



Metairie, LA 70001  
COUNSEL FOR DEFENDANTS/APPELLEES

**AFFIRMED**

Plaintiff, Leslie Cooper III, appeals the dismissal of his lawsuit against defendants, Alfred Clark, Gulf Services, Inc., and Reliance Insurance Company. We affirm.

**FACTS AND PROCEDURAL HISTORY**

On April 6, 1998, a vehicular accident occurred between a car driven by Leslie Cooper, III and a truck driven by Alfred Clark near the intersection of Louisa Street and the I-10 ramp in New Orleans. At the time of the accident, Clark was driving an 18-wheel “cab over” with no trailer and a straight front on the truck. The truck was owed by Clark’s employer, Gulf Services Inc., and insured by Reliance Insurance Company, and Clark was in the course of his employment when the accident occurred.

The defendants appraised the damage to Cooper’s car at \$2,088.73 and tendered a check in that amount to Cooper on May 15, 1998. Cooper negotiated the check.

On September 3, 1998, Cooper filed a lawsuit against Clark, Gulf Services and Reliance, claiming that Clark's negligence caused the accident in which he sustained physical and mental injuries, loss of wages and/or earning capacity, and rental car expenses. On July 30, 1999, Cooper filed a supplemental and amending petition adding a claim for property damage to his car. Apparently, Cooper had his car appraised in May 1999, and the appraisal amount was \$1,168.00 over the amount the defendants tendered to him one year before. Because the supplemental and amending petition was filed over one year after the accident, the defendants filed an Exception of Prescription.

Before trial began on October 13, 1999, the trial court granted the defendants' prescription exception. At trial, the trial court ruled in favor of the defendants and dismissed Cooper's lawsuit at his own cost by judgment of April 18, 2000. Cooper appeals the judgment of the trial court dismissing his lawsuit against the defendants, assigning three errors.

### **LAW AND ANALYSIS**

In his first assignment of error, Cooper argues that the trial court erred in failing to find that Clark was at fault in causing the accident. He

maintains that the testimony at trial made it clear that the truck driven by Clark was overtaking and passing his car when the accident occurred. He further claims that the evidence at trial contradicts the trial court's factual findings.

Although the version of the accident given by Cooper and Clark are irreconcilable, the following facts are uncontradicted. The accident occurred on Louisa Street at a point where there are two lanes going in the same direction, no lane markings, and a shoulder bordered by a guardrail. A traffic light controls the intersection. After the accident, Clark and Cooper stayed at the scene for approximately five hours. Cooper's vehicle, after impact, was partially in the right hand lane of traffic and partially on the shoulder of the road. Clark told the investigating police officer that he had not seen Cooper's vehicle. Clark was issued a traffic citation for failure to use vigilance and for which he later pleaded guilty and paid a fine.

Clark testified that before the accident, he was going uptown to pick up a load for his truck, which would eventually require him to turn left off of Louisa Street. He testified that he was stopped for a red light in the right hand lane of Louisa Street. When the light changed to green, he continued

through the intersection, heard something, looked through his mirror, and saw that he had hit Cooper's car. When he first saw Cooper's car, the two vehicles were no longer in contact.

Clark testified that Cooper's car sustained damage to its left rear corner and back left side. He stated that the front wheel, not the bumper, of his truck was damaged. He testified that although he can see anything in front of his truck, it is more difficult to see something in front and to the right of his truck. He also testified that to his knowledge he did not push Cooper's vehicle to the right, but he admitted that his truck is capable of pushing a car.

Clark testified that when his truck hit the car, he was still completely in the right hand traffic lane and Cooper's car was not in front of him in the lane. Clark testified that he believes that Cooper's vehicle was on the right hand side of his truck at the time of the accident and that his right hand tire hit the driver's side of Cooper's vehicle. Clark testified that if Cooper was driving on the shoulder of the road, the presence of a guardrail at the intersection would require him to merge left.

