NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1893

MONA L. MOSBY

VERSUS

COCA-COLA BOTTLING COMPANY UNITED INC., LIBERTY MUTUAL INSURANCE COMPANY & RANDY ERNEST

Judgment rendered May 2, 2012.

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 575,354
Honorable Timothy Kelley, Judge

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MARK W. SIMIEN
EULIS SIMIEN, JR.
BATON ROUGE, LA

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COCA-COLA BOTTLING
COMPANY UNITED, INC.
AND RANDY ERNEST

* * * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

PETTIGREW, J.

On February 14, 2008, Mona L. Mosby was involved in an automobile accident with Randy Ernest in the parking lot of an apartment complex in Baton Rouge, Louisiana. Ms. Mosby filed the instant suit in the 19th Judicial District Court against Mr. Ernest, his employer, Coca-Cola Bottling Company United, Inc., and its insurer, Liberty Mutual Insurance Company, alleging that she sustained injuries as a result of the incident and that she was entitled to monetary damages.[1] The matter proceeded to a bench trial, after which the trial court rendered judgment in favor of Ms. Mosby and against Coca-Cola Bottling Company United, Inc. and Mr. Ernest, awarding Ms. Mosby $1,500.00 in general damages and $318.50 in special damages, together with legal interest from the date of judicial demand until paid.

It is from this judgment that Ms. Mosby has appealed. In her first assignment of error, Ms. Mosby contends the trial court erred in concluding that an independent medical examiner, who only examined her on one occasion, was in a better position to determine the damages caused by the accident than her treating orthopedic physician. In her second assignment of error, Ms. Mosby asserts the trial court erred in finding that she only sustained a two-three week aggravation of her pre-existing injuries. In considering expert testimony, the trier of fact may accept or reject in whole or in part the opinion expressed by an expert. The effect and weight to be given expert testimony is within the broad discretion of the trier of fact. **Morgan v. State Farm Fire and Cas. Co., Inc.**, 2007-0334, p. 8 (La. App. 1st Cir. 11/2/07), 978 So.2d 941, 946. Moreover, the law is well settled that where the testimony of expert witnesses differs, the trier of fact has great, even vast, discretion in determining the credibility of the evidence, and a finding of fact in this regard will not be overturned unless clearly wrong. **Cotton v. State Farm Mut. Auto. Ins. Co.**, 2010-1609, pp. 7-8 (La. App. 1 Cir. 5/6/11), 65 So.3d 213, 220, writ denied, 2011-1084 (La. 9/2/11), 68 So.3d 522.

[1] Prior to the trial of this matter, Ms. Mosby filed a voluntary motion for partial dismissal, dismissing her claims against Liberty Mutual Insurance Company without prejudice.

In the instant case, the trial court heard testimony from the parties and had the benefit of the deposition testimony of Dr. Kevin McCarthy, the independent medical examiner hired by the defense to examine Ms. Mosby and to review her medical records, and Dr. F. Allen Johnston, Ms. Mosby's treating physician. In rendering judgment in favor of Ms. Mosby, the trial court gave the following brief oral reasons for judgment:

> I think that Dr. McCarthy's deposition is very enlightening. On his total review of all the documentation, [Dr. McCarthy] does not believe that there was any injury at all associated with this accident, and at the very most, a soft tissue minor, minor aggravation, at best, of a couple of weeks. His testimony is compelling, considering when I look at Dr. Johnston's, Dr. Johnston admits that his testimony has to do with the credibility of what was told to him by the plaintiff, as opposed to Dr. McCarthy's being able to look at all the medical records and determine it. I think at best, this is a two-week injury. I really don't think that she was hurt in this accident at all. I really don't think that there was an aggravation, but I'm going to give the benefit of the doubt to her, just as apparently Dr. McCarthy did, and call this a two-week aggravation.

Based on our review of the record before us, we find no error in the trial court's conclusion that Ms. Mosby suffered a two-week aggravation of her pre-existing symptoms. The trial court's ruling is reasonably supported by the medical records in evidence and the testimony of Dr. McCarthy. Accordingly, we affirm the trial court's judgment and assess all costs associated with this appeal against Ms. Mosby. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

AFFIRMED.