

NOT DESIGNATED FOR PUBLICATION

RONALD JEFF BELL, * **NO. 2007-CA-0726**
INDIVIDUALLY AND ON *
BEHALF OF HIS MINOR * **COURT OF APPEAL**
DAUGHTER, ALEXIS BELL * **FOURTH CIRCUIT**
VERSUS *
* **STATE OF LOUISIANA**
ANDRE SMITH AND
AMERICAN NATIONAL * * * * *
PROPERTY AND CASUALTY
INSURANCE COMPANY

APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 104-575, DIVISION "C"
Honorable Wayne Cresap, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Terri F. Love, and Judge Roland L. Belsome)

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NOVEMBER 28, 2007

AFFIRMED

Appellants, Andre Smith and American National Property and Casualty Insurance Company appeal the district court judgment in favor of Appellee, Ronald Jeff Bell, individually and on behalf of his minor daughter, Alexis Bell. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On June 29, 2004, Alexis Bell (“Alexis”), was visiting the home of Mrs. Smith, for a tutoring session. Alexis was sitting on the floor playing with the Smith family dog when a sudden noise caused the dog to become excited and bite Alexis on her mouth. As a result, Alexis sustained multiple lacerations to her lips. Mrs. Smith attempted to stop the bleeding, and applied an ice pack to Alexis’ mouth until her father, Mr. Bell, arrived a few minutes later. Mr. Bell immediately transported the child to the Chalmette Medical Center emergency room.

Alexis was first examined in the emergency room by Dr. George Baird. After requesting an evaluation by a plastic surgeon, Alexis waited a few hours before she was seen by plastic surgeon Dr. Paul Dreschnack. Alexis was given analgesic injections in her lips, and the wounds were stitched by Dr. Dreschnack.

Thereafter, Alexis had five follow-up visits with Dr. Dreschnack between July 2, 2004, and April 27, 2005, when she was discharged.

On June 5, 2005, Mr. Bell, individually and on behalf of Alexis, filed a Petition for Damages against Mrs. Smith and her insurer, American National Property and Casualty Insurance Company (“American National”). The matter proceeded to a judge trial on March 8, 2007, with the parties stipulating to liability on the part of the defendants. The only issue addressed by the trial court was the amount of general damages to be awarded.

Judgment was rendered on March 8, 2007, and signed on March 19, 2007, in favor of the plaintiffs as follows: stipulated medical expenses, 3,400; stipulated lost wages, 500; general damages for Alexis, 60,000 and general damages for Mr. Bell, 5,000; totaling \$68,000.

As further specified in the judgment, the award was reduced to \$50,000 plus interest and costs pursuant to the plaintiffs’ stipulation that the amount in controversy did not exceed \$50,000 exclusive of interest and costs. From this judgment, the Mrs. Smith filed a timely suspensive appeal, asserting, as the only assignment of error, that the award of general damages is excessive.

LAW AND ANALYSIS

The Louisiana Supreme Court explained the standard of review of general damage awards in *Duncan v. Kansas City Southern Railway Co.*, 2000-0066, pp.13-14 (La. 10/30/00), 773 So.2d 670, 682-83, as follows:

General damages are those which may not be fixed with pecuniary exactitude; instead, they “involve mental or physical pain or suffering, inconvenience, the loss of intellectual gratification or physical enjoyment, or other losses of life or life-style which cannot be definitely measured in monetary terms.” *Keeth v. Dept. of Pub. Safety & Transp.*, 618 So.2d 1154, 1160 (La. App. 2

Cir.1993). Vast discretion is accorded the trier of fact in fixing general damage awards. La. Civ.Code art. 2324.1; *Hollenbeck v. Oceaneering Int., Inc.*, 96-0377(La. App. 1 Cir. 11/8/96), 685 So.2d 163, 172. This vast discretion is such that an appellate court should rarely disturb an award of general damages. *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). Thus, the role of the appellate court in reviewing general damage awards 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. *Youn*, 623 So.2d at 1260. As we explained in *Youn*:

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 decrease the award.

