

ROBERT HOUSE

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NO. 2005-CA-0259

VERSUS

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COURT OF APPEAL

**SHERIFF JACK STEPHENS,
THE ST. BERNARD PARISH
SHERIFF'S OFFICE, DEPUTY
DAVID LEVY, AND
RELIANCE INSURANCE
COMPANY**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 87-214, DIVISION "A"
HONORABLE ROBERT A. BUCKLEY, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby,
Judge Roland L. Belsome)

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Defendant, Louisiana Insurance Guaranty Association (“LIGA”),
appeals the trial court judgment in favor of plaintiff, Robert M. House.

Plaintiff answered the appeal, asking for additional damages. We affirm.

On March 19, 1998, at approximately 7:50 p.m., a collision occurred at the intersection of Paris Road (Louisiana Highway 47) and Moreau Street in St. Bernard Parish between vehicles driven by plaintiff and Deputy David Levy, an employee of the St. Bernard Sheriff’s Office. Deputy Levy was proceeding southbound on Paris Road when he struck plaintiff’s vehicle that was proceeding westbound on Moreau Street at its intersection with Paris Road. It is undisputed that Deputy Levy was substantially exceeding the posted speed limit of 40 miles per hour at the time of the accident.

However, the defendant’s position is that Deputy Levy was authorized to exceed the speed limit because he was responding to an emergency call with his lights and sirens activated. At trial, conflicting testimony was presented

on the issue of whether or not the lights and sirens were activated on Deputy Levy's vehicle.

Plaintiff presented testimony indicating that the emergency call to which Deputy Levy was responding was a Code 2 domestic disturbance involving a grandparent's attempt to prevent her daughter from taking the daughter's child away from the grandparent's home. There were no weapons involved, no one's life was in danger and other police units had already arrived at the scene prior to Deputy Levy's accident. Additionally, Deputy Levy was not assigned to the area where the domestic disturbance occurred.

Deputy Levy testified that even though he was not assigned to the area where the domestic disturbance occurred, he responded as a backup unit and backup units can respond outside of their designated area. He heard the Code 2 call broadcast on the police radio saying units were needed to respond. After a brief period of time, there was no Code 4 issued to state that no other units were needed. At that point, Deputy Levy called the communications center asking to go to the call, and he was given permission to proceed to the call, which was still a Code 2 at that time. He testified that

he activated the lights and sirens of his police vehicle and exceeded the speed limit on his way to the call. He stated that he did so because he felt that officers' lives might be in danger due to the fact that several units had responded to the disturbance and could not be reached on their radios. The intersectional collision at issue in this case occurred while Deputy Levy was on his way to the domestic disturbance call.

Plaintiff received serious injuries in this accident, and underwent two surgical procedures for a severe laceration wound to his scalp. Blood alcohol tests taken at the hospital revealed that plaintiff had alcohol in his system, but was not legally intoxicated. In connection with this accident, plaintiff subsequently pled guilty to a charge of reckless operation of a vehicle.

Plaintiff filed a petition for damages against the St. Bernard Sheriff's Office, Sheriff Jack Stephens, Deputy Levy and their insurer, Reliance Insurance Company. The Louisiana Insurance Guaranty Association ("LIGA") was later substituted as a defendant for Reliance Insurance Company after it became insolvent. In his petition, plaintiff alleged that Deputy Levy was negligent in the accident, and that the St. Bernard Sheriff's

Office and Sheriff Stephens were negligent in failing to properly train Deputy Levy and in allowing Deputy Levy to operate a vehicle without the necessary skill, training and experience to do so.

After trial, the trial court rendered judgment, finding plaintiff 30% at fault and the St. Bernard Sheriff's Office and Deputy Levy 70% at fault in causing the accident. Judgment was rendered in favor of plaintiff and against LIGA in the amount of \$38,399.35, which represented plaintiff's damages after a reduction for his percentage of fault.

In written reasons for judgment, the trial court stated that it was unable to determine whether or not the lights and sirens on Deputy Levy's car were in use prior to the collision, given the conflicting evidence on this issue. Noting that all the evidence was undisputed that Deputy Levy was significantly exceeding the speed limit of 40 miles per hour at the time of the accident, the trial court accepted the testimony of Dr. Oscar Griffith, an expert in accident reconstruction, calculating the speed at between 62 and 68 miles per hour. The trial court concluded that this accident occurred through the combined fault of the St. Bernard Parish Sheriff's Office, Deputy Levy and plaintiff. The court faulted the Sheriff's Office for inadequate training

and/or lack of a specific policy for emergency response by deputies. The court found that even if a policy existed that allowed Deputy Levy to speed, it did not authorize him to travel at the speed he was going at the time of the accident.

