

The Supreme Court of the State of Louisiana

THEOPHOLIA THOMAS

No. 2024-C-01252

VS.

BNSF RAILWAY COMPANY

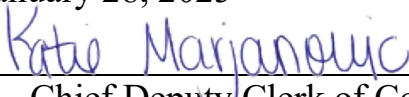
IN RE: Theopholia Thomas - Applicant Plaintiff; Applying For Writ Of Certiorari,
Parish of St. Mary, 16th Judicial District Court Number(s) 131516, Court of Appeal,
First Circuit, Number(s) 2023 CA 1209;

January 28, 2025

Writ application granted. See per curiam.

WJC
JLW
JDH
JTK
JBM
PDG
JMG

Supreme Court of Louisiana
January 28, 2025



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA**No. 2024-C-01252****THEOPHOLIA THOMAS****VS.****BNSF RAILWAY COMPANY**

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of St. Mary

PER CURIAM

Writ granted. The jury found plaintiff was negligent but his negligence was not a proximate cause of the accident; however, the jury thereafter assigned 15% negligence to him and 85% to defendant. These findings are inconsistent. *See* La. Code Civ. Pro. art. 1812C(1); *Ferrell v. Fireman's Fund Ins. Co.*, 94-1252 (La. 2/20/95), 650 So. 2d 742, 747. This inconsistency required the trial court to either return the jury for further consideration of its answers or order a new trial. *See* La. Code Civ. Pro. art. 1813(E); *Ferrell*, 650 So. 2d at 747. The trial court's failure to do so is a legal error that interdicted the jury's fact-finding process relative to whether plaintiff's negligence was a legal cause of the accident. *See Ferrell*, 650 So. 2d at 747; *Gladney v. May*, 29,373 (La. App. 2 Cir. 5/7/97), 697 So. 2d 1022, 1025, *writ denied*, 97-2417 (La. 1/9/98), 705 So. 2d 1101.

Such error generally prompts *de novo* appellate review of whether plaintiff's negligence was a legal cause of the accident. *See Ferrell*, 650 So. 2d at 747; *Gladney*, 697 So. 2d at 1025. Here, however, plaintiff consented to a judgment allocating 15% fault to him, effectively resolving the verdict's inconsistency by conceding his negligence was a legal cause of the accident. Under these circumstances, neither *de novo* review nor a new trial is necessary. The court of appeal thus erred in vacating the trial court's judgment on the jury's verdict and remanding for a new trial on these grounds.

The court of appeal's judgment is vacated, and the case is remanded to the court of appeal for consideration of defendant's remaining assignments of error on appeal.

VACATED AND REMANDED.