(4). *Id.* Just as in *Rabalais,* "direction of movement" is the point of contention at issue in this matter. After reviewing the "common and approved usage" of "movement," *Rabalais* held that the driver of an emergency vehicle driving down a center turn lane did meet the definition of "direction of movement." Similarly, although backing is not specifically listed by Section 32:24(B)(4),

we agree with the trial court's assessment that backing is a "direction of movement." The plaintiff would have this court allow an emergency vehicle go down the wrong way on a one way street or drive in the oncoming lane of traffic to get to an emergency, but not back a few feet to turn into a driveway while responding to an emergency without being subject to ordinary negligence. The legislature did not list each and every "direction of movement" but used the broad terms so as to include many types of maneuvers an emergency vehicle may have to make during an emergency response. Thus the immunity statute applies, meaning that liability is limited to damages caused by "reckless disregard for the safety of others."

While looking for the particular house in response to the emergency call, Mr. Chaney passed up the u-shaped driveway to some degree. Both Mr. Chaney and his passenger, Mr. Seale, testified that the rescue unit passed up the driveway by a few feet. Mr. Perkins, who was standing on his porch attempting to get the attention of the rescue unit, testified that the unit passed the driveway by a few feet or inches. Ms. Turner, while stopped near one entrance of the driveway, testified that the rescue unit was stopped at least 87 feet in front of her vehicle. Regardless as to the distance, the trial court found that the flashing lights and alarm sounding on a rescue unit were sufficient to warn Ms. Turner. The court also found Ms. Turner had time to move out of the way and did not, instead relying upon the assumption that Mr. Chaney was going to back up and turn into the other entrance to the u-shaped driveway. None of Mr. Chaney's actions, however, rose to the level of gross negligence or reckless disregard for the safety of others.

The trial court noted that varying statutes regarding the following and passing of emergency vehicles and regarding immunity are in place "[b]ecause emergency vehicles, because of the nature of their response, that is, there is an emergency, may make unusual, unexpected, and sudden movements ... These people are responding to emergencies. They should be provided some leeway. They should be allowed to make maneuvers that are necessary for what they need to do." The Louisiana Supreme Court has recognized a "high social value and premium placed on protection and rescue efforts." *Lenard,* 805 So. 2d at 180.

As the trial court noted, there were many ways Ms. Turner could have avoided the accident, but she chose to leave her car where it was stopped when an emergency vehicle with lights flashing and an alarm sounding attempted to back up to turn into the driveway of a person in need of immediate assistance. The trial court found that the actions of Mr. Chaney did not amount to reckless disregard. The trial court's factual determination that Mr. Chaney did not act with reckless disregard for Ms. Turner's safety is clearly supported by the record and may not be disturbed on appeal.

Because we find that Section 32:24 applies to the actions of Mr. Chaney, we do not need to determine if his actions constituted ordinary negligence. All of the remaining errors brought by Ms. Turner involve the allocation of fault and damages, which are mooted by this decision. Although, in denying the motion for a new trial, the trial court stated that its original decision was based on the overwhelming fault of the Ms. Turner rather than Section 32:24, this court finds that Section 32:24 applies to the facts before the court and that a determination as to fault is unnecessary.

Further, it is well-settled that a district court's oral or written reasons for judgment form no part of the judgment, and that appellate courts review judgments and not reasons for judgment. *Bellard v. American Cent. Ins. Co.*, 07-1335, 07-1399 (La. 4/18/08), 980 So.2d 654, 671. The judgment in this matter dismissed Ms. Turner's claims against Mr. Chaney and his insurer. Having reviewed the record and determined that Section 32:34 applies to the facts of this case, we find no error in the trial court's judgment dismissing Ms. Turner's claims with prejudice.

CONCLUSION

For the foregoing reasons, the trial court's judgment is affirmed. All costs of this appeal are assessed to Paula Turner.

AFFIRMED.