NOT DESIGNATED FOR PUBLICATION

JO ANN HOWARD	*	**NO. 2008-CA-0394**
VERSUS	*	
		COURT OF APPEAL
JULIUS CURTIS HORNE, AUTOMOBILE CLUB INTER-INSURANCE EXCHANGE, PROGRESSIVE INSURANCE COMPANY, NATUSHA S. JONES-BARDER, SAFECO INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	* * * * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2006-5707, DIVISION "E-7"
HONORABLE MADELEINE LANDRIEU, JUDGE
* * * * * *
JAMES F. MCKAY III
JUDGE
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray, Judge James F. McKay III)

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AFFIRMED

On July 4, 2005, Jo Ann Howard was involved in a three vehicle accident. Ms. Howard was traveling west on North Claiborne Avenue when at North Claiborne's intersection with Arts Street, her vehicle was struck by another vehicle driven by Julius Horne. Mr. Horne was traveling the wrong way on Arts Street and Ms. Howard had the right-of-way. Ms. Howard's vehicle was then struck from the rear by a vehicle driven by Natusha Jones-Barder. Ms. Jones-Barder was also traveling west on North Claiborne.

As a result of the accident, Ms. Howard suffered an injury to her cervical spine. She underwent an anterior cervical discectomy and fusion of the C6-7 level spine.

Ms. Howard filed suit against Mr. Horne, Ms. Jones-Barder and their respective insurers, Automobile Club Inter-Insurance Exchange (Automobile Club) and Safeway Insurance Company of Louisiana[1] (Safeway), as well as Progressive Insurance Company (Progressive), her uninsured motorist carrier. After some

[1] Plaintiff originally named Safeco Insurance Company as the insurer of Ms. Jones-Barder; Safeway Insurance Company of Louisiana was added by way of supplemental and amending petition.

discovery was conducted, Ms. Howard entered into settlement agreements with Mr. Horne, Automobile Club and Progressive, thereby dismissing them from her lawsuit. Ms. Howard reserved her rights against Ms. Jones-Barder and Safeway.

The matter was tried on December 18, 2007. Ms. Howard stipulated that she would not pursue an excess judgment claim against Ms. Jones-Barder. Based on the exhibits, testimony and other evidence, the trial court found that Mr. Horne was at fault in initially causing the collision. The trial court also found that Ms. Jones-Barder shared some of the fault and it assigned her ten percent (10%) comparative fault. Ms. Howard's medical specials were $62,998.00 and the trial court awarded her $150,000.00 in general damages, resulting in a total award of $212,998.00. Although ten percent (10%) of this amount is $21,299.00, judgment was rendered in favor of Ms. Howard and against Safeway in the amount of $10,000.00, plus interest and costs pursuant to the stipulation reached by the parties. It is from this judgment that Ms. Jones-Barder and Safeway now appeal.

On appeal, Ms. Jones-Barder and Safeway contend that the trial court erred in concluding that Natusha S. Jones-Barder was partially at fault in causing the collision between the vehicle operated by plaintiff, Jo Ann Howard, and the vehicle being operated by Natusha S. Jones-Barder and in so doing failed to correctly apply the sudden emergency doctrine.

Under the sudden emergency doctrine, one who finds himself in a position of imminent peril, without sufficient time to consider and weigh all the circumstances or best means that may be adopted to avoid an impending danger, is

not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence. Hickman v. Southern Pacific Transport Co., 262 So.2d 385, 389 (la. 1972); Ducombs v. Nobel Ins. Co., 2003-1704, p. 6 (La.App. 4 Cir. 7/21/04), 884 So.2d 596, 600. Although the trial court stated that "[t]here is little doubt that Ms. Jones-Barder was confronted with a sudden emergency[,]" the trial court also states that "Ms. Jones-Barder had a duty to observe the road ahead of her" and "she could have stopped." The trial court believed that Ms. Jones-Barder was comparatively negligent when it allocated ten percent (10 %) of the fault to her. Therefore, it concluded that she was not faced with a true sudden emergency as envisioned by the sudden emergency doctrine.

Apportionment of fault is a question of fact, subject to the manifest error/clearly wrong standard of review. Sims v. State Farm Auto Ins. Co., 98-1613, p. 2 (La. 3/2/99), 731 So.2d 197, 199. In reviewing allocation of fault, the Louisiana Supreme Court in Clement v. Frey, 95-1119, p. 7 (La. 1/16/96), 666 So.2d 607, 610-611, explained, "there is an analogy between excessive or inadequate quantum determinations and excessive or inadequate fault percentage determinations. In both, the trier of fact, unlike the appellate court has had the benefit of witnessing the entire trial and of reviewing firsthand all of the evidence." Id. To reverse a factfinder's factual determinations, the court of appeal must find (1) that a reasonable factual basis does not exist on the record; and (2) that the

record establishes that the finding is manifestly erroneous or clearly wrong. Cormier v. Comeaux, 98-2378, p. 5 (La. 7/7/99), 748 So.2d 1123, 1127.

While the trial court found that Ms. Jones-Barder was not at fault and Mr. Horne was at fault in the initial collision, the trial court also found that the testimony indicated that Ms. Jones-Barder shared some of the fault. At her deposition, Ms. Jones-Barder testified:

> I could have stopped – if she kept forward, I could have stopped, but her vehicle didn't – her vehicle – she didn't stop her vehicle. Her vehicle came towards mine…
>
> When her vehicle spun in the road, it came towards mines (sic), and we both turned together. But she hit like the side of my car on the driver's side, and my – my – the back of my – the side of my car got attached some kind of way to the back of her truck, and the cars kept going, and she hit the porch. But I was able to stop my vehicle to run into someone's residence, but she did hit somebody's porch.

The trial court found this testimony inconsistent with the police report, the physical evidence, and the testimony of Ms. Howard. Longstanding case law demands that courts of appeal give great deference to a trier of fact's factual findings based on credibility judgments. *See* Rosell v. ESCO, 549 So.2d 840, 845 (La. 1989); *See also* Stobart v. State, Dept. of Transp. and Dev., 617 So.2d 880, 882 (La. 1993). It is the function of the trial court to make credibility judgments, while it is the function of the appellate court to determine if such judgments are reasonable. In the instant case, there is nothing to suggest that the trial court's credibility determination was not reasonable.

Based on the record before this Court, we find nothing manifestly erroneous or clearly wrong with any of the trial court's findings of fact or with its allocation

of fault between the defendants. Accordingly, the judgment of the trial court is affirmed.

AFFIRMED