Id. at 1261.

The initial inquiry, in reviewing an award of general damages, is whether the trier of fact abused its discretion in assessing the amount of damages. *Cone v. National Emergency Serv. Inc.*, 99-0934 (La. 10/29/99), 747 So.2d 1085, 1089; *Reck v. Stevens*, 373 So.2d 498 (La. 1979). Only after a determination that the trier of fact has abused its “much discretion” is a resort to prior awards appropriate and then only for the purpose of determining the highest or lowest point which is reasonably within that discretion. *Coco v. Winston Indus., Inc.*, 341 So.2d 332 (La. 1976).

As reflected by the medical records in the present case, Alexis sustained a one centimeter laceration to the left upper lip, a one centimeter laceration to the right lower lip, and a one centimeter laceration to the left lower lip. In his deposition testimony, Dr. Dreschnack described Alexis’s injuries as follows:

When I had seen Alexis, she had multiple lacerations of her lips. The lacerations extended through several tissues. What is important when you look at a laceration of the lip is, there are three tissues really that you want to examine. One is the normal skin of the lip; the second is the pigmented vermilion of the lip. But if you look very closely, you will notice that there's a line that separates the pigmented portion of the lip from the skin and that is called the white roll.

She had lacerations that essentially went through all three of those tissues. But in addition to that, one of the lacerations extended down into the muscle underneath. The muscle underneath is called the orbicularis oris, and that is the muscle that enables you to press your lips so that you could whistle or kiss someone. She had damage to that muscle. So that muscle needed to be repaired in addition to repairing the other three components, which I've just mentioned. All of this was repaired with sutures in the emergency room under local anesthesia.

Dr. Dreschnack considered Alexis' surgery to be successful. He instructed Alexis to keep the wounds clean, stay out of salt water, apply Maderma cream (to reduce scarring) twice a day, keep sunscreen on her lips when outdoors, and return for follow-up care. In the five visits after surgery, Dr. Dreschnack monitored Alexis for infection, noting that animal bite victims are very prone to infection due to the nature of the bacteria in the mouth of the animal. Dr. Dreschnack removed most of the sutures on July 7, 2004. The remaining sutures were not removed until August 4, 2004. Dr. Dreschnack indicated in his reports that the swelling to Alexis' lips gradually dissipated and her injuries healed without infection. On her last visit of April 27, 2005, Dr. Dreschnack noted that the scar on the upper lip had a slightly depressed center to it and there was also a small lump of tissue in the vermilion itself. Dr. Dreschnack opined that it is possible that Alexis would need, or want to consider, a revision of her scars in the future.

It is clear from the trial testimony of both Alexis and her father that this dog bite was a traumatic event. There is no question that she was scared and in a great deal of pain. This is particularly evident from the photographs taken of Alexis shortly after the incident. Alexis testified that she remains nervous around dogs to this day. She stated that scabs from the wounds remained on her lips for almost a year. She further testified that she would like to have a revision of the scars that still exist on her lips.

It is also clear that the trial judge was in the best position to view Alexis' injuries and make a factual determination of damages. The transcript reveals that the trial judge made a visual examination of Alexis, and noted:

I'm going to note on the record that the scar on the bottom has -- the one on the left has a lump and is discolored, more whitish in color than the rest of the lip. The scar in the center of the bottom is also discolored and is a crease or a line type of scar. The scar on the top lip is a normal type of indentation scar as you would find on normal skin and is above the line and is obvious.

DECREE

Having reviewed the record in this case, including the medical records presented and the testimony of Mr. Bell and Alexis, and considering the applicable standard of review heretofore stated, we find that the general damage award was not excessive, and that there was no abuse of discretion by the trial court. Accordingly, the award will not be disturbed.

AFFIRMED

