NOT DESIGNATED FOR PUBLICATION

JOHN TRAMMEL AND BRENDA TRAMMEL	*	**NO. 2004-CA-0196**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
LIBERTY MUTUAL FIRE INSURANCE COMPANY	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-127, DIVISION "C-6"
Honorable Roland L. Belsome, Judge
* * * * * *
Judge David S. Gorbaty
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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Dennis R. Bagneris Sr., Judge David S. Gorbaty)

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AFFIRMED

In this appeal, plaintiffs contend that the trial judge erred in denying them recovery under a homeowner's policy issued by defendant Liberty Mutual Fire Insurance Company ("Liberty Mutual") to Frank Trammel. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

On June 24, 1999, John Trammel was cutting a tree down in his father Frank Trammel's front yard. John tied a rope between his vehicle and a large tree limb to anchor it. John then ascended a ladder and began cutting a branch from the tree. According to plaintiffs, at this point, Frank got into the driver's seat and called out to him, "You ready?" John Trammel answered, "No!" However, Frank Trammell, who is hard of hearing, thought he said, "Go!" He either accelerated or released the emergency brake and the car moved forward. The limb snapped, hitting John and knocking him from the ladder. John wrenched his back and broke his ankle in several places.

John Trammel made claims against his father's automobile and homeowner's policies, both of which were written by Liberty Mutual. Liberty averred that recovery was available only under the $50,000

automobile policy, and denied coverage under the $100,000 homeowner's policy. John and Brenda Trammel filed suit against Liberty Mutual. Soon thereafter, they filed a motion for partial summary judgment seeking a declaration that coverage existed under both policies. The trial court denied the motion, finding that coverage was only available under the automobile policy, as the negligence arose out of the use of an automobile. In a 3-2 decision, this court overturned the ruling of the trial court, finding that the vehicular exclusion in Frank Trammel's homeowner's policy did not bar plaintiffs' recovery when a cause covered under policy existed (non-vehicular negligence) concurrently with the excluded cause (vehicular negligence). *Trammel v. Liberty Mutual Fire Ins.*, 2001-0948 (La. App. 4 Cir. 2/13/02), 811 So.2d 78. The Supreme Court granted writs and remanded the matter, finding that there were "genuine issues of material fact regarding whether separate, independent acts of negligence were present such that the homeowner's auto exclusion would not bar Plaintiffs' recovery in this case." *Trammel v. Liberty Mutual Fire Ins.*, 2002-0768 (La. 5/24/02), 816 So.2d 294. After a bench trial, the trial court found that there was no evidence that supported liability outside of that which arose out of the use of

an automobile, and awarded $50,000 under the automobile policy. Plaintiffs subsequently filed this appeal of the dismissal of the homeowner's claims.

DISCUSSION

Plaintiffs assert that the trial court erred in concluding that plaintiffs were not entitled to recover under the homeowner's policy because the accident at issue involved the use of an automobile. Plaintiffs further assert that the trial court erred in failing to reach the material dispute of fact as to whether the accident was caused by independent, nonvehicular acts of negligence.

The trial court's ruling on causation is a finding of fact. *Martin v. East Jefferson General Hospital,* 582 So.2d 1272 (La. 1991). The trial court's finding of fact may not be reversed absent manifest error or unless clearly wrong. *Lasyone v. Kansas City Southern Railroad,* 00-2628 (La. 4/3/01), 786 So.2d 682. The reviewing court must give great weight to the factual conclusions of the trier of fact. *Canter v. Koehring Co.,* 283 So.2d 716 (La. 1973).

In the case at bar, there is only one action that could trigger coverage under either policy, and that is the pulling of the rope in question by

Trammel's vehicle. Obviously, this action arises out of the use of an automobile. The tree did not fall because of any defect therein; the branch did not snap of its own accord. The trial court heard the evidence and made the factual determination that there was no separate cause of the accident attributable to Liberty Mutual other than that which arose out of the use of the automobile in question. This finding is not clearly erroneous and does not constitute manifest error.

Finally, plaintiffs argue that the trial court erred in curtailing their submissions of evidence. Plaintiffs assert that the trial court rushed them through the presentation of their evidence, repeatedly cutting off questioning and calling counsel to the bench to advise that the testimony was too extensive. Further, due to scheduling conflicts, the trial court required plaintiffs to introduce the deposition of Dr. Courtney Russo, John Trammel's treating physician, in lieu of his live testimony.

The trial court awarded the maximum amount available under the automobile policy, $50,000. The trial court found no coverage under the homeowner's policy. As such, even if the trial court did err in curtailing plaintiffs' submissions of evidence, it would have been harmless error.

Allowing additional testimony would not have resulted in a larger award for plaintiffs. This assignment of error is without merit.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED