NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1482

FLOYD MARSHALL

VERSUS

WEST BATON ROUGE PARISH FIRE PROTECTION DISTRICT NO. 1 AND THE CITY OF PORT ALLEN (SUBDISTRICT NO. 3 OF THE WEST BATON ROUGE PARISH FIRE PROTECTION DISTRICT NO. 1)

Judgment rendered March 23, 2012.

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Appealed from the
18th Judicial District Court
in and for the Parish of West Baton Rouge, Louisiana
Trial Court No. 34,319
Honorable James J. Best, Judge

* * * * * *

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FIRE PROTECTION DISTRICT
NO. 1

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AMICUS CURIAE

* * * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

PETTIGREW, J.

Plaintiff, Floyd Marshall, challenges the trial court judgment dismissing his petition for writ of mandamus, with prejudice, and rendering judgment in favor of defendant, the West Baton Rouge Parish Fire Protection District No. 1 ("Fire Protection District"). For the reasons that follow, we affirm the judgment of the trial court and issue this memorandum opinion in compliance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

The parties to this case are no strangers to this court. According to the record, Mr. Marshall worked as a fireman in the City of Port Allen ("the City"), from March 15, 1985, through May 12, 2004. In September 2004, Mr. Marshall filed a petition seeking a writ of mandamus against the City and the Fire Protection District alleging that his employment was terminated and that he was never afforded a hearing relative to his termination as required by La. R.S. 33:2561. Mr. Marshall alleged he had timely appealed his termination to the Fire Protection District's civil service board and was subsequently notified by the City that he was an employee of the City and not a member of the Fire Protection District's classified civil service. Mr. Marshall further asserted that "at all times prior to his termination ... [the Fire Protection District] acknowledged that ... [he] was its employee, rather than an employee of the [City.]" Mr. Marshall requested that the trial court issue a writ of mandamus ordering the City and the Fire Protection District to: (1) appoint a civil service board as required by La. R.S. 33:2536; (2) provide him with a civil service hearing relative to the termination of his employment; and (3) conduct the civil service hearing in accordance with law.

The City objected to Mr. Marshall's petition, alleging that he had no cause of action against it. The trial court sustained the City's exception, noting that based on the statutory makeup, the City could not be forced to impanel a civil service board. Mr. Marshall appealed the decision to this court, and we affirmed. See **Marshall v. West Baton Rouge Parish Fire Protection District No. 1**, 2005-1841 (La. App. 1 Cir. 9/20/06) (unpublished decision).

Thereafter, the Fire Protection District filed a motion for summary judgment, arguing that the pleadings, affidavits, and exhibits attached to its motion revealed that Mr.

Marshall was an employee of the City, which was not subject to the "laws regulating the procedure to enforce discipline, including termination of employment, on Civil Service employees for a paid fire department." On December 11, 2006, the trial court heard argument on the motion and Mr. Marshall's petition for writ of mandamus. After considering the evidence, the trial court denied the motion for summary judgment and granted the writ of mandamus. A final judgment was signed by the trial court on February 5, 2007. The Fire Protection District appealed, and we affirmed. See **Marshall v. West Baton Rouge Parish Fire Protection District No. 1**, 2007-1065 (La. App. 1 Cir. 5/2/08), 991 So.2d 492.

The Fire Protection District filed a writ application with the Louisiana Supreme Court, which was granted. The court issued the following per curiam:

> Granted. This matter came before this court upon the trial court's grant of a writ of mandamus ordering the West Baton Rouge Fire Protection District No. 1 to empanel a civil service board and provide plaintiff with a civil service termination hearing. At issue herein is what actions constitute the operation of a regularly paid fire department. Essential to this finding is a determination of what local entity actually employed plaintiff, be it the West Baton Rouge Fire Protection District No. 1, the Port Allen Subdistrict, or the City of Port Allen itself. The trial court held no evidentiary hearing and heard no testimony regarding these factual issues. Accordingly, the judgments of the trial court granting plaintiff's writ of mandamus and of the court appeal affirming that grant are vacated and set aside. The case is remanded to the trial court for further proceedings. Specifically, the trial court is ordered to take evidence, hear testimony, and make factual findings regarding what entity employed Mr. Marshall and what entity operates the fire protection services in the City of Port Allen.

Marshall v. West Baton Rouge Parish Fire Protection District No. 1, 2008-1576 (La. 1/9/09), 998 So.2d 85.

Pursuant to the supreme court's remand order, the trial court conducted a hearing on December 20, 2010, at which time numerous witnesses testified and various documents were introduced into the record. At the conclusion of the evidence, the trial court asked the parties for post-trial memorandums. On May 5, 2011, the trial court, adopting the Fire Protection District's post-trial memorandum, ruled in favor of the Fire Protection District and dismissed, with prejudice, Mr. Marshall's petition for writ of

mandamus. This appeal by Mr. Marshall followed, wherein he alleged the following assignments of error:

> 1. Louisiana Revised Statute Title 40, Section 1503 mandates that [the Fire Protection District] create a Civil Service Board.
>
> 2. Marshall is an employee of [the Fire Protection District] and it is error for the Trial Court to conclude that Marshall is not an employee and [relieve] it of its obligation to create a civil service board to hear Marshall's appeal relative to his termination as a fire fighter for the City ....
>
> 3. [The Fire Protection District] operates a regularly paid fire department and it is error for the Trial Court to conclude that [the Fire Protection District] does not have paid fire fighters.
>
> 4. [The Fire Protection District] owns all of the fire fighting equipment and it is error for the Trial Court to conclude that [the Fire Protection District] does not own, possess, manage, maintain, and/or operate fire fighting equipment.

During the hearing on December 20, 2010, the trial court heard testimony concerning who employed Mr. Marshall and which entity provided fire protection services in the City. After considering all of the evidence before it, the trial court found, as argued by the Fire Protection District in its post-trial memorandum, that Mr. Marshall was employed by the City and that the City, pursuant to a Local Service Agreement between the City and the Port Allen Fire Subdistrict No. 3, provided the fire protection services in the City. The trial court further found that the Fire Protection District did not operate a regularly paid fire department as it did not own, maintain, or operate any firefighting equipment, nor did it employ any regularly paid employees.

It is well-settled that a reviewing court may not disturb the factual findings of the trier of fact in the absence of manifest error. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989); **Arceneaux v. Domingue**, 365 So.2d 1330, 1333 (La. 1978). In **Arceneaux**, we set forth a two-part test for the appellate review of facts: (1) the appellate court must find from the record that there is a reasonable factual basis for the finding of the trial court, and (2) the appellate court must further determine that the record establishes the finding is not clearly wrong or manifestly erroneous. **Arceneaux**, 365 So.2d at 1333. Under the manifest error-clearly wrong standard, the reviewing court does not decide whether the trier of fact was right or wrong, but whether the fact

finder's conclusion was a reasonable one. **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993). Thus, "[i]f the [fact finder's] findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." **Sistler v. Liberty Mutual Ins. Co.**, 558 So.2d 1106, 1112 (La. 1990).

In reviewing this matter, we find the trial court very closely and carefully considered all of the evidence presented. Likewise, we have thoroughly reviewed the record before us and find no error in the trial court's judgment. We conclude that the evidence in the record reasonably supports a finding that Mr. Marshall was employed by the City; that the City provided fire protection services pursuant to an intergovernmental agreement; and that the Fire Protection District did not operate a regularly paid fire department. The May 5, 2011 judgment of the trial court dismissing, with prejudice, Mr. Marshall's petition for writ of mandamus is affirmed. All costs associated with this appeal are assessed against plaintiff, Floyd Marshall.

AFFIRMED.