

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0354

BOBBY JACKSON, JR., AND LAKEASHA JACKSON

VERSUS

**MARNIE L. PARKER, ON BEHALF OF HER MINOR
CHILD, TAYLOR PARKER, and STATE FARM FIRE AND
CASUALTY INSURANCE COMPANY**

Judgment Rendered: February 10, 2012

On Appeal from the 21st Judicial District Court
In and for the Parish of St. Helena
Docket No. 19516, Division "D"

Honorable M. Douglas Hughes, Judge Presiding

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

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HUGHES, J.

This is an appeal from a judgment of the Twenty-First Judicial District Court that granted a motion for involuntary dismissal of the plaintiffs' cases. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

This suit arose out of a car accident that occurred on Highway 16 in St. Helena Parish. The collision occurred as defendant, Taylor J. Parker, pulled his vehicle out of a truck stop, crossing Highway 16, and heading west. Mr. Parker's truck made contact with the vehicle in which two brothers, Mr. Bobby Jackson, Jr. and Mr. Demetrius Jackson, were passengers (the Jackson vehicle), and which was travelling west. The Jackson vehicle was alleged to have been in the process of passing another car, also headed west, which was stopped in front of Mr. Jackson and waiting to turn left into the truck stop.

The Jackson brothers filed suit against Mr. Parker and his insurer, State Farm Fire and Casualty Insurance Company (State Farm), for injuries they sustained in the accident. They also named as defendants Mr. Jessie Wise and his insurer, Louisiana Farm Bureau Casualty Insurance Company (Farm Bureau). Their action against Mr. Wise and Farm Bureau was based on their contention that Mr. Wise "waved" Mr. Parker onto the roadway in front of their vehicle, and caused the accident. All claims with Mr. Parker and State Farm were settled prior to trial and they were dismissed from the suit. The only issue at the trial, therefore, was Mr. Wise's alleged liability in causing the accident.

A bench trial was held on October 4, 2010. At the conclusion of the presentation of the plaintiffs' case, the defendants moved for involuntary dismissal. The trial court granted the motion, finding that the plaintiffs had

not proven, by a preponderance of the evidence, that Mr. Wise “waved” Mr. Parker onto the roadway, and had therefore not carried their burden of proving negligence on the part of Mr. Wise.

Bobby Jackson, Jr. appeals and assigns error to the trial court’s grant of the motion for involuntary dismissal, arguing that he did prove, by a preponderance of the evidence, that Mr. Wise waved Mr. Parker onto the roadway in front of him and caused the accident in this case.¹

LAW AND ANALYSIS

Louisiana Code of Civil Procedure article 1672(B) provides for a motion for involuntary dismissal of a plaintiff’s action in the course of a bench trial:

In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, any party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal of the action as to him on the ground that upon the facts and law, the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff and in favor of the moving party or may decline to render any judgment until the close of all the evidence.

The trial court’s granting of an involuntary dismissal is subject to the well-settled manifest error standard of review. **Broussard v. Voorhies**, (La. App. 1st Cir. 9/19/2007), 970 So.2d 1038, citing **Gauthier v. City of New Iberia**, 06-341, p. 3 (La. App. 3rd Cir. 9/27/2006), 940 So.2d 915, 918. Under that standard, a court of appeal may not set aside a trial court’s or a jury’s findings of fact in the absence of “manifest error” or unless it is “clearly wrong.” **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). The supreme court has announced a two-part test for the reversal of a factfinder’s determinations: (1) the appellate court must find from the record that a

¹ Both Jacksons appealed, however, Demetrius Jackson did not file a brief with this court and his appeal was dismissed on May 10, 2011.

reasonable factual basis does not exist for the finding of the trial court, and (2) the appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). See also Mart v. Hill, 505 So.2d 1120, 1127 (La. 1987). Thus, the issue to be resolved by a reviewing court is not whether the trier-of-fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Stobart v. State, Department of Transportation and Development**, 617 So.2d at 882. Where factual findings are based on determinations regarding the credibility of witnesses, the trier-of-fact's findings demand great deference. **Boudreaux v. Jeff**, 2003-1932, p. 9 (La. App. 1 Cir. 9/17/04), 884 So.2d 665, 671; **Secret Cove, L.L.C. v. Thomas**, 2002-2498, p. 6 (La. App. 1 Cir. 11/7/03), 862 So.2d 1010, 1016, writ denied, 2004-0447 (La. 4/2/04), 869 So.2d 889. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. **Rosell v. ESCO**, 549 So.2d at 844.

Accordingly, in order to reverse the trial court's grant of involuntary dismissal, we must find, after reviewing the record, that there is no factual basis for its finding or that the finding was clearly wrong.

At the trial, testimony was given by Jessie Wise, Bobby Jackson, Jr., Demetrius Jackson, and Bret Farrow. The deposition of Taylor Parker was also introduced into evidence, along with photographs of the vehicles at the scene of the accident.

