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<tr><td>WELLINGTON BEAUDIEU,
JR., ARTHUR HARRISON,
CHRISTOPHER BURKHART,
LLOYD CLARK, DARRELL
DOUCETTE, CARY DUPART,
BENJA JOHNSON,
TOKISHIBIA LANE,
MICHELLE LETULLE,
EDWARD PRATER, JR.,
MICHEAL SINEGAR, JAMES
WAITERS III AND LEFLORA
YOUNG</td><td>*

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COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA</td></tr>
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VERSUS

ALLSTATE INSURANCE COMPANY, HERBERT A. BURAS, JR., JERRY THORNTON, JR., AND REGIONAL TRANSIT AUTHORITY,

CONSOLIDATED WITH:

BRENDA BEVLEY, SHELITA ANN BUTLER, ROBERT CARROLL III, ANGELA M. DAVIS, DARYLE HALLOWAY, REGINALD LANDRY, EDWARD PRATER, JR. AND MARK ANTHONY WILSON

VERSUS

TRANSIT MANAGEMENT OF SOUTHEAST LOUISIANA D/B/A REGIONAL TRANSIT AUTHORITY, JERRY THORNTON, JR., ALLSTATE INSURANCE COMPANY AND HERBERT A. BURAS, JR.

CONSOLIDATED WITH:

NO. 2000-CA-2008

CONSOLIDATED WITH:

ALFRED WEST

VERSUS

HERBERT BURAS, JR., ET AL.

CONSOLIDATED WITH:

NO. 2000-CA-2009

CONSOLIDATED WITH:

HERBERT BURAS, JR. AND/HIS WIFE ARLENE BURAS

VERSUS

REGIONAL TRANSIT AUTHORITY AND/OR TRANSIT MANAGEMENT OF SOUTHEAST LOUISIANA, INC., JERRY THORNTON, JR., THE CITY OF NEW ORLEANS, SERGEANT SHERMAN JOSEPH AND ALLSTATE INSURANCE COMPANY

CONSOLIDATED WITH:

NO. 2000-CA-2010

CONSOLIDATED WITH:

HERBERT BURAS, JR., AND HIS WIFE ARLENE BURAS

VERSUS

RTA AND/OR TRANSIT MANAGEMENT OF SOUTHEAST LA, INC., JERRY THORNTON, JR., CITY OF NEW ORLEANS, SARGEANT SHERMAN JOSEPH AND ALLSTATE INSURANCE COMPANY

CONSOLIDATED WITH:

NO. 2001-CA-0306

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 98-3672, C/W 98-5691, C/W 98-12965, C/W 98-21268
DIVISION “M-16”
Honorable Piper Griffin, Judge Pro Tempore

* * * * * *

Charles R. Jones
Judge

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(Court composed of Judge Charles R. Jones, Judge Max N. Tobias, Jr. and Judge David S. Gorbaty)

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AFFIRME D

On February 21, 1998, a Regional Transit Authority (RTA) bus driven by Mr. Jerry Thornton was transporting a large group of New Orleans Police Officers to parade duty during the Mardi Gras season. The bus was headed north on North Claiborne Avenue, and was escorted by a police unit driven by Sergeant Sherman Joseph. Mr. Herbert Buras was driving his vehicle in the left lane of northbound traffic on North Claiborne Avenue, but he moved to the right lane when he heard the police siren. Mr. Buras did not come to a complete stop, but continued to drive in the right lane. Once the police unit passed him, Mr. Buras returned to the left lane, and continued to look for his destination. He was then in between the police unit and the bus. Mr. Thornton began to follow Mr. Buras' vehicle closely. Upon realizing he was in the middle of the escort, Mr. Buras attempted to change lanes. In so doing, he took his eyes off of the road in front of him. When he returned to consider the traffic, he saw Sergeant Joseph slowing down. Mr. Buras

reacted suddenly and slammed on his brakes. He was consequently rear-ended by Mr. Thornton, injuring many of the bus passengers who filed suit against Mr. Buras; Allstate Insurance Company, Mr. Buras' insurer; the RTA; and Mr. Thornton.

