

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2020 CA 0361

WAY-JO, L.L.C., WAYNE HAGAN AND JOHN BANKSTON

VERSUS

HARVEY ANTHONY

Judgment Rendered: DEC 30 2020

On Appeal from the
Twenty First Judicial District Court
Parish of St. Helena, State of Louisiana
Docket No. 22244

The Honorable Robert H. Morrison, III, Judge Presiding

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BEFORE: HIGGINBOTHAM, THERIOT, AND WOLFE, JJ.

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WOLFE, J.

Plaintiffs-appellants, Way-Jo, L.L.C. (“Way-Jo”), John K. Bankston (“Bankston”), and Wayne I. Hagan (“Hagan”), appeal the October 22, 2019 judgment of the trial court rendered in favor of defendant-appellee, Harvey Anthony (“Anthony”), dismissing appellants’ demands with prejudice. For the following reasons, we reverse the trial court’s October 22, 2019 judgment to the extent it dismissed appellants’ malicious prosecution claim and remand the matter to the trial court for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL BACKGROUND

This appeal arises from a conveyance involving immovable property located in Greensburg, Louisiana, the related mineral rights, and this court’s prior decision in **Estate of Riggs v. Way-Jo, L.L.C.**, 2011-1651 (La. App. 1st Cir. 12/28/12), 2012 WL 6737835 (unpublished), *writ denied*, 2013-0239 (La. 4/1/13), 110 So.3d 583, and *writ denied*, 2013-0246 (La. 4/1/13), 110 So.3d 583, and *writ denied*, 2013-0253 (La. 4/1/13), 110 So.3d 587.

At some point in late 1998, Robert E. Riggs (“Riggs”) suffered a stroke. During the months after his stroke, the evidence reflects that Riggs had a caregiver, was in a wheelchair due to partial paralysis, and had difficulty holding a pen. It is undisputed that Riggs remained mentally competent to handle his affairs.

On February 2, 1999, Riggs executed a last will and testament naming Anthony, who worked for him, as his sole legatee and executor of his estate. Due to financial constraints, Riggs offered to sell a tract of immovable property he owned in Greensburg, Louisiana (the “Greensburg property”) to Bankston, who had been Riggs’ friend since childhood. Bankston told Riggs he could pay \$600.00 per acre for the property, which was approximately 331 acres. The final purchase price was \$198,600.00. According to Bankston, Riggs indicated he wanted to reserve the mineral rights for twelve months after his death and then

they would transfer to Bankston. However, according to Anthony, Riggs did not want to sell the mineral rights and intended to keep to himself all mineral interest in the oil and gas producing property.

Because he lacked sufficient funds, Bankston asked Hagan to help finance the purchase of the Greensburg property. Bankston and Hagan formed Way-Jo for the purpose of purchasing the Greensburg property. JoAnn Bernard (“Bernard”) prepared a purchase agreement after speaking with Bankston. Bernard acted as a dual agent on behalf of Riggs and Way-Jo.

A purchase agreement dated February 1, 1999, bearing what purported to be the signatures of Bankston, Hagan, and Riggs, was accepted by Riggs on February 2, 1999. The purchase agreement contained handwritten additional terms and conditions as follows: “Purchasers agrees [sic] to allow seller to reserve 100% of all subsurface mineral rights for maximum period allowed by law or 1 yr. or (12 months) after seller’s death (seller being Mr. Robert Riggs.)” The additional terms and conditions contain handwritten language that was struck through and initialed by Bankston, Hagan, and Riggs.

On February 22, 1999, the sale of the Greensburg property was executed at a closing held at Riggs’ home. The circumstances surrounding the closing are disputed. However, all parties agree that Riggs objected to the language of the mineral reservation contained in the original Act of Cash Sale, which purportedly stated as follows:

SELLER HEREIN SPECIFICALLY TRANSFERS AND CONVEYS UNTO PURCHASER ALL MINERALS AND MINERAL RIGHTS EXCEPT FOR THE ROYALTIES PRESENTLY BEING PAID TO SELLER, WHICH ROYALTIES ARE HEREBY RESERVED UNTIL TWELVE (12) MONTHS AFTER SELLERS [SIC] DEATH. AFTER THE LAPSE OF SAID TIME, ALL ROYALTIES SHALL BE PAID TO PURCHASER OR ITS SUCCESSORS AND ASSIGNS.