The trial court found plaintiff at fault for proceeding through the intersection even though he saw Deputy Levy's vehicle approaching. He did not see emergency lights or hear sirens, but he admitted that he saw the headlights of Deputy Levy's vehicle and saw it approaching the intersection, yet still made the decision to proceed through the intersection.

However, the trial court stated that plaintiff's negligence was minor in comparison to that of Deputy Levy and the Sheriff's Office. The court found that the responses and actions of Deputy Levy were totally out of proportion to the actual call. The court found that there was no justification for Deputy Levy's actions when he endangered life and property by proceeding at an excessive rate of speed as a backup unit. Noting that Deputy Levy admitted seeing plaintiff's vehicle when he was more than 800 feet from the intersection, the court faulted him for failing to take action to avoid the collision.

Defendant appealed the trial court judgment in plaintiff's favor, and plaintiff answered the appeal asking that additional damages be awarded. On appeal, the defendant first argues that the trial court committed manifest error when it failed to find plaintiff 100% liable for causing the accident at issue. Specifically, defendant contends that the trial court erred in refraining from determining whether Deputy Levy was driving with lights and sirens activated, in not properly applying the provisions of La. R.S. 32:24 in favor of Deputy Levy, in failing to consider the plaintiff's guilty plea to a charge of reckless operation of a vehicle in connection with this accident, in refusing to find that plaintiff's ability to drive was impaired and that he was under the influence of alcohol at the time of the accident and in determining that Deputy Levy first saw plaintiff's car when he was in front of Our Lady of Prompt Succor Church.

On the issue of whether the lights and sirens were activated on Deputy Levy's vehicle at the time of the accident, the trial court noted that Deputy Levy and one eyewitness testified that the lights and sirens on Deputy Levy's vehicle were in use prior to the accident, while plaintiff and another eyewitness testified that they were not. The trial court evaluated all of the

testimony on this issue, and stated that it was not convinced either way. The court's determination was that neither side's evidence was persuasive enough to warrant a finding in its favor on this issue. That determination was reasonable, and will not be disturbed by this Court.

The next argument refers to the application of La. R.S. 32:24, which states:

A. The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to, but not upon returning from, a fire alarm, may exercise the privileges set forth in this Section, but subject to the conditions herein stated.

B. The driver of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the provisions of this Chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down or stopping as may be necessary for safe operation;

(3) Exceed the maximum speed limits so long as he does not endanger life or property;

(4) Disregard regulations governing the direction of movement or turning in specified directions.

C. The exceptions herein granted to an authorized emergency vehicle shall apply only when such

vehicle is making use of audible or visual signals sufficient to warn motorists of their approach, except that a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

D. The foregoing provisions shall not relieve the driver of an authorized vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

Defendant argues that Deputy Levy was traveling with lights and sirens activated on his way to an emergency call, and was therefore entitled to exceed the posted speed limit. In so arguing, defendant contends that Deputy Levy was entitled to the standard of review enunciated in La. R.S. 32:24, and the trial court erred in not applying the less stringent reckless disregard standard to this case rather than the ordinary negligence standard.

Plaintiff responds to this argument by stating that the protections of La. R.S. 32:24 do not apply in this case because they only apply when an emergency vehicle is utilizing lights and sirens, and the trial court could not determine if Deputy Levy had lights and sirens on at the time of the accident. Plaintiff further argues that the call to which Deputy Levy was responding was not truly an emergency call because no one's life was in danger at the scene of the call. Additionally, according to evidence presented by plaintiff, Deputy Levy was told that this call was a Code 2, and

that St. Bernard Parish Sheriff's Office policy was that officers responding to a Code 2 call must obey the speed limit.

As stated above, the trial court could not determine whether or not the lights and sirens on Deputy Levy's vehicle were activated at the time of the accident. However, the court did find that even if Deputy Levy were allowed to exceed the speed limit, the speed at which he was traveling was so excessive and out of proportion to the nature of the call to which he was responding that it was unjustified and was an endangerment to life and property. The court's reasons for judgment indicate that the court found that Deputy Levy acted in reckless disregard for the safety of others. As such, La. R.S. 32:24 does not relieve Deputy Levy from liability for this accident.

The defendant's argument that the trial court did not consider plaintiff's use of alcohol prior to the accident and his guilty plea of reckless operation of a vehicle in connection with this accident is not persuasive. Although these factors were not specifically mentioned in the trial court's reasons for judgment, the issues of plaintiff's blood alcohol content and alleged impairment were explored in great detail at trial. The evidence established that plaintiff was not legally intoxicated at the time of the accident.

