NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1194

SHIRLEY M. DOTSON

VERSUS

ROBERT HUBBARD

Judgment Rendered: February 12, 2010

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On Appeal from the 18th Judicial District Court
In and For the Parish of Iberville
Trial Court No. 63,462, Division "B"

Honorable J. Robin Free, Judge Presiding

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BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

HUGHES, J.

This appeal challenges the involuntary dismissal of plaintiff's lawsuit for damages arising out of the fall of two pecan trees. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On September 23, 2005 Ms. Shirley M. Dotson was working at the home of Mr. and Mrs. Roche, which they rented from defendant, Mr. Robert Hubbard. On that day there was a storm during which two large trees fell through the roof of the house and injured Ms. Dotson. Ms. Dotson filed this lawsuit against Mr. Hubbard, the owner of the trees, and his homeowner's insurer, Louisiana Farm Bureau Mutual Insurance Company (Farm Bureau.)

At the conclusion of plaintiff's case, the defendants moved for involuntary dismissal on the basis that the plaintiff had not met her burden of establishing Mr. Hubbard's liability. The trial court granted the motion. Ms. Dotson appeals.

LAW AND ARGUMENT

Louisiana Code of Civil Procedure article 1672(B) states that:

> In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, any party, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal of the action as to him on the ground that upon the facts and the law, the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff and in favor of the moving party or may decline to render any judgment until the close of all the evidence.

The trial court's grant of an involuntary dismissal is subject to the well-settled manifest error standard of review. **Gauthier v. City of New Iberia**, 06-341, p. 3 (La. App. 3 Cir. 9/27/06), 940 So.2d 915, 918.

Accordingly, in order to reverse a trial court's grant of involuntary dismissal, we must find, after reviewing the record, that there is no factual basis for its finding or that the finding is clearly wrong or manifestly erroneous. *See* **Stobart v. State, through Dep't of Transp. and Dev.**, 617 So.2d 880, 882 (La. 1993). The issue is not whether its conclusion was right or wrong, but whether its conclusion was reasonable. *Id.*

Under LSA-C.C. art. 2317, a person is responsible for damages caused by things which they have in their custody. Louisiana Civil Code article 2317.1, in pertinent part, specifies that:

> The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care.

Four witnesses testified at trial, including Mr. and Mrs. Roche, Mr. Hubbard, and Ms. Dotson. According to Mr. Hubbard, he has had the usufruct of Mr. and Mrs. Roche's rental house since his mother died in 2005 and he rented the house to them in April of that year. He frequented the property because he lives nearby and had a barn on the property. He harvested the pecans from the fallen trees and he cut the grass at the rental house. While he acknowledged that he had picked up limbs that had fallen from the pecan trees during the time that he maintained the grounds, he stated that he did not believe that the trees were diseased because they continued to bear fruit. He denied that either Mr. or Mrs. Roche ever expressed any concerns about the trees prior to September 23, 2005. Further, Mr. Hubbard testified that seven other trees "within eyesight of the

rent house" also fell that same evening as a result of the winds from the storms caused by Hurricane Rita.

Mr. Roche stated that prior to the trees falling, he would have to "periodically" clean up the area where limbs had fallen from the trees. He testified that each of the two trees in question had an "open hole" at their base "where animals and critters would live" and that he was concerned because his children would play around the trees. Mr. Roche testified that approximately two months prior to the date the trees fell, he had advised Mr. Hubbard that he felt that the pecan trees were rotten. However, he admitted that when the trees fell, they did not break where the holes were in their trunks, but that the entire trees were uprooted.

While Ms. Roche testified that she saw her husband speaking with Mr. Hubbard, she could not hear the conversation and so could not testify as to what was said. And finally, while Ms. Dotson testified that she was concerned about the holes in the bottoms of the trees, she admitted that she had never advised Mr. Hubbard of the potential defects.

Photographs of the fallen trees were introduced into evidence. The photographs clearly depict that the entire trees were uprooted and fell on the rental house.

Based on the testimony and the exhibits, the court concluded that the trees did not fail at the alleged defective areas. The "holes" were still intact with the tree trunks and the entire trees were uprooted. The trial court indicated that it thought the accident was the result of an act of God rather than due to negligence or a defect. Therefore, the court held that plaintiff had failed to show, as required by LSA-C.C. 2317.1, that the trees had defects and that those defects caused her damages. After a thorough review

of the record before this court, we are unable to say that the trial court committed manifest error or was clearly wrong in this finding.

CONCLUSION

The judgment of the trial court is affirmed. All costs of this appeal are assessed against plaintiff/appellant, Ms. Shirley M. Dotson.

AFFIRMED.