In response to Riggs' comments, Bernard made handwritten changes to the typed language, striking through certain words and changing the word "transfers and conveys" to "reserves." Upon completion of the revisions, it is undisputed that Riggs personally signed an act of sale.

Two days after the closing, on February 24, 1999, an "Act of Cash Sale," transferring the Greensburg property from Riggs to Way-Jo, was recorded in the conveyance records of the St. Helena Parish Clerk of Court. The document included the signatures of Riggs (as seller), Bankston and Hagan, on behalf of Way-Jo (as buyer), and Ronny J. Champlin ("Champlin") (as notary public). The recorded Act of Cash Sale also included the signatures of Bernard and Anthony as witnesses. The mineral provision in the recorded Act of Cash Sale set forth the following:

~~SELLER HEREIN SPECIFICALLY TRANSFERS~~ Reserves ~~AND CONVEYS UNTO PURCHASER~~ ALL MINERALS AND MINERAL RIGHTS ~~EXCEPT FOR THE ROYALTIES PRESENTLY BEING PAID TO SELLER,~~ WHICH ROYALTIES ARE HEREBY RESERVED UNTIL TWELVE (12) MONTHS AFTER SELLERS [SIC] DEATH. ~~AFTER THE LAPSE OF SAID TIME, ALL ROYALTIES SHALL BE PAID TO PURCHASER OR ITS SUCCESSORS AND ASSIGNS.~~

The handwritten initials of Riggs, Bankston, and Hagan appear next to the changes on the recorded Act of Cash Sale.

Following Riggs' death on April 3, 2006, his February 2, 1999 will was probated, and Anthony was recognized as his testamentary executor and sole testamentary heir. Anthony was sent into possession of the succession property and began receiving the mineral royalties from the Greensburg property, which he stated ranged from approximately \$10,000.00 to \$25,000.00 per month.

Almost a year after Riggs' death, Bankston contacted Anthony concerning the mineral interests to the Greensburg property. Anthony disputed Way-Jo's right to the mineral interests and consulted an attorney, who advised Anthony to obtain a

copy of the act of sale from the parish records. In doing so, Anthony contends he saw the mineral reservation language for the first time, which he asserts was incorrect as all language should have been scratched out except for “[s]eller herein specifically reserves all minerals and mineral rights.”

On March 28, 2007, the Estate of Robert E. Riggs, through its testamentary executor, Anthony, (“the Estate”), filed a Petition for Reformation of Contract against Way-Jo, seeking to reform the Act of Cash Sale to reserve all of the mineral rights of Riggs to the Greensburg property. It was alleged therein that, although Riggs “executed an Act of Cash Sale of the property” on February 22, 1999, the handwritten revisions made by the purchaser to the Act of Cash Sale did not accurately reflect Riggs’ intent. Specifically, the petition alleged that while the revisions on the recorded Act of Cash Sale reserved the mineral rights to Riggs until twelve months after his death, Riggs actually intended to reserve the mineral rights without any time limitation. The Estate requested that the sale be corrected and reformed to reflect Riggs’ intent that the mineral rights be reserved to himself and his heirs without reservation. Anthony, as executor of the Estate, signed a verification, stating he was “duly sworn” and had “read the above and foregoing Petition for Reformation of Contract and all of the allegations contained therein are true and correct to the best of his knowledge and belief.”

In its First Supplemental and Amending Petition filed on July 25, 2008, the Estate asserted that Riggs did not sign the purchase agreement. The Estate further alleged that Way-Jo, through its agents, misled Riggs into signing and agreeing to the Act of Cash Sale by fraudulently misrepresenting and suppressing the truth as to the effect of the revisions made to the mineral reservation included in the Act of Cash Sale, which tracked the language of the purchase agreement rather than Riggs’ intentions. On that basis, the Estate requested nullification of those provisions purporting to transfer the mineral interest in the property to Way-Jo.

Anthony, as executor of the Estate, again signed a verification, stating he was “duly sworn” and had “read the above and foregoing First Supplemental and Amending Petition and all of the allegations contained in Paragraphs 16 through 32 therein are true and correct to the best of his knowledge and belief.”

