



NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 1105



YOLANDA SUE LAMBERT,
Individually and on behalf of her minor children,
CHANCE LAMBERT AND CHASE BURGETTE


VERSUS

STATE OF LOUISIANA, DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

Judgment Rendered: May 4, 2007.

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On Appeal from the
23rd Judicial District Court,
In and for the Parish of Ascension,
State of Louisiana
Trial Court No. 78,069

Honorable Ralph Tureau, Judge Presiding

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BEFORE: CARTER, C.J., WHIPPLE, AND MCDONALD, JJ.

CARTER, C. J.

In this action arising from a one-car accident, Yolanda Sue Lambert (plaintiff) appeals the 23rd Judicial District Court's judgment rendered in accordance with a jury verdict finding the Louisiana Department of Transportation & Development (DOTD) free from liability and dismissing plaintiff's case. The issues on appeal revolve around whether the jury was manifestly erroneous in deciding that the roadway and/or shoulder on Louisiana Highway 621 was not unreasonably dangerous. Plaintiff seeks a reversal of the jury's finding and requests that this court decide the case on the record presented.

According to the record, the fact and expert witnesses offered the jury two plausible versions of how this accident occurred and two contradictory conclusions regarding the defective condition of Highway 621. It is undisputed that plaintiff lost control of her vehicle as she suddenly swerved around a dog in her lane of travel. Plaintiff candidly acknowledged that she smoked marijuana on the day of the accident, and she further admitted driving 60 miles per hour in the 45 mile-per-hour zone that was located approximately two miles from where she had lived most of her life. After the car's wheels dropped off the edge of the roadway, plaintiff's car immediately began to roll and flip down a steep embankment located along the side of the highway that had virtually no shoulders. She eventually crashed into a telephone pole, suffering severe head and neck injuries. There was no evidence of prior or similar-type accidents on Highway 621.

After considering the evidence and the applicable law, the jury obviously found that the evidence supported DOTD's account of what happened and DOTD's version of the condition of the roadway, as well as

the standard for shoulders and slopes of embankments along that particular highway. The jury's finding specifically noted that plaintiff failed to prove by a preponderance of the evidence that the roadway and/or shoulder where the accident occurred presented an unreasonably dangerous condition.

Where there are two permissible views of the evidence, a fact finder's choice between them cannot be manifestly erroneous or clearly wrong. **Stobart v. State through Dept. of Transp. & Development**, 617 So.2d 880, 883 (La. 1993). If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Id.**, 617 So.2d 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).

Furthermore, the fact that a steep embankment may present a danger does not mean that the condition was *unreasonably* dangerous. Only a condition that DOTD could reasonably expect to cause injury to a person acting prudently and using ordinary care will give rise to a finding of liability. See **Deville v. Louisiana Dept. of Transp. & Development**, 97-1422 (La. App. 3 Cir. 9/23/98), 719 So.2d 584, 590, writ denied, 98-2684 (La. 12/18/98), 732 So.2d 1239.

Following a thorough review of the record and exhibits, we find the record does not demonstrate that the decision of the jury was clearly wrong. The record reasonably substantiates the jury's conclusion. Thus, in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2A(2), (4),

(6), and (8), we affirm the district court's judgment and assess all costs associated with this appeal against plaintiff, Yolanda Sue Lambert.

AFFIRMED.