

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 0864

WENDELL R. JENKINS

VERSUS

EUGENE N. PRESTLEY, JR., THE CITY OF BATON ROUGE/PARISH OF  
EAST BATON ROUGE, AND MARKEL AMERICAN INSURANCE  
COMPANY

Judgment Rendered: FEB 10 2012

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Suit Number 550888

Honorable William A. Morvant, Presiding

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Bernard Hampton  
Baton Rouge, LA

Counsel for Plaintiff/Appellant  
Wendell R. Jenkins

Veronica "Vicky" Jones  
Gwendolyn K. Brown  
Baton Rouge, LA

Counsel for Defendant/Appellee  
City of Baton Rouge/Parish of East  
Baton Rouge

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

*W.R.J.*  
*JEK by [Signature]*

**GUIDRY, J.**

In this personal injury action, plaintiff, Wendell Jenkins, appeals from a trial court judgment dismissing his claims against defendant, the City of Baton Rouge, with prejudice. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

On January 5, 2006, Jenkins was involved in a motor vehicle accident when the Harley Davidson motorcycle he was driving collided with a GMC pick-up truck owned by the City of Baton Rouge/Parish of East Baton Rouge (hereinafter "City") and operated by its employee, Eugene Prestley, in the course and scope of his employment. Thereafter, Jenkins filed a petition for damages, naming Prestley, the City, and Markel American Insurance Company, Jenkins's uninsured motorist insurance carrier, as defendants and alleging that he sustained injuries when the truck operated by Prestley collided with his motorcycle.<sup>1</sup>

Following a bench trial on November 22, 2010, the trial court rendered judgment in favor of the City, finding Jenkins failed to meet his burden of proof at trial establishing fault or liability on the part of the City and dismissing Jenkins's claims against the City with prejudice.

**DISCUSSION**

Louisiana courts have adopted a duty-risk analysis in determining whether liability exists under the facts of a particular case. Under this analysis, a plaintiff must prove five separate elements: (1) the defendant had a duty to conform his or her conduct to a specific standard of care; (2) the defendant failed to conform his or her conduct to the appropriate standard of care; (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries; (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries; and (5) actual

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<sup>1</sup> On January 6, 2009, the trial court signed a voluntary order of dismissal, dismissing Markel American Insurance Company with prejudice.

damages. Brewer v. J.B. Hunt Transport, Inc., 09-1408, p. 14 (La. 3/16/10), 35 So. 3d 230, 240. Factual determinations made by the trial court during the course of a duty/risk analysis may not be set aside by a reviewing court absent manifest error or unless the findings are clearly wrong. See Snearl v. Mercer, 99-1738, p. 11 (La. App. 1st Cir. 2/16/01), 780 So. 2d 563, 574, writs denied, 01-1319 (La. 6/22/01), 794 So. 2d 800 and 01-1320 (La. 6/22/01), 794 So. 2d 801.

In order to reverse a trial court's factual findings, the appellate court must find from the record that no reasonable factual basis exists for the trial court's finding and 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 the reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. Stobart, 617 So. 2d at 882. If the factual findings are reasonable in light of the record reviewed in its entirety, a reviewing court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighted the evidence differently. Stobart, 617 So. 2d at 882-883.

When findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the findings of fact, 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).

The parties in the instant case were the only witnesses to testify at trial, and they gave conflicting accounts of how the accident at issue occurred. Prestley testified that he was traveling down Blubebonnet Boulevard toward Airline Highway, and he was slowing down because he was coming to a red light. Prestley stated that he put his blinker on, looked all around, and got over to the

left-turn lane. He stated he did not see or hear a motorcycle, but the next thing he knew, Jenkins hit him and the motorcycle wheel went up under the fender of the truck. Prestley estimated that due to the jolt that he felt upon impact, Jenkins was driving forty-five miles per hour. Prestley surmised that Jenkins must have come from a shop or building, because Jenkins was not in the left turn lane prior to Prestley's lane change, which Prestley states is why he did not receive a traffic ticket.

Jenkins, however, testified that he was traveling down Bluebonnet Boulevard, in the left turn lane, driving no faster than twenty miles per hour, coming to a stop behind two or three cars. Jenkins stated that the truck came over from the lane beside the turn lane and hit the right crash bar of his motorcycle, which became tangled with the truck's left, front bumper. Jenkins stated that he did not see the truck until the accident. On cross-examination, Jenkins was confronted with his previous deposition testimony wherein he stated that he was driving forty miles per hour the whole way down Bluebonnet Boulevard and was just easing off. Further, when asked why the motorcycle did not move after the impact, Jenkins indicated that it was because he was "right at a stop" when he was hit.

In its reasons for judgment, the trial court stated:

[T]o determine how the motor vehicle accident occurred requires the Court to make a credibility determination between the parties['] conflicting testimony. In doing so, the Court notes a number of inconsistencies in the plaintiff's testimony, not only regarding how the motor vehicle accident occurred, but also regarding prior and subsequent accidents, medical treatment received, and prescription medication used. Plaintiff was constantly impeached with prior inconsistent statements and was at times reluctant to admit to prior accidents and medical treatment, even in light of records reflecting same. After observing and considering the testimony of the witnesses at trial, the Court is of the opinion and belief that the testimony of defendant, Eugene Prestley, Jr., is more credible and convincing.

From our review of the entire record, we find no manifest error in the trial court's determination. Further, given Prestley's testimony that he slowed down, initiated his turn signal, and looked all around prior to initiating the lane change, we find no error in the trial court's finding that Jenkins failed to establish fault or liability on the part of the defendants.

### **CONCLUSION**

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are to be borne by the plaintiff/appellant, Wendell Jenkins.

**AFFIRMED.**