NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0872

JANET LONDON

VERSUS

STATE OF LOUISIANA, DIVISION OF ADMINISTRATION, SETH KEENER, JR., ROBERT McCARDLE, ANN WAX and KAREN JACKSON

Judgment Rendered: February 9, 2007.

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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. 464,950

Honorable Donald R. Johnson, Judge Presiding

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BEFORE: CARTER, C.J., WHIPPLE, AND MCDONALD, JJ.

CARTER, C. J.

On September 24, 1999, Janet London brought suit in the 19th Judicial District Court against her employer, the State of Louisiana, Division of Administration, Office of Risk Management (hereafter referred to as "the State"), after filing a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) on October 23, 1998.[1] Ms. London specifically alleged in her petition and EEOC charge that the State had engaged in a continuous pattern of racial discrimination, harassment, and retaliation over a ten-year period because she had filed many discrimination grievances against the State regarding denied promotions beginning in 1989, and more particularly referencing discrimination in four denied promotions during the period of May 1998 to October 1998. The matter proceeded to a bench trial on September 14 and 15, 2004, after which the trial court rendered judgment against the State and in favor of Ms. London for $37,569.00 in damages, plus costs, attorney's fees and interest from the date of judicial demand.[2]

The State and Ms. London both appealed from the judgment. The issues on appeal can be summed up as follows: (1) whether the trial court erred in denying the State's peremptory exception raising the objection of prescription; (2) whether the trial court erred in finding the State liable; and (3) whether the trial court erred in failing to place Ms. London in a supervisory position and in failing to award damages for emotional distress.

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[1] The EEOC charge was dismissed and Ms. London's notice of her right to sue was mailed to her on August 6, 1999, advising her that she had 90 days to sue regarding the charge.

[2] The Honorable Jewel E. "Duke" Welch presided over the two-day bench trial in 2004; however, the Honorable Donald R. Johnson signed the final judgment on January 12, 2006, in accordance with LSA-R.S. 13:4209.

After a thorough review of relevant federal and state jurisprudence and an evaluation of the record, we are convinced that well-settled case law precedent controls the issues raised in this appeal.

Under **National R.R. Passenger Corp. v. Morgan**, 536 U.S. 101, 115, 122 S.Ct. 2061, 2073, 153 L.Ed.2d 106 (2002), **Bustamento v. Tucker**, 607 So.2d 532, 541-542 (La. 1992), and **Alcorn v. City of Baton Rouge**, 02-0952 (La. App. 1 Cir. 12/30/04), 898 So.2d 385, 388-389, writ denied, 05-0255 (La. 4/8/05), 899 So.2d 12, Ms. London's race-based discrimination, humiliation and retaliation claim was timely. The evidence established the type of continual and cumulative acts necessary to constitute an actionable continuing violation. Therefore, the trial court did not err in denying the State's exception of prescription.

Furthermore, Louisiana law has long held that a trial court's findings of fact may not be reversed absent manifest error or unless clearly wrong. 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. **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882-883 (La. 1993). 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). Although we may have reached a different result, we find the trial court's factual conclusions and credibility determinations are reasonable and that its findings are not manifestly erroneous.

Finally, we find no abuse of discretion in the trial court's reasonable award of damages in this case, including the lack of an express award for emotional distress. The trial court's discretion in assessing damages is great, and an appellate court should rarely disturb an award of general damages. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1260-61 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). Additionally, in light of the uncontradicted testimony that Ms. London received a promotion in title and pay raise the year before this case went to trial, we find Ms. London's argument that she was entitled to be placed into a supervisory position after the State was found liable to be without merit.

Thus, we affirm the judgment of the trial court. Costs for this appeal in the amount of $2,363.26 are to be equally borne by the State and Ms. London. We issue this memorandum opinion in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1B.

AFFIRMED.