NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 0458

KAYLA SCHEXNAYDER AND EMILY LAGARDE

VERSUS

STATE OF LOUISIANA, DOTD

Judgment Rendered: NOV 07 2014

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Appealed from the
Twenty-Third Judicial District Court
In and for the Parish of Assumption
State of Louisiana
Docket Number 31002

The Honorable Thomas Kliebert, Jr., Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

WHIPPLE, C.J.

This matter is before us on appeal by defendant, the State of Louisiana, through the Department of Transportation and Development, from a judgment of the trial court rendered in accordance with a jury's verdict awarding damages to plaintiff, Kayla Schexnayder. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On October 4, 2007, plaintiffs, Kayla Schexnayder and Emily Lagarde, were traveling as passengers in a 2002 Mercury Cougar driven by Kristen Cedotal, heading southbound on La. Hwy. 308 just north of its intersection with La. Hwy. 70 in Paincourtville, Louisiana.[1] While proceeding south, Cedotal encountered a curve, and her vehicle partially exited the roadway onto the shoulder. Upon re-entry to the roadway, Cedotal lost control of the vehicle, crossed the centerline of the roadway, and collided with an oncoming vehicle.

After the accident, Schexnayder was transported by helicopter to Our Lady of the Lake Medical Center ("OLOL"), where she presented with serious injuries including: multiple fractures in her pelvis; multiple cervical, thoracic and lumbar fractures; multiple pinpoint brain hemorrhages; grade 1 liver laceration; grade 2 spleen laceration; and anterograde amnesia.[2] Schexnayder was intubated upon her arrival at OLOL on October 4, 2007, and remained so until October 9, 2007. Schexnayder initially underwent orthopedic surgery to her pelvis, which required placing iliosacral screws on each side of her pelvis and installing an external fixator to hold the pieces of the pelvis in place until it healed. After six weeks, she underwent a second surgery to remove the external fixator and pins; however, the internal screws were left in her pelvis. Schexnayder also suffered a closed

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[1]At the time of the accident, Schexnayder was a senior in high school.

[2]Lagarde also sustained significant injuries as a result of the accident, but her awards are not at issue in this appeal.

head injury or traumatic brain injury and multiple spinal fractures for which surgery was not recommended.

On October 19, 2007, Schexnayder was transferred to Touro Rehabilitation Center in New Orleans, for neurological and physical rehabilitation to address her brain injury and her hip injury. Schexnayder remained hospitalized there until October 30, 2007, when she was discharged with instructions to continue outpatient physical therapy. Since her return home, Schexnayder has lived under the supervision, and with the assistance, of her mother and grandmother. She has been living permanently with her grandmother, Brenda Prejean, since January of 2009.

On May 29, 2008, Schexnayder and Lagarde filed the instant suit against the State of Louisiana, Department of Transportation and Development ("DOTD") seeking recovery for damages sustained as a result of the accident. Therein, they contended that the accident and their resulting injuries were caused by a defect in La. Hwy. 308, which was under the management, control, and supervision of the DOTD at the time of the accident. Specifically, plaintiffs averred that the DOTD was negligent and strictly liable in: improperly maintaining the roadway; failing to provide and properly maintain the shoulders; failing to properly stripe, place reflectors, and otherwise mark the roadway in a safe and prudent manner; failing to maintain the roadway and curve with appropriate super-elevation; allowing the roadway to have an excessive drop-off and other defects near the edge of the roadway, creating an unreasonable risk of harm to the motoring public; and failing to properly sign and mark the dangerous curve.

Trial of the matter was bifurcated. The issue of liability was tried before a jury on September 20 and 21, 2011. At the conclusion of the trial, the jury found the DOTD 50% at fault and Cedotal 50% at fault for the accident. A judgment

assessing fault in accordance with the jury's verdict on liability was rendered on October 5, 2011, and became final.

A trial on the issue of damages was held before a separate jury on October 22, 23, and 24, 2013. At the conclusion of trial, the jury returned a verdict awarding damages to Schexnayder, as follows:

Physical pain and suffering	$250,000.00
Mental pain and suffering	$250,000.00
Physical disability and loss of enjoyment of life	$500,000.00
Past lost wages	$75,000.00
Future lost wages	$261,000.00
Past medical expenses	$183,958.93[3]
Future medical expenses (including attendant care)	$816,280.00
Total	$2,336,238.93

On November 13, 2013, a judgment in conformity with the jury's verdict was signed by the trial court.[4] On December 23, 2013, the DOTD filed the instant suspensive appeal from the judgment of the trial court.[5]

On appeal, the DOTD contends: (1) the jury erred in its award of $816,280.00 in future medical expenses to Schexnayder; and (2) the trial court erred "in signing the judgment on damages without giving DOTD credit for write-offs on the payments made by Medicaid on [Schexnayder's] medical bills."