Mr. Wise testified that he approached the "T" intersection of Highway 16, Highway 63, and the entrance to the Grand Paradise Casino, traveling in

the eastbound lane. His truck was pulling a horse trailer. He slowed to make the right turn into the casino parking lot, but could not maneuver the turn because Mr. Parker's vehicle was blocking the entrance to the lot. He testified that he did not "wave" Mr. Parker onto the roadway, but motioned to him and honked his horn for the purpose of alerting Mr. Parker to the fact that he could not make the turn until Mr. Parker moved his vehicle out of the way. Mr. Wise testified that he saw a car stopped in the westbound lane with its blinker on, apparently also waiting to make a left turn into the casino parking lot.

Mr. Farrow testified that he met Mr. Parker at the Grand Paradise Casino and that Mr. Parker was following him out of the casino parking lot because the two were traveling together to Mississippi to go hunting. Mr. Farrow testified that he saw that Mr. Wise could not make the turn into the casino lot, and that he also saw a car in the westbound lane of Highway 16 that was stopped, blinker on, signaling for a left turn into the truck stop parking lot. He proceeded straight across Highway 16 onto Highway 63. Mr. Farrow stated that Mr. Wise did not "wave" him across the street, nor did he see Mr. Wise "wave" Mr. Parker across the street.

Mr. Parker's deposition testimony was introduced at the trial. Mr. Parker testified that both a car in the westbound lane and Mr. Wise in the eastbound lane were waiting to make a turn into the truck stop parking lot. Mr. Wise did not have enough room to make the turn with the truck and trailer until he (Mr. Parker) moved out of the entranceway. Mr. Parker testified that Mr. Wise waved him onto the roadway, and that as he crossed, his vehicle collided with the Jackson vehicle.

Mr. Bobby Jackson, Jr. and Mr. Demetrius Jackson both denied that there was a car in the westbound lane in front of them. Neither of them

knew whether Mr. Wise waved Mr. Parker onto the roadway in front of them.

When a plaintiff alleges that a defendant negligently waved or signaled to indicate to a motorist that the way is clear for the driver to cross, he must prove the following:

1. The defendant did indeed make a signal for the motorist to cross;
2. The defendant intended to convey that he had checked for traffic;
3. The defendant intended to indicate that it was entirely safe to cross the street;
4. The motorist reasonably relied on the signal in deciding to cross; and
5. The circumstances, taken as a whole, caused the accident.

See Martin v. New Orleans Public Service, Inc., 553 So.2d 994, 996 (La. 4th Cir. 11/16/89).

After a thorough review of the record before this court, we are unable to say that the trial court committed manifest error or was clearly wrong in finding that Mr. Jackson did not sufficiently prove that Mr. Wise was negligent in his actions. Mr. Jackson could not testify that he saw Mr. Wise wave Mr. Parker onto the road. And while Mr. Parker testified that he did, there was no evidence introduced to contradict Mr. Wise's testimony that he did not wave Mr. Parker onto the street, but rather signaled to him that he could not proceed until Mr. Parker moved out of the way. Moreover, Mr. Jackson was also required to prove not only that Mr. Parker relied upon the signal, if given, in deciding to cross, but also that it was his negligence in giving the signal which caused the accident. There is conflicting testimony as to whether the Jackson vehicle left the westbound lane and drove onto the shoulder of the road to pass a vehicle that was stopped in front of them, or

was traveling straight down the roadway. While Mr. Demetrius Jackson and Mr. Bobby Jackson, Jr. deny that a vehicle was stopped in front of them, Mr. Wise, Mr. Farrow, and Mr. Parker all testified that a car was stopped in that lane, with a blinker on, signaling for a left turn ahead of the Jackson vehicle. As stated earlier, where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences should not be disturbed upon review. **Rosell v. Esco**, 549 So.2d at 840. Therefore, we must give great deference to the trial court's "reasonable evaluations of credibility and reasonable inferences of fact."

Under the jurisprudence, it was Mr. Jackson's burden to establish, by a preponderance of the evidence, that Mr. Wise signaled for Mr. Parker to cross the street, intending to convey that he had both checked for traffic and that the way was completely clear and safe, that Mr. Parker relied on that signal in deciding to cross the street, and that under the circumstances, the negligent signal caused the accident. Further, we note that even if Mr. Wise in some manner signaled Mr. Parker, Mr. Parker had an unobstructed view of the traffic to his right and had a duty to determine whether he could cross safely. We cannot find error in the conclusion that the evidence presented did not sufficiently prove the legal elements required to find Mr. Wise liable in this case.

CONCLUSION

For the reasons assigned herein, the judgment of the 21st Judicial District Court is affirmed. All costs of this appeal are assessed to plaintiff/appellant, Bobby Jackson, Jr.

AFFIRMED.