

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2024 CA 1148

TAMMY ANDERSEN AND KERRY ANDERSEN

VERSUS

PROGRESSIVE PALOVERDE INSURANCE COMPANY, LOU ANNE
MILLIMAN, AND XYZ INSURANCE COMPANY

Judgment Rendered: AUG 01 2025

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On Appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 2022-12714, Div. F

The Honorable Vincent J. Lobello, Judge Presiding

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BEFORE: PENZATO, STROMBERG, AND FIELDS, JJ.

STROMBERG, J.

In this maritime personal injury case, the plaintiff, Tammy Andersen,¹ appeals a judgment that dismissed her suit against the defendants, Lou Anne Milliman and her insurer, Progressive Paloverde Insurance Co. (“Progressive”), with prejudice, following a bench trial. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Mrs. Andersen, filed suit against the defendants, Ms. Milliman and Progressive, to recover damages for injuries she allegedly sustained on June 20, 2021, as a passenger on Ms. Milliman’s recreational boat in the Tchefuncte River in St. Tammany Parish.² Before the alleged incident, Mrs. Andersen and her husband, Kerry Andersen, were on their pontoon boat on the Tchefuncte River with Jessica Stephens and Gary Loyd.³ Meanwhile, Ms. Milliman was on her boat with her ex-husband, Charles Tracey. The boaters met up at T Rivers Bar on the Tchefuncte River and decided to take a ride in Ms. Milliman’s boat. The group went upriver to Brady Island, where they swam, and then headed downriver.

According to the petition, while Ms. Milliman was operating her boat at a high rate of speed in a “no-wake” zone, Ms. Milliman “crash[ed]” the boat into a wake, causing Mrs. Andersen to fall to the deck of the boat and injure herself.⁴ Mrs.

¹ The Andersen name is spelled both as “Andersen” and “Anderson” in the record, but the correct spelling is “Andersen,” which we will use.

² Mrs. Andersen’s husband, Kerry Andersen, filed a claim against the defendants for loss of consortium, but the trial court granted his motion to voluntarily dismiss his claim with prejudice on January 18, 2024.

³ Ms. Stephens’ name is spelled “Stevens” in the trial transcript and “Stephens” in the trial court’s reasons for judgment. Because her name is spelled “Stephens” in her witness statement in the boating incident report, we will use that spelling. Similarly, Mr. Loyd’s name is spelled “Lloyd” in the trial transcript; however, because it is spelled “Loyd” in his witness statement in the boating incident report, we will use that spelling.

⁴ Louisiana Revised Statutes 34:851.27(C) provides for the establishment of “no-wake” zones where vessels must “operate at bare steerage speed, the slowest speed the vessel can travel while allowing the operator to maintain directional control of the vessel to produce the minimum water surface turbulence.” The “no-wake” zones are established on all waterways within three hundred feet of: (1) a boat launch accessible by the public, and (2) a docking facility adjacent to a boat

Andersen further alleged that Ms. Milliman breached her duty to operate the boat with diligence and care by speeding and driving carelessly, ignoring a “no-wake” zone, having too many passengers in the bow, and overloading the boat.⁵

The trial court held a bench trial on the merits on February 20, 2024, and took the matter under advisement. Over the course of the trial, Mrs. Andersen offered the following evidence in support of her claim: her testimony; the testimony of Mr. Tracey, Ms. Stephens, and Ms. Milliman; the deposition of Joshua Laviolette, the officer from the Louisiana Department of Wildlife & Fisheries (“LDWF”) who investigated the incident, along with a certified copy of the boating incident report (“the report”); the testimony of Dr. John B. Logan, her orthopedic surgeon; copies of text messages from Mr. Loyd and Ms. Milliman; an uncertified copy of Ms. Milliman’s insurance policy; and various certified and uncertified medical records.⁶ During Mrs. Andersen’s cross examination, the evidence the defendants offered, filed, and introduced into the record included the following: the report; a map of the Tchefuncte River; numerous certified medical records; the deposition of Dr. Najeeb Thomas, a neurosurgeon who examined Mrs. Andersen; and surveillance photos and

launch accessible by the public. La. R.S. 34:851.27(C). Louisiana Revised Statutes 34:851.27(C) was amended by 2025 La. Acts No. 415, § 1, but the amendment does not change how a “no-wake” zone is defined.