[3]The parties stipulated to the amount of past medical expenses.

[4]The judgment awarded damages against the DOTD in accordance with the liability determination against the DOTD for fifty percent (50%), as authorized by LSA-R.S. 39:1533.2 (the Future Medical Care Fund), and within the limitations set forth in LSA-R.S. 13:5106.

[5]The jury also awarded Lagarde a total of $755,422.00 in damages. However, on appeal, the DOTD does not challenge the portion of the judgment awarding damages to Lagarde.

DISCUSSION

Future Medical Expenses (Including Attendant Care) (Assignment of Error Number One)

In this assignment of error, the DOTD contends that the jury's award of $816,280.00 for "future medical expenses, including attendant care," is not supported by the evidence presented at trial, where there was insufficient evidence from plaintiff's expert witnesses to support the award. In brief, the DOTD summarized its argument as follows: "The jury obviously rejected plaintiff's claim for attendant care. As such, the amount awarded must consist primarily of future prescription drug costs. No testimony was presented to support the lump sum amount for future prescription costs set forth by plaintiff's CPA." Thus, the DOTD argues, this award should be lowered.

Noting that plaintiff's counsel argued to the jury that Schexnayder would need attendant care, which plaintiff's CPA estimated would cost $2.8 million, the DOTD argues that "[i]t is obvious from the [jury's] award of $816,280.00, that the jury did not find [Schexnayder] needed 'attendant care'." Thus the DOTD argues, given the amount awarded "in future medical expense, it is clear much of that award [must have] consisted of the $660,000.00 figure for future prescriptions given by . . . the [plaintiff's] CPA." The DOTD then argues that "[t]he award made by the jury appears to consist of evaluations for various future therapies and for those therapies, plus the award for future prescriptions." The DOTD argues that on this basis, the award is unsupported.

At the outset, we note that the award entered by the jury on the verdict form was for "future medical expenses, including attendant care" and was rendered as a lump sum award in accordance with the verdict form. The verdict rendered did not specify or break down the total figure awarded for this element of plaintiff's damages in any manner, much less the manner now suggested by the DOTD.

Further, given the extensive evidence and testimony adduced at trial from both lay and expert witnesses as to Schexnayder's need for attendant care, future treatment, and the methodology used in calculating same, we find no support for the argument that the award was made in the manner suggested by the DOTD and should therefore be reviewed on appeal as such. Moreover, the fact that the jury awarded less than the amount sought or suggested by Schexnayder does not necessarily establish that "much of the award" consisted of future prescriptions only. However, in the interest of fairness, we will consider this assignment of error by the DOTD as a challenge to the reasonableness of the jury's award for "future medical expenses, including attendant care" as reflected on the verdict form.

An award of future medical expenses is justified if there is medical testimony that they are indicated and setting out their probable cost. Hanks v. Seale, 2004-1485 (La. 6/17/05), 904 So. 2d 662, 672. Nevertheless, when the record establishes that future medical expenses will be necessary and inevitable, courts should not reject the award because the record does not provide the exact value, if the court can determine from the record, past medical expenses, and other evidence a minimum amount that reasonable minds could not disagree would be required. Goza v. Parish of West Baton Rouge, 2008-0086 (La. App. 1st Cir. 5/5/09), 21 So. 3d 320, 337, writ denied, 2009-2146 (La. 12/11/09), 23 So. 3d 919, cert. denied, 560 U.S. 904, 130 S.Ct. 3277, 176 L.Ed.2d 1184 (2010). In such a case, the court should award all future medical expenses that the medical evidence establishes that the plaintiff, more probable than not, will be required to incur. Hymel v. HMO of Louisiana, Inc., 2006-0042 (La. App. 1st Cir. 11/15/06), 951 So. 2d 187, 206, writ denied, 2006-2938 (La. 2/16/07), 949 So. 2d 425. Although future medical expenses must be established with some degree of certainty, they do not have to be established with absolute

certainty, as an award for future medical expenses is by nature somewhat speculative. Grayson v. R.B. Ammon and Associates, Inc., 99-2597 (La. App. 1st Cir. 11/3/00), 778 So. 2d 1, 23, writs denied, 2000-3270, 2000-3311 (La. 1/26/01), 782 So. 2d 1026, 1027.