On November 21, 2008, the Estate filed a Second Supplemental and Amended Petition and Petition for Nullity of Contract Due to Fraud, naming Hagan and Bankston, individually, as defendants. The Estate alleged for the first time that the purported signatures of Riggs on both the purchase agreement and the February 22, 1999 Act of Cash Sale were forgeries and constituted a fraud upon Riggs. As evidence of such, the Estate alleged that Riggs’ last will and testament, which was also executed on February 2, 1999 and was attached, showed that Riggs could not execute his signature with a steady hand and could only do so with obvious tremors. The Estate further newly alleged that “[p]resent at the home of ... Riggs on February 22, 1999 were ... Riggs, ... Hagan, ... Bankston, ... Bernard and ... Anthony.”

In the Second Supplemental and Amended Petition and Petition for Nullity of Contract Due to Fraud, the Estate sought a declaration that the February 22, 1999 Act of Cash Sale between Riggs and Way-Jo was an absolute nullity entitling the Estate to rescission of the sale on the grounds of fraud and recognition that the Estate was the owner of all mineral rights related to the Greensburg property. The Estate also sought damages and attorney fees. Once again, Anthony, as executor of the Estate, signed a verification, stating he was “duly sworn” and had “read the above and foregoing Second Supplemental and Amended Petition and Petition for Nullity of Contract Due to Fraud and all of the allegations contained [sic] Paragraphs 1 thru 41 therein are true and correct to the best of his knowledge and belief.”

On January 5, 2011, in the underlying proceeding, the trial court rendered written judgment in favor of the Estate on the primary demand, declaring that the February 22, 1999 sale of the Greensburg property from Riggs to Way-Jo was a nullity because the recorded Act of Cash Sale was not signed by Riggs. *See Estate of Riggs*, 2012 WL 6737835 at *5. However, the trial court denied the Estate's request for attorney fees on the specific basis that no fraud had occurred. **Id.** In its reasons for judgment, the trial court concluded it was possible that, in the confusion of the closing, Champlin notarized a copy of the act of sale, apparently by mistake, that included a signature of Riggs that was not genuine. **Id.**

On December 28, 2012, this court on appeal found the Estate failed to establish by convincing evidence that Riggs' signature on the recorded act of sale was not genuine, where Anthony's self-serving testimony was "less than credible" and was contradicted, not only by the fact that he signed the act of sale as a witness, but also by the weight of the opposing testimony from Bankston, Hagan, Bernard and Champlin, who each testified that they observed Riggs sign the act of sale that was subsequently recorded in the public records and that Champlin was present at the closing. **Estate of Riggs**, 2012 WL 6737835 at *13-14, 20. Accordingly, this court found the Estate was not entitled to have that act of sale from Riggs to Way-Jo annulled on the basis of fraud, reversed the portion of the judgment of the trial court that declared the act of sale a nullity, and dismissed the Estate's suit. **Id.**

Thereafter, on January 3, 2014, Way-Jo, Bankston, and Hagan filed a Petition for Damages against Anthony, individually, asserting claims for malicious prosecution, abuse of process, defamation, false light invasion of privacy, violations of the Louisiana Unfair Trade Practices and Consumer Protection Law, and fraud. The claim of malicious prosecution is the sole subject of the instant appeal, and Way-Jo, Bankston, and Hagan alleged as follows: Anthony

commenced and prosecuted the underlying civil proceeding against them, which was terminated in their favor; there was an absence of probable cause for the filing and prosecution of the civil proceeding; the initial allegation that Riggs intended to reserve the minerals without limitation and the subsequent allegation that Riggs' signature on the Act of Cash Sale was a forgery were false and self-serving statements made by Anthony with knowledge of their falsity and, therefore, malice or fault is present; and petitioners suffered damages including emotional distress, loss of enjoyment of life, the cost to defend the underlying civil proceeding, and lost business opportunities.

A bench trial was held on October 17, 2019, and the trial court took the matter under advisement. The trial court ultimately denied all of the claims of Way-Jo, Bankston, and Hagan. In its written reasons for judgment, the trial court stated as follows with respect to the claim of malicious prosecution:

Obviously, where Anthony served as a witness to the [Riggs]-Way-Jo deed, where the amended petition later claiming that the signature thereon was not that of [Riggs], and where, based on [Riggs'] testament, Anthony would have, if successful, stood to benefit as the recipient of the mineral royalties, those factors combined would tend to give credence to a malicious prosecution claim.

...