⁵ In her petition, Mrs. Andersen also alleged that Ms. Milliman failed to operate her boat according to the requirements of La. R.S. 34:851.4(A), which states that “[c]areless operation of a watercraft is the operation of a watercraft in a careless manner so as to endanger the life, limb, or property of any person, when such operation constitutes a violation of any of the following requirements. . . .” While Mrs. Andersen did not specify which provisions of La. R.S. 34:851.4(A) applied, the applicable provisions appear to be section (16), which states, “[a]ll vessels shall be operated at reasonable speeds for given conditions and situations and must be under the complete control of the operator at all times,” and section (17), which states, “[n]o person shall, under any circumstances, operate a vessel in excess of an established speed or wake zone.” We note that La. R.S. 34:851.4(A)(17) was amended by 2025 La. Acts No. 415, § 1 to change “wake” zone to “no-wake” zone.

⁶ The plaintiff also called Phillip A. Odom to testify as an expert witness in boating and offered his curriculum vitae into evidence. However, after questioning by Mrs. Andersen’s and Ms. Milliman’s counsel, the trial court did not qualify Mr. Odom as an expert witness, and his testimony was excluded.

video and Facebook photos of Mrs. Andersen along with the deposition of the surveillance investigator.

After the trial, the trial court issued written reasons for judgment wherein it held that Mrs. Andersen failed to prove by a preponderance of the evidence that Ms. Milliman breached a duty owed to her or that Ms. Milliman's actions caused or contributed to her injuries. On May 20, 2024, the trial court signed a judgment in accordance with the written reasons in favor of Ms. Milliman and Progressive, dismissing Mrs. Andersen's suit against them with prejudice. From this judgment, Mrs. Andersen appeals, contending that the trial court erred in finding that Ms. Milliman did not breach a duty owed to her, contrary to the evidence presented at the trial.

DISCUSSION

Liability

Admiralty claims may be brought in federal court pursuant to its admiralty jurisdiction or in state court under the savings to suitors clause. See 28 U.S.C. § 1333; **Thompson v. Cenac Towing Co.**, 2019-1185 (La. App. 1 Cir. 3/25/21), 322 So.3d 852, 858, writ denied, 2021-00766 (La. 10/1/21), 324 So.3d 1058. Generally, state courts exercising concurrent maritime jurisdiction are bound to apply substantive federal maritime statutory law and to follow United States Supreme Court maritime jurisprudence. **Thompson**, 322 So.3d at 858.

To establish maritime negligence, the plaintiff must demonstrate that (1) the defendant owed plaintiff a duty; (2) the defendant breached the duty; (3) injury sustained by the plaintiff; and (4) the breach caused the plaintiff's injury. See **Canal Barge Co., Inc. v. Torco Oil Co.**, 220 F.3d 370, 376 (5th Cir. 2000). Negligence is not presumed, and the burden of proving negligence by a preponderance of the

evidence rests on the party alleging it. **Lawrence v. New Hampshire Indemnity Co.**, 583 So.2d 155, 156-57 (La. App. 3 Cir. 1991).

The threshold inquiry in a negligence action is whether the defendant owed the plaintiff a duty. **Prange v. Posey**, 2022-0702 (La. App. 4 Cir. 2/28/23), 358 So.3d 943, 949. Under maritime law, a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew. See **Kermarec v. Compagnie Generale Transatlantique**, 358 U.S. 625, 630, 79 S.Ct. 406, 409, 3 L.Ed.2d 550 (1959); **Brewer v. E. J. Platt Fisheries, Inc.**, 511 F.2d 182, 184 (5th Cir. 1975); **Prange**, 358 So.3d at 949.

