

JOSUE SPEARS

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NO. 2000-CA-0149

VERSUS

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COURT OF APPEAL

**EDDIE LACEY, JR. AND
OMEGA ONE INSURANCE
COMPANY**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 97-59253, DIVISION "B"
HONORABLE ANGELIQUE REED, JUDGE

JAMES F. MCKAY, III

JUDGE

(Court composed of Judge James F. McKay, III, Judge Michael E. Kirby,
Judge Patrick M. Schott, Pro Tempore)

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Attorney for Defendants/Appellants

AFFIRMED

The defendants, Eddie Lacey, Jr. and Omega One Insurance Company, appeal the judgment of the trial court finding the defendant Mr. Lacey 100% at fault in causing an automobile accident.

FACTS AND PROCEDURAL HISTORY

This case arises out of a car accident on Cambronne Street. On October 23, 1997, during heavy morning traffic in the Carrolton Avenue area, the plaintiff was driving down Earhart Boulevard in an easterly direction when he attempted to make a right turn onto Cambronne Street from the right emergency/parking lane. Mr. Lacey, the defendant, was driving in a westerly direction on Earhart Boulevard. When the defendant reached the intersection of Earhart and Cambronne he made the turn onto Cambronne and struck the plaintiff's car. The investigating officer, who arrived on the scene after the accident and after the cars had been moved from the traffic lanes, did not issue a citation to either driver. Nevertheless, the officer testified that in his opinion Mr. Spears was improperly using the

emergency lane and noted the safety violation in the accident report.

The morning of the accident the plaintiff was on his way to school. The vehicle he was driving was registered to his sister-in-law, April Baud, and the insurance policy was in her name. The plaintiff alleges that the car was in Ms. Baud's name only because he could not get the credit necessary for its purchase as he was only 17 years old and a college student.

At trial the plaintiff called an expert witness, Richard Namias, to testify as to the appraisal value of the damaged vehicle. He testified that the value of this vehicle was \$12,400.00. The defendants objected to the introduction of this testimony claiming that they were caught off guard by this last minute introduction of Raymond Namias.

Following a trial on the merits the trial court cast the defendant 100% at fault. The trial court also found the plaintiff properly used the emergency lane to make the right turn and awarded him \$6,000 in general damages, \$13,880 in property damage and medical damages and \$250.00 in expert fees plus costs and interest.

DISCUSSION

ASSIGNMENT OF ERRORS

The appellant raises numerous errors for consideration by this court. First, appellants contend that the trial court erred in finding that the plaintiff properly used the emergency lane of traffic to make his right turn and that the evidence established that he had made a turn as opposed to crossing the intersection. Secondly, appellants contend that the trial court erred in disregarding the testimony of the investigating officer Raymond Recasner. Thirdly, the appellants contend that the trial court erred in awarding property damages to the plaintiff when he was not the owner of the vehicle. Fourthly, the appellants contend that the trial court erred in allowing expert testimony the morning of trial over their objection. Fifthly, the appellants contend that the trial court erred in exceeding the court's jurisdictional limits.

STANDARD OF REVIEW

In reviewing the factual findings of a trial court, an appellate court is limited to a determination of manifest error. Arceneaux v. Domingue, 365 So.2d 1330 (La. 1978) writ denied 374 So.2d 660 (La.1979); Stobart v. State through Dept. of Transp. and Development, 617 So.2d 880 (La. 1993).

Where two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. Id. at 883.

The issue to be resolved by the reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. Id. at 882. The reviewing court may not disturb reasonable evaluations of credibility and reasonable inferences of fact when viewed in light of the record in its entirety even though it feels its evaluations are more reasonable. Id. The Louisiana Supreme Court has also recognized that “[t]he reason for this well-settled principal 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. Canter v. Koehring Co., 283 So.2d 716 (La. 1973). Thus, where two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. Id.

ASSIGNMENT OF ERROR I

In assignment of error one the appellants contend that the trial court erred in finding that the plaintiff properly used the emergency lane for a right turn and that the plaintiff was actually making a turn instead of going across the intersection.

La. R.S. 32:101 (A)(1) provides: “Right Turns: Both the approach for

a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.” In the instant matter the plaintiff contends that he was in compliance with the statutory requirement and was as far as possible to the right curb prior to making his turn into the intersection. Although, Officer Recasner felt that plaintiff was at fault because he was making a right-hand turn in what he called an “emergency lane” yet, he did not give a citation to the plaintiff but merely noted what he considered to be a safety violation in his accident report. A clear reading of La. R.S. 32: 101 (A)(1) confirms that the plaintiff was making a proper right-hand turn. The trial court heard the officer’s testimony and the testimony of all of the witnesses and concluded that the plaintiff was not making an illegal turn. Furthermore, there are no eyewitnesses to the accident other than the plaintiff and the defendant.

Moreover, the defendant was negotiating a left-hand turn. A driver making a left turn has a statutory duty under La. R.S. 32:122 to “yield the right of way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard.” A left turn is one of the most dangerous maneuvers a motorist may execute and requires the exercise of great caution. Before attempting a left turn, a motorist should ascertain whether it can be completed safely. Theriot

v. Lasseigne, 640 So.2d 1305,1312 (La.1994) rehearing denied. The only defense the defendant offered for his actions was that a truck driver signaled him to proceed into the intersection, which he did just prior to striking the plaintiff's vehicle.

