

NOT DESIGNATED FOR PUBLICATION

LAKEITHA BLAISE, * **NO. 2006-CA-1593**
INDIVIDUALLY AND ON *
BEHALF OF HER MINOR * **COURT OF APPEAL**
DAUGHTER, LANIKA M. *
BLAISE * **FOURTH CIRCUIT**
VERSUS * **STATE OF LOUISIANA**

CAROL K. PEREZ, ST. * * * * *
BERNARD PARISH SCHOOL
BOARD AND LARMA
INSURANCE COMPANY

APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 102-900, DIVISION "A"
Honorable Robert A. Buckley, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Max N. Tobias,
Jr., and Judge Edwin A. Lombard)

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MAY 2, 2007

AMENDED; AFFIRMED AS AMENDED

The Appellant, Lakeitha Blaise (Ms. Blaise), on behalf of her minor child, Lanika Blaise (Lanika), appeals the judgment of the district court of St. Bernard Parish finding her thirty percent at fault for injuries she sustained while riding the school bus. We reverse.

The Appellant alleged that Lanika was injured while riding the school bus. The district court established that the Appellees, Carol Perez (the driver of the bus) and the St. Bernard Parish School Board, were indeed at fault for the accident, so there is no question of law or fact in that regard. After the accident, Lanika called Ms. Blaise who arrived at the scene and waited for Lanika to exit the bus. Ms. Blaise transported Lanika to Chalmette Medical Center. Lanika complained of back and neck pain. Dr. Samuel Elliot Greenbaum treated Lanika for approximately four and a half months and diagnosed her with an acute cervical strain, an acute trapezoidal muscle strain and an acute bilateral thoracic strain.

Ms. Blaise filed a Petition for Damages in the district court of St. Bernard Parish. The petition named Carol Perez, St. Bernard Parish School Board and LARMA Insurance Company as defendants. The matter came for trial on June 15, 2005 and judgment was rendered on August 26, 2005. The

judgment found Carol Perez and the St. Bernard Parish School Board seventy percent at fault for causing Lanika's injuries. Lanika was found thirty percent at fault. LARMA Insurance Company was ordered to pay Lanika \$4375 in compensation for her damages. It is from this judgment that Ms. Blaise, on behalf of Lanika, takes the instant appeal.

Ms. Blaise offers two assignment of error, however, the sole question for this Court's review is whether the district court erred in imputing any comparative fault to Lanika. We find that it did.

Whether comparative fault applies in a given case is a factual determination governed by the manifest error standard of review; hence, "[o]nly if the apportionment of fault is found to be clearly wrong can an appellate court adjust percentages." *Maldonado v. Louisiana Superdome Com'm.*, 95-2490, p. 10, (La.App. 4 Cir. 1/22/97) 687, So.2d 1087 (citing *Clement v. Frey*, 95-1119, p. 7 (La.1/16/96), 666 So.2d 607, 610-11). In comparing fault, we apply the oft-cited list of factors enunciated in *Watson v. State Farm Fire & Cas. Ins. Co.*, 469 So.2d 967, 974 (La.1985); to wit:

- (1) whether the conduct resulted from inadvertence or involved an awareness of the danger;
- (2) how great a risk was created by the conduct;
- (3) the significance of what was sought by the conduct;
- (4) whether the capacities of the actors were superior or inferior;
- (5) whether any

extenuating circumstances required to actor to proceed without proper thought, and (6) the relationship between the actor's conduct and the harm to the plaintiff. *Joseph v. City of New Orleans* 02-1996, pp. 9-10 (La. App. 4 Cir. 3/5/03), 842 So.2d 420, 426.

At trial in the instant matter, there was a question as to whether Lanika was standing up when the accident occurred. Ms. Perez testified that Lanika was indeed standing up. A videotape was produced showing footage of the bus and its passengers before, during and after the accident. The district court established at trial that Lanika was seated at the time of the accident. However, the district court found that Lanika was seated on her leg. It also established that Lanika did not appear to be suffering from injury immediately after the accident. The district court reasoned:

The Court is satisfied that Lanika Blaise's testimony is verified by the video tape and at the time of the accident she was in fact seated on her leg and not with her back against the seat back. She therefore could have jerked forward and back injuring her neck and back as a result of this accident. Clearly, Lanika would have been more stable and situated in her seat had she been properly seated and the extent of her injury lessened. Therefore, the court feels that while the accident was ultimately caused by Ms. Perez, Ms. Blaise is comparatively at fault for the injury she incurred as a result of the accident.

This Court has an obligation to evaluate this case in accordance with

Watson v. State Farm Fire & Cas. Ins. Co. We find that the conduct of the parties, Ms. Perez driving the bus and Lanika sitting on her leg, were inadvertent and did not involve any conscious awareness of danger. Ms. Perez created a risk when she made a left turn while looking in her rearview mirror causing her to collide with another vehicle. Although the significance of Ms. Perez's conduct was the simple act of driving children to school, the fact that she was found 100% at fault for her conduct cannot go without acknowledgment. Ms. Perez's capacity as a bus driver was superior as it relates to Lanika. Ms. Perez testified that she told the children to sit down several times, including Lanika who corroborated her testimony. However, as a bus driver, Ms. Perez has a duty to proceed with caution knowing that in her profession children can be distracting. Further, the videotape proves that Lanika was seated at the time of the accident regardless of being told to sit down prior to or after the collision. There is no question that Ms. Perez's conduct caused harm to Lanika. Dr. Greenbaum testified at trial that Lanika had no previous injuries. When asked if it was more likely than not that Lanika's injuries to her neck and upper back were casually related to the bus accident, the doctor replied "absolutely."

The district court correctly reasoned that the videotape verifies Lanika's testimony at the time of the accident proving that she was in fact

seated. It further concluded that although Lanika's actions immediately following the accident were not consistent with complaints of injury. The district court stated, "the Court must also recognize that injuries are not always immediately apparent during the excitement of a collision." Lastly, Lanika's injuries were uncontradicted and no evidence established that had she been sitting on her bottom with her back against the seat she would have suffered less injury.

The district court, as a fact finder, was manifestly erroneous in finding that Lanika was comparatively at fault. We shall amend the judgment such that Lanika shall be awarded the total damages of \$6,250.

Decree

We amend the judgment of the district court and find that the Appellant was not as fault for the injuries she sustained; further, we award the Appellant \$6,250 in damages

AMENDED, AFFIRMED AS AMENDED