In the assessment of damages, much discretion is left to the judge or jury. LSA-C.C. art. 2324.1. Furthermore, the assessment of quantum, or the appropriate amount of damages, by a trial judge or jury is a determination of fact, which is entitled to great deference on review. Guillory v. Lee, 2009-0075 (La. 6/26/09), 16 So. 3d 1104, 1116. An appellate court, in reviewing a jury's factual conclusions with regard to special damages, must satisfy a two-step process based on the record as a whole: there must be no **reasonable** factual basis for the fact-finder's conclusion, and the finding must be clearly wrong. Menard v. Lafayette Insurance Company, 2009-1869 (La. 3/16/10), 31 So.3d 996, 1007. The issue to be resolved on review is not whether the jury was right or wrong, but whether the jury's fact finding conclusion was a reasonable one. Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989). Notably, reasonable persons frequently disagree regarding the measure of damages in a particular case. Menard v. Lafayette Insurance Company, 31 So.3d at 1007. Thus, where there are two permissible views of the evidence, the jury's choice between them cannot be manifestly erroneous or clearly wrong. Menard v. Lafayette Insurance Company, 31 So.3d at 1007. Moreover, an appellate court on review must be cautious not to re-weigh the evidence or to substitute its own factual findings. Rosell v. ESCO, 549 So. 2d at 844.

With these principles in mind, we must review the evidence of record and determine whether the jury's decision to award "future medical expenses (including attendant care)" is supported by the record and, if so, whether or not the jury abused its discretion in the amount it awarded.

At trial, plaintiff presented both lay and expert testimony regarding Schexnayder's ongoing need for medical and attendant care. Prejean testified at length regarding Schexnayder's significant memory loss and limitations, explaining why she did not think Schexnayder could live alone. Prejean stated that while she is at work, she talks to Schexnayder four or five times throughout the day and that she keeps prepared meals for Schexnayder in the refrigerator for lunch. Prejean gave examples of Schexnayder's impairment and memory loss, including a situation that occurred on one particular day, when Schexnayder attempted to make beignets and put a pot of oil on the stove. After smelling the oil burning, Prejean called out to Schexnayder, who had completely forgotten that she had turned the fire on underneath the pot of oil. Prejean testified that she is required to tell Schexnayder when it is time for her to take a bath and when to wash her hair. Prejean described Schexnayder's condition as "childlike" and testified that she and Schexnayder's mother, Emelie Martinez, take her to her primary care physician, Dr. Michael Hirsch, and see that her medication is filled and that she is taking it as prescribed. Prejean testified as to the various efforts the family has made to help her improve, but stated that based on her daily observations of Schexnayder since the accident, she does not feel that Schexnayder can live independently or without assistance.

Kayla Schexnayder testified that since the accident, she has not gone a full day without experiencing pain in her hip and pelvic region. She also testified that she suffers from chronic headaches, for which she sees a neurologist, Dr. Michael Charlet, every six months. Schexnayder testified that she has not lived alone since the accident and that she has not attempted to live alone. Schexnayder further testified that but for the accident, she would have expected and wanted to be able to live independently at her age.

Schexnayder also presented medical testimony and estimations of the probable costs of Schexnayder's future medical care and expenses from Drs. Greene, Scrantz, Andrews, and Hirsch; vocational rehabilitation expert Glenn M. Hebert; and expert economist John Theriot. Dr. Craig C. Greene, Schexnayder's treating orthopedist, was accepted an expert in the field of orthopedic surgery. Dr. Greene testified that Schexnayder returned to him on several occasions for treatment of her continuing complaints of pelvic pain, including dull aches in the pelvic area with increased activity. Dr. Greene testified that given her injuries, he would expect such continuing complaints, even if her injuries were to heal. Dr. Greene testified that since the accident, Schenxayder's life has changed, and that she will "never" be like she was before the accident. Dr. Greene explained that if her bones heal, while there may be a better likelihood of less pain, this does not mean that she is or will be back to "normal." He testified that her medical condition is something that she is going to have to manage for the rest of her life and that he cannot cure it. Thus, Dr. Greene referred Schexnayder to Dr. Comeaux for pain management of her hip and lower back injuries and lumbosacral injections.