Standard of Review

A Louisiana appellate court applies the manifest error-clearly wrong standard of review of facts in general maritime and Jones Act cases. **Milstead v. Diamond M Offshore, Inc.**, 95-2446 (La. 7/2/96), 676 So.2d 89, 96; **Terrebonne v. B & J Martin, Inc.**, 2003-2658 (La. App. 1 Cir. 10/29/04), 906 So.2d 431, 435. The two-part test for appellate review of a factual finding is: 1) whether there is a reasonable factual basis in the record for the finding of the trial court, and 2) whether the record further establishes that the finding is not manifestly erroneous. **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993); **Terrebonne**, 906 So.2d at 435. Under the manifest error standard of review, which demands that an appellate court give great deference to the trial court's findings of fact, the issue to be resolved on appeal is not whether the trial court was right or wrong, but whether its conclusions are reasonable. **Katz v. Creel**, 2023-1136 (La. App. 1 Cir. 6/14/24), 391 So.3d 1119, 1123. However, where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable factfinder would not credit the witness's story, the court of appeal may find manifest error or clear wrongness

even in a finding purportedly based upon a credibility determination. **Stobart**, 617 So.2d at 882.

Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. **Katz**, 391 So.3d at 1123. Similarly, where factual findings are based on determinations regarding the credibility of witnesses, the trier of fact's findings demand great deference and are virtually never manifestly erroneous or clearly wrong. **Katz**, 391 So.3d at 1123-24. Only the factfinder 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. **Katz**, 391 So.3d at 1124. Even though an appellate court may feel that its own evaluations and inferences are as reasonable as the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989).

Trial Testimony and Evidence

At the trial of this matter, Mrs. Andersen testified that she was sitting in the bow of Ms. Milliman's boat, in front of Ms. Milliman, who was driving. According to Mrs. Andersen, Ms. Milliman was driving the boat "really fast" through the "no-wake" zones, and everyone was yelling at her to slow down, but she would not. Mrs. Andersen stated that she turned around and told Ms. Milliman to slow down. She further testified that they hit some waves, and on the last wave they hit, she "flew" into Mr. Andersen, who was sitting across from her. According to Mrs. Andersen, she landed on the deck of the boat, first on her knees and then on her side, and that she was screaming, crying, and experiencing "excruciating pain."

Mrs. Andersen stated that they then turned around and returned to T Rivers Bar. According to Mrs. Andersen, she was carried off Ms. Milliman's boat, then she returned home on their pontoon boat. She stated that Mr. Andersen called 911, and

an ambulance picked her up at her home and brought her to St. Tammany Parish Hospital, where she was diagnosed with bruised ribs. Mrs. Andersen testified that an MRI on a later date showed she suffered a fractured T-12 vertebra as a result of the incident, although she gave what the trial court described in its written reasons as “inconsistent and conflicting testimony regarding prior thoracic and mid-back pain.”

On cross examination, Mrs. Andersen testified that Ms. Milliman was driving the boat unsafely, but she could not state the speed at which the boat was traveling, the location of the “no-wake” zones, or whether the incident occurred in a “no-wake” zone. When asked what caused her to fall to the deck, Mrs. Andersen answered that she “[didn’t] know,” but then testified that “[g]oing at a high speed chase” caused her to fall. She also stated that “[i]t felt like” the boat came to a “blunt stop.” Mrs. Andersen testified that she had two drinks on the day of the incident; everyone had been drinking; and she thought Ms. Milliman and Mr. Tracey were intoxicated.

Mr. Tracey testified that after they left Brady Island, they went past T Rivers Bar to continue riding in the boat and ultimately came to the end of the Tchefuncte River. According to Mr. Tracey, they were not going into Lake Pontchartrain from the river, so he took command of the boat from Ms. Milliman to slow it down and make the turn back towards T Rivers Bar. Mr. Tracey testified that he operated the boat, “[o]nly there at the end when we made the turn in the river.” Mr. Tracey further testified that he did not see anyone fall to the deck or become propelled by a wave or wake. Mr. Tracey specifically testified that before he made the turn, Mrs. Andersen was “sitting like in a forty-five (45) degree angle in the corner of the right, front bow seat and at the completion, I remember she was bent over.”