In determining that Deputy Levy first saw plaintiff's car when he was

in front of Our Lady of Prompt Succor Church, the trial court noted that Deputy Levy's own testimony was that he observed plaintiff's vehicle when he was in front of Our Lady of Prompt Succor Church (a stipulated distance of 851 feet), and he failed to take action to avoid the collision. The defendant argues that Deputy Levy testified at trial that he did not know exactly where he was when he first saw plaintiff's car. However, during Deputy Levy's trial testimony, he was presented with his earlier deposition testimony in which he stated that he first observed plaintiff's vehicle "somewhere around the first intersection south of Our Lady of Prompt Succor Church or around that area." Deputy Levy did not deny making that statement in his deposition but insisted that he could not recall the exact location. The trial court apparently found that Deputy Levy's earlier deposition testimony that he was at the intersection by Our Lady of Prompt Succor Church was sufficient to impeach his trial testimony that he did not know where he was when he first saw plaintiff's car. The parties stipulated at trial that the distance from the center of Our Lady of Prompt Succor Church to the center of the intersection of Paris Road and Moreau Street where the accident occurred is 851 feet. The court found that from the point where Deputy Levy first observed plaintiff's vehicle, he had ample time to slow down and allow the other vehicle to cross in front of him. Considering

Deputy Levy's deposition and trial testimony, we conclude the trial court did not err in finding that Deputy Levy was in front of Our Lady of Prompt Succor Church when he first saw plaintiff's vehicle.

Based on our review of the evidence, we find that the trial court did not err in failing to find plaintiff 100% at fault for this accident. In its well-founded reasons for judgment, the trial court assessed plaintiff's fault at 30%, and we find no error in that figure.

Defendant's next argument is that the trial court erred in finding that the Sheriff's Office is liable in this case for the negligent training of Deputy Levy. In reasons for judgment, the trial court noted that one of the causes of this accident was inadequate training and/or lack of a specific policy for emergency response for deputies. The court found that the evidence showed that confusion exists within the Sheriff's Office as to whether there is a formal policy for emergency response for deputies. Deputy Levy testified that no written policy exists, while plaintiff introduced a copy of a written policy for emergency response calls used by the communications department of the St. Bernard Sheriff's Office. This exhibit was introduced during the testimony of Sergeant Jamie Penton who is employed in the communications department. That written policy stated that for Code 2 calls, officers are to proceed directly to the scene obeying all speed limits. Deputy Levy testified

that he was not aware of any restrictions as to speed in a Code 2 situation. He also testified that he did not receive any specialized driver training through the St. Bernard Sheriff's Office.

There was sufficient evidence presented in this case to establish that the St. Bernard Sheriff's Office inadequately trained Deputy Levy, and that this lack of training was a contributing cause to this accident. Therefore, we find no error in the trial court's finding of liability on the part of the St. Bernard Sheriff's Office for this accident.

Finally, the defendant argues that the trial court erred in awarding excessive damages to plaintiff. In his answer to the appeal, plaintiff argues that the damages awarded were inadequate, and should be increased. The trial court assessed plaintiff's total damages at \$54,856.22, which included \$40,000.00 in general damages and \$14,856.22 in medical expenses. The amount actually awarded to plaintiff was \$38,399.35, which represented his damages reduced by his comparative fault of 30%. The trial court noted that plaintiff was unconscious after the accident, and had to be extracted from his vehicle before being transported to the hospital. He suffered a frontal scalp avulsion and an arterial bleed as a result of the accident. Plaintiff underwent surgery the day after the accident to close the tissue on his scalp and clean the wound. He was discharged from the hospital on March 23, 1998, but

returned on March 31, 1998 to undergo a skin graft procedure of the right lateral thigh to the scalp. He was discharged the same day. The court noted that plaintiff has received no other treatment, even though he complained at trial of continued neck, knee and back pain. The court also found that there was no evidence presented that plaintiff will need any treatment in the future for the procedures performed following the accident.

The trial court stated that a general damages award of \$40,000.00 was appropriate to compensate plaintiff for his pain, suffering and scarring. The defendant argues that the plaintiff's injuries and surgical procedures did not warrant an award of \$40,000.00. On the other hand, plaintiff argues that the court erred in awarding an inadequate amount given the severity of his injuries, and in failing to award plaintiff damages for permanent disfigurement and loss of enjoyment of life.

The discretion vested in the trier of fact in the awarding of general damages is great, and even vast. *Youn v. Maritime Overseas Corp.*, 623 So.2d 1257 (La. 1993). Considering the injuries suffered by plaintiff, and the surgical procedures performed as a result thereof, we find that an award of \$40,000.00 for general damages was neither excessive nor inadequate. The trial court did not err in awarding damages for pain, suffering and scarring in the amount of \$40,000.00 (subject to reduction for plaintiff's

percentage of fault.)

For the reasons stated above, the trial court judgment is affirmed.

AFFIRMED