ROBERT L. WATTIGNY, SR.	*	**NO. 2018-CA-0297**
VERSUS	*	
		COURT OF APPEAL
HOSKIN HOMES L.L.C., AND BS RENTALS OF LOUISIANA, L.L.C.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

*** * * * * * ***

APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 55-928, DIVISION "B"
Honorable Michael D. Clement
* * * * * *
Judge Daniel L. Dysart
* * * * * *

(Court composed of Judge Edwin A. Lombard, Judge Daniel L. Dysart, Judge Paula A. Brown)

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AFFIRMED IN PART; REVERSED IN PART; AMENDED IN PART, AND, RENDERED

NOVEMBER 14, 2018

Defendants, Hoskin Homes, L.L.C. and BS Rentals of Louisiana, L.L.C., appeal a judgment rendered on April 25, 2017, in accordance with a jury verdict returned and recorded on March 27, 2017. The jury found Hoskins Homes, L.L.C., fifty percent at fault, BS Rentals of Louisiana, L.L.C., twenty-five percent at fault and the Parish of Plaquemines twenty-five percent at fault. Both parties filed motions for judgment notwithstanding the verdict, which were denied by the trial court. Plaintiff, Robert L. Wattigny, Sr., answered the appeal, seeking to modify the judgment. For the reasons that follow, we affirm the judgment in part, reverse in part, amend in part, and render.

BACKGROUND:

BS Rentals, L.L.C. ("BSR") purchased vacant property in Belle Chasse, Louisiana, and contracted with Hoskin Homes, L.L.C. ("HH") to develop the property. The property was subdivided into five lots, with three homes being built on Lots 3, 4 and 5. The homes were designated as 130, 140 and 150 Tall Pines Road, Belle Chasse, Louisiana. Plaintiff, Robert L. Wattigny, Sr., ("Wattigny" or

"plaintiff"), owns and resides on the property adjacent to and north of the subject property.

Prior to construction of the homes, HH elevated the grade of the property to three feet above that of Wattigny's property, and, as required by Plaquemines Parish ordinances, built a retaining wall at the north end of the three home sites to prevent run off of water and soil onto Wattigny's property. The three homes were subsequently sold to three individuals.

Prior to filing suit, Wattigny notified both HH and BSR of the defects in the retaining wall and of the damage being caused to his property, but was unsatisfied with their responses. He filed a Petition to Abate Nuisance on June 20, 2008, naming HH and BSR as defendants, seeking to have the retaining wall declared a nuisance, and to have an injunction issue to defendants ordering them to remove the wall and replace it with a suitable wall, or to pay plaintiff reasonable damages.[1]

Plaintiff filed an Amended and Supplemental Petition on June 25, 2010, naming the persons who had since bought the three houses constructed by HH, alleging that the new owners and BSR, as owner of Lots 1 and 2, were also responsible for the defective wall. As a result of the negligence and/or nuisance of defendants, plaintiff suffered loss of enjoyment of his property, mental anguish, irritation, anxiety and discomfort.

On May 4, 2012, a telephone conference was held and a new bench trial date of November 28, 2012 was selected. On November 13, 2012, plaintiff filed a

[1] The matter was originally set for a March 5, 2009, bench trial. The trial was continued without date on March 30, 2009.

Second Amended and Supplemental Petition, adding a subsequent owner of Lot 3. A joint motion was filed to continue the trial. The new owner of Lot 3 answered the petition, and filed a cross-claim against the person who sold him the lot for breach of implied warranty. Various answers, cross-claims, affirmative defenses and exceptions were filed by the parties. Before any of those actions were heard, plaintiff filed a Restated and Amended Petition to Abate Nuisance. He again named the original defendants and all owners and subsequent owners of the property. Ms. Gloria Bonvillian, the original purchaser of Lot 3, filed a third party petition against her homeowner insurer.

On June 13, 2013, the trial court heard argument on various exceptions filed by Ms. Bonvillian. It denied her exception of no cause of action, but granted her exception of vagueness, ordering plaintiff to amend his petition.

Ms. Bonvillian also filed cross-claims against HH and BSR, and a third-party demand against Bonnie Buras, as a member of BSR, and against Buras's employer, TEC Realtors, LLC d/b/a Coldwell Banker Realtors. She also filed a third-party petition against Western World Insurance Company that had issued various policies to HH. TEC Realtors requested a jury trial.

