

**NOT DESIGNATED FOR PUBLICATION**

**INES RAMOS, AS TUTRIX OF** \* **NO. 2001-CA-0650**  
**AND ON BEHALF OF HER** \* **COURT OF APPEAL**  
**MINOR CHILD, ARIEL** \* **FOURTH CIRCUIT**  
**RAMOS** \* **STATE OF LOUISIANA**  
**VERSUS** \*  
**STATE FARM MUTUAL** \*  
**AUTOMOBILE INSURANCE** \*  
**COMPANY, AND ITS** \*  
**INSURED, LANCE MATTHEW** \*  
**NAQUIN** \* \* \* \* \*

**APPEAL FROM**  
**ST. BERNARD 34TH JUDICIAL DISTRICT COURT**  
**NO. 90-288, DIVISION "B"**  
**Honorable David S. Gorbaty, Judge**  
\* \* \* \* \*  
**Judge Dennis R. Bagneris, Sr.**  
\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes, III,  
Judge Dennis R. Bagneris, Sr., and Judge Terri F. Love)

**BYRNES, C.J., DISSENTS IN PART AND CONCURS IN PART**

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**AFFIRMED**

**AFFIRMED**

**AFFIRMED**

Plaintiff, Ines Ramos, brought this suit individually and on behalf of her minor daughter, Ariel Ramos, to recover for damages that they sustained in a two-vehicle accident, which occurred in St. Bernard Parish, Louisiana, on May 18, 1999. The defendants in the suit include Lance Naquin, the driver of one of the vehicles involved in the accident and his insurer, State Farm Mutual Automobile Insurance Co. (“State Farm”). Ms. Ramos settled with her own insurer, who was also State Farm, for \$9,750.00.

Consequently, State Farm, in its capacity as liability insurer for Ines Ramos, was dismissed with prejudice. Plaintiff and Defendants appeal the trial court’s judgment in favor of Plaintiff, and the trial court’s finding that Ms. Ramos and Mr. Naquin are fifty (50) percent at fault for the accident. For

the following reasons, we affirm.

## **FACTS**

This matter arises out of an automobile accident that occurred on May 18, 1999 at the intersection of Bayou Road and Michelle Drive in St. Bernard Parish. Ariel Ramos was a passenger in a vehicle driven by her mother, Ines Ramos. Ms. Ramos was traveling on Michelle Drive when she stopped at the intersection of Michelle Drive and Bayou Road. She then turned eastbound on to Bayou Road and was immediately hit from the rear by Lance Naquin's vehicle, which was traveling east on Bayou Road. Ms. Ramos was issued a ticket for failure to yield at the stop sign.

At trial, the parties disputed where the accident occurred, with respect to the intersection. Officer Todd Lemoine testified at trial that the accident occurred "in front of the intersection...in the eastbound lane of traffic;" however, Officer Lemoine also testified that he did not take any measurements at the scene. Ms. Ramos testified that the accident occurred about forty-five feet from the intersection. She further testified that the broken lights or pieces of the vehicle were located on the roadway about forty-five feet away from the intersection. Mr. Naquin testified that the accident occurred "at the head of the intersection, on the New Orleans side."

After the accident, Ms. Ramos testified that Ariel experienced pain in

her lower back and shoulders; however, Ms. Ramos further testified that Ariel now rarely complains of any type of pain and that her injuries have resolved.

Ms. Ramos testified that she experienced pain in her back, her right leg, and her left arm, but that she had previous problems with her back and right leg before the accident.

After a one-day bench trial, the trial court rendered judgment in favor of Ms. Ramos, and the trial court ordered that fifty (50) percent of the fault be allocated to Mr. Naquin, and fifty (50) percent of the fault be allocated to Ms. Ramos. The trial court further awarded Ms. Ramos \$8,400.00 in general damages, plus \$1,677.80 in specials, subject to reduction by her fault. The trial court also found in favor of Ariel Ramos, but the trial court awarded no additional monies. In its reasons for judgment, the trial court stated, in pertinent part:

Because of the conflicting information regarding where with respect to the intersection the accident occurred, the liability should be shared equally between the two parties. Therefore, fifty percent of the fault is allocated to Ines Ramos, and fifty percent of the fault is allocated to Mr. Naquin.

After the accident, Ines Ramos experienced back, arm, and leg pain. She treated with Dr. Shoemaker, a chiropractor, from May 24, 1999 through January 14, 2000. At trial, under cross-examination, Ms. Ramos admitted that she also injured her back picking up a child in December of 1999. Medicare paid \$897.20 for her treatment with Dr. Shoemaker; then, due to policy changes, they discontinued payment for chiropractic

claims.

At trial, the parties stipulated that Ariel Ramos had previously received \$9,750.00 in a settlement of this matter. No evidence was introduced at trial that would support an award of further monies for Ariel Ramos. The Court finds that she has already been adequately compensated for any injuries she sustained.

On appeal, Ms. Ramos alleges that the trial court erred in giving Defendants a credit for the amount previously received in a partial settlement by Ariel Ramos. The Defendants allege that the trial court erred in finding that Lance Naquin was fifty (50) percent at fault; rather, Defendants argue that Ms. Ransom should be held 100% at fault.