At least, as to the damage claim, the mineral royalties were held in escrow by the mineral lessee during this litigation and ultimately paid to plaintiffs. There is no doubt, however, that they incurred attorney's fees in defending this claim. (The Court notes with respect to the attorney's fees, which were entered into evidence through affidavits of the attorneys, that it was extremely difficult to discern which services were directly related to the defense of the forgery claim as opposed to other portions of the litigation, including the third party vendee claims.)

...

In the present case, the First Circuit had previously reversed the trial court's decision that the signature to the deed was not that of [Riggs], not based on a substitution of its opinion as to the trial judge's credibility determination, but upon a misapplication of the required standard of proof. While calling Anthony's testimony into question, it was done in the light of whether that standard was met in the face of the overall testimony and evidence. Further, the First Circuit noted that Anthony had used an expert in the field of handwriting analysis at the trial, who determined that in her opinion, the signature of [Riggs] to the deed did not match other handwriting exemplars. The fact that

a handwriting expert attempted to substantiate Anthony's claim is of some significance in the resolution of the issue as to whether he had any "probable cause" or exhibited any "wanton and reckless disregard" for the present plaintiffs' rights.

Additionally, this Court notes that from the testimony of John Feduccia, Anthony's attorney during those proceedings, that it was Feduccia who, in comparing different signatures of [Riggs], first raised the question with Anthony regarding the authenticity of [Riggs'] signature. This observation is not intended to shift any "blame" to Anthony's attorney, as there were noted discrepancies in various exemplars of [Riggs'] signatures, which the First Circuit ascribed to testimony that a prior stroke caused [Riggs] to occasionally have difficulty in writing smoothly as opposed to shakily. Rather, this fact is considered by this Court in attempting to determine whether Anthony was, under the circumstances, acting in bad faith or with malice.

...

Given all of the above factors, this Court cannot find that plaintiffs have met the requisite burden of proof as to the malicious prosecution claim, and it will likewise be denied.

On October 22, 2019, the trial court signed a judgment in favor of Anthony and against Way-Jo, Bankston, and Hagan, dismissing their demands with prejudice.

Way-Jo, Bankston, and Hagan appeal the trial court's October 22, 2019 judgment, assigning as error the trial court's finding that they failed to meet their burden of proving the elements of malicious prosecution, as the conclusive facts determined by this court in the prior litigation, combined with the evidence before the trial court herein, purportedly establish the requisite elements of malicious prosecution, including lack of probable cause and malice.

LAW

A court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). The Louisiana Supreme Court has announced a two-part test for the reversal of a factfinder's determinations: (1) The appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and (2) the appellate court must further determine that the

record establishes that the finding is clearly wrong (manifestly erroneous). **Stobart v. State through Department of Transportation & Development**, 617 So.2d 880, 882 (La. 1993).

This test dictates that a reviewing court must do more than simply review the record for some evidence which supports or controverts the trial court's finding. **Stobart**, 617 So.2d at 882. The reviewing court must review the record in its entirety to determine whether the trial court's finding was clearly wrong or manifestly erroneous. **Id.**

Nevertheless, the issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Stobart**, 617 So.2d at 882. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. **Id.** However, where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable factfinder would not credit the witness's story, the court of appeal may find manifest error or clear wrongness even in a finding purportedly based upon a credibility determination. **Id.** Nonetheless, the supreme court has emphasized that the reviewing court must always keep in mind that if the trial court or jury's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Id.** at 882-83; **Patin v. Duplessis Pontiac-Buick-GMC Trucks, Inc.**, 632 So.2d 790, 791 (La. App. 1st Cir. 1993), *writ denied*, 94-1004 (La. 6/17/94), 638 So.2d 1096 ("When conflicting evidence creates two possible views and the trier of fact's choice between them is

reasonable in light of the entire record, an appellate court may not reverse merely because it would have chosen the alternative view.”).

The supreme court has recognized that the reason for this well-settled principle of review is based not only upon the trial court’s better capacity to evaluate live witnesses (as compared with the appellate court’s access only to a cold record), but also upon the proper allocation of trial and appellate functions between the respective courts. **Stobart**, 617 So.2d at 883. Thus, where two permissible views of the evidence exist, the factfinder’s choice between them cannot be manifestly erroneous or clearly wrong. **Id.** Accordingly, *Way-Jo*, *Bankston*, and *Hagan* must show that no reasonable evidence was presented which could justify the findings of fact made by the trial court as to their claim of malicious prosecution. *See Patin*, 632 So.2d at 791.

