

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 2216

LESLIE D. EDWARDS AND LYDIA CORMIER

VERSUS

JEW  
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,  
JOYCE HEBERT AND CLINTON HEBERT

JOP  
BPC  
Judgment Rendered: May 6, 2011

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Trial Court Number 577,726

Honorable Wilson Fields, Judge

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Plaintiffs – Appellants  
Leslie D. Edwards and  
Lydia Cormier

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Defendants – Appellees  
State Farm Mutual Automobile  
Ins. Co., Joyce Hebert, and  
Clinton Hebert

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

In this appeal, plaintiffs, Leslie D. Edwards and Lydia Cormier, appeal a judgment entered in accordance with a jury verdict dismissing their personal injury claims against defendants, State Farm Mutual Automobile Insurance Company, Joyce Hebert, and Clinton Hebert. We affirm.

### **BACKGROUND**

On September 18, 2008, a minor automobile collision occurred on or near the Essen Lane exit ramp off of Interstate 10 in Baton Rouge, Louisiana. Mr. Hebert, who was driving a Hyundai SUV, struck the right rear portion of a BMW driven by Mr. Edwards and occupied by Ms. Cormier. Thereafter, on April 27, 2009, Mr. Edwards and Ms. Cormier filed this lawsuit against Mr. Hebert, his wife Joyce, who was a passenger in the Hyundai, and State Farm, which provided liability on the Hebert vehicle. Mr. Edwards and Ms. Cormier alleged that they sustained back and neck injuries in the accident.

The parties stipulated to liability. A three-day jury trial on the issue of damages was held, following which the jury found that Mr. Edwards and Ms. Cormier failed to prove that they were injured as a result of the accident. A judgment in accordance with the jury's verdict was rendered by the trial court, dismissing plaintiffs' claims with prejudice.

### **DISCUSSION**

In this appeal, plaintiffs insist that they met their burden of proving that they suffered injuries as a result of the accident and that the jury's verdict to the contrary is manifestly erroneous. They claim that unrefuted medical evidence demonstrated that their neck and back injuries were caused and/or aggravated by the accident.

The jury's conclusion that plaintiffs were not injured as a result of the

accident is a factual one governed by the manifest error standard of review. Pursuant to that standard, this court may set aside the jury's factual finding only if we find from the record that a reasonable factual basis does not exist for the finding and the record establishes that the finding is clearly wrong. **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). The issue to be resolved by this court is not whether the jury was right or wrong, but whether its conclusion was reasonable. *Id.* In a trial where, as here, causation and credibility are major issues, a jury's finding of fact is entitled to great deference. **Guillory v. Insurance Company of North America**, 96-1084, p. 5 (La. 4/8/97), 692 So.2d 1029, 1032. Moreover, where more than one competing view of the evidence is permissible, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.*

At trial, the jury was presented with evidence regarding the minor nature of the collision. Mr. Hebert died prior to trial, and Mrs. Hebert, who was a passenger in the vehicle at the time, testified that she was reading as her husband was merging onto the Essen Lane exit lane, and when she looked up, he had pulled over to the shoulder because traffic was stopping so fast behind them. At some point, Mr. Hebert "grazed" the right rear panel of the BMW ahead of him. Mrs. Hebert, who stated that she did not even feel an "impact," testified that her husband got out of his vehicle and spoke with plaintiffs, they exchanged information, and because there was no damage, police were not called to the scene. Mr. Edwards, however, described the impact as a "good jolt." Mr. Edwards testified that prior to the collision, his vehicle was "creeping" along.

Photographs of the BMW taken after the collision reflect scratches on the right rear quarter panel of the vehicle and the detachment of a portion of the bumper near the right rear tire. Photographs of the Hyundai SUV depict a black

scratch mark on the left front bumper.

Mr. Edwards claimed that immediately following the accident, he began to experience back, neck, and shoulder pain, and he sought treatment at the Baton Rouge General Medical Center. He also saw his treating physician, Dr. Charles Tessier, that same day or the following day, and was diagnosed with neck pain, low back pain, and thoracic spine pain. Mr. Edwards relies on the testimony of Dr. Tessier as establishing a causative link between his complaints of pain and the September 18, 2008 automobile collision.

The evidence showed that Mr. Edwards had a long-standing history of back pain prior to the accident and had been involved in numerous accidents. He was treated by Dr. Tessier, a general practitioner, for back pain from November 4, 2003, through October of 2008. Mr. Edwards was involved in automobile accidents in 2002 and 2004 in which he injured his back. In 2005, Mr. Edwards slipped and fell on an escalator, further injuring his back and his left shoulder, and was treated for cervical, thoracic, and lumbar strains. He also stated that he had been involved in another accident in which he hurt his back, but could not recall the year.

Mr. Edwards acknowledged that since November of 2003, he has taken the pain medication, hydrocodone, for back pain on a monthly basis. He was treated by Dr. Tessier on a monthly basis from 2003-2008, for an estimated 65 visits, during which Mr. Edwards complained primarily of back pain and occasionally of neck pain. On each visit, Dr. Tessier prescribed pain medications to Mr. Edwards. MRI's taken after Mr. Edwards' automobile accidents in 2002 and 2004 reflected disc bulges at L1-2 and protrusions at L4-5 and L5-S1. Dr. Tessier stated that the progression of Mr. Edwards' degenerative disc disease was demonstrated on the successive MRI's and acknowledged that Mr. Edwards had serious issues at

multiple levels in his back prior to the instant accident.