#### **STANDARD OF REVIEW**

An appellate court may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." *Stobart v. State through Dept. of Transp. and Development*, 617 So.2d 880, 882 (La. 4/12/93). Thus, an appellate court is not to decide whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. *Id.* Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. *Id.* The reason for this well-settled principle of review is based not only upon the trial court's better

capacity to evaluate live witnesses (as compared with the appellate court's access only to a cold record), but also upon the proper allocation of trial and appellate functions between the respective courts. *Canter v. Koehring Co.*, 283 So.2d 716, 724 (La. 9/24/73).

## DISCUSSION

***Issue 1: Whether the trial court erred in looking to the amount received in settlement by Ariel Ramos in determining the credit to be granted to the remaining defendants, rather than assigning general and special damages on her behalf.***

Ms. Ramos contends that the trial court erred in crediting the Defendants for the settlement funds previously awarded to her daughter, Ariel Ramos. Ms. Ramos cites to a Louisiana Supreme Court decision, *Farbe v. Casualty Reciprocal Exchange*, 2000-0076, pgs. 5-7, (La. 7/6/00), 765 So.2d 994, 997-8, for the proposition that Louisiana courts do not look to the settlement amount received by a plaintiff when determining the credit granted to the remaining solidary obligors.

We find Ms. Ramos's reliance on *Farbe* is misplaced. The issue addressed by the Supreme Court in *Farbe* was whether the defendant (a non-settling tortfeasor) was entitled to receive a credit against the judgment in accordance with the percentage of fault assigned to the released tortfeasor or whether the defendant was solidarily liable for 50% of the judgment. In finding that the defendant was entitled to the credit, the court discussed the

factors parties take into account during settlement negotiations. As stated by the court:

Plaintiffs must weigh many uncertain factors in the settlement process, including how many tortfeasors will ultimately be held liable for their injuries, the degree degree of fault that each tortfeasor will bear, and their total amount of damages. If plaintiffs miscalculate these factors, and the amount they receive in settlement differs from the portion of damages ultimately attributed to the released tortfeasor at trial, they may either reap a windfall or suffer a loss. Therefore, Louisiana courts do not look to the settlement amount received by a plaintiff when determining the credit granted to the remaining solidary obligors.

*Farbe*, 765 So.2d at 997-998. Accordingly, settling parties might “reap a windfall or suffer a loss” if they miscalculate a settlement amount that is different than how the court apportions fault to the tortfeasor.

Unlike in *Farbe*, where the defendant non-settling tortfeasor was seeking a credit from a second tortfeasor who had previously settled with the plaintiff, in this case Ms. Ramos is seeking additional damages from Defendants. The parties stipulated at trial that Ariel Ramos was previously awarded a settlement. Further, a review of the record supports the trial court’s finding that Ms. Ramos failed to introduce any new evidence on behalf of Ariel Ramos to support an award for additional monies. For these reasons, we find no merit to Ms. Ramos’s assignment of error.

***Issue 2: Whether the trial court erred in apportioning 50% of fault to the defendant Lance Naquin.***

The Defendants appeal the trial court's finding that Mr. Naquin was 50% at fault for the accident. The Defendants contend that the trial court should have found Ms. Ramos 100% at fault based on the testimony and physical evidence introduced at trial. Specifically, the Defendants claim the trial court completely discounted the testimony of Mr. Naquin and Officer Lemoine regarding how the accident occurred and the location of the accident. Defendants cite to *Miramon v. Bradley*, 96-1872, (La.App. 1 Cir. 9/23/97), 701 So.2d 475, in support of their argument that the trial court ignored the evidence.

In *Miramin*, plaintiff was in a serious automobile accident whereby she suffered from post-traumatic stress disorder. While recovering from the first accident, plaintiff was involved in a second, less serious accident. At trial, plaintiff claimed that the second accident exaggerated her mental trauma from the first accident. Although all of plaintiff's treating physicians and therapists agreed that the second accident exacerbated plaintiff's problems, the trial court concluded that the second accident had not contributed to an increase in plaintiff's symptoms. The First Circuit found that the record supports a finding that the second accident contributed to an increase in plaintiff's problems and thus, the trial court committed reversible error in failing to award compensation to plaintiff for these damages.



Unlike the *Miramon* case, whereby the trial court ignored and discounted the testimony from the plaintiff and her witnesses, there is no evidence in this case that the trial court ignored or discounted the evidence. In fact, in the reasons for judgment, the trial court specifically stated that the physical evidence was located at the intersection; however, the trial court found both parties equally liable “because of the conflicting information regarding where with respect to the intersection the accident occurred.” After a review of the record, we fail to find any evidence indicating that the trial court ignored or discounted the testimony and thus, we find no merit to this assignment of error.

Accordingly, we affirm the judgment of the trial court in favor of Ms. Ines Ramos and Ariel Ramos, and the trial court’s order that fifty (50) percent of the fault is allocated to Lance Naquin, and fifty (50) percent of the fault is allocated to Ines Ramos. Further, we affirm Ms. Ines Ramos’s general damage award of \$8,400.00, plus her special award of \$1,677.80, subject to reduction by her fault.

**AFFIRMED**

