

# **SUPREME COURT OF LOUISIANA**

**No. 98-C-1795**

**JOSHUA DOUGLAS REEVES**

**Versus**

**STRUCTURAL PRESERVATION SYSTEMS, ET AL.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
THIRD CIRCUIT, PARISH OF CALCASIEU, STATE OF LOUISIANA**

**JOHNSON, Justice, dissenting**

In the instant case, the majority has reversed findings of fact that were made by the trial court and affirmed by the court of appeal. The evidence presented to the jury proved conclusively that Structural Preservation Systems (hereinafter “SPS”) knew that moving the pot manually was substantially certain to cause injury. First, the pot had a warning sticker stating that the pot should not be moved manually. The Occupational Health and Safety Act (hereinafter “OSHA”) required that this sticker be placed on the pot. Second, SPS knew that a forklift had been used to move this same pot on a previous job. When the pot arrived at the SPS job site, the pallet, which allowed the pot to be moved by forklift, was removed. Lastly, Plaintiff’s supervisor informed SPS at a safety meeting that a tow motor would be needed to move the pot.

This court may not set aside a jury’s finding of fact and substitute its own conclusions unless those findings are “manifestly erroneous” or “clearly wrong.” Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989). We may not reverse the jury’s findings of fact in the absence of manifest error even though the we may be convinced that we would have reached a different result. Id. Therefore, our disagreement with the trial court is not sufficient to set aside the jury’s findings. Sistler v. Liberty Mut. Ins. Co., 558 So. 2d 1106, 1112 (La. 1990).

Workers' compensation is an employee's exclusive remedy for work-related injuries unless the injuries resulted from an intentional act. In Bazley v. Tortorich, 397 So. 2d 475 (La. 1981), we stated that a person's act is intentional if (1) the person consciously desires the physical result of his act, whatever the likelihood of that result happening from his conduct, or (2) the person knows that injury is substantially certain to follow from his conduct, whatever his desire may be as to the result. The majority has held that the jury was manifestly erroneous in finding that SPS's conduct was intentional. They concluded that SPS's conduct does not meet the "substantial certainty" test. According to the majority, believing that someone may, or even probably will, eventually get hurt if a workplace practice is continued does not rise to the level of an intentional tort, but instead falls within the range of negligent acts covered by workers' compensation. Specifically, the majority states that "There was simply no evidence presented that the accident was 'substantially certain' to occur."

In Wainwright v. Moreno's Inc., 602 So. 2d 734 (La. Ct. App. 3 Cir. 1992), the Louisiana Third Circuit Court of Appeal held that an employer committed an intentional tort by ordering an employee to work in a ditch that he knew would cave-in and cause injury. The Third Circuit found that the employer knew with substantial certainty that injury would occur because (1) the ditch had caved-in on the previous day, See, Wainwright, 602 So. 2d at 739, (2) a safety meeting was held where an engineer recommended that no one go into the ditch, See, Id., and (3) the ditch was constructed in violation of OSHA standards, See, Id. The facts in Wainwright are very similar to the facts of this case. In both cases, the employers' practices violated OSHA standards and in both cases the employers were warned, at safety meetings, about the danger of their practices. The majority tries to distinguish the instant case from Wainwright because there was a previous accident

in Wainwright. There was no previous accident in this case because a forklift was used to move the pot on previous jobs. Following the majority's logic, we should deny Reeves' recover, but allow recovery to any subsequent worker who is injured while manually moving the 1,200 pound pot. The majority has held that in order for an employer to be substantially certain that injury will occur, another employee must have been previously injured due to the improper workplace practices of the employer.

For the reasons stated above, I would affirm the two lower courts and hold SPS liable to Plaintiff for an intentional tort.