NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0888

LINDA FLOWERS AND BRENT EFFERSON

VERSUS

FLORIDA PARISHES INDUSTRIES, INC. AND CNA INSURANCE COMPANY

Judgment rendered: December 21, 2007

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On Appeal from the 21st Judicial District Court
Parish of Tangipahoa, State of Louisiana
Docket Number 2003-000358; Division "F"
The Honorable Elizabeth P. Wolfe, Judge Presiding

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George R. Tucker **Hammond, LA**	**Counsel for Plaintiffs/Appellants** **Linda Flowers and Brent Efferson**
Gregory W. Roniger **Metairie, LA**	**Counsel for Defendants/Appellees** **Florida Parishes Industries and Valley Forge Insurance Co., Inc.**
James A. Dukes **Hammond, LA**	**Counsel for Defendant/Appellee** **Florida Parish Industries, Inc.**

BEFORE: PARRO, KUHN AND DOWNING, JJ.

DOWNING, J.

This matter arises from an accident that occurred when a forklift bumped into the rear of a 1980 Toyota Corolla that was waiting in line at a scrap yard facility. The collision caused minimal damage to the car. The plaintiffs/appellants, Linda Flowers and Brent Efferson, were occupying the car at the time. Flowers and Efferson claimed to have severe back injuries as a result of the accident, and subsequently, each had surgery.[1] Flowers and Efferson filed suit against the scrap yard facility and its insurer. After a jury trial, the jury returned a verdict in favor of the defendants, granting Flowers and Efferson no relief. Judgment was entered accordingly. Flowers and Efferson filed a JNOV/Motion for New Trial, which was denied.

Flowers and Efferson appealed,[2] alleging that (1) the verdict was contrary to the law and evidence and (2) the trial court erred in denying the motion for JNOV. For the following reasons, we affirm the judgment.

Flowers and Efferson first argue that the jury disregarded all the medical testimony of their treating physicians. They contend the jury erroneously held that their injuries were not caused by the collision, and, therefore, they were not entitled to any compensation. They argue that the jury erred in failing to apply a presumption of causation.

The presumption of causation was described in ***Housley v. Cerise***, 579 So.2d 973, 980 (La. 1991), where the La. Supreme Court stated that:

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[1] Flowers underwent cervical medial branch neurotomy, lumbar medial branch neurotomy, and a lumbosacral epidural block. Efferson underwent intradiscal electrothermal annuloplasty and a lumbosacral epidural block.

[2] The actual judgment appealed was the denial of the JNOV and/or Motion for New Trial. However, the established rule in this circuit is that the denial of a motion for new trial is an interlocutory and non-appealable judgment. *McKee v. Wal-Mart Stores, Inc*, 06-1672, P. 8 (La.App. 1 Cir. 6/8/07), 964 So.2d 1008, 1012, *writ denied*, 07-1655 (La. 10/26/07), ___ So.2d ___, 2007WL 3257392. While technically this is a correct statement of law, the Louisiana Supreme Court has directed us to consider an appeal of the denial of a motion for new trial as an appeal of the judgment on the merits as well, when it is clear from the appellant's brief that the appeal was intended to be on the merits. ***Id.*** Accordingly, we consider this appeal of the judgment on the merits.

> A claimant's disability is presumed to have resulted from an accident, if before the accident the injured person was in good health, but commencing with the accident the symptoms of the disabling condition appear and continuously manifest themselves afterwards, providing that the medical evidence shows there to be a reasonable possibility of causal connection between the accident and the disabling condition.
> (Citation omitted).

Here, although Flowers and Efferson presented medical deposition testimony about their respective injuries, the jury also heard evidence to the contrary. It was established that Flowers had been recommended for surgery prior to the accident. The jury also heard that Efferson had serious back problems prior to the accident. As discussed above, applicability of the *Housley* rule is only appropriate when the plaintiff was healthy before the accident and unhealthy afterwards and there is a reasonable possibility of a causal connection between the accident and the injury. The factfinder is in the best position to determine the credibility of the plaintiffs, and this determination demands great deference "for only the factfinder 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)(quoting ***Canter v. Koehring***, 283 So.2d 716, 724 (La. 1973).

Further, the accident reconstruction expert testified that, judging from the damage to the vehicle, this slight impact could not possibly have caused both occupants to incur such severe injuries. Moreover, the photographs introduced at trial show that damage to the vehicle was minor. The jury apparently did not believe that these severe injuries were the result of such a minor accident. This is a factual finding, which this court may not modify in the absence of manifest error. ***Arceneaux v. Domingue***, 365 So.2d 1330,

1333 (La. 1978). Based upon the evidence as a whole, we see no manifest error in the jury determinations.

Accordingly, after a review of the record, we conclude that this assignment of error is without merit.

Flowers and Efferson argue in their second assignment of error that the trial court erred when it denied the motion for JNOV. Since we have concluded that the jury's decision was a reasonable one, this assignment of error is moot and the discussion on this subject is pretermitted.

After a thorough review, we conclude that this assignment of error is without merit as the record demonstrates that the decision of the jury was a reasonable one and therefore not manifestly erroneous.

Thus, in accordance with Uniform Court of Appeal Rule 2-16.1B, we affirm the trial court judgment. All costs of this appeal are assessed against the plaintiffs/appellants, Linda Flowers and Brent Efferson.

AFFIRMED