On February 24, 2014, plaintiff filed a Third Amended and Supplemental Petition naming the homeowner insurers of the owners of Lots 3, 4 and 5. On September 4 and 16, 2014, the trial court heard arguments on various motions filed by the parties. Ultimately, the trial court granted summary judgment in favor of all

of the defendant homeowners of Lots 3, 4 and 5, and their homeowner insurers. Plaintiff filed notices of appeal, but did not appeal that ruling, which is now final.

On November 17, 2014, plaintiff filed a Fourth Amended and Supplemental Petition, naming another homeowner insurer; Ricky Southall and South Tech, Inc., alleging that the latter two defendants constructed the wall at the direction of HH.

On July 4, 2015, HH, BSR and Bonnie Buras filed a reconventional demand against plaintiff, arguing that plaintiff was liable to them as his claims were baseless and vindictive, that plaintiff admitted he had suffered no damage personally or to his property, that other parties were sued in bad faith, and that plaintiffs-in-reconvention had suffered damages, specifically, inability to sell the remaining properties. Plaintiff responded with an Exception of Prematurity, among others, which was granted by the trial court on December 11, 2015.

After numerous delays, this matter proceeded to trial on March 21, 2017, against HH and BSR as defendants. On March 27, 2017, the jury returned a verdict finding BSR twenty-five percent at fault, HH fifty percent at fault, and Plaquemines Parish twenty-five percent at fault for Wattigny's damages in the amount of $98,750.00, plus legal interest from the date of demand, and court costs and expert fees to be determined at a later date. A judgment conforming to the verdict was rendered on April 25, 2017.

On August 3, 2017, the trial court signed a judgment ordering BSR and HH to pay plaintiff $14,611.75 in court costs and $3,639.00 in expert fees. The court further denied motions for judgment notwithstanding the verdict filed by both

plaintiff and defendants, and denied defendants' Motion to Cancel Mortgage Inscription.

DISCUSSION:

A. Defendants' appeal:

All of BSR's and HH's assignments of error are based upon Wattigny's dismissed claim for injunctive relief. The dismissal took place during a pre-trial conference on the morning of trial. The trial court advised the parties that it would allow the jury to consider a claim for damages. Defendants argue: 1) the claim was waived; 2) a claim for injunctive relief could not be maintained against the prior property owner; 3) a jury charge relative to La. Civ. Code art. 667 was improper; and, 4) a jury charge for damages relative to a nuisance claim was improper.

We find none of these assignments of error to be meritorious, and set forth our reasons in more detail below.

On the morning of trial, the defendants orally moved for a ruling on an exception of no cause of action. They argued that plaintiff was not entitled to injunctive relief, as the defendants no longer owned the property in question, and therefore the defendants could not legally enter the property to remedy the problems with the retaining wall. Further, although plaintiff had sued the current owners, those parties had been dismissed from the case by summary judgment. Thus, there was no injunctive relief available to plaintiff. The trial court granted the exception.

We agree that plaintiff could not proceed on a claim for injunctive relief; however, we disagree with the defendants' argument that the case proceeded on

plaintiff's petition for injunction or that damages were awarded in connection with an injunction. Rather, we find that damages were awarded in connection with a nuisance.

In *Moreland v. Acadian Mobile Homes Park, Inc.,* 313 So.2d 877 (La.App. 2d Cir. 1975), the Second Circuit addressed a situation strikingly similar to the facts of the case below. In *Moreland*, homeowners brought an action for injunctive relief and damages against Acadian Mobile Homes Park, Inc. ("Acadian"), and its successors in ownership. Plaintiffs, who originally purchased their property in 1965, alleged that the construction and operation of the mobile home park adjacent to plaintiff's property beginning in 1970, caused damage to their property. Specifically, Acadian removed trees and graded the property, causing loose top soil to flow onto plaintiffs' property. Heavy rainfall would also cause sand and other debris to flow onto plaintiffs' land. In 1973, defendant Acadian sold the property to a partnership, Pittman-Harber, which continued to operate the trailer park.

Plaintiffs sued both Acadian and Pittman-Harber seeking damages for loss of value to their home and for mental anguish. They also sought injunctive relief to prevent further damage to their property.