Officer Alfred West's claim was tried before a jury. The district court heard Mr. Herbert Buras' and Officer Michelle Lutelle's claims. The jury found fault as follows: Mr. Buras and Allstate, 79%; Mr. Thornton and the RTA, 21%; Sergeant Joseph and the City of New Orleans, 0%. The district court found fault as follows: Mr. Buras and Allstate, 75%; Mr. Thornton and the RTA, 25%; Sergeant Joseph and the City of New Orleans, 0%. It is from these judgments that Allstate and Mr. Buras file this appeal arguing that Mr. Buras should not have been found to be the majority at fault, that the differences in the judgments by the district court and the jury must be reconciled, and that the injuries complained of by Mr. Alfred West and Ms. Michelle Lutelle were not caused by the February 1998 accident.

FAULT

The first issue we considered is whether the jury committed manifest error by finding Mr. Buras 79% comparatively at fault. Mr. Buras argues that the sudden emergency doctrine does not excuse the bus driver's failure to exercise due diligence by following a preceding vehicle too closely and

that the bus driver should have been apportioned a larger percentage of fault since he had the final and last chance to minimize or avoid a collision.

Mr. Thornton and the RTA argue that Mr. Buras was properly apportioned a majority of the fault since he interfered with a police escort, and he hit his brakes so hard that it caused a sudden emergency. Further they contend that a rear-end collision does not automatically place the following vehicle at fault, and that Mr. Buras did not exercise due diligence in the operation of his vehicle. They argue that Mr. Buras should have exercised more caution in the changing of lanes and when continuing in traffic once an emergency unit has passed.

LA R.S. 32:81 (A) states that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon the condition of the highway." Further, "Louisiana courts have uniformly held that a following motorist in a rear-end collision is presumed to have breached the standard of conduct prescribed in La. Rev. Stat. Ann. 32:81 and hence is presumed negligent." Mart v. Hill, 505 So.2d 1120, 1123 (La. 1987). "[T]he risk of a rear-end collision … is clearly within the scope of the statutory prohibition against following too close." Id. "It is firmly established that the operator of a following vehicle is required to keep his car under control,

to observe closely a forward vehicle, and to follow at a safe distance. If a rear-end collision occurs, the following motorist is presumed negligent." State Farm Mutual Automobile Insurance Co. v. Hoerner, 426 So.2d 205, 208 (La. App. 4 Cir. 11/02/82).

The district court found that the driver of the third vehicle, Mr. Thornton, was not prudent in the manner in which he followed Mr. Buras' vehicle. Although Mr. Thornton slowed the bus down, he could have increased the distance between himself and the Buras' vehicle. Also, Mr. Thornton knew that Mr. Buras had no way of getting out of their lane. Therefore, it is reasonable for Mr. Thornton to be found negligent and partially at fault for the accident.

> **In order for the following motorist who collides with a preceding vehicle to exculpate himself, he must show** that he kept his vehicle under control, that he closely observed the forward vehicle, that he followed at a safe distance under the circumstances, or **that the driver of the lead vehicle negligently created a hazard which the following vehicle could not reasonably avoid**. (**emphasis added**)

Id. at 209.

Although the district court found that Mr. Thornton followed Mr. Buras' vehicle too closely, it found that Mr. Thornton responded to a sudden emergency created by Mr. Buras. The district court questioned Mr. Buras'

attentiveness as he was looking to make a left turn. The district court found that Mr. Buras must have briefly looked away and when his eyes returned to the road he was startled to see the brake lights on the police unit and overacted by braking suddenly. At this point, the accident became unavoidable. Further, the district court found that Mr. Buras had a duty to pull over in the right lane and stop. La. R. S. 32:125 provides:

> A. Upon the immediate approach of an authorized emergency vehicle making use of audible or visual signals, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right hand edge or curb of the highway clear of any intersection, and **shall stop and remain in such position until the authorized emergency vehicle has passed**, except when otherwise directed by a police officer.
>
> **B.** This Section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. **[Emphasis supplied.]**

Mr. Buras heard the siren and failed to stop as required by law. But for his failure to follow the procedure mandated by law, he would have been in a better posture to assess the situation and ensure he was not interfering with the official business of the police department, and the subject accident

may not have occurred. For these reasons, the district court did not abuse its discretion in finding Mr. Buras to be 75% comparatively at fault, and the jury did not err in finding Mr. Buras to be 79% comparatively at fault.