Dr. Kelly J. Scrantz, an expert in the field of neurosurgery, initially diagnosed and treated Schexnayder for the traumatic brain injury and spinal fractures she sustained as a result of the accident. While at OLOL, Dr. Scrantz ordered various CAT scans to monitor Schexnayder's brain bleeds and placed her in a cervical collar for a month. Following her initial treatment, Schexnayder returned to Dr. Scrantz with complaints of chronic headaches. Dr. Scrantz testified that it is not uncommon for patients who suffer traumatic brain injuries to have cognitive deficits or impairments and that with these impairments, patients will function poorly, become confused, or exhibit negative social changes, such as irritability. Dr. Scrantz testified that family members or people who knew

Schexnayder before the accident and saw her on a daily basis would notice these changes. Dr. Scrantz referred Schexnayder to a neuropsychologist for a neuropsychological evaluation and to assist her with her cognitive deficits and impairment issues, as well as brain functioning issues resulting from the accident.

Dr. Susan R. Andrews, an expert neuropsychologist, performed two neuropsychological evaluations on Schexnayder. The results of the first evaluation in June of 2009 showed that Schexnayder had problems over a variety of areas, but primarily centered in her frontal lobe deficits. Dr. Andrews testified that Schexnayder's visual memory is the most impaired of the memory scores and that she has impaired reasoning and thinking abilities, which is consistent with her findings that Schexnayder has deficits in attention, concentration, motor coordination, verbal fluency, naming, math computation, motor speed, and executive functioning. Dr. Andrews testified that the frontal lobe damage sustained by Schexnayder affects her safety consciousness and awareness of potential problems. Dr. Andrews testified that people who suffer from frontal lobe damage, like Schexnayder, are very inconsistent in their behaviors and unable to control their emotions or cope with problems very well, which is why they often need a fair amount of supervision. Dr. Andrews performed a second neurological examination in 2013, which showed slight improvement in her IQ score, which increased from a score of 83 to 86. Dr. Andrews cautioned, however, that while damage to the frontal lobes does not reduce a patient's IQ, it can affect how the person uses that IQ. Dr. Andrews stated that Schexnayder's grandmother's testimony concerning Schexnayder's daily events and limitations was a "textbook description of what you would expect to see in someone with bilateral frontal lobe damage." Dr. Andrews likewise concurred that Schexnayder would not be able to live completely independently and that she would require attendant care. Dr. Andrews testified that Schexnayder is more likely than not

going to need continuing attendant care services in the future and noted that her grandmother has actually been performing these attendant care duties on an ongoing basis. Dr. Andrews testified that Schexnayder is going to suffer as a result of these types of deficits for the remainder of her life, and that if she is extremely lucky, and makes good progress in therapy, she may advance to an assisted level of living. However, Dr. Andrews did not believe that Schexnayder would ever advance to independent living status. Dr. Andrews outlined the various health care services she recommended for Schexnayder, which included occupational therapy, physical therapy, speech therapy, recreational therapy, psychiatric treatment, psychological counseling, vocational rehabilitation, medication, and attendant care.

Dr. Michael Hirsch, Schexnayder's grandfather and her primary care physican since her birth, also testified. Dr. Hirsch testified that since the accident, Schexnayder went from being a bright, vivacious, alert, friendly, and happy person who was smiling all of the time and full of mischief, to being someone who is withdrawn and confused, and who has difficulty in managing her life, difficulty with pain issues, and difficulty with memory issues. He testified that since the accident, he has seen Schexnayder exhibit agitation, disruptive behavior, confusion, and a lack of impulse control. He stated that she clearly is not the same person. Dr. Hirsch likewise testified that Schexnayder's cognitive limitations, mental affect, and cognitive affect are permanent. Dr. Hirsch further stated that Schexnayder has difficulty with decision making and opined that she will have to be guided, which will require a "support role" for the rest of her life. Dr. Hirsch has also consulted with Drs. Greene and Scrantz to monitor Schexnayder's medical treatment and manage her medication. Dr. Hirsch testified that as of trial, Schexnayder was currently prescribed and taking Abilify, Vyvanse, Lithium Carbonate, Hydroxyzine, Pam, Trazodone, Azithromycin, and

Ibuprofen. He stated that except for Azithromycin, birth control medication, and Trazodone, she would be required to take the other five medications for the remainder of her life.

