NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0095

ALPHONSE PARKER

VERSUS

GLENN H. TEMPLET, JR., MALINDA RUSSO, STATE FARM INSURANCE COMPANY, CHRISTOPHER J. CANNATA AND AMERICAN NATIONAL PROPERTY CASUALTY COMPANIES

Judgment Rendered: February 10, 2012

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 542,168

Honorable Kay Bates, Judge Presiding

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James H. Peltier, Jr.
R. Bree Routman Kennedy
Baton Rouge, LA

Attorneys for Plaintiff-Appellee
Alphonse Parker

John S. White, Jr.
Baton Rouge, LA

Attorney for Defendants-Appellants
Glen H. Templet, Jr. and State Farm Mutual Automobile Insurance Company

Arthur H. Andrews
Baton Rouge, LA

Attorney for Defendants-Appellees
ANPAC Louisiana Insurance Company and Christopher Cannata

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BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

This matter arises out of a motor vehicle accident that occurred on December 26, 2005. Plaintiff, Mr. Alphonse Parker was returning home to Baton Rouge from a hunting trip in Gramercy. As Mr. Parker was driving west on Interstate 10 near the exit for Tanger Outlet Mall, he applied his brakes and swerved to the left to avoid an out-of-control vehicle in front of him driven by Mr. Glen Templet. At the same time, Mr. Christopher Cannata hit Mr. Parker's vehicle from behind. The impact damaged the front passenger's side of Mr. Cannata's vehicle and the rear driver's side of Mr. Parker's vehicle. As a result of the accident, Mr. Parker suffered physical injuries. Mr. Parker filed the instant suit in the 19th Judicial District Court against Mr. Templet and his insurer State Farm Mutual Automobile Insurance Company, and Mr. Cannata and his insurer, ANPAC Louisiana Insurance Company (ANPAC), seeking damages for his injuries.[1] The matter proceeded to a bench trial, after which the trial court rendered judgment in favor of Mr. Parker, and against defendants. The trial court awarded total damages in the amount of $50,000 and apportioned 60% of the fault to Mr. Templet and 40% of the fault to Mr. Cannata. It is from this judgment that Mr. Templet has appealed.[2] In his sole assignment of error, Mr. Templet contends that the trial court erred in finding him 60% at fault for the accident.

It is well-settled that a trial court's finding of fact may not be reversed absent manifest error or unless clearly wrong. **Stobart v. State of Louisiana, Through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). The reviewing court must do more than simply review the record for

[1] Mr. Parker also filed suit against Malinda Russo (now Malinda Templet) as owner of the vehicle. Ms. Templet was dismissed from the case by joint motion signed on January 25, 2007.

[2] Parker and ANPAC have represented to this court that they have settled their differences by way of compromise. Accordingly, the motion to dismiss ANPAC and Cannata as parties to this litigation is granted. Further, ANPAC's answer to this appeal and the motion to strike ANPAC's answer to this appeal are dismissed as moot.

some evidence that supports or controverts the trial court's findings; it must instead review the record in its entirety to determine whether the trial court's findings were clearly wrong or manifestly erroneous. **Id.** The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. **Id.** If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Id** at 882-83. The manifest error standard demands great deference to the trier of fact's findings; for only 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. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Thus, where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. **Id.** The determination of the allocation of fault by the trier of fact is a factual finding, which cannot be overturned in the absence of manifest error. **Jefferson v. Soileau**, 2003-0541 (La. App. 1st Cir. 12/31/03), 864 So. 2d 250, 253, writ denied, 2004-0594 (La. 4/23/04), 870 So.2d 306.

In this case, Mr. Templet contends a white vehicle swerved in front of him, and in trying to avoid it, he lost control of his vehicle. In **Haney v. Francewar**, 588 So.2d 1172, 1178 (La. App. 1st Cir. 1991), we recognized that where non-parties or phantom tortfeasors are claimed by a defendant to be at fault in causing damages to the plaintiff, the burden shifts to the defendant to show not only the fault of the non-parties or phantom tortfeasors, but the percentage thereof. **Id.** at 1178. Therefore, the burden of proof was on Mr. Templet to prove the fault of the driver of the alleged white vehicle.

The trial court, regarding the existence of the alleged white vehicle and the apportionment of fault, stated the following in its written reasons:

> Although I find Mr. Templet to be credible, I do not believe that it has been proven by a preponderance of the evidence that a phantom vehicle started this chain reaction. I note that neither Mr. Cannata nor Mr. Parker observed this vehicle. Therefore, I apportion 60% of fault to Mr. Templet who failed to maintain control of his vehicle and swerved across several lanes of travel. To Mr. Cannata, I apportion 40% as he did not maintain the proper distance from Mr. Parker's vehicle nor proper speed given the traffic conditions to be able to safely stop his vehicle to avoid the collision with Mr. Parker.

Following a thorough review of the record, we find that the trial court's conclusions regarding liability and allocation of fault are reasonable and that its findings are not manifestly erroneous. Thus, we may not disturb the court's findings below.

For the above and foregoing reasons, we affirm the judgment of the trial court and assess all costs associated with this appeal against, defendants-appellants Mr. Glen Templet and State Farm Mutual Automobile Insurance Company. Further, the motion to dismiss ANPAC and Cannata as parties to this litigation is granted, and ANPAC's answer to this appeal and the motion to strike ANPAC's answer to this appeal are dismissed as moot. We issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1.B.

MOTION TO DISMISS GRANTED; ANSWER TO APPEAL DISMISSED; MOTION TO STRIKE ANSWER TO APPEAL DISMISSED; AFFIRMED.