

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 2033

TERRY L. WILLIAMS

VERSUS

CAPITOL TRUCKS, L.L.C., SHEFIELD C. SPRING AND
TOWER INSURANCE COMPANY

Judgment Rendered: MAY - 2 2014

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 599457

HONORABLE WILLIAM A. MORVANT, JUDGE

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Capitol Trucks, L.L.C., Sheffield C.
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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

On February 23, 2010, around 7:00 a.m., Terry L. Williams was driving a 1994 Ford Astro van, owned by Gloria Volter, in a southerly direction on Airline Highway in congested traffic when his vehicle was hit from behind by a 2009 GMC Yukon driven by Sheffield C. Spring. Mr. Williams later filed suit against Mr. Spring, Capitol Trucks, L.L.C. (Mr. Spring's employer and the owner of the truck), and Capitol Trucks, L.L.C.'s liability and indemnity insurer, Tower Insurance Agency. Mr. Williams asserted that he received injuries to his head, neck, back, and leg. Mr. Williams prayed for damages for past, present, and future physical and mental pain and suffering, medical expenses, loss of enjoyment of life, inconvenience, lost wages, and lost earning capacity. The defendants answered the petition and raised affirmative defenses.

After a bench trial, the district court determined that Mr. Spring was 100 percent at fault for the accident. The district court found that Mr. Williams exaggerated the severity of the impact and was not a credible witness, that Mr. Williams had a pre-existing herniated disc that was not caused by the accident, and that the accident merely caused a soft-tissue injury. The district court awarded Mr. Williams general damages of \$17,500.00 and special damages totaling \$3,738.72. Mr. Williams appealed that judgment.

Mr. Williams asserts that the district court had no factual basis to determine that he was not a credible witness and to find that he did not suffer any disability as a result of the aggravation of a pre-existing condition. He maintains that the district court erred in finding that the treatment provided by three different doctors was not related to the aggravation of his pre-existing condition; that the district court erred in not giving more weight to the testimony of his three treating physicians; and that the district court abused its discretion in failing to assess the defendants with a portion of his court costs.

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." **Stobart v. State through Dept. of Trans. And Development**, 617 So.2d 880, 882 (La. 1993). Where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Moreover, in applying this standard, a trial court's credibility determinations are entitled to great deference. **In re Succession of Wagner**, 2008-0212 (La. App. 1 Cir. 8/8/08), 993 So.2d 709, 717.

After a thorough review and evaluation of the entire record, we find no manifest error in the district court's reasonable conclusions regarding credibility, causation and the extent of Mr. Williams' injuries sustained in the accident. The district court considered the evidence, including many inconsistent statements by Mr. Williams, and the gaps of time in treatment, as well as the expert medical opinions. The district court's choice between the permissible views of the evidence is not manifestly erroneous. See Rosell, 549 So.2d at 844.

Except as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable. La. C.C.P. art. 1920. As the district court found that the treatment provided by Dr. Kelly Scrantz, Dr. Anthony Ioppolo, and Dr. Joseph Turnipseed was unrelated to the accident, we find no abuse of discretion by the district court in excluding their deposition costs from the court costs assessed against the defendants. See State, Dept. of Trans. And Development v. Restructure Partners, L.L.C., 07-1745 (La. App. 1 Cir. 3/26/08), 985 So.2d 212, writ denied, 08-1269 (La. 9/19/08) 992 So.2d 937.

For the foregoing reasons, the district court judgment is affirmed.¹ Costs are assessed against Terry L. Williams. This memorandum opinion is issued in accordance with the Uniform Rules, Courts of Appeal, Rule 2-16.1.B.

AFFIRMED.

¹ Defendants raised the issue of recovery of damages for frivolous appeal in their brief. The defendants did not file an independent appeal or an answer to Mr. Williams' appeal to assert their claim to such damages. Thus, their claims for damages for frivolous appeal are not properly before this court and are denied. See **Jackson Nat. Life Ins. Co. v. Kennedy-Fagan**, 2003-0054 (La. App. 1 Cir. 2/6/04), 873 So.2d 44, 51, writ denied, 2004-0600 (La. 4/23/04) 870 So.2d 307.