NOT DESIGNATED FOR PUBLICATION

GARVIN O. HART	*	**NO. 2006-CA-1602**
VERSUS	*	**COURT OF APPEAL**
CHEVRON STATIONS, INC. STORE NO. 391, XYZ INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 2003-55167, SECTION "B"
Honorable Angelique A. Reed, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr., and Judge Edwin A. Lombard)

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JUNE 27, 2007

AFFIRMED

The Appellant, Chevron Stations Inc. (Chevron), appeals the judgment of the trial court awarding the Appellee, Garvin Hart, $10,000 in damages for burns he sustained. We affirm.

Mr. Hart entered the Chevron Station located at 477 North Rampart Street in New Orleans, on or about September 5, 2002. Mr. Hart attempted to pour himself a cup of coffee when the pot containing the coffee "busted" in his hands and hot liquid spilled on and below his torso. Shortly after the incident, Mr. Hart sought the medical assistance of his primary treating physician Dr. Stephanie L. Sarrat.

Mr. Hart filed a Petition for Damages in First City Court in the Parish of Orleans. Trial was held on June 15, 2006 and in a judgment dated August 29, 2006, Mr. Hart was awarded $10,000 in general damages. Chevron takes this timely appeal.

Chevron offers three issues for this Court to review. We opine that the sole question for this Court is whether the trial court abused its discretion in awarding $10,000 to Mr. Hart in light of the injuries he sustained. Although we find the award on the high end, we do not think that there was an abuse of discretion by the trial court.

> The standard of appellate review of a damage award is clear abuse of discretion. *Theriot v.*

Allstate Ins. Co., 625 So.2d 1337, 1340 (La. 1993). The Supreme Court addressed the standards governing appellate review of general damage awards in *Andrus v. State Farm Mutual Auto. Ins. Co.*, 95-0801 (La. 3/22/96), 670 So.2d 1206. Specifically, the Supreme Court stated:

> In appellate review of general damage awards, the court must accord much discretion to the trial court judge or jury. *Reck v. Stevens*, 373 So.2d 498 (La. 1979). The role of an appellate court in reviewing awards of general damages is not to decide what it considers to be an appropriate award, but rather to review the exercise of discretion by the trial court. *Id.* Only if the reviewing court determines that the trial court has abused its "much discretion" may it refer to prior awards in similar cases and then only to determine the highest or lowest point of an award within that discretion. *Coco v. Winston Indus., Inc.*, 341 So.2d 332 (La. 1976).
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> Because discretion vested in the trial court is "great," and even vast, an appellate court should rarely disturb an award of general damages. *Youn v. Maritime Overseas Corp.*, 623 So.2d 1257, 1261 (La. 1993). 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. *Id. Andrus v. State Farm Mutual Auto. Ins. Co.*, 95-0801 (La. 3/22/96), 670 So.2d 1206, 1210.
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> This Court similarly held that "[a] general damage award assigned by a jury, although high or low, that does not shock the conscience should not be touched by an appellate court in light of the vast discretion that a finder of fact is granted in matters of general damages; the same applies to a general damage award of a trial judge." *Andrews v.*

> *Dufour*, 2003-0736 (La. App. 4 Cir. 6/2/04), 882 So.2d 15…Moreover, "[d]amages awarded by a jury are to be reviewed in the light most favorable to the prevailing party." *O'Riley v. City of Shreveport*, 30,107 (La. App. 2 Cir. 01/23/98), 706 So.2d 213.

Raines v. Columbia Lakeland Medical Center 005-0243, pp.5-7 (La. App. 4 Cir. 1/4/06) 923 So.2d 170, 173-174.

Chevron maintains that the trial court erred in determining that Mr. Hart sustained burns to his groin and experienced some sexual dysfunction. Chevron argues that Dr. Sarrat's testimony fails to corroborate Mr. Hart's testimony and that Mr. Hart "grossly exaggerated the nature and severity of his injuries." Chevron concludes its argument by submitting to this Court that there are no cases in this jurisdiction whereby this Court has dealt with an award for first-degree burns on appeal. Therefore, Chevron relies on the jurisprudence in other jurisdictions and offers that a $2,000 award for Mr. Hart is well within reason.

Mr. Hart maintains that he did indeed sustain burns on his groin causing him sexual discomfort. He further maintains that he received no assistance from the two Chevron employees who witnessed the incident and had to rely on an onlooker to assist him.

A review of the record finds that Dr. Sarrat testified that Mr. Hart

came into her office with complaints of burns the day of the accident. Dr. Sarrat treated Mr. Hart with Silvadene Cream but never examined his groin area because he failed to complain that he was injured in that area. Dr. Sarrat diagnosed Mr. Hart as having first-degree burns and never saw Mr. Hart for a follow-up of that particular complaint.

At trial, Dr. Sarrat agreed with Mr. Hart's counsel that it would be painful for a man to achieve an erection if he had first degree burns in "that area of the pubic hair" and that burns of this nature could affect a man's sex life. Dr. Sarrat also testified that first-degree burns could be more painful two or three days after receiving them. She also agreed that although she never treated Mr. Hart for any mental condition relating to the burn, that Mr. Hart's sex life could be effected psychologically.

Chevron insists that Mr. Hart was having erectile problems before the accident and that he was prescribed Viagra by Dr. Sarrat. Although the record finds this to be true, we cannot conclude that Mr. Hart's complaints of sexual "problems" only refer to his inability to become erect. Mr. Hart could have suffered from pain and embarrassment. Mr. Hart presented photos of his groin area at trial in an effort to depict his injury. Dr. Sarrat testified that Mr. Hart had been previously treated for hyper pigmentation in the same area. From our review of the record, we cannot undoubtedly

conclude, nor was it undeniably determined, that the photos revealed pigmentation problems, burns or both.

The testimony in the instant case is somewhat conflicting. Mr. Hart testified that his groin was burned. Dr. Sarrat testified that he never complained of burns on his groin and that the burns were not severe, only equivalent to sunburn. Allison Jurisich, the Human Resource Manager at Acme Oyster House, Mr. Hart's employer, has no record of Mr. Hart being absent on medical leave. Further, Marilyn Roberts, the former territory manager for Chevron at the time of the incident, testified that there was no accident report on file regarding Mr. Hart's injuries.

Although the standard of review in *Touchard v. Slemco Elec. Foundation* 1999-3577 (La. 10/17/00) 769 So.2d 1200, was manifest error, we still rely on legal analysis when conflicting testimony is at issue. "It is well settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is clearly wrong. *Arceneaux v. Domingue,* 365 So.2d 1330, 1333 (La. 1978). When there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. *Lirette v. State Farm Ins. Co.,* 563 So.2d 850, 852 (La.

1990); *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989); *Canter v. Koehring Co.*, 283 So.2d 716, 724 (La. 1973). Therefore, the issue for the reviewing court is not whether the trier of fact was wrong, but whether the fact-finder's conclusions were reasonable under the evidence presented." Citation omitted. *Id* at 1204.

The trial court judge is in a better position than this Court to determine the credibility of the witnesses at trial. Here, our purpose is to determine whether the trial court abused its discretion in awarding Mr. Hart $10,000. Chevron is correct in that there are no cases in this jurisdiction whereby first-degree burns, and first-degree burns alone, are at issue. While we do find that $10,000 is a large award, we cannot conclude that it was excessive considering the site of Mr. Hart's burns, the failure of the Chevron employees to assist him, and his testimony of temporary loss of sexual function.

Decree

For the reasons stated herein, we affirm the judgment of the trial court awarding Mr. Garvin Hart $10,000 in general damages.

AFFIRMED