SUPREME COURT OF LOUISIANA

NO. 98-C-1613

LORI ANN SIMS, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, ROBERT SPENCER HEARD

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, JAMES E. KIRKPATRICK, AND ROBERSON TRUCKING COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, STATE OF LOUISIANA

CALOGERO, C.J., dissenting

It is true that the court of appeal should not reverse a district court judgment, particularly in a fact intensive case, unless they can reasonably conclude that the district court was clearly wrong. On the other hand, a case resolved at the court of appeal level, where decided on the facts, should not be reversed by this court in order to correct perceived errors. Ours is not an error-correcting court.

On the merits of the case now before us, I am simply not prepared to say that the court of appeal failed to properly apply the clearly wrong standard in altering the percentage of fault allotted to the plaintiff and defendant. The simple, essential facts of this case alone should preclude a finding that there was greater fault on the part of the plaintiff than on the part of the defendant. This young plaintiff came across a hill, only to find a huge tractor-trailer spanning her entire roadway, a short distance away. Given these facts, which were adopted by both the court of appeal and this court, I would surely find the defendant at least equally at fault, and I would certainly not allocate eighty percent of the fault to the plaintiff. Thus, for the reasons discussed above, I would either affirm the court of appeal or, at the very least, allocate fault equally between plaintiff and defendant. It is my opinion that a rational fact finder

could not have imposed on the plaintiff more than fifty percent of the fault which contributed to the occurrence of this accident.