

**SUPREME COURT OF LOUISIANA**

**00-C-0157**

**RAYFORD J. LEBLANC, II**

**versus**

**WILLIAMS STEVENSON, III**

**ON WRIT OF CERTIORARI  
TO THE THIRD CIRCUIT COURT OF APPEAL**

**TRAYLOR, J. (dissenting)**

Although the court of appeal paid lip service to the manifest error rule, it promptly disregarded the jury's verdict in this case and substituted its own judgment for that of the factfinder. The record demonstrates that the jury's verdict is reasonably supported by the record and is not manifestly erroneous. Because we should reverse the judgment of the court of appeal and reinstate the jury's verdict, I dissent.

After plaintiff's truck became stuck in the mud, he mentioned to his friend, the defendant, that he needed the truck the following morning and was unable to secure professional help to extricate the truck. Defendant offered the use of his Suburban to dislodge the truck. Defendant is not a towing expert and did not profess to be one. On the other hand, plaintiff was solely responsible for purchasing the Tug-em strap and later made the decision to tie that strap to the binding strap. Although both men were inexperienced, the record demonstrates that plaintiff was the superior actor throughout the towing operation.

The jury could reasonably conclude that defendant did not breach a duty owed to plaintiff, and that his actions and omissions were not the legal cause of plaintiff's injury. The sole case cited by the court of appeal, *Oliver v. Capitano*,

405 So. 2d 1102 (La. App. 4<sup>th</sup> Cir.), *writs denied*, 407 So. 2d 731, 407 So. 2d 734 (1981)<sup>1</sup> is distinguishable on its facts, because plaintiff was not an impaired actor.

Further, no evidence was produced that the signal given between the two men on the first two attempts was an ongoing admonition or “protective instruction” that applied even when the vehicles were not connected and no towing operation was in progress. In fact, the accident did not occur during a towing attempt, but when defendant was attempting to realign his Suburban. The jury apparently concluded that plaintiff’s signaling instructions applied only to the first two towing attempts and not at other times. Because this conclusion was reasonable and is supported by the evidence adduced at trial, the court of appeal erred in substituting its own alternative interpretation of the evidence, and in making its own credibility determinations.

The unrefuted facts established at trial are that defendant was assisting a friend without compensation; plaintiff was in charge of the towing operation and supplied all of the equipment for it except for defendant’s Suburban; and one end of the Tug-em strap was on the ground when defendant entered his Suburban. One can infer that plaintiff began to connect the straps after defendant walked away, and that it was plaintiff’s attempt to tie the straps together that was the proximate cause of the injury. The jury obviously believed that the accident was not caused by any negligence on defendant’s part, but was instead proximately caused by plaintiff’s actions. It was not for the court of appeal to decide whether the jury was right or wrong in reaching this conclusion — the court of appeal should only have evaluated whether the jury’s decision was reasonable. Because the jury’s determination was reasonable and well supported by the record adduced at trial, the

---

<sup>1</sup> In *Oliver*, an insane woman sat in the path of an oncoming truck and took no action to protect herself from being run over. Observing that the woman’s failure to protect herself did not relieve the truck driver of his duty to observe and avoid what was in his path, the court held that an unimpaired actor’s duties are not diminished by the actions of a person whose capacity is impaired.

court of appeal should not have disturbed the district court's judgment.