

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0139

MAE LEE RUCKER, BENNY S. M. RUCKER, MARCUS I. L.
RUCKER, LATRICE RUCKER YOUNG, KIMBERLYN RUCKER
BELONE, AND ALBERT T. K. RUCKER

VERSUS

PARISH OF ASCENSION

DATE OF JUDGMENT: SEP 21 2018

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
NUMBER 110,187, DIVISION C, PARISH OF ASCENSION
STATE OF LOUISIANA

HONORABLE KATHERINE TESS STROMBERG, JUDGE

Irving J. Warshauer
Michael J. Ecuyer
Kathy A. Rito
M. Palmer Lambert
New Orleans, Louisiana

Counsel for Plaintiffs-Appellees
Mae Lee Rucker, Kimberlyn Rucker
Belone, and Albert T. K. Rucker

W. Brett Mason
Baton Rouge, Louisiana

Counsel for Intervenor-Appellee
Dolese Bros. Co.

Jeffrey P. Diez
Gonzales, Louisiana

Counsel for Defendant-Appellant
Parish of Ascension

Ernest P. Gieger, Jr.
Rachel G. Webre
Tara E. Clement
New Orleans, Louisiana

Counsel for Defendants-Appellants
Parish of Ascension and Berkley
Insurance Company

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: AFFIRMED.

CHUTZ, J.

This appeal is taken from a judgment that despite the fact that the defendants, the Parish of Ascension and Berkley Insurance Company, prevailed at trial, denied the defendants' motion to tax costs against the plaintiffs and the intervenor. The underlying suit was brought by Mae Lee Rucker, Kimberlyn Rucker Belone, and Albert T.K. Rucker, Jr.¹ ("the plaintiffs"), seeking damages for the wrongful death of their husband and father, respectively. Mr. Rucker was killed in Ascension Parish in a single-vehicle accident, while he was working in the course and scope of his employment with Dolese Brothers Company ("Dolese"). The fatal accident occurred when the cement truck Mr. Rucker was driving went partially off the roadway onto the right shoulder. Upon reentering the roadway, Mr. Rucker lost control of the truck, which overturned and ultimately came to rest in a ditch. The plaintiffs filed suit against the Parish of Ascension and its insurer, Berkley Insurance Company (collectively, "the defendants"), alleging the accident was caused by the defective and unreasonably dangerous condition of the Parish road and its adjacent right shoulder. Additionally, Dolese filed an intervention, seeking recovery for the economic and property damages it allegedly sustained as a result of the accident.

The trial court rendered judgment on August 31, 2017, in favor of the defendants, dismissing the plaintiffs' and Dolese's claims on the basis that the Parish had no actual or constructive notice of the shoulder edge drop offs.² Subsequently, on October 18, 2017, the defendants filed a "Motion to Tax Costs Against Plaintiffs And Intervenor" in the amount of \$18,018.82, consisting of costs and expert fees. Following a hearing on November 17, 2017, the trial court orally

¹ Benny S.M. Rucker, Marcus I.L. Rucker, and Latrice Rucker Young, were originally also named as plaintiffs, but were dismissed from this matter pursuant to an unopposed motion to dismiss.

² In a separate appeal, also decided this date, the plaintiffs and Dolese each appealed the August 31, 2017 judgment dismissing their claims. *See Rucker v. Parish of Ascension*, 17-1754 (La. App. 1st Cir. 9/21/18) (unpublished).

denied the motion to tax costs against the plaintiffs and Dolese, signing a written judgment in accordance with that ruling on December 12, 2017. The defendants now appeal, alleging in a single assignment of error that the trial court abused its discretion in refusing to cast all costs and expert fees against the plaintiffs and Dolese. The defendants argue the trial court abused its discretion in ignoring the mandatory language of La. C.C.P. art. 1920, which requires that costs “shall” be paid to the prevailing party by the party cast in judgment.

Louisiana Code of Civil Procedure article 1920 provides that “[u]nless the judgment provides otherwise, costs shall be paid by the party cast, and may be taxed by a rule to show cause.” (Emphasis added.) Contrary to the defendants’ contentions, Article 1920 does not mandate that all costs be taxed against the party cast in judgment in every instance. Even though Article 1920 employs the term “shall,” the article must be read in its entirety, including the qualifying phrase, “[u]nless the judgment provides otherwise.” Under the jurisprudence, while the general rule is that the party cast in judgment should be assessed with court costs, the trial court may assess costs in any equitable manner and against any party in any proportion it deems equitable, even against the party who prevailed on the merits. *Bourg v. Cajun Cutters, Inc.*, 14-0210 (La. App. 1st Cir. 5/7/15), 174 So.3d 56, 73-74, writs denied, 15-1306, 15-1253 (La. 4/4/16), 190 So.3d 1201 and 1205; *Brown v. Mathew*, 13-1974, pp. 13-14 (La. App. 1st Cir. 12/30/14) (unpublished); *Anglin v. Anglin*, 09-0844 (La. App. 1st Cir. 12/16/09), 30 So.3d 746, 753-54. Moreover, upon review, an appellate court will not disturb the trial court’s fixing of costs absent an abuse of the sound discretion afforded the trial court. *Bourg*, 174 So.3d at 74; *Townes v. Liberty Mutual Insurance Company*, 09-2110 (La. App. 1st Cir. 5/7/10), 41 So.3d 520, 531.

In denying the defendants’ motion to tax costs against the plaintiffs and Dolese, the trial court stated:

I have listened to the arguments and reviewed the information. The court is going to deny the motion to award costs and expert fees. This was a hard fought battle. It wasn't a frivolous case. We know that these people don't have a lot of money. Both sides expended a lot of funds as far as getting ready for this, but that's because it needed to come to trial and everybody needed to put their best case forward. I think in order to be fair and equitable, that is the reason why I'm going to make the decision that I am. I'm going to deny the motion to award costs and expert fees.

The trial court has great discretion in matters relating to the assessment of costs. *Harris v. City of Baton Rouge*, 16-0163 (La. App. 1st Cir. 12/22/16), 209 So.3d 405, 408, writ denied, 17-00155 (La. 3/31/17), 217 So.3d 360; *Carcamo v. Raw Bar, Inc.*, 12-294 (La. App. 5th Cir. 11/27/12), 105 So.3d 936, 939. Considering the circumstances of this case, including the substantial economic losses sustained by the plaintiffs (including loss of income and funeral expenses) and Dolese (including loss of the cement truck and its load, incidental expenses, and workers' compensation benefits paid), we find no abuse of discretion in the trial court's refusal, in the interests of fairness and equity, to tax the defendants' costs against the plaintiffs and Dolese. See *Townes*, 41 So.3d at 531-32; *Brown*, 13-1974 at pp. 13-14. Accordingly, the judgment of the trial court is affirmed. All costs of this appeal are to be paid by the defendants-appellants. We issue this memorandum opinion in accordance with Uniform Rules—Courts of Appeal, Rule 2–16.1(B).

AFFIRMED.