Glenn M. Hebert, an expert in the field of vocational rehabilitation and life care planning, testified regarding the cost of the medication regime and various health care services recommended by Dr. Andrews. Hebert testified that the cost of Schexnayder's medications alone is $650.00 to $700.00 per month; that the cost of attendant care for Schexnayder is $17.00 to $19.00 per hour; and that a one-time only evaluation for occupational, physical, and speech therapy costs $320.00 to $360.00 per evaluaton. He estimated that a one-time only evaluation for recreational therapy costs $150.00 to $175.00. Hebert stated that after the initial evaluation, the cost of occupational and physical therapy is $284.00 to $320.00 per visit and the cost of recreational therapy is $150.00 to $175.00 per visit. Hebert testified that the psychiatric treatment Dr. Andrews recommended she receive four times a year for a period of ten years costs $220.00 to $250.00 per visit. He opined that psychological counseling once a month for a year and then four to six times a year thereafter costs $175.00 to $200.00 per visit. Hebert concluded that the cost of ten to twenty hours of vocational rehabilitation as recommended for Schexnayder's care is $250.00 per hour.

Using the cost figures provided by Hebert, John Theriot, an expert economist, provided the actual present-day cost of the expenses required for Schexnayder's future health care services, as recommended by Dr. Andrews. In making his calculations, Theriot outlined these costs as follows:

SERVICE	FREQUENCY	COST
Occupational Therapy Evaluation	1 x only	$320.00-$360.00
Physical Therapy Evaluation	1 x only	$320.00-$360.00

Speech Therapy Evaluation	1 x only	$320.00-$360.00
Recreational Therapy Evaluation	1 x only	$320.00-$360.00
Occupational Therapy	3 x wk./6 mos.	$284.00-$320.00/vis.
Physical Therapy	3 x wk./6 mos.	$284.00-$320.00/vis.
Recreational Therapy	3 x wk./6 mos.	$150.00-$175.00/vis.
Psychiatric Therapy	4 x yr./10 yrs.	$200.00-$250.00/vis.
Psychological Counseling	1 x mon./1 yr. 4-6 x yr./10 yrs.	$175.00-$200.00/vis.
Vocational Rehabilitation	10-20 hrs.	$250.00/hr.
Medication		$650.00-$700.00/mo.
Attendant Care	8-12 hrs./day	$17.00-$19.00 hr.

Theriot then calculated the present-day cost of Schexnayder's medication expenses as $7,200.00 per year, which amounted to an expense of $660,000.00 over the course of her life expectancy. He further calculated the present-day cost of attendant care as $66,000.00 per year, which amounts to an expense of $2,800,000.00 over the course of her life expectancy. In addition to these figures, Theriot combined the other modalities of occupational therapy, physical therapy and psychological treatment, etc., as set forth above, and opined that the present-day amount required to cover Schexnayder's total medical costs would be $3,562,000.00.

The DOTD presented evidence from expert neuropsychologist, Dr. Meagan A. Ciota. After performing a neuropsychological evaluation of Schexnayder in May of 2010, Dr. Ciota classified her head injury as "severe" and found that there were areas such as speed, quickness, fluency, and fine motor skills that were diminished or negatively impacted as a result of injuries sustained in the accident. However, she felt that her evaluation also showed that Schexnayder had a good

capacity to learn, remember information, and problem solve, which she classified as strengths. Dr. Ciota testified that despite Schexnayder's severe head injury, she did not consider Schexnayder to be disabled, from a neurological perspective. She testified that "disabled" is different than having cognitive deficits, because some people can have cognitive defects, but they are not necessarily disabled. Dr. Ciota concluded that although she concurred that Schexnayder had some permanent problems, she did not believe they were disabling in that Schexnayder showed good ability to learn, remember, and problem solve.

The DOTD also presented the testimony of Michael Frenzel, an expert in the field of vocational rehabilitation. Notably, after reviewing the neurological examinations performed by Drs. Andrews and Ciota, Frenzel opined that Schexnayder had some brain deficits that she may learn to cope with, but that these would not improve over time.

