

**OROZCO, MARIANA
RE: FILIBERTO SERNA
DEC'D**

* **NO. 2018-CA-0274**
* **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

VERSUS

**FILSER CONSTRUCTION &
ARIES BUILDING SYSTEMS,
INC.**

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**LOVE, J., CONCURS IN PART AND DISSENTS IN PART AND ASSIGNS
REASONS**

I concur with the majority’s affirmation of the OWC’s finding that Serna Jr. was performing as an independent contractor.

I respectfully dissent, however, from the majority’s finding¹ that the OWC was manifestly erroneous in finding that the claimants failed to prove that the manual labor exception applied.

The OWC stated the following in its reasons for judgment:

Claimants did not present sufficient evidence to prove that Serna, Jr. performed manual labor which was considered an integral part of Filser’s trade, business, or occupation. The only testimony provided was the questionable testimony of Serna, Sr. and Orozco. Thus, upon review of the facts and evidence, the Court finds that the testimony and evidence was insufficient to prove that Serna, Jr. fell under the manual labor exception.

Serna Sr. testified that he falsified tax documents and that he would lie to help Claimant Orozco. Orozco testified that she lied/falsified documents in order to get more money. The credibility of the witnesses was called into question regarding the veracity of their testimony. After reviewing the evidence, testimony and demeanor of

¹ It is unclear from the majority’s opinion as to the facts that necessitate disregarding the OWC’s credibility findings. “[T]he reviewing court may find manifest error in a credibility determination if the witness’s testimony is so internally inconsistent or implausible on its face, or is so contradicted by documents or other objective evidence, that a reasonable fact finder would not credit it.” *Orgeron v. Louisiana Med. Mut. Ins. Co.*, 08-0179, p. 5 (La. App. 4 Cir. 12/3/08), 1 So. 3d 576, 580. “However, where such factors are absent, and the trial court’s finding is based upon a decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous or clearly wrong.” *Id.*

the witnesses, the Court finds that Claimants did not sustain their burden to prove an employee-employer relationship with Filser, nor did they prove that Serna, Jr. fell under the manual labor exception of an independent contractor. Therefore, judgment is rendered in favor of Aries and against claimants, with prejudice, each party to bear their own costs.

“[R]easonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony.” *Cheatham v. State Farm Mut. Auto. Ins. Co.*, 02-2420, p. 3 (La. App. 4 Cir. 9/17/03), 858 So. 2d 89, 91. Further, “[w]hen findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact’s findings.” *Id.* “[O]nly the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener’s understanding and belief in what is said.” *Id.*

Given the deferential standard and the OWC’s reasons, I do not find that the OWC was manifestly erroneous in finding that the manual labor exception did not apply. Accordingly, I would affirm the judgment of the OWC.