The tort of malicious prosecution has been recognized from the early jurisprudence of this state, and while the cause of action in favor of one whose liberty has been interfered with in an unwarranted manner derives from the fault-reparation principles of La. Civ. Code art. 2315, our courts have imported certain restrictions and guidelines from the common law in defining the contours of the tort. **Markovich v. Villere**, 2017-1739 (La. App. 1st Cir. 2/28/19), 273 So.3d 333, 340, *writ denied*, 2019-0500 (La. 5/20/19), 271 So.3d 201. The limitations on the tort imposed by these restrictions reflect a careful balance between two societal interests: the right of all persons to resort to the courts for redress of wrongs and to be protected when acting in good faith on reasonable grounds in commencing either a civil or criminal proceeding, and the right of an individual to seek redress for the malicious prosecution and unwarranted employment of the judicial process against him. **Id.** Malicious prosecution actions have never been favored in our law, and the plaintiff in such an action must clearly establish that the forms of justice have been perverted to the gratification of private malice and the willful

oppression of the innocent. **Rombach v. State ex rel. Division of Administration**, 2015-0619 (La. App. 1st Cir. 12/23/15), 2015 WL 9464500, *5 (unpublished), *writ not considered*, 2016-0214 (La. 4/4/16), 190 So.3d 1200 (*citing Johnson v. Pearce*, 313 So.2d 812, 816 (La. 1975)).

To prevail in an action for malicious prosecution, a plaintiff must prove: (1) the commencement or continuance of an original criminal or civil proceeding; (2) its legal causation by the present defendant against plaintiff who was defendant in the original proceeding; (3) its bona fide termination in favor of the present plaintiff; (4) the absence of probable cause for such proceeding; (5) the presence of malice therein; and (6) damage conforming to legal standards resulting to plaintiff. **Markovich**, 273 So.3d at 340-41. As stated above, the action for malicious prosecution has never been favored, and strict compliance with all essential elements is required for its application. **McClanahan v. McClanahan**, 2009-182 (La. App. 5th Cir. 10/13/09), 27 So.3d 862, 864, *writ denied*, 2009-2455 (La. 1/29/10), 25 So.3d 833.

The trial court herein appears to have dismissed the plaintiffs' malicious prosecution claim on the grounds that they did not meet their burden of proving the fourth and fifth elements—absence of probable cause for the proceeding and the presence of malice therein. These are the elements addressed by the parties on appeal, and the parties do not dispute the presence of the first three elements herein, where Anthony, as executor of the Estate, commenced, caused, and personally verified the underlying civil proceeding and forgery allegations against Way-Jo, Bankston, and Hagan, which were terminated by judgment in Way-Jo's, Bankston's and Hagan's favor. *See Estate of Riggs, supra.*

Probable cause to file suit is a question that depends upon the particular facts as perceived by the person bringing the action. **Hibernia National Bank of New Orleans v. Bolleter**, 390 So.2d 842, 843-44 (La. 1980). Probable cause does not

depend upon the actual state of the case in point of fact, but on the honest and reasonable belief of the party prosecuting. **Ferrant v. Parish of Tangipahoa ex rel. Coroner's Office**, 2001-2278 (La. App. 1st Cir. 6/21/02), 822 So.2d 118, 120; *see also Markovich*, 273 So.3d at 341 (“The crucial determination in regard to the absence of probable cause is whether the defendant had an honest and reasonable belief in the guilt of the plaintiff.”). If an accusation is based on probable cause there is no liability even if there was malicious motive. **Ferrant**, 822 So.2d at 120. The test for probable cause is whether a reasonable man would have acted the same under the circumstances. **Ryland v. Law Firm of Taylor, Porter, Brooks, and Phillips**, 496 So.2d 536, 540 (La. App. 1st Cir.), *writ denied*, 497 So.2d 1388 (La. 1986).

Malice exists when charges and allegations in a suit are made that one knows to be false. **Ryland**, 496 So.2d at 540. Malice can be presumed where a lack of probable cause for filing a suit results from a reckless and inexcusable indifference of the rights of the party sued, indicative of a lack of caution and inquiry a prudent person would employ before suing someone. **Id.**; *see also Miller v. East Baton Rouge Parish Sheriff's Department*, 511 So.2d 446, 453 (La. 1987) (“Malice may be inferred from the lack of probable cause or inferred from a finding that the defendant acted in reckless disregard of the other person's rights.”); **Onwukwe v. Kroger Co.**, 380 So.2d 148, 150 (La. App. 1st Cir. 1979) (“The malice element can be inferred in cases where there is wanton and reckless disregard of the rights of a party, evincing utter absence of that caution and inquiry a man should employ.”).

