

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0654

JOHNNY'S PIZZA HOUSE, INC. AND
LIBERTY MUTUAL INSURANCE COMPANY

VERSUS

LOUISIANA WORKERS' COMPENSATION SECOND INJURY BOARD

Judgment Rendered: December 21, 2011

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 545713

THE HONORABLE WILSON E. FIELDS, JUDGE

* * * * *

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

McDONALD, J.

This is an appeal of a judgment finding a merger of a work-related injury and a permanent partial disability, and a ruling in favor of the Louisiana Workers' Compensation Second Injury Board.¹ For the following reasons, the judgment is affirmed in part, and reversed in part.

FACTS

Willie McNeil was hired as a driver by Johnny's Pizza in 1997. At the time he was hired, Johnny's Pizza knew that McNeil had a permanent partial disability due to prior lumbar back surgery and diabetes mellitus. On March 3, 2005, McNeil slipped and fell during the course and scope of his employment, injuring his right knee and lower back. McNeil was not able to return to his employment, and Johnny's Pizza began making worker's compensation payments to him. Subsequently, a claim was made to the Board for compensation. The Board denied the claim finding that McNeil's pre-existing disability did not merge with his subsequent injury in accordance with La. R.S. 23:1371(C)(1) or (2).

Thereafter, Johnny's Pizza and Liberty Mutual Insurance Company filed a petition in the Nineteenth Judicial District Court appealing the Board's decision, and alleging that the evidence showed that McNeil's injury had merged with the previous permanent partial disability and that the law required payment by the Board.

The parties stipulated prior to trial that Johnny's Pizza hired McNeil with full knowledge of his partial permanent disability, and the only issue before the

¹ While decisions of the Office of Workers' Compensation are appealed directly to the First Circuit Court of Appeal, in accordance with La. Const. Art. V, Section 10, the decisions of the Louisiana Workers' Compensation Second Injury Board are appealed to the district court in accordance with La. R.S. 49:964.

trial court was whether the March 3, 2005 injury had “merged” with that disability. The matter was heard on May 12, 2010, with the trial court finding that the plaintiffs had proven that the injuries had merged, and then ruling in favor of the Board. That judgment was appealed. A rule to show cause was issued by this court requesting briefs on the issue of why the judgment should not be dismissed for failure to contain decretal language. An amended judgment was rendered on May 20, 2011, finding that the issue of merger was proven by the plaintiffs; judgment in favor of the Board was rendered, and the plaintiffs’ claim was dismissed. That judgment is now before us on appeal.

DISCUSSION

Appellants, Johnny’s Pizza House Inc. and Liberty Mutual, argue that since the trial court found that they had proven merger, the law requires judgment ordering the Board to approve the claim. Factual findings in workers’ compensation cases are subject to the manifest error or clearly wrong standard of appellate review. *Banks v. Industrial Roofing & Sheet Metal Works, Inc.*, 96-2840 (La. 7/1/97), 696 So.2d 551, 556. In applying the manifest error-clearly wrong standard, the appellate court must determine not whether the trier of fact was right or wrong, but whether the factfinder’s conclusion was a reasonable one. Where there are two permissible views of the evidence, a factfinder’s choice between them can never be manifestly erroneous or clearly wrong. Thus, if the factfinder’s findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even it is convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.*

After reviewing the entire record, we find that it contains a reasonable basis for a finding that the plaintiffs proved merger. Thus, the finding is not manifestly

erroneous and may not be reversed by an appellate court. The appellees did not appeal the findings of the trial court, instead arguing that a finding of “merger” was inadvertent and the judgment was meant to state the merger was “not proven.” However, the judgment says what it says. Whether, in fact, the trial court meant something else is not subject to review. Appeals are taken from the judgment, not reasons for judgment. *Greater New Orleans Expressway Commission v. Olivier*, 2002-2795 (La. 11/18/03), 860 So.2d 22, 24. And the record does not contain any statements by the trial court. Therefore, if, in fact, the trial court reached a contrary result than that stated in the judgment, we have no reason to believe so. Accordingly, the finding that the merger was proven is affirmed.

The judgment in favor of the Board is legally wrong. A legal error occurs when a trial court applies incorrect principles of law and such errors are prejudicial. Legal errors are prejudicial when they materially affect the outcome and deprive a party of substantial rights. *Evans v. Lungrin*, 97-0541, 97-0577, pp. 6-7 (La. 2/6/98), 708 So.2d 731, 735.

Louisiana Revised Statute 23:1378(A) provides, in pertinent part:

An employer operating under the provisions of this Chapter who knowingly employs, re-employs, or retains in his employment an employee who has a permanent partial disability, as defined in R.S. 23:1371.1, shall qualify for reimbursement from the Second Injury Fund, if the employee incurs a subsequent injury arising out of and in the course of his employment resulting in a greater liability due to the merger of the subsequent injury with the preexisting permanent partial disability. ...

Further, La. R.S. 23:1371 provides, in pertinent part:

A. It is the purpose of this Part to:

- (1) Encourage the employment, re-employment, or retention of employees who have a permanent, partial disability.
- (2) Protect employers, group self-insurance funds, and property and casualty insurers from excess liability for workers' compensation for

disability when a subsequent injury to such an employee merges with his preexisting permanent physical disability to cause a greater disability than would have resulted from the subsequent injury alone.

* * *

C. As, used in this part, the merger of an injury with a preexisting permanent partial disability is limited to the following:

- (1) The subsequent injury would not have occurred but for the preexisting permanent partial disability; or
- (2) The disability resulting from the subsequent injury in conjunction with the preexisting permanent partial disability is materially and substantially greater than that which would have resulted had the preexisting permanent partial disability not been present, and the employer has been required to pay and has paid additional medical or indemnity benefits for that greater disability.

The parties stipulated prior to trial that Johnny's Pizza had knowledge of McNeil's permanent partial disability before he was hired. Thus, according to Workers' Compensation Law, the Board was required to be liable to Johnny's Pizza and its insurer, Liberty Mutual, for the subsequent injury. A claim was made and the Board determined that the injuries had not merged. Therefore, the claim was denied. That decision was appealed, with the trial court finding that the plaintiffs had proven merger and that finding is affirmed by this court. Accordingly, the judgment in favor of the Board is reversed and judgment is rendered in accordance with law, finding that the Louisiana Workers' Compensation Second Injury Fund is liable for the subsequent injury to McNeil.

Costs of this appeal in the amount of \$524.32 are assessed to the Louisiana Workers' Compensation Second Injury Board.

AFFIRMED IN PART; REVERSED IN PART.