3/23/01

SUPREME COURT OF LOUISIANA

No. 00-C-1372

DON PERKINS, ET AL.

versus

ENTERGY CORPORATION, ET AL.

consolidated with

No. 00-C-1387

JOSEPH BUJOL, III, ET AL.

versus

ENTERGY CORPORATION, ET AL.

consolidated with

No. 00-C-1440

ROBERT HRACEK, ET AL.

versus

ENTERGY CORPORATION, ET AL.

Johnson, J., Dissenting

The court of appeal reversed the trial court's decision in this matter solely on the issue of causation. The issue of causation turned on whether the 58 cycle "unplanned and unsystematic" voltage sag resulted in a "turbulent shutdown" which ultimately caused the oxygen flash fire in which plaintiffs were injured. In affirming the court of appeal's decision, the majority concluded that the record does not include a reasonable factual basis for the trial court's finding that the electrical fault shutdown was a cause in fact of the plaintiffs' injuries.

I respectfully disagree. There is sufficient evidence in the record to support the trial court's decision that there was a causal relationship between the electrical

fault shutdown and the flash fire, which caused plaintiffs' injuries.

It is well settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." *Rosell v. ESCO*, 549 So. 2d 840, 844 (La. 1989). This Court has announced a two-part inquiry for the reversal of the trier of fact's determinations: (1) the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the factfinder, and (2) the appellate court must also determine that the record establishes that the finding is clearly wrong or manifestly erroneous. *Stobart v. State, through DOTD*, 617 So. 2d 880, 882 (La. 1993). Thus, the inquiry is whether the factual findings are reasonable, not whether the trier of fact was right or wrong. *Id*. If, in light of the record in its entirety, the trial court's findings are reasonable, then the appellate court may not reverse, even if convinced it would have weighed the evidence differently sitting as the trier of fact. *Sistler v. Liberty Mutual Ins. Co*., 558 So. 2d 1106, 1112 (La. 1990).

Plaintiffs' expert witness, Mr. Roger Owens, testified that in all probability, the voltage sag which occurred during the unplanned and uncontrolled shutdown ultimately caused the flash fire. Mr. Owens testified that there was severe turbulence in the equipment during the shutdown. This, he opined, resulted in the introduction of debris or particles in the flow system, which ultimately caused the accident. Defendants' expert witness, Frederick Brooks, testified that although he had no opinion as to what actually caused the explosion, it was not caused by the voltage sag.

It is apparent that the trial judge was presented with conflicting testimony from plaintiffs' and defendants' expert witnesses on the issue of causation. The trial judge, therefore, had the duty to evaluate this testimony and make reasonable inferences of fact from this testimony. "Where there is conflict in testimony,

reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable." *Canter v. Koehring Co.*, 283 So.2d 716, 724 (La. 1973).

There is no evidence in the record to disprove plaintiffs' theory of causation other than the conflicting testimony of defendants expert witnesses. Based on my review of the record, I find that there was sufficient evidence to support the trial judge's acceptance of plaintiffs' theory of causation. Although the court of appeal's evaluations may be as reasonable, it was error to reverse the decision of the trial court under our well settled "manifest error" standard of review.