When asked if he powered down the boat because he heard the other passengers yell “slow down, slow down,” Mr. Tracey answered affirmatively, but

he also added that he slowed down because they were approaching the end of the Tchefuncte River and he needed to turn the boat. Mr. Tracey stated that he did not take “emergency command” of the boat. When questioned as to whether Ms. Milliman operated the boat in an unsafe manner at any point in time or whether she was under the influence of alcohol or intoxicated, he replied negatively. Mr. Tracey added that going at a higher speed through a “no-wake” zone is considered unsafe, but that it was not necessarily a hazard to the people in the boat. He further testified that the only significant wave or wake event that day occurred when they were upriver and Mr. Andersen was driving the boat.

Ms. Stephens testified that her recollection of the events was unclear, as she was intoxicated on the day of the incident, and it occurred four years before the trial. Ms. Stephens could not recall where she and Mrs. Andersen were sitting on Ms. Milliman’s boat. She testified that when they were going down the Tchefuncte River, they started to go into the lake where the water was “rough and choppy.” She said they then hit “kind of a large wave because when the boat went up, we all kind of like came down, and everybody kind of got liked flipped around and a little disoriented.” Ms. Stephens testified that she was “pretty sure” Ms. Milliman was driving at the time of the incident and “guess[ed]” that the boat was going “medium speed.” Ms. Stephens believed she heard Mr. Andersen shout for Ms. Milliman to slow down or turn around, but she could not remember if she also asked Ms. Milliman to slow down. Ms. Stephens testified that she “[didn’t] think” Ms. Milliman’s driving made her “[feel] unsafe.” According to Ms. Stephens, when they returned to T Rivers Bar, Mrs. Andersen was crying and saying she was hurt. Ms. Stephens further testified that she did not see Mrs. Andersen fall to the deck of the boat.

On cross examination, Ms. Stephens agreed that the boat went a “little bit past” T Rivers Bar, going towards the lake, “then made an abrupt stop[,] and turned around” to go back to T Rivers Bar. She admitted she could not say with “one-hundred percent” certainty who was in control of the boat when the incident occurred. Ms. Stephens recalled that the drivers of the boat switched at some point during the ride, but it was hard for her to recall who was driving when the incident occurred because she was intoxicated.

Ms. Milliman testified that she was operating her boat as they headed downriver and slowed down as they passed T Rivers Bar. Ms. Milliman agreed that there was a “no-wake” zone “just before” T Rivers Bar, which ended “right after” T Rivers Bar. Ms. Milliman testified that she did not hear the passengers yell at her to slow down. She further testified that Mr. Andersen said “he wanted to go back” or “stop, I want to go—he wanted to go stop at T Rivers [Bar].” Ms. Milliman was asked about proper seating on her boat, and she stated that it was appropriate for four passengers to be seated in the bow, indicating that the water was “smooth” that day.

Ms. Milliman testified that at some point, Mr. Tracey took control of the boat, slowed it down, turned it, and drove it back to T Rivers Bar. Ms. Milliman denied the assertions that Mr. Tracey took control of the vessel because she lost control and because she could not make the turn as an inexperienced boater. Ms. Milliman testified that she observed Mrs. Andersen on the deck of the boat as they approached T Rivers Bar; however, Ms. Milliman did not see Mrs. Andersen or anyone else propelled from their seats, and she did not see Mrs. Andersen fall. Ms. Milliman stated that Mrs. Andersen appeared to be in pain when she was on the boat’s deck.

Specifically, Ms. Milliman testified “I know [Mrs. Andersen] was in her seat while I was driving, one-hundred percent. She was right in front of me.” When

asked if she knew who was driving when Mrs. Andersen was thrown from her seat, Ms. Milliman testified:

If she was thrown from her seat[,] then it was when [Mr. Tracey] was driving because she was sitting on her seat when I was driving. She was looking forward and [Mr. Tracey] came around and took control of the boat and I moved over. We headed back to T Rivers [Bar] and at that point I saw her on the deck of the boat.