Additionally, appellant contends that the trial court erred in not finding that the plaintiff was actually attempting to cross the intersection instead of making a right turn. Once again there were no eyewitnesses to establish that the plaintiff was actually attempting to cross the street in an attempt to go around the traffic as opposed to making a right turn. The plaintiff testified that he was making a right hand turn onto Cambronne Street. Furthermore, there was no notation in the accident diagram that established where the debris from the accident was located and the officer testified that he could not recall where the debris was located. Obviously the trial court assessed all of the testimony and found the plaintiff's account of the accident to be credible. Accordingly, we find no error in the judgment of the trial court.

ASSIGNMENT OF ERROR II

The appellants argue in their second assignment of error that the trial court erred in disregarding the testimony of Officer Recasner. Officer Recasner arrived at the scene after the accident had occurred and the

vehicles had been moved to the side of the road. He admitted that he never had an opportunity to observe the location of the vehicles as a result of the collision. He concluded that neither party should be cited for a violation. Ultimately, the officer testified that to make a right turn “you have to get over closest as far right as you can.” Accordingly, we find no error on the part of the trial court.

ASSIGNMENT OF ERROR III

In the third assignment of error appellants aver that the trial court erred in awarding the plaintiff property damages because the damaged car was registered and insured in the name of the plaintiff’s sister-in-law, April Baud.

It is well established in law that sales of motor vehicles are governed by the Civil Code articles relating to sales and are not affected by noncompliance with the requirements of the Vehicle Certification of Title Law. La. R.S.32:701 *et seq.* Maloney v. State Farm Insurance Co., 583 So.2d 12, 15 (La. App 4 Cir. 1991); Talley v. Hughes, 481 So.2d 172 (La. App. 4 Cir. 1985); Sherman v. State Farm Mutual Automobile Insurance Co., 413 So.2d 644 (La. App. 1 Cir. 1982), writ denied, 414 So.2d 776 (La. 1982). Therefore, the fact that the registration of the vehicle is in Ms. Baud’s name instead of Mr. Spears’s name is not conclusive to the question

of ownership.

The testimony and evidence presented at trial was that Mr. Spear's and Ms. Baud, had an agreement by which she would register the vehicle and purchase the car insurance, in her name so that he would be able to purchase the car. At the time he sought to purchase the car he was a minor and unable to get credit. Therefore, the car was registered in Ms. Baud's name, but plaintiff was responsible for making the car and insurance payments. Mr. Spears, his mother Ms. Ervie Spears, and Ms. Baud all testified as to this arrangement.

Ms. Spears testified that her son gave her cash on a monthly basis to pay for the car and the insurance. She would then make payments to the Hibernia Bank on the car note. During trial Ms. Baud identified a document as her signed affirmation acknowledging that she had purchased the vehicle for Mr. Spears. She further testified that once the vehicle was paid for she was going to change the title to Josue Spears. This testimony was substantiated by the car title itself, which had been signed over by Ms. Baud to Josue Spears on its reverse side. She testified that the car had not been turned over to plaintiff prior to the time of the accident because he had not finished all of the payments on the car. Louisiana law states the following:

The sale is considered to be perfected between the

parties, and the property is of right acquired by the purchaser with regard to the seller, as soon as there exists an agreement for the object and for the price thereof, although the object has not yet been delivered, nor the price paid.

Maloney, supra, at p. 15.

For the foregoing reasons the trial court's decision to award plaintiff his property damage is in accordance with the law and the evidence.

ASSIGNMENT OF ERROR IV

Appellants' fourth assignment of error raises the issue of whether or not the trial court erred in admitting the testimony of the plaintiff's expert witness, Mr. Raymond J. Namias, when he was not listed on the pre-trial order. Appellants contend that at no time prior to the trial date did the plaintiff disclose that he intended to call an expert witness. Defendants aver that they were prejudiced by the trial court's decision by not having the opportunity to counter his testimony. They objected but the trial court overruled their objection.

Plaintiff contends that the defendant had ample opportunity to send an appraiser to inspect the plaintiffs's vehicle and have their own appraisal available at trial.

The trial court has great discretion in the manner in which proceedings

are conducted before the court, and it is only upon a showing of gross abuse of discretion that appellate courts have intervened. Harris v. West Carroll Parish School Bd., 605 So.2d 610 (La. App 2 Cir. 1992), writ denied, 609 So.2d 255 (1992). In the case *sub judice* the trial court explained to all of the parties that in First City Court there was no requirement for a witness list nor a trial order requiring the submission of a witness list. In the instant matter the plaintiff's car was a total loss; the expert witness merely testified as to the NADA rating. The testimony of the witness had no bearing on liability, only quantum, which was easily discoverable by the defendants with little effort exerted on their part. The trial court has great discretion in these matters and we find no abuse thereof.

ASSIGNMENT OF ERROR V

In their final assignment of error, appellants' claim that the trial court exceeded its \$20,000 jurisdictional limits pursuant to L.C.C.P. art. 4843, in its aggregate award of property damages, general damages and expert fees plus costs and interest. As mentioned above the trial court awarded the plaintiff \$13,800 in property and medical damages, \$6,000 in general damages and \$250 in expert fees plus interest and cost.

Pursuant to La.C.C.P. art. 4843 (D), the jurisdictional limits for First

City Court in Orleans Parish in cases where the amount in dispute, or the value of the property involved does not exceed \$20,000. The amount in dispute is determined by the amount demanded, including damages pursuant to La. C.C. art. 2315.3 and 2315.4, or value asserted in good faith by the plaintiff, but does not include interest, court cost, attorney fees, or penalties, whether provided by agreement or by law. La. C.C.P. art. 4841. In the instant matter, the total judgment of the trial court \$19,880, plus interest, costs and expert fees was within the \$20,000 jurisdictional limit of the court.

For the foregoing reasons we affirm the judgment of the trial court.

AFFIRMED