

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2021

GLENN PATRICK AND KAREN PATRICK

VERSUS

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
and MARY WISDOM**

Judgment rendered: MAY - 7 2010

**On Appeal from the 18th Judicial District Court
Parish of Iberville, State of Louisiana
Suit Number: 57345; Division: C
The Honorable Alvin Batiste, Jr., Judge Presiding**

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**Counsel for Defendant/Appellant
State Farm Automobile Insurance
Company**

BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

*McCleendon, J - CONCURS WITH REASONS
By [Signature]*

DOWNING, J.

The sole issue in this appeal is whether the trial court was clearly wrong or abused its discretion in awarding damages, including those for loss of enjoyment of life, to plaintiff for the injuries he sustained in an automobile accident. While plaintiff/appellee answered the appeal requesting various adjustments in the damage award, those adjustments were contingent upon this court decreasing the damages awarded at trial. The issues presented in the answer to appeal and discussion thereof, are pretermitted since we are affirming the trial court judgment.

The allegations in defendant's assignments of error involve credibility determinations made by the trial court and expressed in its well-written, extensive reasons. Here, the trial court found as a fact that plaintiff was treated for cervical strain and rotator cuff contusion. It also found as a fact that plaintiff aggravated an old injury to his left foot. The trial court found, based upon expert testimony, that these injuries were the result of the automobile accident in question.

In the assessment of damages, much discretion must be left to the trier of fact. LSA-C.C. art. 2324.1; **Ryan v. Zurich American Insurance Company**, 07-2312, p. 7 (La. 7/1/08), 988 So.2d 214, 219. A court of appeal may not set aside a trial court's findings of fact unless it is clearly wrong. **Id.** Moreover, the Louisiana Supreme Court has ruled that "whether or not loss of enjoyment of life is recoverable depends on the particular facts of the case, and should be left to the district court's discretion on a case-by-case basis." **Magee v. A C and S, Inc.**, 05-1036, p. 12 (La. 7/10/06), 933 So.2d 770, 779. Plaintiff testified that since his accident, he can no longer participate in the field work aspect of his job as a machinist. He also testified that his injuries have seriously curtailed his games of golf and tennis, as well as his fishing and boxing hobbies. He also said that he no longer has the ability to restore old motor vehicles, a pursuit he very much

enjoyed. We therefore conclude that the trial court had a reasonable basis to compensate plaintiff for his loss of enjoyment of life.

Accordingly, we affirm the judgment of the trial court. The costs of this appeal are assessed to the appellant/defendant, State Farm Mutual Automobile Insurance Company.

AFFIRMED

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VERSUS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANT AND MARY WISDOM

McCLENDON, J., concurs and assigns reasons.

The standard of review applicable to a general damages award is the abuse of discretion standard. The trier of fact is afforded much discretion in assessing the facts and rendering an award because it is in the best position to evaluate witness credibility and see the evidence firsthand. **Bouquet v. Wal-Mart Stores, Inc.**, 08-0309, p. 4 (La. 4/4/08) 979 So.2d 456, 459. The discretion vested in the trier of fact in fashioning an award of general damages is great, and even vast, so that an appellate court should rarely disturb an award of general damages. Reasonable persons frequently disagree about the measure of general damages in a particular case. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994).

While I would have awarded a lower amount for general damages had I been sitting as the trier of fact, and while I consider the general damages award in this matter to be at the very high end of the award spectrum, I cannot say that the trial court abused its vast discretion. Therefore, I respectfully concur.