

LORRAINE LEBLANC

NO. 24-CA-496

VERSUS

FIFTH CIRCUIT

HALE REAL ESTATE, LLC D/B/A SOUTHERN
IMPORTS

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION,
DISTRICT 7
STATE OF LOUISIANA
NO. 22-3462
HONORABLE SHANNON BRUNO BISHOP, JUDGE PRESIDING

April 02, 2025

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Scott U. Schlegel, and Timothy S. Marcel

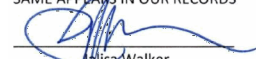
AFFIRMED

TSM

FHW

SUS

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Alisa Walker
Deputy, Clerk of Court

COUNSEL FOR PLAINTIFF/APPELLANT,
LORRAINE LEBLANC
Christopher A. Minias

MARCEL, J.

In this worker's compensation case, claimant Lorraine LeBlanc appeals a judgment of the trial court finding claimant failed to meet her burden to show she sustained an on the job accident or injury in the course and scope of employment by Hale Real Estate, LLC, d/b/a Southern Imports, ("Hale" or "Southern Imports" as it is referred to later). For the following reasons, we affirm the judgment of the Office of Workers' Compensation.

BACKGROUND

On June 30, 2022, Ms. LeBlanc filed a disputed claim for compensation form wherein she alleged that on June 29, 2021 she was hit by a forklift and suffered injuries to her neck, back, and legs while working as an employee of Hale. On July 27, 2022, Hale filed an answer denying all of Ms. LeBlanc's allegations and stating they had "no record of this person being employed by us, ever."

The matter came before the trial court on January 12, 2024 for trial on the merits of Ms. LeBlanc's claim for benefits. Defendant made no appearance at the trial. Ms. LeBlanc was the only person who testified. Medical records from Ms. LeBlanc's physician and chiropractors were the only written documentation introduced into evidence. Following the trial, the court took the matter under advisement and on April 1, 2024 issued a judgment against claimant. In the judgment and the written reasons included, the court specifically found that Ms. LeBlanc failed to meet her burden to show that she sustained an on the job accident or injury in accordance with La. R.S. 23:1021(1).

Claimant filed a motion for a new trial in which she argued that she was excluded from presenting the testimony of a witness, Terry Roche, a friend who drove her to and from work including on the date of the alleged accident and injury, who was present and ready to testify. Claimant also argues that she was excluded from introducing text messages between claimant and her sister, a

manager at Southern Imports, further establishing employment and injury on the job. Claimant also argued that new evidence was available because claimant's sister, Lynette Stewart, was now prepared to testify on claimant's behalf. This motion for a new trial was denied as untimely by the trial court on April 15, 2024. This timely appeal followed.

On appeal, Ms. LeBlanc raises two assignments of error: (1) the trial court erred in deciding the case against Ms. LeBlanc when the only evidence presented supported her claim and the defendant failed to participate in the suit; and (2) the trial court erred by not allowing Ms. LeBlanc to proffer additional evidence in the form of witness testimony and text messages that corroborated her account. We consider these assignments of error in our discussion below.

DISCUSSION

A worker in a compensation action must establish personal injury by accident arising out of and in the course of his employment. La. R.S. 23:1031(A). An employee may prove by his or her testimony alone that an unwitnessed accident occurred in the course and scope of employment if the employee can satisfy two elements: (1) no other evidence discredits or casts serious doubt upon the worker's version of the incident; and (2) the worker's testimony is corroborated by the circumstances following the alleged accident. *Ardoin v. Firestone Polymers, L.L.C.*, 10-0245, p. 8 (La. 1/19/11), 56 So.3d 215, 218-9. Corroboration of the worker's testimony may be provided by the testimony of fellow workers, spouses, or friends, or by medical evidence. *Id.* at 219. The fact-finder's determinations as to whether the worker's testimony is credible and whether the worker has discharged his burden of proof are factual determinations that should not be disturbed on appellate review unless clearly wrong or manifestly erroneous. *Id.*

At the January 12, 2024 trial, Ms. LeBlanc testified that she was an employee of Southern Imports and that she was paid wages weekly in cash with an accompanying receipt showing her name and the amount paid. She also testified as to the accident and the medical treatment she sought afterwards. The judge asked questions of Ms. LeBlanc following her testimony, including whether she had brought the receipts showing the paid wages and whether the forklift operator who purportedly hit Ms. LeBlanc was to be called as a witness. (Counsel for claimant represented efforts to reach the forklift operator were unsuccessful.) Counsel stated that he had text messages between claimant and her sister that he offered to provide the court but that he did not have that evidence with him at the time of the trial. According to the transcript, at no time did claimant offer or seek to call any additional witnesses.

Addressing claimant's first assignment of error, we find no manifest error in the trial court's decision not to credit the testimony of Ms. LeBlanc even though hers was the only evidence presented. When findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings; for 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. *Bajewski v. Bajewski*, 23-552, p. 4 (La. App. 5 Cir. 10/9/24), 398 So.3d 737, 740 (citing *Rosell v. ESCO*, 549 So.2d 840, 844-45 (La.1989)). In this instance, the claimant needed first to prove the employment relationship with Southern Importers. The trial court did not find Ms. LeBlanc's testimony as to this relationship credible. Upon review of the record, we cannot say this finding is manifestly erroneous.

Concerning claimant's second assignment of error, we find no abuse of the trial court's discretion in failing to allow Ms. LeBlanc to proffer additional evidence in the form of witness testimony or text messages that corroborated her

account. It is well-settled that error may not be predicated upon a ruling that excludes evidence, unless a substantial right of a party is affected and the substance of the evidence was made known to the court by counsel. *McMillion v. E. Jefferson Gen. Hosp.*, 15-578, p. 7 (La. App. 5 Cir. 5/26/16), 193 So.3d 448, 451, *writ denied*, 16-1192 (La. 10/10/16), 207 So.3d 405. In those instances, it is incumbent upon the party who contends the evidence was improperly excluded to make a proffer; and if the party fails to do so, then that party cannot contend such exclusion was erroneous. *Id.* In this case, counsel for claimant either did not make the court aware of additional evidence it wished to offer (i.e. the testimony of Terry Roche) or did not seek to proffer the evidence excluded by the trial court (i.e. the text messages between claimant and her sister.) Therefore, this argument is without merit.

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 2, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-CA-496

E-NOTIFIED

OFFICE OF WORKERS' COMPENSATION, DISTRICT 7 (CLERK)
HON. SHANNON BRUNO BISHOP (DISTRICT JUDGE)
CHRISTOPHER A. MINIAS (APPELLANT)

MAILED

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