NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008/CA/0494

TROY HARMON AND WILLIAM ROUNDTREE

VS.

DALE T. MOREAU, EXXON MOBIL CORPORATION AND
NATIONAL UNION FIRE INSURANCE COMPANY

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JUDGMENT RENDERED: SEP 26 2008

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ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 520,218, DIVISION 26
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

THE HONORABLE KAY BATES, JUDGE

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Exxon Mobil Corporation,
And National Union Fire
Insurance Company

BEFORE: PETTIGREW, McDONALD, HUGHES JJ.

McDONALD, J.

This is an appeal of a judgment from the Nineteenth Judicial District Court dismissing plaintiffs' case with prejudice. For the following reasons, the judgment is affirmed.

Plaintiffs, Troy Harmon and William Roundtree, were traveling from Lafayette to New Orleans in May 2003. Mr. Harmon was driving. In addition to Mr. Roundtree, there were four other adults in the vehicle, including Ms. Kay Walker, Mr. Harmon's girlfriend. Shortly after passing the Essen Lane intersection on Interstate 10, Mr. Harmon's vehicle was rear-ended by a truck being driven by Dale Moreau. The truck was owned by Mr. Moreau's employer, Exxon Mobil Corporation. In May 2004, plaintiffs filed suit against Mr. Moreau, Exxon Mobil Corporation, and National Union Fire Insurance Company.

Following a bench trial in May 2007, the trial court found that Mr. Harmon had caused the collision by pulling in front of Mr. Moreau's vehicle and slamming on his brakes for no apparent reason. The trial court heard testimony from Mr. Harmon, Mr. Roundtree, Mr. Moreau, and Shannon Moreau Lavigne, Mr. Moreau's daughter. Deposition excerpts of Kay Walker, Loretta Tharpe and Harold Clay, passengers in Mr. Harmon's vehicle, were also submitted into evidence. Judgment was rendered dismissing plaintiffs' case with prejudice. The plaintiffs have appealed this judgment, alleging that the trial court committed manifest error in failing to attribute fault to Dale Harmon; committed manifest error by giving undue weight to the contradictory testimony of Dale Harmon and Shannon Lavigne; and committed manifest error in failing to award damages to the plaintiffs.

In order to reverse a factfinder's determination of facts, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis

does not exist for the finding and (2) further determine that the record established that the fact finder is clearly wrong or manifestly erroneous. *Lam ex rel. Lam v. State Farm Mutual Automobile Insurance Co.*, 05-1139 (La. 11/29/06), 946 So.2d 133, 138. Appellate courts have a constitutional duty to review facts and have every right to determine whether the trial court finding was clearly wrong based on the evidence or clearly without evidentiary support. 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 finding was clearly wrong or manifestly erroneous. *Siverd v. Permanent General Insurance Co.*, 05-0973 (La. 2/22/06), 922 So.2d 497, 499.

Before rendering judgment, the trial court noted the copious conflicting testimony and specified her reasons for choosing and crediting the evidence supporting her decision. Importantly, she found that Mr. Harmon had slammed on his brakes relying on testimony of Kay Walker. When there is evidence before the trier of fact which, upon its reasonable evaluation of credibility, furnishes a reasonable factual basis for its finding, the appellate court should not disturb this finding. *Quinones v. Barber Bros. Contracting Co.*, 97-0655 (La. App. 1 Cir. 4/8/98), 710 So.2d 816, 818. Where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Huddleston v. Ronald Adams Contractor, Inc.*, 95-0987 (La. App. 1 Cir. 2/23/96), 671 So.2d 533, 536.

The law has established a *rebuttable* presumption that a following motorist who strikes a preceding motorist from the rear has breached the standard of conduct prescribed by La. R.S. 32:81(A) and is therefore liable for the accident. *Daigle v. Mumphrey*, 96-1891 (La. App. 4 Cir. 3/12/97), 691 So.2d 260, 262. The

rule is based on the premise that a following motorist whose vehicle rear-ends a preceding motorist either has failed in his responsibility to maintain a sharp lookout or has followed at a distance from the preceding vehicle which is insufficient to allow him to stop safely under normal circumstances. A following motorist may rebut the presumption of negligence by proving the following things: (1) that he had his vehicle under control, (2) that he closely observed the preceding vehicle, and (3) that he followed at a safe distance under the circumstances. *Chambers v. Graybiel,* 25,840 (La. App. 2 Cir. 6/22/94), 639 So.2d 361, 366. *writ denied,* 94-1948 (La. 10/28/94), 644 So.2d 377. The following motorist may also avoid liability by proving that the driver of the lead vehicle negligently created a hazard that he could not reasonably avoid. *Daigle,* 691 So.2d at 262; *State Farm Mutual Automobile Insurance Co. v. Hoerner,* 426 So.2d 205, 209 (La. App. 4 Cir. 1982), *writ denied*, 433 So.2d 154 (La. 1983).

In the matter before us, the trial court specifically found that Mr. Harmon caused the accident by pulling in front of Mr. Moreau and by slamming on his brakes for no apparent reason. Clearly, the trial court believed that Mr. Harmon had negligently created a hazard that Mr. Moreau could not reasonably avoid. The record contains a reasonable factual basis for this finding. In fact, the record contains a reasonable basis for finding that the accident was caused by an intentional rather than a negligent act by Mr. Harmon.

After a thorough examination of the entire record in this matter, we find that the factual findings of the trial court have evidentiary support and are not manifestly erroneous or clearly wrong. The judgment is affirmed, and this opinion is issued in compliance with URCA Rule 2-16.1B. Costs are assessed to plaintiffs.

AFFIRMED.