

NOT DESIGNATED FOR PUBLICATION

TAMIKO SCOTT AND * **NO. 2008-CA-0092**
MIKHELLE BASS *
VERSUS * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
VICTOR R. SMITH, III AND *
ALLSTATE INSURANCE * **STATE OF LOUISIANA**
COMPANY

* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2004-17241, DIVISION "D-16"
Honorable Lloyd J. Medley, Judge

* * * * *

Judge David S. Gorbaty

* * * * *

(Court composed of Judge Michael E. Kirby, Judge Max N. Tobias, Jr., Judge David S. Gorbaty)

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AFFIRMED

In this appeal, plaintiffs aver that the trial court erred in assessing them with costs, and failing to award monies for property damage. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiffs, Tamiko Scott and Mikhelle Bass, filed suit against Victor Smith and his insurer, Allstate Insurance Company, for personal injuries and damages resulting from an automobile accident. Ms. Scott was driving a white 1995 Ford Mustang, which was struck in the rear by a vehicle operated by Smith. Defendant received a traffic citation at the accident scene, to which he later pled guilty.

After a trial, judgment was rendered in favor of plaintiffs. Specifically, the trial court stated:

[a]fter considering all the evidence presented including the credible testimony of plaintiffs Tamiko Scott and Mikhelle Bass, the credible testimony of witness Vincent Bryant, [and] defendant's guilty plea to the ticket issued in connection with the accident of December 31, 2003, the court finds that Victor R. Smith, III and his insurer, Allstate Insurance Company, are 100% liable in causing damage and injury to plaintiffs Tamiko Scott and Mikhelle Bass.

The trial court awarded personal injury damages to Scott in the amount of \$1,536.00 and Bass in the amount of \$1,767.00, and ordered that each party bear

its own costs. The trial court did not make an award for property damage to the Mustang. Plaintiffs subsequently filed this appeal.

DISCUSSION

Plaintiffs assert that the trial court erred in failing to assess all costs to defendants.

La. C.C.P. art. 1920 provides:

Unless the judgment provides otherwise, costs shall be paid by the party cast, and may be taxed by a rule to show cause. Except as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable.

Plaintiffs argue that this article suggests that the party cast in judgment should pay the costs. Further, plaintiffs state that it is inequitable to force the plaintiffs, who had no fault in this matter and were judged to be “credible” by the trial court, to pay any portion of the costs.

La. C.C.P. art. 1920 does not require that costs be taxed against the party found to be liable, and in fact acknowledges that the judgment of the trial court may provide otherwise. The trial court has great discretion in awarding costs. Further, the trial court has discretion to deny costs to the prevailing party. *Smith v. Two R Drilling Co., Inc.*, 606 So.2d 804, 816 (La.App. 4 Cir.1992). We find no abuse of that discretion in the instant case. This assignment of error lacks merit.

Plaintiffs next assert that the trial court erred in failing to allow plaintiffs to introduce the property damage appraisal into evidence. This document is Allstate’s own statement of the value of the property damage and is not hearsay, according to plaintiffs.

Plaintiffs failed to establish a right of action to collect property damage. During the trial, neither plaintiff testified to owning the vehicle in which they were

riding. Further, neither plaintiff testified to the extent of the damage, whether there was pre-existing damage to the car, whether and by whom the damage was repaired, or who paid for the repairs. In fact, there was testimony by the defendant that there was pre-existing damage to the vehicle. This statement is supported by the proffered appraisal.

In addition, plaintiffs did not lay a foundation for having the appraisal admitted. During the proffer, Bass testified that she saw an adjuster taking notes on a notepad. These notes were not the evidence that was being offered. Neither Bass nor Scott was asked to review the appraisal. Neither plaintiff testified to having seen the appraisal sought to be introduced, or to the authenticity of the document.

A trial court is afforded great discretion concerning the admission of evidence at trial, and its decision to admit or exclude evidence may not be reversed on appeal in the absence of an abuse of that discretion. *Boutte v. Kelly*, 2002-2451 (La. App. 4 Cir. 9/17/03), 863 So.2d 530. Since plaintiffs did not lay a proper foundation and did not call a qualified witness to testify as to the authenticity of the document, the trial court properly excluded the introduction of the estimate into the record. Further, plaintiffs did not establish a cause of action that would entitle them to recover monies for property damage.¹ This assignment of error has no merit.

CONCLUSION

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

AFFIRMED

¹ We note that the value of property damages does not necessarily establish the extent of damages to the physical person.

