NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0492

NICOLE P. COWART AND SCOTTY D. COWART,
INDIVIDUALLY AND ON BEHALF OF THEIR CHILDREN
MICHAEL COWART AND NICHOLAS COWART

VERSUS

DONNA R. RICE AND GEICO INDEMNITY COMPANY, HERMAN ADDISON, JR. AND THE PARISH OF EAST BATON ROUGE, DEPARTMENT OF PUBLIC WORKS

Judgment Rendered: November 9, 2011

* * * * *

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 576,745

Honorable William A. Morvant, Judge Presiding

* * * * *

John L. Tyler
Baton Rouge, LA

Attorney for Plaintiffs-Appellees
Nicole P. Cowart and Scotty D. Cowart
Individually and on behalf of their minor
Children, Michael Cowart and Nicholas
Cowart

Richard B. Nevils
Baton Rouge, LA

Attorney for Defendants-Appellants
Herman Addison, Jr. and The Parish of East
Baton Rouge, Department of Public Works

* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

Carter, C.J. Concurs
Parro, J., concurs.

HIGGINBOTHAM, J.

Defendants, Herman Addison, Jr. and his employer the Parish of East Baton Rouge, Department of Public Works (Parish), appeal a judgment adjudicating liability against the defendants and awarding damages to plaintiffs, Nicole and Scotty Cowart and their minor children Michael and Nicholas Cowart. For the following reasons, we affirm.

FACTS

This matter arises out of an accident that occurred in East Baton Rouge Parish on August 27, 2008, while Ms. Nicole Cowart was heading home from the pediatrician's office with her two sons, Michael and Nicholas Cowart. As Ms. Cowart was traveling northbound on I-110 near Memorial Stadium, she saw Mr. Herman Addison, a Parish employee, mowing the grass on her side of the interstate. Mr. Addison entered her lane of travel on the interstate on his tractor to go around an area below the train trestle where there was no shoulder, in order to continue mowing on the other side. Ms. Cowart slammed on her breaks to avoid hitting Mr. Addison. Ms. Cowart did not hit Mr. Addison, but was rear-ended by a vehicle driven by Ms. Donna Rice. As a result of the accident, Ms. Cowart and her children suffered injuries.

On March 24, 2009, Ms. Cowart and her husband, Scotty Cowart, filed suit in the 19th Judicial District Court individually, and on behalf of their minor children, against Herman Addison, Jr. and his employer, the Parish, and Ms. Donna Rice[1] and her insurer, Government Employees Insurance Company.[2] Ms. Cowart and her children sought damages for the injuries they sustained in the

[1] Prior to trial, the Cowarts settled their claims with Government Employees Insurance Company and Ms. Rice.

[2] Government Employees Insurance Company was erroneously named GEICO Indemnity Company in the original petition.

accident. In addition, Mr. Cowart and the minor children sought damages for the loss of consortium they sustained as a result of Ms. Cowart's injuries.

The matter proceeded to a bench trial, after which the trial court rendered judgment assessing 100% of the fault to Mr. Addison and the Parish. Ms. Cowart was awarded $475,081.81 in general and special damages. Michael Cowart and Nicholas Cowart were awarded total damages of $7,046.00 and $8,046.00, respectively. Mr. Cowart was awarded $20,000.00 for loss of consortium.

It is from this judgment that the Parish appeals, asserting that the trial court erred in assessing Mr. Addison and the Parish with 100% fault, because Mr. Addison was not involved in the accident and because the legal presumption regarding the fault of the rear-ending driver was not rebutted. The Parish further contends that trial court's award of damages was excessive.

I. APPORTIONMENT OF FAULT

It is well settled in Louisiana that a trial court's findings of fact may not be reversed on appeal absent manifest error. **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993). The reviewing court must do more than simply review the record for some evidence that supports or controverts the trial court's findings; it must instead review the record in its entirety to determine whether the trial court's findings were clearly wrong. **Id.** The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. **Id.** If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Id.** at 882-883. The manifest error standard demands great deference to the trier of fact's findings; for only the fact finder 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). Thus, where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous. **Id.**

However, where documents or evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face that a reasonable fact finder would not credit the witness's story, the court of appeal may well find manifest error in a finding purportedly based upon a credibility determination. **Rosell, Id** at 844-45. But where such factors are not present, and a fact finder's finding is based on its decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous. **Id** at 845.

Pursuant to La. R.S. 32:81(A), a following motorist has a duty not to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway. As Louisiana courts have uniformly held, a following motorist in a rear-end collision is presumed to have breached this duty and, hence, is presumed negligent. **Mart v. Hill**, 505 So.2d 1120, 1123 (La. 1987). However, under the sudden emergency doctrine, there is an exception to the general rule that a following motorist is presumed negligent if he collides with the rear of a leading vehicle. This doctrine provides that a following motorist will be adjudged free from fault if the following motorist is suddenly confronted with an unanticipated hazard created by a forward vehicle, which could not be reasonably avoided, unless the emergency is brought about by the following motorist own negligence. **Ly v. State Through the Dept. of Public Safety and Corrections**, (La. App. 1st Cir. 1993) 633 So.2d 197, 201, writ denied,634 So.2d 835 (La. 1994).