As is evident from its verdict of $816,280.00 for future medical expenses, after hearing the testimony and considering the evidence, the jury apparently accepted the testimony of plaintiff's witnesses and concluded that: (1) she would continue to suffer pain from her hip and pelvic injuries and would continue to have headaches related to the accident, which would require ongoing medication for the rest of her life; and (2) she would also require at least some degree of attendant care and therapy.

Noting that Schexnayder estimated the total costs of future medical expenses to be $3,562,000.00 and that the jury did not award this entire amount, the DOTD argues that the jury's verdict is unsupported by the record and cannot be "reconciled." Thus, the DOTD argues, the jury abused its discretion and erred in making its award. We disagree.

While the jury verdict form used by the parties did not delineate the specific bases for its award, the jury obviously accepted the testimony presented

by plaintiff's lay and expert witnesses as to both the need for and costs of her future care and concluded that some degree of attendant care, therapy, and prescription medications would be necessary. The fact that there was no itemizing of the components of the $816,280.00 award, and that the amount was less than plaintiff requested does not mandate a conclusion that the verdict was improper (or that the award was "obviously" solely for prescription expenses, and therefore improper, as claimed by the DOTD). Instead, after careful review, we find no error.

As the trier of fact, the jury was entitled to accept or reject, in whole or in part, any expert's view. See Harris v. State ex rel. Dept. of Transportation and Development, 2007-1566 (La. App. 1st Cir. 11/10/08), 997 So. 2d 849, 866, writ denied, 2008-2886 (La. 2/6/09), 999 So. 2d 785. Furthermore, when opinions of expert witnesses differ, the determination of what constitutes the most credible evidence is within the province of the jury, and these determinations will not be overturned unless it is proven that the expert's stated reasons are patently unsound. Brown v. City of Madisonville, 2007-2104 (La. App. 1st Cir. 11/24/08), 5 So. 3d 874, 881, writ denied, 2008-2987 (La. 2/20/09), 1 So. 3d 498.

Given the evidence in the record, we find a reasonable basis exists to support the jury's finding that plaintiff will require some ongoing medical and attendant care. Thus, we cannot say that the jury's decision to award future medical expenses was unreasonable and clearly wrong. Further, considering the record herein, we find no abuse of discretion in the amount awarded. Accordingly, we find no merit in the DOTD's assignment of error regarding the award for "future medical expense and attendant care."

Medicaid Credit
(Assignment of Error Number Two)

The DOTD next argues that the trial court erred "in signing the judgment on damages without giving DOTD credit for write-offs on the payments made by Medicaid on plaintiff." The record reflects that on January 13, 2014, after the trial court had signed a judgment and granted the DOTD's motion for a suspensive appeal, the DOTD filed a "Motion for Court to Set Amount of Medicaid Credit," contending that the DOTD was entitled to a Medicaid credit against the past medical expenses awarded to Schexnayder in the amount of $49,286.18 in accordance with Bozeman v. State, 2003-1016 (La. 7/2/04), 879 So. 2d 692. By judgment dated February 5, 2014, the trial court denied the DOTD's motion.

Despite the fact that this motion was not filed or considered by the trial court prior to the trial court's grant of the DOTD's motion for suspensive appeal of the November 13, 2013 judgment, the DOTD nonetheless contends that this court should "consider the issue of DOTD's entitlement to credit in this appeal" and render judgment offsetting the award to plaintiff.

Louisiana Code of Civil Procedure article 2088, entitled, "Divesting of jurisdiction of trial court," provides as follows:

> A. The jurisdiction of the trial court over all matters in the case reviewable under the appeal is divested, and that of the appellate court attaches, on the granting of the order of appeal and the timely filing of the appeal bond, in the case of a suspensive appeal or on the granting of the order of appeal, in the case of a devolutive appeal. Thereafter, the trial court has jurisdiction in the case only over those matters not reviewable under the appeal, including the right to:
>
> (1) Allow the taking of a deposition, as provided in Article 1433;
>
> (2) Extend the return day of the appeal, as provided in Article 2125;
>
> (3) Make, or permit the making of, a written narrative of the facts of the case, as provided in Article 2131;

(4) Correct any misstatement, irregularity, informality, or omission of the trial record, as provided in Article 2132;

(5) Test the solvency of the surety on the appeal bond as of the date of its filing or subsequently, consider objections to the form, substance, and sufficiency of the appeal bond, and permit the curing thereof, as provided in Articles 5123, 5124, and 5126;

(6) Grant an appeal to another party;

(7) Execute or give effect to the judgment when its execution or effect is not suspended by the appeal;

(8) Enter orders permitting the deposit of sums of money within the meaning of Article 4658 of this Code;

(9) Impose the penalties provided by Article 2126, or dismiss the appeal, when the appellant fails to timely pay the estimated costs or the difference between the estimated costs and the actual costs of the appeal; or

(10) Set and tax costs and expert witness fees.

