

NOT DESIGNATED FOR PUBLICATION

DEBORAH DAVIS * **NO. 2000-CA-2211**
VERSUS * **COURT OF APPEAL**
ALLSTATE INSURANCE * **FOURTH CIRCUIT**
COMPANY AND BEVERLY * **STATE OF LOUISIANA**
FERNANDEZ *

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 98-15207, DIVISION "A-5"
Honorable Carolyn Gill-Jefferson, Judge

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JUDGE MAX N. TOBIAS, JR.
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(COURT COMPOSED OF JUDGE MICHAEL E. KIRBY, JUDGE TERRI F. LOVE, JUDGE MAX N. TOBIAS, JR.)

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AFFIRMED

In this personal injury lawsuit, plaintiff, Deborah Davis, appeals a trial court judgment rendered in favor of defendants, Beverly Fernandez and her automobile liability insurer, Allstate Insurance Company (“Allstate”).

On 9 May 1998, Ms. Davis, was traveling east on I-10 near the Morrison Road exit when she claims that a blue van swerved into her lane of travel due to debris in the roadway, struck her vehicle, and drove off. While Ms. Davis was unsuccessful in stopping the vehicle, she followed the van and recorded the license number, which she later gave to police. Once Ms. Fernandez was identified as the owner of the blue van, the police contacted her; Ms. Fernandez, however, denied that any accident ever took place. Ms. Davis later filed the instant lawsuit against Ms. Fernandez and Allstate.

Following a pretrial conference, the trial court bifurcated the issues of liability and damages and tried liability first. The trial took place on 3 May 2000, and at the conclusion of the testimony, the trial court found in favor of defendants. In her oral reasons for judgment, the trial judge stated:

Considering the law and evidence, while the court finds that something happened between Ms. Davis' vehicle and Ms. Fernandez's van on May 9, 1998, Ms. Davis has not shown by a preponderance of the evidence that Ms. Fernandez was at fault.

The court makes the following findings of fact: (1) On May 9, 1998, between 3:30 and 4:00 pm, defendant was in the area where the incident occurred; (2) plaintiff accurately noted the color of defendant's van and her license number; (3) plaintiff's testimony regarding how the alleged accident occurred is full of inconsistencies; and while plaintiff asserts that she saw the van before the impact and blew her horn, she later states that she didn't see the car until the impact.

And, again, despite having testified that she didn't see the car until after the impact, she testified that prior to impact she and the car swerved at the same time. In her report to police, plaintiff stated that the debris was in defendant's lane and that the defendant swerved to avoid the debris. However, at trial, she stated that the debris was in her lane, the right lane.

Considering the above, the court finds that plaintiff has not shown by a preponderance of the evidence that any accident was due to the fault of the defendant.

On appeal, Ms. Davis argues that the trial court committed manifest error by finding inconsistencies in plaintiff's testimony where the record reflects that none exist. In addition, she contends that the trial court erred as a matter of law in rejecting her testimony as to how the accident occurred

where no contradictory evidence was presented on that issue.

An appellate court's review of factual findings is governed by the manifest error-clearly wrong standard. The two-part test for the appellate review of factual findings is: (1) whether there is a reasonable factual basis in the record for the finding of the trial court, and (2) whether the record further establishes that the finding is not manifestly erroneous. *Mart v. Hill*, 505 So. 2d 1120, 1127 (La. 1987). Thus, if a reasonable factual basis exists in the record for the trial court's finding, no additional inquiry is necessary. However, if no reasonable factual basis is present, an appellate court may set aside a trial court's factual finding only if, after reviewing the record in its entirety, it determines the trial court's finding was clearly wrong. *See Stobart v. State, through Department of Transportation and Development*, 617 So. 2d 880, 882 (La. 1993). Even though an appellate court may feel its own evaluations and inferences are more reasonable than the fact finder's, reasonable evaluations of credibility and inferences of fact should not be disturbed upon review where conflict exists in the testimony. Where two permissible views of the evidence are present, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.*

After a careful review of the testimony of the witnesses at trial, we find that a factual basis exists for the trial court's finding of no liability on

the part of defendants. Indeed, Ms. Davis' testimony at trial was full of inconsistencies when considered in light of her prior deposition testimony and the facts she gave to the police immediately following the accident. This purely factual case hinges almost entirely on the credibility of plaintiff herself. When a finding is based on a credibility determination, the manifest error standard demands great deference to the fact finder who has observed the witness's demeanor and tone of voice which weighs heavily in favor of the fact finder's understanding of the testimony. *Nuckley v. Gail M. Woods, Inc.*, 94-2190 (La. App. 4 Cir. 4/26/95), 654 So. 2d 840, 842. We will not disturb the trial court's obvious determinations of credibility.

Accordingly, for the above reasons, we affirm the trial court's judgment in favor of defendants.

AFFIRMED