The trial court found that injunctive relief was not proper, and the court of appeal affirmed stating: "The determination of whether injunctive relief is necessary when the injury complained of by plaintiffs may easily be compensated by the payment of money is within the sound discretion of the trial court." *Id.*, 313 So.2d at 884, citing *Freestate Indus. Dev. Co. v. T. & H., Inc.,* 188 So.2d 746 (La.App. 2d Cir. 1966)(other citations omitted). The court further found that an injunction was an inappropriate remedy, especially as an award of damages to compensate plaintiffs was available. *Id.*

The record confirms that the trial court dismissed Wattigny's claim for injunctive relief; however, Wattigny argued that he had set forth alternatively a claim for damages, as did the plaintiffs in *Moreland*. Wattigny's claim was for damages to his property caused by the defective wall, and for general damages such as aggravation, loss of enjoyment of property, mental anguish, etc. Finding that plaintiff sought damages in the alternative, the trial court allowed Wattigny to proceed.[2]

The evidence of damages allowed by the trial court was the cost of preventing further damage to plaintiff's property, by constructing a new retaining wall on his own property, or any other method by which he could protect his property. Plaintiff had two experts testify as to what was required to remedy the problem and the associated costs. The trial court specifically prohibited plaintiff from arguing that the defendants were responsible for building a new wall on their former property or repairing the existing wall, as that would constitute injunctive relief not available as the defendants no longer owned the property.

We find no abuse of the trial court's discretion by allowing the jury to consider damages incurred by plaintiff as a result of the defective retaining wall creating a drainage problem on his property.

Defendants also argue that it was error to allow plaintiff to recover from BSR and HH, as they were not the owners of the property at the time plaintiff alleged he was damaged. They argue that as no nuisance claim existed, the jury

[2] Our review of the record confirms the trial court's finding that plaintiff had set forth an alternative claim for damages. Particularly in his Restated and Amended Petition to Abate Nuisance, plaintiff set forth specific items of damage to his property, including water ponding, grass and debris rising and flowing to his doorstep, and deterioration of the driveway, all of which caused plaintiff aggravation, depreciation in the value of his home, and loss of enjoyment of his property.

charge as to La. Civil Code art. 667 was error. We find that plaintiff's damage claim is rooted in Article 667 of the Louisiana Civil Code, which provides in part:

> Although a proprietor may do with his estate whatever he pleases, still he cannot make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him. However, if the work he makes on his estate deprives his neighbor of enjoyment or causes damage to him, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known that his works would cause damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care.

Further, La. Civ. Code art. 2315 A provides:

> Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

Defendants argue that a former owner of property cannot be held liable for continuing damages. However, our jurisprudence holds to the contrary.

In *Chaney v. Travelers Ins. Co.*, 259 La. 1, 16-17; 249 So.2d 181, 186-87 (La. 1971), the Supreme Court stated:

> Our view will not accept the proposition that a proprietor is responsible for damage to a neighbor for a 'work', that is, a structure on his premises which harms his neighbor without imposing a like responsibility for harmful activity.
> Article 667 is therefore a limitation the law imposes upon the rights of proprietors in the use of their property. It is a species of legal servitude in favor of neighboring property, an expression of the principle of *sic utere*. An activity, then, which causes damage to a neighbor's property obliges the actor to repair the damage, even though his actions are prudent by usual standards. It is not the manner in which the activity is carried on which is significant; it is the fact that the activity causes damage to a neighbor which is relevant. This being ascertained, it remains only to calculate the damage which ensued.

> And the proprietor is likewise responsible not only for his own activity, but also for that carried on by his agents, contractors and representatives with his consent and permission. This liability which the law imposes attaches also to the agent or contractor, who, as in this case, becomes solidarily liable with the proprietor if his activity causes damage to a neighbor.

This Court in *Borenstein v. Joseph Fein Caterers, Inc.*, made clear that "[t]he nuisance is a condition, and the person legally liable for the nuisance is the person actually responsible for the existence of the condition. This includes the person **who creates the nuisance** and the person who participates in the active continuance thereof." *Borenstein,* 255 So.2d 800, 806 (La.App. 4th Cir. 1971)(emphasis added).

Defendants also argue that the jury was incorrectly charged on damages available in a nuisance claim, making a distinction between a nuisance claim and a tort claim. They also argue that plaintiff put forth no evidence of any damage to his property.