In February of 2008, nearly seven months before the subject accident, Dr. Tessier wrote a letter to Mr. Edwards' attorney opining that the 2002 and 2004 automobile accidents and the 2005 slip and fall accident combined to render Mr. Edwards totally disabled and unable to do any type of gainful employment. The doctor also opined that Mr. Edwards would require lumbar surgery in the future, that his prognosis was poor, and that he would never be able to return to gainful employment.

On September 15, 2008, three days before the subject accident, Mr. Edwards visited Dr. Tessier complaining of lower back pain, rating his pain level as a 7 on a scale of 0-10 without medications, which Dr. Tessier described as "significant pain," and a pain level of 2 with medications. On his visit after the subject accident, Mr. Edwards reported a pain level of 9 without medication and a level of 5 with pain medication. Dr. Tessier stated that Mr. Edwards had tenderness in the cervical spine area, complained of pain on flexion and extension of the neck, and was also tender in the thoracic spine. Dr. Tessier stated that Mr. Edwards' cervical and thoracic strain were "new findings." He examined Mr. Edwards several weeks later on October 10, 2008, during which Mr. Edwards complained of pain going down to the right knee, which the doctor referred to as "somewhat of a newer finding." Dr. Tessier stated that Mr. Edwards was again tender in the cervical spine area and had a positive straight leg raising test, indicating possible nerve involvement. Dr. Tessier ordered lumbar and cervical MRIs. According to Dr. Tessier, the lumbar MRI, performed on October 17, 2008, exhibited the previous bulges seen on the earlier MRIs and a new bulge at the L3-4 level. The cervical MRI taken that same day showed multiple cervical disc bulges. Dr. Tessier opined that more probably than not, the new findings in 2008 were the result of the

September 18, 2008 accident. The doctor noted that while he did not have a previous MRI to show any pathology Mr. Edwards may have had in the neck area before the accident, Mr. Edwards complained of neck, mid back, and low back pain following the September 18, 2008 accident. The doctor also admitted that it was unknown, without MRI evidence prior to and shortly after the 2005 slip and fall incident, whether the changes seen on the 2008 MRIs were attributable to Mr. Edwards' slip and fall accident.

Mr. Edwards also was treated by Dr. Stephen Wilson, a board certified orthopedic surgeon, on four occasions following the September 18, 2008 accident. Mr. Edwards related to the doctor that he had been in several accidents in which he injured his back, but denied having had significant back pain before the instant accident. Mr. Edwards told Dr. Wilson that the subject accident made his back pain much worse. Dr. Wilson stated that his examination revealed that Mr. Edwards suffered a muscle and ligamentous strain to the mid and lower back area. He reviewed Mr. Edwards' MRIs, which reflected that Mr. Edwards has degenerative disc disease at multiple layers of the lumbar spine, and indicated that such could be aggravated or made worse by the numerous accidents Mr. Edwards has had. Dr. Wilson opined that as a result of the instant accident, Mr. Edwards had a sprain and strain to the ligaments in his mid to low back, and given the history related to him by Mr. Edwards, the accident aggravated his pre-existing condition. In offering this opinion, however, Dr. Wilson acknowledged that: (1) he was not aware that Mr. Edwards had seen Dr. Tessier just three days before the accident for his lower back complaining of significant back pain; (2) Mr. Edwards never told him about the 2005 slip and fall incident; (3) he believed Mr. Edwards was exaggerating or magnifying his complaints; and (4) he offered his opinion strictly on the basis of the history given to him by Mr. Edwards and Mr. Edwards'

complaints of pain, which, if inaccurate or incomplete, would affect his opinion.

The effect and weight to be given medical testimony is within the broad discretion of the fact finder. **Yohn v. Brandon**, 2001-1896, p. 7 (La. App. 1<sup>st</sup> Cir. 9/27/02), 835 So.2d 580, 584, writ denied, 2002-2592 (La. 12/13/02), 831 So.2d 989. The weight afforded a treating physician's testimony is largely dependent upon the facts upon which his opinion is based. A claimant's lack of credibility on factual issues can serve to diminish the veracity of the claimant's complaints to a physician. **Perow v. Lenzly**, 30,833, p. 5 (La. App. 2<sup>nd</sup> Cir. 8/19/98), 716 So.2d 519, 523.

It is obvious that in finding Mr. Edwards did not demonstrate that he sustained new injuries or aggravated his pre-existing back condition in the accident, the jury considered the fact that Mr. Edwards had not been truthful regarding his injuries and significant back pain prior to the accident when treating with Dr. Wilson. The causation issue in this case rested largely on Mr. Edwards' credibility in reporting his medical condition and his level of pain to his treating physicians. Moreover, the jury was presented with evidence of numerous accidents in which Mr. Edwards had been involved that could account for his complaints of pain. We cannot say that the jury's failure to find that Mr. Edwards sustained injuries or that his pre-existing condition was aggravated from the relatively minor impact on September 18, 2008, is manifestly erroneous on the record before us, and therefore, we may not disturb that ruling.