In this case, the trial court found that the testimony of Ms. Rice and her

passenger, Ms. Namesha Crosby, totally lacked credibility. In its oral reasons for judgment, the trial court stated the following regarding the cause of the accident:

> I then take the testimony of Ms. Cowart with that of the investigating officer, the statements made at the scene contemporaneously with the accident, and the [c]ourt comes to the inescapable conclusion that the accident in question was caused by the actions of Mr. Addison leaving the grass area on the side of I-110 and entering the travel portion of the interstate in an effort to go around the trestle and begin cutting on the other side. ... So the inescapable conclusion... is the accident was caused by the **sudden emergency** created by the actions of Mr. Addison leaving the nontravel portion. (Emphasis added).

Following a thorough review of the record, we find that the trial court's conclusions regarding the liability and allocation of fault are reasonable and that its findings are not manifestly erroneous. Thus, we may not disturb the court's findings below. Further, we find no error in the trial court's clear determination that Ms. Rice fit into the sudden emergency exception to the general rule that the following motorist is presumed negligent if she collides with the rear of the lead vehicle.

II. DAMAGES

The Parish contends that (1) Ms. Cowart's award of $375,000.00 in general damages is excessive and unreasonable given the nature of the injuries Ms. Cowart sustained; (2) the amounts given to the children and Mr. Cowart for loss of consortium were unwarranted; and (3) the special damages for medical expenses should be reduced by $500.00 because that amount was noted on the medical records as a fee for a consultation attorney.

The assessment of quantum or the appropriate amount of damages made by a trial judge or jury is a determination of fact, one entitled to great deference on review. **Wainwright v. Fontenot**, 2000–0492 (La. 10/17/00), 774 So.2d 70, 74. As such, the role of an appellate court in reviewing general damages is not to

decide what it considers to be an appropriate award, but rather to review the exercise of discretion by the trier of fact. Moreover, before a court of appeal can disturb an award made by a fact finder, the record must clearly reveal that the trier of fact abused its discretion in making its award. **Id.**

According to the record, Ms. Cowart suffered neck and low back pain that she described as a level of 8 or 9 out of 10 on a pain scale. She had disc herniation in her neck and pain from her tailbone. She received epidural steroid injections, had facet joint blocks performed, and had RFA procedures on the right and left side of her neck. Ms. Cowart ultimately had to have surgery to remove her tailbone. She testified that she had a difficult time with the recovery from the surgery. Dr. Johnston in his deposition stated that she has "a permanent physical impairment of 10 percent whole person as a result of the cervical disc herniation." She requires a sacral doughnut for sitting. Ms. Cowart testified that she still has pain in her neck and has to take pain medication for her tailbone.

In oral reasons for judgment, the court stated the following when discussing general damages:

> The general damages based on the medical records, the testimony of Dr. Johnston, and probably most importantly, Ms. Cowart's in-court testimony today, the [c]ourt will make a general damage award in the amount of $375,000 ... I did about as extensive a quantum review as I possibly could regarding these types of damages and this type of treatment.

After careful review of the evidence, we do not find the award of $375,000.00 in general damages abusively high in light of the harm Ms. Cowart suffered and the injuries that she incurred.

The Parish contends that the award for loss of consortium to Mr. Cowart in the amount $20,000.00 and $5,000.00 to each of the children was unreasonable. Louisiana Civil Code article 2315(B) authorizes the recovery of loss of

consortium, service, and society as damages by the spouse and children of an injured person. These elements of damages include such pecuniary elements as loss of material services and support and such nonpecuniary components as loss of love, companionship, affection, aid and assistance, society, sexual relations, comfort, solace, and felicity. **Jenkins v. State ex rel. Department of Transportation and Development**, 06–1804 (La. App 1st Cir. 8/19/08), 993 So.2d 749, 777, writ denied, 08–2471 (La.12/19/08), 996 So.2d 1133. A consortium award is a fact-specific determination, to be decided case-by-case, and is disturbed only if there is a clear showing of an abuse of discretion. **Rudd v. Atlas Processing Refinery**, 26,048 (La. App. 2d Cir. 9/21/94), 644 So.2d 402, 411, writ denied, 94-2605 (La. 12/16/94), 648 So.2d 392.

Mr. Cowart and the children did not testify regarding their loss of consortium claim. Therefore, we must determine if Ms. Cowart's testimony alone was sufficient to support the awards given by the trial court.

Ms. Cowart testified that she can no longer do many of the activities with her children that they used to enjoy, like playing on the floor with them, piggyback rides, and rocking them to sleep. She stated that she could not pick up her younger son and felt like she was not the same type of mom to him as she was with the older one. She said before the accident she was very active with Boy Scouts and would go camping and hiking with the boys, but testified "I just can't do any of that with my kids anymore." Ms. Cowart testified that she is no longer able to do the same household chores and cannot keep her home as clean as she could prior to the accident. According to Ms. Cowart, her physical relationship with Mr. Cowart has suffered because she is in too much pain. She stated that this has caused some friction in the marriage. Considering the evidence presented, we do not find that the trial court abused its vast discretion in the amounts awarded for loss of

consortium. Further, we do not find the trial court abused its discretion in the amount of special damages awarded.

CONCLUSION

For the above reasons, the judgment of the trial court is affirmed. All costs associated with this appeal are assessed against defendants-appellants, Mr. Herman Addison, Jr. and the Parish of East Baton Rouge, Department of Public Works, in the amount of $2639.50.

AFFIRMED.