

JOHNNY ROBERTS

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NO. 2000-CA-1543

VERSUS

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COURT OF APPEAL

**ORLEANS PARISH SCHOOL
BOARD**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 95-13474, DIVISION "K-14"
HONORABLE RICHARD J. GANUCHEAU, JUDGE

JAMES F. MC KAY, III
JUDGE

(Court composed of Judge Joan Bernard Armstrong, Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr.)

MARIE A. BOOKMAN
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Attorney for Defendant/Appellee

AFFIRMED

The plaintiff, Johnny Roberts, Jr., filed suit against the defendant, the Orleans Parish School Board, for injuries he claims to have sustained from falling on a wet floor in the kitchen of Chester Elementary School while he was delivering foodstuffs on September 9, 1994. After he allegedly fell, Mr. Roberts claims that his hand truck loaded with foodstuffs fell upon him causing further injury. Mr. Roberts also claims that his employer, Herbert Lacassagne, had to come pick him up because he was limping so badly that he had to remove his shoe and that he was unable to do any more work.

Mr. Roberts' version of events was disputed by several witnesses. Mrs. Lillie Armstrong, a cafeteria worker, testified that there were only a few drops of water on the floor and that the plaintiff did not fall but rather "sat" on the floor in the doorway of the kitchen with his feet outside. Mrs. Armstrong also testified that she did not see the hand truck loaded with foodstuffs fall on the plaintiff. The testimony of the cafeteria manager, Ella Barrow, agreed with that of Mrs. Armstrong regarding the amount of water on the floor and the fact that the hand truck loaded with foodstuffs did not fall on the plaintiff. Finally, Mr. Lacassagne testified that Mr. Roberts had not removed his shoe, was not limping, and the two of them completed

delivering foodstuffs to other locations.

After listening to the testimony of the witnesses and evaluating the evidence before it, the trial court found that there was no hazardous condition which caused the plaintiff's fall and injury. The trial court, therefore, dismissed the plaintiff's claims against the Orleans parish School Board. It is from this judgment that the plaintiff now appeals.

The issue before this Court is whether the trial court erred in determining that Mr. Roberts did not fall and injure himself in the kitchen of Chester Elementary School.

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. LeJeune v. Union Pacific R.R., 97-1843 (La. 4/14/98) 712 So.2d 491. Appellate courts review the evidence in the light which most favorably supports the judgment to determine whether the trier of fact was clearly wrong in its conclusions. Theriot v. Allstate Ins. Co., 625 So.2d 1337, 1340 (La. 1993). The court of appeal may reverse the district court only if it finds from the record that a reasonable factual basis does not exist for the finding, and it further determines that the record establishes that the finding is clearly wrong or

manifestly erroneous. Stobart v. State, DOTD, 617 So.2d 880 (La. 1993).

In the instant case, Mr. Roberts told his version of what happened on the day of the alleged incident. Mr. Roberts' version of events was in direct conflict with the testimony given by Lillie Armstrong, Ella Barrow, and Herbert Lacassagne. After weighing the evidence and observing the witnesses, the trial court concluded that plaintiff's testimony was not believable.

Where two reasonable views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong.

Daye v. General Motors Corp., 97-1653 (La. 9/9/98) 720 So.2d 654, 659.

Also, when findings are based on determinations regarding the credibility of witnesses, the manifest error, clearly wrong standard demands great

deference to the trier of fact's findings. Mutart v. Allstate Ins. Co., 622

So.2d 803, 806 (La. App. 4 Cir. 1993), citing Rossell v. ESCO, 549 So.2d

840, 844-45 (La. 1989). Only the fact finder can be aware of the variations

in demeanor and tone of voice that bear so heavily on a listener's

understanding and belief in what is said. Id. Accordingly, the trial court's

judgment in favor of the defendant cannot be considered clearly wrong or

manifestly erroneous. Therefore, the judgment of the trial court is affirmed.

AFFIRMED