Recently, this Court explained in *Bayer v. Starr International Corp.,* 17-0948 (La.App. 4 Cir. 5/2/18), 246 So.3d 46:

> Damages are generally awarded in property damage cases when the property is damaged by: (1) an intentional or illegal act; (2) an act for which the tortfeasor will be strictly or absolutely liable; (3) **acts constituting nuisance**; or (4) acts occurring when the owner is present or at the time, or shortly after, damage was negligently inflicted and suffer psychic trauma as a result. *See Williams v. City of Baton Rouge,* 98-1981, p. 15 (La. 4/13/99), 731 So.2d 240, 250 n. 5. *See also* Frank L. Maraist & Thomas C. Galligan, Jr., *Louisiana Tort Law* §7.02[6](2d ed. 2004).

Id., 17-0948, p. 4, 246 So.3d at 49. Defendants' distinction between a nuisance claim and a tort claim is meritless.

As to defendants' argument that no evidence was put forth concerning damage to plaintiff's property, the record indicates that James Gilbert, a civil and structural engineer, testified that the retaining wall was so poorly constructed as to make it impossible to repair, with the only remedy being to construct an entirely new wall on plaintiff's property adjacent to the failing wall. Kurt Werling, a contractor, testified that the cost of constructing a new wall would be approximately $53,765.00, the amount awarded by the jury.

Last, defendants argue that plaintiff was not entitled to general damages for aggravation, loss of enjoyment of property, mental anguish, irritation, anxiety, discomfort and embarrassment as there was no medical testimony of such conditions. The jury awarded $45,000 for general damages *in globo*. There was no breakdown as to exactly what general damages were awarded.

Plaintiff testified as to the aggravation caused by water and debris flowing onto his driveway after a heavy rain or after his neighbor watered his lawn. The water could be swept away but would return within minutes, and sometimes sat for three to four days. The ponding water attracted mosquitoes, and would become slimy and smelly, to the point that plaintiff would not allow his grandchildren, who lived nearby, to walk up the driveway to his home. Plaintiff's son also testified about the conditions created from the run-off under and through the rotting retaining wall. One of plaintiff's neighbors also testified that he witnessed water running from his property onto plaintiff's property after a rain storm or after he watered his lawn. A video admitted into evidence showed water gushing under the retaining wall onto plaintiff's property after a heavy rain storm. These conditions existed for over nine years at the time of trial.

The Second Circuit discussed real damages in *Badke v. USA Speedway, LLC*, 49,060, pp. 16-17 (La.App. 2d Cir. 5/14/14), 139 So.3d 1117, 1126. It explained that a factfinder must determine whether an activity occasions real damage or mere inconvenience by considering the reasonableness of the conduct in light of the circumstances. Factors to consider are the character of the neighborhood, the degree of intrusion and the effect of the activity on the health and safety of the neighbors. *Id.*, 49,060, pp. 16-17, 139 So.3d 1117, 1126, citing *Rodrigue v. Copeland*, 475 So.2d 1071 (La. 1975); *Barrett v. T.L. James Co.*, 28,170 (La.App. 2d Cir. 4/3/96), 671 So.2d 1186.

Further, jurisprudence dictates that real damages do not require physical injury, negating the need for medical testimony. *See, e.g.*, *Rodrigue v. Copeland, supra* at 1077 (holiday displays ruled a nuisance; real damages were proven sufficient to issue an injunction)*; Robichaux v. Huppenbauer*, 258 La. 139, 150, 245 So.2d 385, 389 (1971)(horse stables in residential area ruled nuisance where they resulted in "material injury to neighboring property or interfere with its comfortable use and enjoyment by persons of ordinary sensibilities"); *McCastle v. Rollins Environmental*, 415 So.2d 515, 519 (La.App. 1 Cir. 1982). When actions or work graduate from inconveniences to real damages is a question of fact, and the factfinder's decision will not be overturned absent manifest error.[3]

Accordingly, we find no merit to defendants' assignments of error.