Cooper testified that at the time of the accident, he was on his way to

work as a security guard. He stated that he was completely in the right hand lane of Louisa Street intending to turn right onto the I-10 entrance ramp. He testified that the traffic light was red and that a pickup truck in front of him at the intersection turned right on red allowing him to become the first vehicle at the intersection. Cooper testified about the accident:

Well, what happened while I was sitting at the red light to wait to make the turn to go to I-10, after the [pickup] truck passed and I pulled up, I set for minute and then . . . it was a big crash in the back of my car and it hit me from the rear, but then after it hit from the rear, it's like, went along side my car, it pushed my car over to like the shoulder of the road.

Cooper testified that after the accident, he got out of his car and left the car at the intersection. Cooper testified that Clark did not stop until after he went through the intersection.

The trial judge gave the following written reasons for judgment:

The Court, after hearing the testimony of the witnesses and applying the law and evidence, dismissed the plaintiff's case at his cost. The Court found that the plaintiff vehicle was not rear-ended as he claims. The damage to the plaintiff's vehicle is on the rear driver's side [photographs] (defendant-2 & defendant-3) and not in the rear of the vehicle. There is no way that the defendant tractor-trailer truck could have gotten into the right lane of traffic if it was occupied by the plaintiff. The evidence appears to indicate that the plaintiff was attempting to pass on the shoulder of the roadway.

The defendants supplemented the record on appeal with copies of photographs, presumably those relied upon by the trial court, which show damage to Cooper's car on the rear left corner and driver's side.

The trial court, presented with two conflicting versions of the accident, chose to believe Clark's version. In *Courteaux v. State, Dept. of Transportation & Development*, 99-0353 (La.App. 4 Cir. 9/22/99), 745 So.2d 91, *writ denied*, 00-3214 (La. 1/28/00), 753 So.2d 834, this court set forth the well-known standard of review for a trial court judgment made under such circumstances:

In reviewing the factual findings of a trial court, an appellate court is limited to a determination of manifest error. *Hill v. Morehouse Parish Police Jury*, 95-1100 (La.1/16/96), p. 4, 666 So.2d 612, 614. . . . It is well settled that 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," and where there is a conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on review, even though the appellate court may feel that its own evaluations and inferences are as reasonable.

Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Watson v. State Farm Fire and Cas. Ins.Co.*, 469 So.2d 967 (La.1985). Appellate courts must constantly have in mind that their initial review function is not to decide factual issues *de novo*. 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; for only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is

said. Where documents or objective evidence so contradict a witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable fact finder would not credit the witness's story, the court of appeal may well find manifest error or clear wrongness even in a finding purportedly based upon a credibility determination. However, where . . . such factors are not present, and a factfinder's finding is based on its decision to credit the testimony of one or more witnesses, that finding can virtually never be manifestly erroneous or clearly wrong." *Rosell v. ESCO*, 549 So.2d 840, 844-845 (La.1989). (Citations omitted).

745 So.2d at 97- 98.

As in *Courteaux*, our review of the entire record in this case convinces us that the trial court's findings are reasonable. The version of the accident presented by Clark is contradicted only by Cooper's testimony, and Clark's testimony is internally consistent and plausible. To the contrary, Cooper's testimony that his car was hit in the rear is not supported by the photographic evidence. Although in his testimony Cooper elaborated about the accident indicating that the driver's side of his car was damaged and Clark's truck "pushed" his car out of the right hand lane of traffic, neither of these assertions is contained in his petition which merely alleged that his car was "struck from behind."

The testimony does not make it clear that Clark's truck was overtaking and passing Cooper's car which Cooper claims was in the right hand lane of traffic and not on the shoulder. Contrary to Cooper's claim,



Clark's acknowledgment that he had not seen Cooper's car before the accident best supports an inference that Cooper abruptly came from the shoulder of the road on the right side of Clark's truck into the right hand traffic lane in front of Clark. Cooper references the photographs he submitted into evidence and contends, without explanation, that the damage to his vehicle shown in these photographs is consistent with Clark's truck overtaking and passing his vehicle. While this may be true, the damage to Cooper's vehicle is also consistent with the version of the accident given by Clark and accepted by the trial court. "[W]here two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong." *Stobart v. State, through Department of Transportation and Development*, 617 So.2d 880, 883 (La. 1993).

