

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 0528

MARTHA AND LEVY SPEARS

VERSUS

KENYA RABY, XYZ INSURANCE COMPANY, CITY OF BAKER,
EAST BATON ROUGE PARISH, AND ALLSTATE INSURANCE
COMPANY

Judgment Rendered: FEB 18 2014

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 578,220

Honorable Trudy White, Judge Presiding

Kris A. Perret
Baton Rouge, LA

Attorney for Plaintiffs-Appellees,
Martha and Levy Spears

Richard B. Nevils
Gwendolyn K. Brown
Baton Rouge, LA

Attorneys for Defendant-Appellant,
City of Baton Rouge/Parish of East Baton
Rouge

Jack W. Rifle
Baton Rouge, LA

Attorney for Defendant-Appellee
Allstate Insurance Company

J. Theriot CONCUR

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

HIGGINBOTHAM, J.

Defendant, the City-Parish of East Baton Rouge, appeals a judgment awarding damages to plaintiffs, Martha and Levy Spears, for injuries Ms. Spears sustained from an automobile accident. Finding that the trial judge was clearly wrong in its allocation of fault, we amend the judgment in part, and as amended, affirm.

FACTS AND PROCEDURAL HISTORY

On May 11, 2008, Martha Spears was leaving her subdivision to do some shopping when she was involved in an automobile accident at the intersection of Middlewood Drive and Thomas Road in Baker, Louisiana. Ms. Spears was traveling in the right lane of Middlewood Drive when she stopped at the stop sign located at the intersection with Thomas Road. A barricade was placed in the left lane of Middlewood Drive by the City-Parish of East Baton Rouge for construction being done on a bridge ahead. According to Ms. Spears, a Suburban was attempting to turn right onto Middlewood Drive from Thomas Road but was prevented from getting past Ms. Spears because of the placement of the barricade. Ms. Spears was unable to see around the stopped suburban, so she eased into the intersection and was struck by an oncoming vehicle driven by Ms. Kenya Raby.

As a result of the accident, Ms. Spears suffered injury to her shoulder which required surgery. Ms. Spears and her husband, Mr. Levy Spears, filed suit in the Nineteenth Judicial District Court against Ms. Kenya Raby, the City-Parish of East Baton Rouge, the City of Baker, and the Speares' UM carrier, Allstate Insurance Company.¹

Prior to trial, the plaintiffs stipulated that the damages were less than fifty-thousand dollars exclusive of interest and court costs. The matter proceeded to a bench trial, after which the trial court assessed 100% of the fault to the City-Parish

¹ The City of Baker was dismissed by an order signed on September 1, 2010.

of East Baton Rouge, and rendered judgment in favor of Ms. Spears in the amount of \$54,825.73 for general and special damages and \$5,000.00 in favor of Mr. Spears for loss of consortium.

It is from this judgment that the City-Parish appeals, asserting that the trial court erred in finding negligence on the part of the City-Parish. Alternatively, the City-Parish contends that the trial court erred in its allocation of fault. Finally, the City-Parish contends that the trial court erred in awarding damages over the amount stipulated to by the plaintiffs.

LAW AND ANALYSIS

I. Negligence and Allocation of Fault

A trial court's findings of fact will not be disturbed on appeal unless the reviewing court finds that they are clearly wrong or manifestly erroneous. **Stobart v. State through Department of Transportation and Development**, 617 So.2d 880 (La. 1993); **Holland v. State Farm Mutual Automobile Insurance Company**, 42,753 (La. App. 2d Cir. 12/05/07), 973 So.2d 134. To reverse a fact finder's determination, the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court and that the record establishes that the finding is clearly wrong. **Stobart, supra**. If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse, even though convinced that, had it been sitting as the trier of fact, it would have weighed the evidence differently. **Stobart, supra**. As with other factual determinations, the fact finder is vested with much discretion in its allocation of fault. Therefore, an appellate court should only disturb the fact finder's allocation of fault when it is clearly wrong or manifestly erroneous. See **Hebert v. Rapides Parish Police Jury**, 06-2001, 06-2164 (La. 4/11/07), 974 So.2d 635, 654-56 (on rehearing). Only after making a determination that the trier of fact's apportionment of fault is clearly wrong can an appellate court disturb the

award, and then only to the extent of lowering it or raising it to the highest or lowest point respectively which is reasonably within the trial court's discretion. **Id.**

Although a reasonable factual basis exists for finding negligence on the part of the City-Parish, our review of the evidence and the testimony leads us to the conclusion that the trial court was clearly wrong in its determination that the City-Parish was one-hundred percent at fault. In this case, the trial court determined that but for the placement of the barricade by the City-Parish at the time of the accident, Ms. Spears would have had a proper and safe view of the oncoming traffic, and the accident would not have occurred. Further, the trial court determined that no credible evidence was offered to prove that the placement of the barricade in the roadway was in accordance with the standard pursuant to the Manual for Uniform Traffic Control Devices (MUTCD).