Turning to the evidence with respect to Ms. Cormier, it demonstrated that she, too, had a long-standing history of back pain, treatment for back pain, and had been involved in numerous accidents. Ms. Cormier testified that after the instant accident, her back pain increased and she began to experience neck pain after the accident, which she did not have before the accident, and which now hurts as bad

as her back on a daily basis.

The record reflects that Ms. Cormier was involved in numerous automobile accidents prior to and after the subject accident and received extensive medical treatment for back pain and back injuries before the accident. Medical records document that she was involved in an automobile accident in 2000 in which she complained of lower back pain and, in 2007, was in a car collision in which she sustained a compression fracture in her lumbar spine of the first lumbar vertebrae. Ms. Cormier added that she had been in automobile accidents in 1995 and 2003, and that she injured her back and neck in the 2003 accident. Medical records reflect that Ms. Cormier sought treatment on a number of occasions at hospital emergency rooms and from medical professionals for back pain prior to and after the subject accident. These records document that after the accident, in November of 2008, Ms. Cormier sought emergency treatment for acute lower back pain after lifting wood, and in December of 2008, Ms. Cormier was brought to the emergency room after she ran into a tree with her automobile and was ejected from the vehicle.

Ms. Cormier began to see Dr. Tessier in January of 2008 complaining of back pain. She saw Dr. Tessier on 10 occasions until October 10, 2008. During each monthly visit, Dr. Tessier prescribed pain medications to Ms. Cormier. Prior to the accident, Ms. Cormier complained of pain in her back and cervical spine and experienced right arm numbness by June of 2008. Several months before the instant accident, Dr. Tessier increased her dosage of pain medications because she was reporting increased pain in the range of 7-9 out of 10 without medications. Three days before this accident, Ms. Cormier saw Dr. Tessier, complaining of neck and back pain.

Dr. Tessier testified that MRIs and CT scans taken prior to the instant



accident of Ms. Cormier's lumbar spine showed long standing degenerative disc disease at L5-S1, a disc bulge at L3-4, and disc herniations at L4-5 and L5-S1. A lumbar MRI taken after the September 18, 2008 accident showed new bulges at the first lumbar vertebrae, L2-3, and the 12<sup>th</sup> thoracic vertebrae. A cervical MRI taken shortly after the accident showed three disc bulges and two disc herniations. This was the first cervical MRI Dr. Tessier was aware of.

Dr. Tessier opined that the new findings on the lumbar MRI and the cervical MRI were more probably than not attributable to the subject accident. However, he admitted that his opinion regarding the relationship of the findings to the accident was based on what Ms. Cormier told him—that she had not had problems with her neck before and had problems after the accident. Moreover, he acknowledged that prior to the accident, in June of 2008, Ms. Cormier reported having right arm numbness. He also admitted that Ms. Cormier was reporting increased pain several months before the subject accident in July or August of 2008, prompting him to increase the dosage of her pain medication.

Dr. Wilson, who first examined Ms. Cormier on September 24, 2008, and saw her on four occasions through January 9, 2009, testified that Ms. Cormier reported to him that she was not in pain at the time of the instant accident, but that immediately following the accident, she had pain in her lower back and neck. Dr. Wilson diagnosed an acute muscle and ligamentous strain to the neck and back. The doctor was aware that Ms. Cormier had been on pain medications for years, and she related to him her 2007 automobile accident, along with the post-accident wood lifting incident and December 2008 automobile collision. Dr. Wilson believed that Ms. Cormier was embellishing her symptoms. Dr. Wilson reviewed MRIs taken prior to the accident and after the subject accident and noted that the 2008 MRIs showed that Ms. Cormier's disc disease has gotten worse. When asked

whether the additional conditions in 2008 were caused by the trauma of an accident, the doctor answered affirmatively, provided that the history provided to him by Ms. Cormier was correct. The doctor also admitted that in order to formulate an opinion, he had to rely on the accuracy and veracity of Ms. Cormier's report to him that she did not have problems before the accident and had problems after the accident.

In concluding that Ms. Cormier failed to prove she sustained injuries in the September 18, 2008 automobile accident, the jury obviously made a credibility determination. The record establishes that Ms. Cormier had not been truthful in relating her history to Dr. Wilson when she told him that she did not have pain prior to the accident, when in fact she had reported increased pain to Dr. Tessier shortly before the accident. Both treating physicians testified that they relied on Ms. Cormier's veracity regarding her complaints of pain in formulating their opinions. Moreover, Ms. Cormier had been involved in numerous accidents prior to the subject accident which could have accounted for her complaints of pain. Based on the record before us, we find that the jury was well within its discretion to reject the medical causation evidence offered by Ms. Cormier. We cannot say that the jury's causation determination is manifestly erroneous, and we may not disturb that ruling.

#### **CONCLUSION**

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to plaintiffs, Leslie D. Edwards and Lydia Cormier.

**AFFIRMED.**