Thus, to prove malice, plaintiffs must establish that Anthony acted with knowledge of falsity or with reckless disregard for the truth. *See Gaspard v. Provensal*, 2016-0143 (La. App. 4th Cir. 7/6/16), 195 So.3d 1287, 1290, *writ denied*, 2016-1478 (La. 11/15/16), 209 So.3d 781. Further, to prove there was a

lack of probable cause for the filing of the lawsuit, plaintiffs must show that Anthony did not have an honest and reasonable belief in the allegations made. **Id.**

ANALYSIS

Way-Jo, Bankston, and Hagan point to this court's decision in **Estate of Riggs**, *supra*, to support their claim of malicious prosecution. In the prior appeal, this court made the following findings based on the facts herein: no one present at the closing suggested or admitted to signing Riggs' name to the document, either intentionally or by mistake; Champlin was an experienced attorney and stated definitively that he notarized only one document that evening, which was the one recorded, and testified that he made handwritten revisions to only one act of sale, which was the one that Riggs initialed and Champlin notarized; Anthony's "self-serving" testimony conflicted with that of everyone else present at the closing each of whom testified that Riggs signed the authentic act and was also contradicted by the notary attestation clause, which stated the Act of Cash Sale was signed in the presence of competent witnesses, of which Anthony admittedly was one; Anthony offered no explanation as to why he failed to raise any issue as to the authenticity of the signature until almost eighteen months after suit was filed, although he was Riggs' longtime friend and knew his signature; and Anthony's credibility was further undermined by the fact that his testimony regarding Champlin's alleged absence from the closing was contradicted by the testimony of the other individuals present at the closing, including Champlin himself, who testified that he was present, and the attestation clause that stated that all of the signatures were written in the notary's presence on the date stated. **Estate of Riggs**, 2012 WL 6737835 at *8, 11-12.

This court further noted that, in order to accept the Estate's theory of what occurred at the closing, it would have to conclude that Bankston, Hagan, Bernard and Champlin all participated in some aspect of a conspiracy to deceive and

defraud Riggs by misleading him as to the revisions made in the act of sale, destroying or secreting the act of sale Riggs signed, and recording in the public records a different act of sale containing his forged signature. **Estate of Riggs**, 2012 WL 6737835 at *12. However, this court declined to do so, because the record lacked sufficient credible evidence to support the Estate's theory. **Id.** Additionally, the theory ignored the close friendship that existed between Riggs and Bankston for most of their lives, and no suggestion was made as to why either Champlin or Bernard would engage in such a conspiracy at great risk to themselves and their professional reputations, especially since Bernard was also a personal friend of Riggs and the trial court acknowledged that Champlin had no financial interest in the transaction. **Id.**

Considering the foregoing, appellants argue that this court's findings establish that Anthony could not have had an honest and reasonable belief in the truth of his accusations in the underlying suit. Although this court rejected Anthony's claims as not credible, it did not make a specific finding as to whether Anthony lacked probable cause to file those claims or did so with malice. Therefore, we review the record of this malicious prosecution proceeding in its entirety to determine whether the trial court's finding was manifestly erroneous.

As explanation for the underlying lawsuit, Anthony testified at the trial herein that Riggs did not intend to sell the mineral rights and wanted to keep them without a time limitation. Anthony testified that he was present at the closing, there was a dispute as to the language of the mineral reservation in the closing documents, Bernard took the documents to fix the language, Bernard "started drawing lines through everything and wrote 'reserves' at the top", and Riggs indicated he was "okay" with it. Anthony further stated that that Riggs was able to handle his affairs, was aware of what was going on, and Bernard changed the mineral reservation language based on what Riggs told her to do.

