

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 1683

LATOYA MONROE

VERSUS

STATE OF LOUISIANA D/B/A LEONARD CHABERT
MEDICAL CENTER AND CHARLES BINFORD M.D.

Judgment Rendered: APR 26 2013

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On Appeal from the
32nd Judicial District Court,
In and for the Parish of Terrebonne,
State of Louisiana
Trial Court No. 155,914

The Honorable Timothy C. Ellender, Judge Presiding

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BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.

CRAIN, J.

The State of Louisiana, d/b/a Leonard J. Chabert Medical Center, and Dr. Charles Binford appeal an award of general damages to the plaintiff based on medical malpractice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

In February 2006, twenty-six-year-old Latoya Monroe, who was pregnant with her second child, underwent a left breast radical mastectomy. Dr. Charles Binford, a pathologist at Leonard J. Chabert Medical Center, had diagnosed Ms. Monroe with breast cancer after reviewing samples from a needle core biopsy. Subsequent analysis of the mastectomy specimen revealed that Ms. Monroe did not have cancer. She had a non-cancerous breast condition that Dr. Binford misdiagnosed as cancer. Approximately six weeks after surgery, Ms. Monroe was informed that she did not have breast cancer and that her left breast had been needlessly removed.

Ms. Monroe filed this medical malpractice action after a medical review panel concluded that both Dr. Binford and the Leonard J. Chabert Medical Center breached the applicable standard of care in treating her. A bench trial was conducted and the trial court determined that the defendants' care constituted medical malpractice. The trial court awarded Ms. Monroe damages, including \$475,000.00 in general damages for physical pain, suffering, mental anguish, and loss of enjoyment of life.¹ This appeal followed.

DISCUSSION

The sole issue on appeal is whether the trial court's award of \$475,000.00 in general damages is excessive.

¹ Both Dr. Binford and the Leonard J. Chabert Medical Center were state health care providers, therefore judgment was rendered against the State of Louisiana. *See*, La. R.S. 40:1299.39.

General damages are intended to compensate an injured plaintiff for mental or physical pain and suffering, inconvenience, loss of gratification or intellectual or physical enjoyment, or other losses of lifestyle that cannot be measured definitely in terms of money. *See, Thongsavanh v. Schexnayder*, 09-1462 (La. App. 1 Cir. 5/7/10), 40 So. 3d 989, 1001, *writ denied*, 10-1295 (La. 9/24/10), 45 So. 3d 1074. There is no mechanical rule for calculating general damages. *Stockstill v. C.F. Industries, Inc.*, 94-2072 (La. App. 1 Cir. 12/15/95), 665 So. 2d 802, 817, *writ denied*, 96-0149 (La. 3/15/96), 669 So. 2d 428. They are inherently speculative in nature and cannot be fixed with mathematical certainty. *Wainwright v. Fontenot*, 00-0492 (La. 10/17/00), 774 So. 2d 70, 74. The facts and circumstances of each case control. *Stockstill*, 665 So. 2d at 817.

The trier of fact is accorded great discretion in assessing general damages, such that its award should rarely be disturbed on appeal. La. Civ. Code art. 2324.1; *Guillory v. Lee*, 09-0075 (La. 6/26/09), 16 So. 3d 1104, 1127; *Youn v. Maritime Overseas Corp.*, 623 So. 2d 1257, 1261 (La. 1993), *cert. denied*, 510 U.S. 1114 (1994). The role of an appellate court in reviewing general damages is not to decide what it considers to be an appropriate award, but rather to review the exercise of discretion by the trier of fact. *Wainwright*, 774 So. 2d at 74. Reasonable persons frequently disagree about the measure of general damages in a particular case. *Youn*, 623 So. 2d at 1261. It is only when the award is less or more than a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff that an appellate court should alter the award. *Youn*, 623 So. 2d at 1260.

Ms. Monroe testified that as a pregnant, twenty-six-year-old mother of a three year old, the cancer diagnosis left her an emotional wreck. Because of the size of the purportedly cancerous mass, mastectomy rather than lumpectomy was

her option. She was concerned not only for herself but for the health of her unborn child. However, she was advised to proceed with the surgery in spite of the risk to the baby because it was better to save her own life. Ms. Monroe had been dating her unborn child's father, but facing the mastectomy did not want to see him or anyone, believing she "[w]asn't going to be the same person."

After the surgery, an ultrasound revealed that the baby was "okay." However, until she received the pathology results of the mastectomy specimen, Ms. Monroe believed she would face future radiation or chemotherapy treatments. She worried about what that would do to herself and her baby.

After learning that she did not have cancer, and that the mastectomy was unnecessary, Ms. Monroe was angry and emotional. She questioned her doctor's decision to perform surgery before verifying the diagnosis. A result of her experience is a distrust of doctors.

Ms. Monroe has also been affected by the loss of her breast and feelings about her appearance. She is self-conscious, insecure, and feels that she is "less than a woman." At twenty six years old she stopped dating, stopped going places, stopped wearing certain clothing, and stopped looking in mirrors to get dressed. She testified, "I feel that I am disfigured. I am scarred[.]" When she did begin dating the man to whom she is now married, she did not want to expose her upper torso, and would not remove her top in front of him, despite his indication that it did not bother him.

At trial, Ms. Monroe testified that she would like to have reconstructive surgery and the trial court awarded her medical expenses for breast reconstruction. Dr. Frank Dellacroce, the plastic surgeon with whom Ms. Monroe consulted, testified that all of Ms. Monroe's breast tissue, as well as the great majority of the breast skin had been removed. He described the reconstruction options available,

including his recommended and Ms. Monroe's preferred option of having her breast reconstructed from fat and tissue harvested from her body. Dr. Dellacroce testified that reconstruction will involve multiple procedures, including a technically complex one lasting approximately eight hours and requiring a three-night, four-day stay at the surgical facility. Another procedure will be required for "finishing work," including nipple reconstruction, scar revision, and maximization of the reconstruction. Once that procedure is completed, she will need to have that nipple pigmented with medical grade tattooing. Additionally, she will need a procedure on her right breast to achieve symmetry and balance.

The trial court awarded Ms. Monroe \$475,000.00 in general damages. After reviewing the record in its entirety, we find no abuse of discretion in the amount of damages awarded.

CONCLUSION

For the reasons set forth herein, the judgment of the trial court is affirmed. Costs of this appeal in the amount of \$2,672.50 are assessed to the State of Louisiana, d/b/a Leonard Chabert Medical Center and Dr. Charles Binford.

AFFIRMED.