Additionally, Sergeant Joseph was not found to have any fault in the accident. In Viator v. Gilbert, 206 So.2d 106, 109 (La. App. 4 Cir. 1968), we stated that: "When the lead vehicle makes a sudden stop, or one in order to execute an illegal maneuver, but the operator of the second vehicle is able to bring his car to a stop without a collision, the first driver is not liable if a third vehicle collides with the second." State Farm Mutual Automobile Insurance Co. v. Hoerner, supra. Sergeant Joseph struck his brakes in order to slow down and diligently tried to signal Mr. Buras to exit the lane of the escort. Sergeant Joseph did not stop, and Mr. Buras was able to stop his vehicle without hitting the police unit. Therefore, Sergeant Joseph was not at fault for the accident.

JUDGMENT RECONCILIATION

The second issue we consider is whether the judgments of the district court and the jury should be reconciled. Mr. Buras argues that since the allocations of fault as determined by the judge and by the jury are different by a margin of four percent, that on appellate review fault should be apportioned the same in both instances finding Mr. Buras to be 75% at fault

across the board as opposed to 79% at fault.

Appellees argue that the judgments are not truly in conflict and should be allowed to stand alone as separate judgments. They argue that the minimal deviance in the two independent judgments is not substantial enough to constitute manifest error.

When two separate judgments are rendered in a bifurcated trial, the appellate court is then required to address both of the conflicting decisions, that of the jury and that of the trial judge, under the manifest error standard. Powell v. Regional Transit Authority, 96-0715 (La. 6/18/97), 695 So.2d 1329.

The jury found Allstate Insurance and Mr. Buras to be 79% at fault; and the RTA and Mr. Thornton were found to be 21% at fault. The district court found Allstate and Mr. Buras to be 75% at fault, and the RTA and Mr. Thornton to be 25% at fault. The amount of fault allocated to Allstate and Mr. Buras by both the district court and the jury are very close, only a difference of four percentage points. Further, Mr. Buras is clear about which parties they have to pay and the amount in which they are to be paid. Therefore, this Court finds that there is no basis to reconcile the judgments when they are not in conflict with each other.

AWARDS

The final issue we consider is whether Mr. West's and Ms. Lutelle's injuries were due to the accident that is the subject of this matter, and whether the awards of damages were an abuse of discretion. Allstate and Mr. Buras argue that both Mr. West and Ms. Lutelle had severe pre-existing conditions that the accident, if at all, only caused a minor aggravation not worth the judgments awarded to them.

Mr. West and Ms. Lutelle argue that this Court should defer to the vast discretion of the district court and not disturb the awards as they have been set by the district court.

Alfred West states that this injury arising from the subject accident is to his rotator cuff. The defense was presented with respect to the injury and as to whether it was caused by the subject accident as stated by Mr. West or caused by a pre-existing condition raised by Allstate and Mr. Buras. When conflicting evidence is presented, the trier of fact's validation of one version of the facts over another is not reversible unless clearly wrong or manifestly erroneous. See Rosenthal v. Betsy's Pancake House, Inc., 2000-1546 (La. App. 4 Cir. 5/16/01), 789 So.2d 35. I find that the trier of fact did not abuse that discretion. In addition, the award of damages of $106,500.00 is supported by the record, for Mr. West had past medical expenses, future medical expenses, and lost wages. We note the recent case of Corlis v. Baha

Towers Ltd. Partnership, 2000-2011 (La. App. 4 Cir. 8/29/01), ____ So.2d ____, wherein this Court found that the trial court did not abuse its discretion in awarding $131,690.31 for a torn rotator cuff injury.

Similarly, we do not find that the trier of fact abused its vast discretion in determining that Michelle Lutelle's award of damages is excessive. The trier of fact apparently found that Ms. Lutelle's disc condition was at least materially aggravated by the subject accident, resulting in substantial back pain and alteration of lifestyle. The damages awarded fall within the amounts validated by the jurisprudence.

There is nothing in the record that suggests the district court or the jury was manifestly erroneous in the awards rendered. It is reasonable that the district court and the jury found that the injuries to Mr. West and Ms. Lutelle were as a result of the accident in February 1998 and not the residual effect of previous injuries. Therefore, the awards granted will not be disturbed.

DECREE

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRME

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