Anthony testified he saw Riggs sign an act of sale at the closing. Anthony further admitted he signed the closing documents, specifically the recorded Act of Cash Sale, as a witness to Riggs' signature. Anthony's testimony is consistent with his initial allegations in the original petition in the underlying lawsuit, specifically that Riggs "executed an Act of Cash Sale of the [Greensburg] property" on February 22, 1999, as well as Anthony's verification of those allegations. Anthony testified that, at the time he verified the allegations of the original petition, "[a]s far as [he] knew" the signature on the Act of Cash Sale was Riggs' and he did not know it was forged. Thus, having been at the closing and having seen Riggs sign the act of sale, Anthony verified Riggs' signature on the Act of Cash Sale, when he filed the original petition. Contrary to Anthony's self-serving testimony regarding Riggs' intent and otherwise as noted by this court, **Estate of Riggs**, 2012 WL 6737835 at *11 and 13, the language of the Act of Cash Sale, bearing Riggs' signature, witnessed by Anthony, and as attached to the original petition demonstrates that Riggs (as seller) intended to reserve his mineral rights until twelve months after his death.

When asked to describe the mineral reservation language that the Act of Cash Sale should have reflected per Riggs' alleged intent, Anthony testified that all other language on the mineral reservation provision was "scratched out ... [e]xcept for seller herein specifically reserves all minerals and mineral rights." However, Anthony admitted he "wasn't standing over her [Bernard's] shoulder watching what she was doing," yet once the changes were made, Riggs approved them and signed the document, as Bernard held the clipboard. As to Riggs' state of mind, Anthony agreed that Riggs' was sharp and smart.

Anthony is unable to provide a copy of the act of sale showing the mineral reservation language as he described at trial and as allegedly signed by Riggs. Instead, he admits the only document that anyone has ever seen was the recorded

Act of Cash Sale, and he signed said document without paying attention to the changes or whether the seller had actually signed it. Anthony further does not know if the referenced language, as he described, was scratched out on all versions of the act of sale that he signed.

Nevertheless, over a year after the filing of the original petition, the First Supplemental and Amending Petition was filed, alleging that Way-Jo misled Riggs into signing and agreeing to the Act of Cash Sale by fraudulently misrepresenting and suppressing the truth as to the effect of the revisions made to the mineral reservation included in the Act of Cash Sale. Thereafter, in the allegations of the Second Supplemental and Amended Petition filed eighteen months after the original petition, it was newly alleged that the purported signatures of Riggs on both the purchase agreement and the Act of Cash Sale were forgeries. Additionally, as outlined above, it was newly alleged in the Second Supplemental and Amended Petition that Champlin was not present at the closing.

As explanation for the change in allegations and amendments to the petition in the underlying matter, Anthony testified he did not look at the signatures on the Act of Cash Sale or question their authenticity when he pulled it from the record, and a “red flag” went up when he later obtained the purchase agreement, which he did not have at the time the original petition in the underlying suit was first filed. Anthony further testified that the signature on the Act of Cash Sale was not Riggs’ signature as “[h]e could barely write after his stroke.” Anthony argues that he did not proceed recklessly but with caution and reasonable inquiry through his attorney, Feduccia, and Feduccia’s retention of two handwriting experts.

However, Feduccia was not present at the closing, whereas Anthony was present at the closing and thus was better positioned than Feduccia to know the facts herein. Anthony testified that he had the purchase agreement at the time of the filing of the First Supplemental and Amending Petition and knew the signature

on the Act of Cash Sale was not Riggs' signature, yet he did not allege forgery in the First Supplemental and Amending Petition. As to why he waited to allege forgery, Anthony stated that he retained handwriting experts before he alleged anything.

However, Anthony subsequently testified that he "was more familiar with Mr. Riggs' signature than anybody living probably" and did not need to rely on a handwriting expert to determine Riggs' signature on the Act of Cash Sale was a forgery, as he was present at the closing. Furthermore, as to his testimony that Riggs could barely write after his stroke, Anthony also testified that Riggs "got better" and signed checks up until the day before he died, and that he saw Riggs sign a document at the closing, which he also signed as a witness.

Way-Jo, Bankston, and Hagan point to Feduccia's testimony herein that he prepared and filed the original petition to reform the contract based on Anthony's contention that Riggs had intended to reserve the mineral rights without limitation and not as reflected in the Act of Cash Sale. Feduccia stated that the only issue at that point was the wording of the mineral reservation contained in the Act of Cash Sale and reformation of the mineral reservation. Even though Anthony testified that he knew Riggs' signature better than anyone, Anthony did not tell Feduccia that the signature at issue was not Riggs' when he initially brought the Act of Cash Sale to him.

