

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1164

CLIFFORD RAY JACKSON AND BERNICE JACKSON

VERSUS

CONNOR BOURG; UNITRIN AUTO AND HOME
INSURANCE COMPANY; KRISTEN KRAUS AND
STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY

Judgment Rendered: February 11, 2011

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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. 559,853

Honorable William A. Morvant, Judge Presiding

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BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

On July 15, 2007, Clifford Ray Jackson injured his neck and back when his vehicle was rear-ended by a vehicle driven by Connor Bourg. Jackson and his passenger, Bernice Jackson,¹ filed suit in the Nineteenth Judicial District Court against Bourg and his liability insurer, Unitrin Auto and Home Insurance Company (“Unitrin”), as well as the driver of another vehicle that rear-ended Bourg, Kristen Kraus,² and her liability insurer, State Farm Mutual Automobile Insurance Company (“State Farm”). The matter proceeded to a bench trial, after which the trial court assessed 100% fault to Bourg, and rendered judgment in favor of Jackson and against Bourg and Unitrin. The trial court judgment dismissed Jackson’s claims against Kraus and State Farm. Jackson was awarded a total of \$15,000.00 for general damages and a total of \$13,205.34 for special damages. It is from this judgment that Jackson appeals, asserting that the trial court erred in failing to find that the herniated disc in his back was causally related to the rear-end collision. Jackson also maintains that the general and special damage awards are abusively low and that the trial court’s failure to award future medical expenses was an abuse of discretion. For the following reasons, we affirm.

It is well settled in Louisiana law that a trial court’s findings of fact may not be reversed absent manifest error. **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993). The reviewing court must do more than just simply review the record for some evidence that supports or controverts the trial court’s findings; it must

¹ The record reflects that Bernice Jackson settled and dismissed all of her claims.

² Kristen was also spelled “Kristin” at times in the record.

instead review the record in its entirety to determine whether the trial court's findings were clearly wrong. **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.**, 617 So.2d at 882-883. 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. **Id.**

Furthermore, where documents or evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face that a reasonable fact finder would not credit the witness's story, the court of appeal may well find manifest error in a finding purportedly based upon a credibility determination. **Rosell**, 549 So.2d at 844-845. But where such factors are not present, and a fact finder's finding is based on its decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous. **Id.**

In this case, the trial court determined that Jackson was treated for complaints of neck pain at the hospital on the day of the accident. Jackson then received treatment from a chiropractor for neck and back pain, with radiating leg pain, during a seven-month period that began the day after the accident, July 16, 2007, and went through February 25, 2008. The

chiropractor, Dr. Michael Goff, testified that he treated Jackson for “the usual things that you see in a whiplash-type” injury, but the fact that Jackson still had pain after seven months of chiropractic treatment was an indication that “it was more than just a soft tissue” injury. Dr. Goff stated that if Jackson did not have any of these symptoms prior to the accident, then more probably than not, the accident caused the symptoms. But Dr. Goff acknowledged that to properly opine as to causation, he must rely on his patient’s credibility as to whether he had ever experienced these symptoms prior to the accident, and Jackson had indicated to Dr. Goff that he never had these types of problems before. Additionally, Dr. Goff deferred to other doctors regarding Jackson’s need for further treatment after February 25, 2008, since that was the last day he treated Jackson. Dr. Goff was not able to comment regarding any disc herniation because he had not reviewed Jackson’s MRI.

After Dr. Goff’s treatment, the record reflects a fourteen-month gap in Jackson’s treatment for any injuries related to the accident. The record contains evidence that Jackson denied any back trouble or back injury on work-related forms during this fourteen-month time period, as well as when he began treating with a pain management specialist, Dr. Michael Burdine. On April 27, 2009, Jackson saw Dr. Burdine for low back pain and radiating right leg pain. Jackson informed Dr. Burdine that he had been treated for back pain prior to the accident, but the leg pain was new after the accident. Dr. Burdine treated Jackson with a series of three epidural steroid injections, but there was no further treatment after July 30, 2009. Dr. Burdine testified about an inexplicable increase in Jackson’s pain level after the second epidural injection. The trial court observed that the report of increased back

pain coincided with the same time Jackson had indicated on the work forms that he was not bothered with nor had he ever experienced any back injuries or back trouble. The trial court further noted that Jackson had testified about a new work-related injury to his back that had occurred around the same time period. Dr. Burdine testified that he was not aware of any work-related injury to Jackson's back during his treatment. Dr. Burdine relied on Jackson's history and physical exam to opine that the accident had caused an exacerbation of Jackson's pre-existing back problems and caused the right-sided leg pain. However, Dr. Burdine reviewed the radiologist's report regarding a November 2007 MRI and stated that there was "no way to know ... the age of the [L4-5] herniation." Dr. Burdine also testified that another disc bulge at L5-1 clearly predated the accident.

Based upon the medical evidence, the trial court stated in oral reasons:

I don't think [Jackson] has shown that this July 15, 2007, accident was the cause of the herniation of the dis[c], and I've got no testimony to support ... that it was. So I do find ... we've got seven months of active treatment for a soft tissue injury. And I know we have a dispute as to the reasons why Mr. Jackson stopped treating. He said it was an economic reason, but ... I don't find his explanation that he stopped treating because he couldn't afford it to be very credible in light of the fact that at the same time he's claiming he couldn't afford it he was still going to Earl K. Long and receiving other medical treatment and never – those records don't reflect any complaints of a back problem.

After a thorough review and evaluation of the entire record, we find no manifest error in the trial court's reasonable conclusions regarding causation and the extent of Jackson's injuries sustained in the accident. The trial court obviously considered the conflicting evidence offered for the gap in Jackson's treatment, as well as the expert medical opinion testimony of Dr. Burdine. The trial court's choice between the two permissible views of

the evidence is not manifestly erroneous. See Rosell, 549 So.2d at 844. Further, the effect and weight to be given medical expert testimony is within the broad discretion of the fact finder. **Yohn v. Brandon**, 01-1896 (La. App. 1st Cir. 9/27/02), 835 So.2d 580, 584, writ denied, 02-2592 (La. 12/13/02), 831 So.2d 989.

Additionally, we find that the amount of damages awarded to Jackson for a seven-month soft-tissue injury does not constitute an abuse of the trial court's vast discretion. We also find no abuse of discretion in the trial court's denial of medical expenses associated with unrelated medical treatment in the past or in the future. Thus, we may not disturb the trial court's award. See Youn v. Maritime Overseas Corp., 623 So.2d 1257, 1260-1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994).

For these reasons, we affirm the judgment of the trial court and assess all costs associated with this appeal against plaintiff-appellant, Clifford Ray Jackson.

AFFIRMED.