Cooper further contends that the evidence showed that Clark was inattentive. Clark's attentiveness, however, is not at issue under the factual scenario accepted by the trial court. The trial court's conclusion that the plaintiff was attempting to pass on the shoulder of the road indicates that the plaintiff was in violation of La.R.S. 32:74 (B), which provides:

The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main traveled portion of the highway.

The trial court found that Cooper did not comply with this rule and, by failing to do so, caused the accident. Faced essentially with Cooper and Clark both claiming to have been in the same spot at the time of the accident, the trial court chose to accept Clark's version. Thus, the judgment at issue is based on a factual finding. See *Stevens v. Willis*, 00-01172 (La.App. 3 Cir. 1/31/01), 778 So.2d 1196.

The testimony and photographic evidence supports the trial court's finding. When, as here, there is a reasonable factual basis for the trial court's findings, those findings are not clearly wrong or manifestly erroneous.

In his second assignment of error, Clark argues that the trial court erred by not considering Clark's guilty plea to a traffic citation after the accident in determining liability. After Cooper's counsel introduced evidence that Clark was ticketed after the accident, the trial court stated:

If he got a ticket, it [doesn't] make any difference in this court anyway. . . . That's [a] quasi criminal matter, this is a civil matter, but I'm not interested in whether or not he got a ticket.

Jurisprudence relevant to this issue holds that guilty pleas to traffic violations are admissible as evidence as an admission against interest to show fault, although such pleas are not conclusive evidence of guilt. See *Shepard v. Scheeler*, 96-1690 (La. 10/21/97), 701 So.2d 1308, 1315; *Arceneaux v. Domingue*, 365 So.2d 1330, 1336 (La. 1978); *Tolbert v.*

*Fireman's Fund Ins. Co.*, 98-637 (La.App. 3 Cir. 10/7/98), 719 So.2d 738.

In the instant case, although the trial court allowed evidence of Clark's guilty plea into evidence, the court simply accorded no weight to this evidence. We are unable to say that the trial court's ultimate conclusion was clearly wrong.

Trial courts are given much discretion in their ability to weigh the evidence presented. Although we may disagree with the amount of weight given to a particular piece of evidence, our supreme court has instructed:

[A]n appellate court should not substitute its opinion for the conclusions made by the district court . . . . The trier of fact is not disadvantaged by the review of a cold record and is in a superior position to observe the nuances of demeanor evidence not revealed in a record.

*Leal v. Dubois*, 00-1285 (La.10/13/00); 769 So.2d 1182, 1184-85. (Citations omitted.)

In this case, the investigating police officer issued a traffic citation to Clark apparently because Clark told the officer that he had not seen Cooper's car. The trial court's decision to give more weight to Clark's testimony than to the fact that he pleaded guilty to a traffic violation is entirely within the trial court's discretion. Indeed, we do not find that the mere issuance of the citation is significant in comparison to the clearly irreconcilable versions of the accident presented to the trial court, as well as

several inconsistencies in Cooper's testimony, notably those involving whether his vehicle was drivable after the accident and the length of time for his recovery from injuries he allegedly sustained in the accident.

Accordingly, we find no clear error in the trial court's decision to disregard Clark's guilty plea to a traffic violation relative to the accident.

In his third assignment of error, Cooper contends that the trial court erred in granting the defendants' Exception of Prescription. Cooper claims that his supplemental and amending petition adding a claim for property damages "related back" to his original petition pursuant to La.Code Civ.P. art. 1153. The defendants claim that they were not given the requisite notice of potential liability for a property damage claim, an issue they considered resolved by their payment to Cooper of the full damage appraisal.

At the outset we note that there is nothing in the record to show that Cooper has appealed the trial court's judgment on the prescription exception. Nevertheless, assuming Cooper did properly appeal the judgment, the issue is moot because we have concluded that the trial court's judgment dismissing Cooper's claims against the defendants is not manifestly erroneous.

Reviewing the record in its entirety, we have determined that the trial court's finding was not clearly wrong or manifestly erroneous. The record

supports the reasonable factual findings made by the trial court.

Accordingly, finding no merit in Cooper's assigned errors, we affirm the judgment of the trial court.

**AFFIRMED**