[3] A court of appeal may not set aside the jury's finding of fact in absence of "manifest error" or unless it is "clearly wrong." *Stobart v. State through DOTD*, 617 So.2d 880, 882 (La. 4/12/1993)(citing *Rosell v. ESCO*, 549 So.2d 840 (La. 1989)). The Louisiana Supreme Court has provided a two-prong test for the reversal of a factfinder's determinations: (1) the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the district court, and (2) the appellate court must further determine that the record establishes that the finding is clearly wrong or manifestly erroneous. *Id.* (citing *Mart v. Hill*, 505 So.2d 1120, 1127 (La. 1987)). The issue to be resolved by the reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. *Id.*

B. Plaintiff's Answer to Appeal:

Plaintiff argues that the trial court erred in including the Parish of Plaquemines ("Parish"). They argue that the Parish was not a party to the lawsuit, and there was no evidence of fault on its part.

The record indicates that the trial court agreed to include the Parish in the jury interrogatories under the assessment of fault question. The jury found the Parish to be twenty-five percent at fault for plaintiff's damages.

Plaintiff argues that the defendants filed a general denial to his petition, did not allege that the Parish was at fault, and did not third-party the Parish.[4]

Plaintiff objected to the inclusion of the Parish in the jury interrogatories, but was overruled by the trial court. Plaintiff argues that there was no evidence presented to demonstrate that the Parish was in any way at fault for plaintiff's damages. Defendants counter that the jury considered the plaintiff's own exhibit to conclude that the Parish was at fault.

The jury interrogatories asked individually if the jury found by a preponderance of the evidence that Hoskin Homes was the cause of plaintiff's damages, if BS Rentals was at fault in creating a nuisance to plaintiff, if BS Rentals caused plaintiff's damages, and if the Parish was at fault. The form then instructed the jury to assign a percentage of fault to each defendant the jury found at fault. The jury answered yes to all of the questions, and assigned twenty-five percent to BS Rentals, fifty percent to Hoskin Homes, and twenty-five percent to the Parish.

Louisiana Code of Civil Procedure article 1812 provides, in pertinent part:

[4] As noted above, at no time during the course of this litigation did any party sue Plaquemines Parish.

> B. The court shall inform the parties within a reasonable time prior to their argument to the jury of the special verdict form and instructions it intends to submit to the jury and the parties shall be given a reasonable opportunity to make objections.
> C. In cases to recover damages for injury, death, or loss, the court at the request of any party shall submit to the jury special written questions inquiring as to:
> (2)(a) If appropriate under the facts adduced at trial, whether another party or nonparty, other than the person suffering injury, death, or loss, was at fault, and, if so:
> (i) Whether such fault was a legal cause of the damages, and, if so:
> (ii) The degree of such fault, expressed in percentage.
> (b) For purposes of this Paragraph, nonparty means a person alleged by any party to be at fault, including but not limited to:
> (i) A person who has obtained a release from liability from the person suffering injury, death, or loss.
> (ii) A person who exists but whose identity is unknown.
> (iii) A person who may be immune from suit because of immunity granted by statute.

This article sets forth the rules for application of Louisiana Civil Code art. 2323, the comparative fault article.[5]

[5] La. Civil Code art. 2323 provides:

> A. In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.
> B. The provisions of Paragraph A shall apply to any claim for recovery of damages for injury, death, or loss asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability.
> C. Notwithstanding the provisions of Paragraphs A and B, if a person suffers injury, death, or loss as a result partly of his own negligence and partly as a result of the fault of an intentional tortfeasor, his claim for recovery of damages shall not be reduced.

Per Article 1812's directives, it is permissible to include non-parties on jury interrogatories if appropriate under the facts adduced at trial. *Iteld v. Four Corners Const., L.P.*, 12-1504, p. 29 (La.App. 4 Cir. 6/5/13), 157 So.3d 702, 720. It is also within the trial court's discretion to include a possible negligent non-party. *Id.*, citing *Wilson v. Transp. Consultants, Inc.*, 04-0334, p. 10 (La.App. 4 Cir. 3/2/05), 899 So.2d 590, 599. A jury's apportionment of fault is subject to the manifest error standard. *Id.*, citing *Lederer v. Famous Entertainment, Inc.*, 98-2274 (La.App. 4 Cir. 5/12/99), 732 So.2d 1277, 1286.