B. In the case of a suspensive appeal, when the appeal bond is not timely filed and the suspensive appeal is thereby not perfected, the trial court maintains jurisdiction to convert the suspensive appeal to a devolutive appeal, except in an eviction case.

In this case, the order of appeal was signed on December 26, 2013. Pursuant to LSA-R.S. 13:4581, the DOTD was not required to furnish an appeal bond.[6] Thus, considering that a motion to set the amount of Medicaid credit due to the DOTD is not one of the enumerated matters over which the trial court retains jurisdiction as set forth in LSA-C.C.P. art. 2088, we conclude the trial court was divested of jurisdiction and the jurisdiction of this court had attached prior to the time the DOTD filed its motion to set the amount of Medicaid credit on January 13, 2014. Accordingly, the trial court no longer had jurisdiction to

[6]Louisiana Revised Statute 13:4581 provides as follows:

The state, state agencies, political subdivisions, parish, and municipal boards or commissions exercising public power and functions, sheriffs, sheriffs' departments, and law enforcement districts, the Louisiana Insurance Guaranty Association, the Louisiana Citizens Property Insurance Corporation, and the Patient's Compensation Fund, or any officer or employee thereof, shall not be required to furnish any appeal bond or any other bond in any judicial proceedings instituted by or brought against them, that arise from activities within the scope and course of their duties and employment.

hear the merits of DOTD's motion to set the amount of the Medicaid credit once the motion for appeal was granted.

As to the DOTD's request that this court consider the issue of its entitlement to Medicaid credit and render judgment on same in this appeal, we note that issues not submitted to the trial court for decision will generally not be considered by the appellate court on appeal. East Tangipahoa Development Company, LLC v. Bedico Junction, LLC, 2008-1262 (La. App. 1st Cir. 12/23/08), 5 So. 3d 238, 246, writ denied, 2009-0166 (La. 3/27/09), 5 So. 3d 146; Jackson v. Home Depot, Inc., 2004-1653 (La. App. 1st Cir. 6/10/05), 906 So. 2d 721, 725; Union Planters Bank, N.A. v. City of Gonzales, 2005-1898 (La. App. 1st Cir. 2/10/06), 923 So. 2d 790, 793, writ denied, 2006-0991 (La. 6/16/06), 929 So. 2d 1292; and Stewart v. Livingston Parish School Board, 2007-1881 (La. App. 1st Cir. 5/2/08), 991 So. 2d 469, 474 ("As a general rule, appellate courts will not consider issues that were not raised in the pleadings, were not addressed by the trial court, or are raised for the first time on appeal."). Since the Medicaid-credit issue was not heard or considered by the trial court herein, we conclude that this issue is not properly before this court.[7] See East Tangipahoa Development Company, LLC v. Bedico Junction, LLC, 5 So. 3d at 246.

This assignment of error also lacks merit.

CONCLUSION

For the above and foregoing reasons, the November 13, 2013 judgment of the trial court is hereby affirmed. Costs of this appeal in the amount of $9,768.00

[7]To the extent that the DOTD requested at oral argument that this matter be remanded to the trial court to address the Medicaid credit issue, we note that a party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation. LSA-C.C.P. art. 425(A). Claims that are not pled are waived and are precluded by judgment. See LSA-C.C.P. art. 425 and Batson v. South Louisiana Medical Center, 2006-1998 (La. App. 1st Cir. 6/13/07), 965 So. 2d 890, 895-896, writ denied, 2007-1479 (La. 10/5/07), (where the state attempted to apply Medicaid credits to a final judgment ordering the state to pay medical expenses, this court held that the State is precluded from raising a substantive challenge to a final judgment once the judgment acquired the authority of a thing adjudged).

are assessed to the defendant/appellant, the State of Louisiana, through the Department of Transportation and Development.

AFFIRMED.