AMBROSE PETERSON	*	**NO. 2001-CA-0330**
VERSUS	*	**COURT OF APPEAL**
ROBERT A. SCHIMEK, M.D. AND LAFAYETTE INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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BYRNES, C.J., DISSENTS IN PART WITH REASONS

I respectfully dissent in part based on my conclusion that the trial court was not clearly wrong in finding that the defendant/lessor Dr. Robert A. Schimek and his insurer were not 100 percent liable for the injuries of plaintiff/tenant Ambrose Peterson in this slip and fall accident on the stairway to the plaintiff's second floor apartment.

The majority found that the plaintiff was 25 percent comparatively negligent because of his knowledge of the plants on the stairway as compounded by his participation in the placement of the potted plants.

Causation is a question of fact to which the trial court's determinations will not be disturbed absent manifest error. *Martin v. East Jefferson General Hosp.*, 582 So.2d 1272, 1276 (La. 1991). In the present case, the trial court found that the cause of the plaintiff's fall was the defective railing

that swung out.

The trier of fact is owed great deference in its allocation of fault and may not be reversed unless clearly wrong. *Warren v. Campagna,* 96-0834 (La. App. 4 Cir. 12/27/96), 686 So.2d 969. Under the manifest error or clearly wrong standard of review for factual findings, when there is evidence before the trier of fact which, upon its reasonable evaluation of credibility, furnishes a reasonable factual basis for the trial court's finding, the appellate court should not disturb a factual finding in the absence of manifest error. *Powell v. Regional Transit Authority*, 96-0715 (La. 6/18/97), 695 So.2d 1326; *Stobart v. State through Dept. of Transp. and Development,* 617 So.2d 880, 882-83 (La.1993). Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous, and thus is not subject to reversal by appellate courts. *Dixon v. Winn-Dixie Louisiana, Inc.*, 93-1627 (La. App. 4 Cir. 5/17/94), 638 So.2d 306, 318; *Rosell v. ESCO*, 549 So.2d 840, 844 (La.1989). A reviewing court may reallocate fault only after it has found an abuse of discretion and then, only to the extent of lowering or raising the percentage of fault to the highest or lowest point. *Clement v. Frey*, 95-1119, 95-1163 (La. 1/16/96), 666 So.2d 607, 609.

In the present case, the trial court concluded that the defective

stairway railing was the sole cause of the plaintiff's fall. Potted plants did not cause the railing to be defective. The trial court reasonably could have concluded that the plaintiff's fall itself was caused by the defective railing, whether or not the potted plants were on the stairway. The record furnishes a reasonable factual basis for the trial court's finding. I cannot conclude that the trial court clearly or manifestly erred in its assessment of causation. I cannot conclude that the trial court abused its discretion in allocating fault solely against the defendants, thereby ruling out any comparative negligence on the part of the plaintiff.

Accordingly, I would affirm the judgment of the trial court.