Defendants argue that a complaint form contained in plaintiff's Exhibit #1[6] that was submitted to the Parish government by plaintiff's councilmember is the evidence upon which the jury relied to find the Parish at fault and assign it a percentage of fault. The form, which was obtained through a public records request, indicates that plaintiff requested his councilmember to have the subject retaining wall inspected to determine if it was in compliance with parish ordinances. In the complaint, the councilmember reported that plaintiff told the councilmember that Ken Dugas, the Parish engineer, told plaintiff that the Parish had to take responsibility for the wall, and that a permit should never have been issued.

Ken Dugas was questioned at trial and confirmed that the documents sought to be introduced by plaintiff in Exhibit 1 were documents from his department (public works) and the permit office of the Parish. He also identified a building permit issued to John Hoskins, the owner of HH, which included a cedar fence with chain wall, and a photograph of the wall that showed a sheet of Tyvek being

[6] Exhibit 1 was admitted *in globo*, and consisted of documents obtained by plaintiff pursuant to a public records request to the Parish.

used to construct the wall. On cross-examination, Dugas identified an inspector's progress report that indicated the fence was completed satisfactorily.

Plaintiff testified regarding the complaint form completed by plaintiff's councilman. He said on the day that Dugas came to his home in response to the complaint, Dugas looked at the retaining wall and asked plaintiff: "How did they get a permit for this?" Plaintiff testified that he responded: "Well, that's my question to you."

We find the complaint form and testimony adduced at trial related to it, to be insufficient to support a finding of fault on the part of the Parish. Therefore, the allocation of fault to the Parish by the jury is unsupported by the record and is thus manifestly erroneous.

Last, in his answer to the appeal, plaintiff argues that the trial court erred in not awarding legal interest on the costs and expert fees awarded.

The original judgment was signed on April 25, 2017, on motion of plaintiff for judgment in accordance with the jury verdict. As such, HH and BSR were cast in judgment for fifty percent and twenty-five percent of $98,750.00, with legal interest thereon from date of judicial demand until paid, **and for all court costs of these proceedings and expert fees in an amount to be determined by this Court.**

On August 20, 2017 the trial court rendered a second judgment that included an award of court costs and expert witness fees, totaling $18,250.75. There is no mention of interest being awarded on these costs and fees.

The Louisiana Supreme Court addressed the issue of whether interest on costs and expert witness fees is mandatory. In *Cajun Electric Power Cooperative v. Owens-Corning Fiberglass Corp.*,616 So.2d 645 (La. 1993), the Court stated:

> A court has authority to render a "judgment for costs." La. Code Civ. P. art. 1920. Expert witness fees are taxed as costs and, once fixed, form a part of the final judgment. La. R.S. 13:3666. Clearly, under these provisions, an award of expert witness fees assessed as court costs against a judgment debtor is a money judgment in favor of the party who incurred the court costs. *Bd. of Trustees v. All Taxpayers,* 361 So.2d 292 (La.App. 1st Cir. 1978). La. Code Civ. P. art. 1921 provides that "[t]he court shall award interest in the judgment as prayed for or as provided by law." Art. 1921 makes no distinction between the types of judgments that "shall" draw interest. Moreover, there is no authority for this court to make a distinction between a judgment for expert witness fees taxed as court costs and other money judgments upon which interest accrues. Accordingly, we hold that legal interest may be awarded on a judgment for expert witness fees taxed as court costs."

Id., 616 So.2d at 646-47.

Our review of the petitions filed by plaintiff in this matter reveals that he prayed for interest from date of demand on any damage award, and for costs of the proceedings. Louisiana Civil Code art. 2000 provides in part that "[w]hen the object of performance is a sum of money, damages for delay in performance are measured by the interest on that sum from the time it is due …" Accordingly, we agree that plaintiff was entitled to interest on court costs and expert witness fees awarded; however, we find that interest should run from the date of judgment.

C. Conclusion:

For the reasons set forth above: 1) we reverse the judgment as to the allocation of twenty-five percent of fault to Plaquemines Parish, and hereby affirm the judgment in favor of the Robert Wattigny, and against defendants, in the percentages of 66 2/3 percent to HH, and 33 1/3 percent to BSR. Additionally, we find that plaintiff is entitled to interest on the award of costs and expert witness

fees from the date of judgment, and order that the costs, fees and interest be shared by HH and BSR in the percentages set forth above.

AFFIRMED IN PART; REVERSED IN PART; AMENDED IN PART; AND, RENDERED