

NOT DESIGNATED FOR PUBLICATION

**QUWANDA EVANS,
INDIVIDUALLY AND ON
BEHALF OF PAULIQUA
EVANS AND RONA EVANS**

VERSUS

**STATE FARM INSURANCE
COMPANY AND CHARLES
BLACK AND INDEPENDENT
FIRE INSURANCE COMPANY**

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NO. 2003-CA-1033

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COURT OF APPEAL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 2001-52445, SECTION "A"
Honorable Charles A. Imbornone, Judge

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Judge Patricia Rivet Murray

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(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby,
Judge Edwin A. Lombard)

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(STATE FARM INSURANCE COMPANY AND
CHARLES BLACK)

AFFIRMED

Defendants, Charles Black and his insurer, State Farm Mutual Automobile Insurance Company [“State Farm”], appeal the trial court’s judgment finding that Mr. Black was solely at fault in causing an automobile collision between himself and plaintiff Quwanda Evans. For the reasons that follow, we affirm.

This action arose out of a March 26, 2000 two-car collision that occurred at the intersection of Louisa and Abundance Streets in New Orleans. The intersection is controlled by “four-way” stop signs. Ms. Evans, who had been traveling north on Louisa (a divided street), turned left at Abundance, and her vehicle then collided with the vehicle driven by Mr. Black, who was traveling south on Louisa.

Ms. Evans filed the instant suit in First City Court on behalf of herself, her two-year-old daughter, Pauliqua Evans, and her sixteen-year-old niece, Rona Evans, who were passengers in her vehicle at the time of the

accident; she alleged that all three had suffered mental and physical injuries attributable to the fault of Mr. Black. The case was tried without a jury on April 16, 2002, with the only witnesses being Quwanda Evans, Rona Evans and Charles Black. Disputed issues at trial included whether each vehicle had stopped at the four-way stop sign before proceeding into the intersection, and which vehicle had the right of way. On May 20, 2002, the trial court rendered judgment against defendants, awarding damages in the amount of \$7, 540 to Quwanda Evans, \$1,720 to Pauliqua Evans, and \$6,175 to Rona Evans. According to the Reasons for Judgment:

The Court, after hearing the testimony of the witnesses and reviewing all of the evidence, found that the defendant driver, CHARLES BLACK, was the sole cause of the accident. He failed to yield to the plaintiff vehicle, who had the right of way, after stopping at the stop sign and turning onto the roadway.

The defendants now appeal the judgment, contending that the trial court erred in finding Charles Black solely responsible for causing the accident. The gist of the defendants' argument is that Mr. Black had the right of way pursuant to La. R.S. 32:122, which provides that the driver of a left-turning vehicle must yield to vehicles approaching from the opposite direction that are "within the intersection or so close thereto as to constitute

an immediate hazard.” Plaintiffs, on the other hand, contend that the trial court’s judgment is supported by La. R.S. 32:123, which delineates the duties of motorists at intersections controlled by stop signs.

Given the factual situation presented by this case, we agree that La. R.S. 32:123 is the controlling law. It provides, in pertinent part:

B...[E]very driver and operator of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the cross walk on the near side at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the driver shall yield the right of way to all vehicles which have entered the intersection from another highway or which are approaching so closely on said highway as to constitute an immediate hazard.

C. At a four-way stop intersection, the driver of the first vehicle to stop at the intersection shall be the first to proceed.

An appellate court is bound to uphold the trial court’s findings of fact unless, in light of the entire record, they are manifestly erroneous or clearly wrong. *Lewis v. State, through DOTD*, 94-2370, pp. 4-5 (La. 4/21/95), 654 So.2d 311, 314. One reason for the deference given to the trial court’s findings is the factfinder’s better capacity to evaluate live witnesses, for only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on credibility. *Id*; *Rosell v. Esco*, 549 So.2d 840, 844

(La. 1989). Therefore, when the trial court's finding is based upon its decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous or clearly wrong. *Id.* at 845.

In the instant case, three witnesses testified as to how the accident occurred. Quwanda Evans testified that when she reached the four-way stop sign and made a complete stop, there were no other vehicles stopped at the intersection. She saw Mr. Black's vehicle approaching, but it had not yet reached the stop sign. She proceeded and began her left turn while Mr. Black's vehicle was still approaching the intersection. She testified that she expected Mr. Black's vehicle to stop, but it did not; it went straight through the intersection and the collision occurred. At her deposition, Ms. Evans had testified that Mr. Black's vehicle struck the rear of her vehicle on the right side. At trial, her testimony became confused on this point, and, when shown a photograph depicting damage to the front driver's side door of Mr. Black's car, she stated that the front of her vehicle had struck the side of his vehicle.

Ms. Evans' passenger, Rona Evans, who was sixteen years old at the time of the accident, also testified. She corroborated Quwanda Evans' statement that Mr. Black's vehicle had not yet reached the stop sign when her aunt began her left turn, and that Mr. Black did not stop at the sign. She

also stated that she was positive Mr. Black's vehicle had struck the back side of her aunt's vehicle and had then struck a telephone pole, which accounted for the damage to the front door of the Black vehicle.

The final witness was Mr. Black. He stated that he had stopped at the stop sign before he noticed Ms. Evans' vehicle, but his testimony concerning the location of her vehicle when he first noticed it was equivocal. He first testified that he did not see her until she was in the middle of the intersection; then he said he saw her before she reached the stop sign and saw that she failed to stop; finally, he admitted he did not know where her vehicle was when he first saw it. He denied that he had hit a pole and insisted that the damage to his front door was caused when the Evans vehicle struck his.

Considering the evidence, it was clearly reasonable for the trial court to believe the testimony of Ms. Evans and her niece that Mr. Black failed to obey the stop sign, which caused the collision. Their testimony was consistent and was not contradicted by any physical evidence. In view of the record, the trial court's determination that Mr. Black was one hundred percent at fault in causing the accident is not manifestly erroneous. We therefore reject the appellants' sole assignment of error.

Accordingly, for the reasons stated, the judgment of the First City Court is affirmed.

AFFIRMED