Feduccia testified that Anthony later pointed out to him that Riggs could not hold a pen, and Feduccia filed the Second Supplemental and Amended Petition in response. However, such a contention by Anthony is contrary to his testimony that Riggs signed an act of sale at the closing and signed checks up until the day before he died.

When asked why he signed as a witness when he disputed Riggs' signature on the Act of Cash Sale, Anthony testified that he only paid attention to the first

document he signed, which was the one he “saw JoAnn [Bernard] and Robert [Riggs] fussing over” but not the other copies as he was “sure they all said the same thing.” Anthony stated there were multiple documents being signed that night. Nevertheless, this court previously repudiated Anthony’s testimony in this regard as follows:

Anthony stated that he signed three or four copies of the act of sale at the closing. According to Anthony, he did not pay attention after Riggs signed the first document as various documents were being passed around between the parties and witnesses in a disorderly fashion. He maintains that he merely signed what he was given to sign. Essentially, he claims that he signed a document as a witness, although he did not actually see Riggs sign it, which is contrary to the declaration in the authentic act that the document was signed by the parties in the presence of the witnesses.

Further, in contrast to Anthony’s testimony, none of the other individuals present at the closing testified to multiple originals being passed around and signed in a chaotic fashion.

Estate of Riggs, 20212 WL 6737835 at *9 and 11.

Furthermore, as to the basis for his allegations regarding Champlin’s presence at the closing, Anthony had no living witnesses or documents to show Champlin was not present, and his allegations were based in part on Champlin’s inability to recall certain portions of the closing, including the layout of the Riggs’ house, which occurred eleven years prior to the trial. Anthony ultimately agreed it was his word against that of Champlin, Bernard, Hagan, and Bankston, as to Champlin’s presence at the closing, just as it was his word that he should get the minerals as opposed to Way-Jo.

Appellants argue that a reasonable factfinder would not credit Anthony’s story and asks this court to reverse the trial court’s judgment, which denied their malicious prosecution claim. Considering the circumstances herein including, but not limited to, where Anthony admitted he was present at the closing, saw Riggs sign an act of sale, signed himself as a witness, verified such allegations, and Riggs undisputedly maintained the ability to handle his affairs and continued to sign

checks until his death, we find that Anthony could not have had an honest and reasonable belief that Riggs' signature was forged on the Act of Cash Sale, and it was unreasonable to have brought such allegations. Moreover, we infer malice herein, where Anthony's allegations were in wanton and reckless disregard of the rights of Way-Jo, Bankston, and Hagan and with the intention to use the baseless suit to collect from them. Therefore, we find there is no reasonable factual basis for the trial court's findings that Anthony did not act without probable cause or with malice, and the record as outlined above establishes that these findings and the trial court's dismissal of appellants' malicious prosecution claim are manifestly erroneous. We find that the documents and objective evidence in this matter so contradict the witness's story, and the story itself is so inconsistent and implausible on its face, that a reasonable fact finder would not credit Anthony's story.

Appellants further ask that this matter be remanded to the trial court for a determination of damages. Damages are to be presumed in a case where all other elements of a suit for malicious prosecution are satisfied. **Hibernia National Bank of New Orleans**, 390 So.2d at 844. Nevertheless, Way-Jo, Bankston, and Hagan introduced bills for attorney's fees into evidence at trial, which show amounts paid in defense of the claims brought in the underlying lawsuit. Accordingly, we find Way-Jo, Bankston, and Hagan suffered damages due to Anthony's malicious prosecution of the underlying action. This case is remanded to the trial court for a determination of the amount of such damages. *See Hibernia National Bank of New Orleans*, 390 So.2d at 844-45.

In answering the appeal, Anthony contends that it is frivolous. However, a successful appeal is by definition non-frivolous. **Daisey v. Time Warner**, 98-2199 (La. App. 1st Cir. 11/5/99), 761 So.2d 564, 569. Accordingly, damages for frivolous appeal are denied.

CONCLUSION

For the foregoing reasons, we reverse the trial court's October 22, 2019 judgment to the extent it dismissed the malicious prosecution claim of plaintiffs-appellants, Way-Jo, L.L.C., John K. Bankston, and Wayne I. Hagan, against defendant-appellee, Harvey Anthony, with prejudice. The case is remanded to the trial court for further proceedings consistent with this opinion. Costs of this appeal are assessed against defendant-appellee, Harvey Anthony.

REVERSED AND REMANDED.