At trial, Ms. Spears testified that there was a Suburban turning onto Middlewood Drive that was unable to get past the barricade. This alleged Suburban was not mentioned in Ms. Spears's petition for damages or the accident report. She also did not discuss the Suburban with the police officer investigating the accident. Her petition for damages states that "the visual obscurement created by the barricades and road construction signage" forced her to pull her vehicle forward. The barricade in the picture introduced into evidence is short and certainly would not have obstructed Ms. Spears's view.

Mr. Audrey James Ferguson, a civil engineer for the City-Parish, testified that it appeared from the photographs that the barricade was farther away from the north edge of Thomas Road than 30 feet and complied with MUTCD. His testimony was uncontradicted.

During the trial, Ms. Spears testified that there was a vehicle behind her; therefore, she could not back up. This was the first time Ms. Spears mentioned a vehicle behind her. She did not discuss it in her petition or in her deposition.

Ms. Spears admitted that when she eased into the intersection she could not see anything. Ms. Spears testified that she “probably eased out a little bit too far.” Ms. Spears had a duty to stop at the intersection and not enter the intersection “unless and until such movement [could] be made with reasonable safety.” La. R.S. 32:104(A).

Brian Jackson, a Baker police officer who investigated the accident, noted in his report that Ms. Spears failed to yield. Considering Ms. Spears’ admission that she proceeded into the intersection without knowing if there were any approaching vehicles and eased out too far, some percentage of fault must be assessed to her.

Based upon our review of the record, including the discrepancies in Ms. Spears’ testimony, her admission that she pulled out without being able to see, and the testimony of Mr. Ferguson and Officer Jackson, we conclude that a reasonable factual basis does not exist in the record to support the trial court’s finding that the City-Parish was one-hundred percent at fault. That finding was clearly wrong. Accordingly, we must reallocate the comparative fault of the parties to the lowest point which was reasonably within the trial court’s discretion.

In allocating percentages of comparative fault, a court must consider the nature of the conduct of all parties and the extent of the causal relationship between the conduct and the damages claimed. See **Watson v. State Farm Fire and Casualty Insurance Company**, 469 So.2d 967, 974 (La. 1985). In assessing the nature of the parties’ conduct, various factors may influence the degree of fault, 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. **Clement v. Frey**, 95-1119 (La. 1/16/96), 666 So.2d 607, 611.

Considering these factors with the circumstances in this case, we have determined that eighty percent of the fault is the lowest percentage of fault that the trial court reasonably could have allocated to Ms. Spears. The judgment of the trial court will be amended to reflect that eighty percent of the fault should be allocated to Ms. Spears.

II. Damages

The City-Parish contends that the parties stipulated that the damages were not to exceed \$50,000.00 total including damages to Mr. Spears and Ms. Spears² and that the additional \$5,000.00 awarded to Mr. Spears was in excess of the stipulated amount. Ms. Spears contends that the amount was limited to \$50,000.00 per plaintiff and the damages awarded were within the stipulated amount.

The stipulation states "Martha Spears and Levy Spears stipulate...That the plaintiffs' damages are less than Fifty Thousand Dollars (\$50,000.00), exclusive of interest and court costs." The clear language of the stipulation contemplates an award of \$50,000.00 inclusive of both parties. Therefore, the judgment of the trial court is amended to reduce the total amount of damages awarded to Mr. and Mrs. Spears to \$50,000.00.

CONCLUSION

For the foregoing reasons, the trial court judgment is amended to decrease the allocation of fault to the City-Parish from one-hundred percent to twenty percent. Further, the trial court judgment is amended to decrease the total damages award to both plaintiffs to \$50,000.00 in accordance with the stipulation. After reduction of total damages to \$50,000.00 per the stipulation of the parties and reduction for Ms. Spears' eighty percent comparative fault, Mr. and Ms. Spears are entitled to a judgment against the City-Parish of East Baton Rouge in the amount

² The parties agreed that Ms. Spears's damages were limited to \$50,000.00 per the stipulation and that any amount awarded in excess of that should be reduced in accordance with the stipulation.

of \$10,000.00 total, with \$9,160.00 to be awarded to Ms. Spears and \$840.00 to be awarded to Mr. Spears.³ Costs of this appeal in the amount of \$1,118.50 are to be divided between the parties, with the City-Parish of East Baton Rouge to pay \$559.25 and Mr. and Mrs. Spears to pay \$559.25.

AMENDED IN PART, AND AS AMENDED AFFIRMED.

³ The amount to be awarded to each plaintiff was determined by using the same percentages that the trial court used in awarding damages to the parties.