Officer Laviolette with LDWF testified in his deposition that he began investigating the incident when he arrived at the hospital and spoke with Mrs. Andersen. The report he prepared states that while the vessel was cruising south in the Tchefuncte River, the operator hit a wake or wave that resulted in the injury of a passenger. The report additionally states that alcohol and drugs were not suspected in the incident and that contributing factors were improper loading and the force of the “wake/wave,” respectively. According to the report, having four of the six passengers in the boat seated in the bow increases bow weight, such that impacting a wave at a moderate speed could cause unsecured passengers to “shift in rough waters.” No citations were issued for the incident. Officer Laviolette further testified that it was his opinion that Ms. Milliman was the operator of the vessel at the time of the incident, but “due to [the] inconsistency of passenger statements, it is difficult to conclude what exactly took place and how and where the injury occurred.” The statements of everyone on board the boat were attached to the report. As noted by Officer Laviolette, the statements from the passengers on the bow, Mrs. Andersen, Ms. Stephens, Mr. Loyd, and Mr. Andersen, all claimed that Ms. Milliman was driving at a high rate of speed through the “no-wake” zone near T Rivers Bar. The statements from Ms. Milliman and Mr. Tracey did not indicate high speed or that Ms. Milliman was ever told to slow down at any time.

In his statement, Mr. Loyd stated that they pleaded with “the driver” to slow down after they passed the “no-wake” zone “at a high rate of speed,” but “[s]he did

not.” He further stated they came to an abrupt stop and most of them were “slung across the boat.” Mr. Andersen in his statement said that Ms. Milliman “punched the throttle to the maximum position all the way thr[ough] the [“no-wake”] zone at [the] T Rivers Bar area, then proceeded to go even faster into the wake where she hit 3 foot waves and threw [Mrs.] Andersen to the floor board of the boat.”

Officer Laviolette testified that the statements were the entire basis of his determination of what happened, including what the water conditions were and whether drug or alcohol use was suspected. He admitted that he could not determine whether the boat was properly loaded at the time of the incident because he did not know the weights of anything on board and where the passengers were actually seated. Officer Laviolette further admitted that his conclusion that Ms. Milliman was the boat operator was “subject to question.” When asked if he would have issued a citation if the operator was operating the vessel in a reckless, dangerous, unreasonable manner, which would include excessive speed, taking a wake at an improper angle, operating under the influence of alcohol or drugs, or excessive speed in a “no-wake” zone, he replied affirmatively. He testified that he found none of those actions in this case. Officer Laviolette concluded that no rules of navigation had been violated.

We note that, relevant to Mrs. Andersen’s credibility, Dr. Logan, her treating physician, testified that he was unaware that Mrs. Andersen had been involved in an automobile accident on April 3, 2021, and that she had been treated for lower, upper, and mid-back pain through June 15, 2021.

Trial Court’s Reasons for Judgment

In concluding that Mrs. Andersen did not meet her burden of proof at trial, the trial court stated in its written reasons for judgment:

Plaintiff Andersen contends Milliman breached the duty of care owed to her by [Milliman’s] negligent operation of the boat. However,

the overwhelming majority of the evidence reviewed by the Court, as well as the trial testimony, is conflicting and insufficient to support this contention. For instance, while Andersen contends it was Milliman driving at the time she was thrown onto the deck, Tracey testified he did not see Andersen get thrown onto the deck, and only saw her bent over after he took over and completed the turn at the end of their drive. Likewise, Stephens testified she did not see Andersen fall. Only Andersen testified with certainty that she was injured while Milliman was driving. The Court has made a credibility determination and finds Andersen's testimony to be self-serving and not credible. Simply put, Andersen does not know what caused her alleged injuries and therefore, cannot prevail on a cause of action against Milliman.

Additionally, Andersen has failed to prove by a preponderance of evidence that a negligent act even occurred. Even Andersen's own testimony is inconsistent as to how her injuries occurred, first stating that Milliman was speeding and hit a wave, then later stating the incident occurred as the boat came to a stop. Andersen's testimony alone is insufficient to support a finding of liability on the part of Milliman. The Court also notes the [LDWF report] did not cite Milliman for any statutory violation in connection with the incident.

...

After careful consideration of the testimony and reviewing the evidence submitted by the parties, the facts and circumstances surrounding the underlying incident remain unclear to the Court. Andersen failed to prove by a preponderance of the evidence that Milliman breached a duty owed to her or that Milliman's actions caused or contributed to her injuries.

In its reasons, the trial court noted that Mr. Andersen did not testify in court. The trial court also referred to a case Ms. Milliman cited in pretrial briefings, **Lawrence**, 583 So.2d at 156-57, wherein a passenger fell and injured his back when the boat operator full-throttled the boat. In **Lawrence**, the plaintiff testified that the ship channel was rough and he was aware of the waves, but that there was no need for him to hold onto the boat railing. 583 So.2d at 156. The Third Circuit reasoned that the testimony of the witnesses did not support a finding of negligence on the part of the boat operator, noting, "Probabilities, surmises, speculations, and conjectures cannot be accepted as sufficient grounds to justify a recovery [against] defendant. The mere fact that an accident occurred does not necessarily infer that someone was negligent." **Lawrence**, 583 So.2d at 157.

Analysis

On appeal, Mrs. Andersen focuses on testimony concerning whether Ms. Milliman was operating the boat when the alleged incident occurred. Mrs. Andersen contends that the trial court manifestly erred in its factual findings because it did not consider that four of the six passengers on the boat stated that Ms. Milliman was operating the boat when she was propelled from her seat. In addition to her own testimony, Mrs. Andersen refers to Ms. Stephens' trial testimony as corroborated by Ms. Stephens' statement given to LDWF shortly after the incident, and also to Mr. Loyd's and Mr. Andersen's statements to LDWF. She also relies on Officer Laviolette's conclusion that Ms. Milliman was operating the boat at the time of the incident. Mrs. Andersen also asserts that Mr. Tracey did not affirmatively testify that he was driving when she was injured.

After thoroughly and carefully reviewing the record, we find no manifest error in the trial court's factual finding that Ms. Milliman was not negligently operating the boat. In its reasons for judgment, the trial court specifically stated that it found Mrs. Andersen's testimony to be "self-serving and not credible." In weighing the other evidence, the trial court implicitly gave greater weight to the live testimony of Ms. Milliman and Mr. Tracey than to the unsworn statements the passengers gave to LDWF. Mr. Andersen and Mr. Loyd did not testify at the trial, despite the fact that both were listed as possible witnesses for Mrs. Andersen in the parties' joint pretrial order, with Mr. Loyd listed under "**WILL CALL**" and Mr. Andersen listed under "**MAY CALL**." The unsworn statements the passengers gave to LDWF are not documents or objective evidence that contradict Ms. Milliman's or Mr. Tracey's testimony. See Stobart, 617 So.2d at 882. As to Ms. Stephens, she testified that she could not say with certainty who was operating the boat, admitted that she did not see Mrs. Andersen fall, and testified that she did not feel that Ms. Milliman was

driving unsafely. Moreover, Mrs. Andersen's reliance on Officer Laviolette's conclusion that Ms. Milliman was operating the boat at the time of the incident ignores his admission that his conclusion was subject to question. Where the factfinder's determination is based on its decision to credit the testimony of one or more witnesses, that finding can virtually never be manifestly erroneous. **Purvis v. Grant Parish School Board**, 2013-1424 (La. 2/14/14), 144 So.3d 922, 926. Accordingly, Mrs. Andersen's assignment of error has no merit and we affirm the trial court's judgment.

CONCLUSION

For the above reasons, the May 20, 2024 judgment dismissing Tammy Andersen's suit against Lou Anne Milliman and Progressive Paloverde Insurance Company with prejudice is affirmed. Costs of this appeal are to be paid by Tammy Andersen.

AFFIRMED.