

**CONNIE DAWSON,
INDIVIDUALLY AND AS
SUCCESSION
REPRESENTATIVE OF
FRANK ANTHONY DAWSON,
BARBARA DAWSON,
JENNIFER E. ROBERT AND
CHERYL WOODS**

*** NO. 2018-CA-0380
*
* COURT OF APPEAL
*
* FOURTH CIRCUIT
*
* STATE OF LOUISIANA**

*** * * * ***

VERSUS

**GRAY & GRAY, A
PROFESSIONAL LAW
CORPORATION, AND JAMES
A. GRAY, II**

**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2011-04789, DIVISION "E"
Honorable Clare Jupiter, Judge**

*** * * * ***

Judge Roland L. Belsome

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(Court composed of Judge Roland L. Belsome, Judge Joy Cossich Lobrano, Judge Regina Bartholomew-Woods)

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AFFIRMED

OCTOBER 24, 2018

This appeal arises from a legal malpractice action brought against the defendants, Gray & Gray, a Professional Law Corporation and James Gray, II. The trial court awarded each of the four plaintiffs \$50,000. For the reasons that follow, we affirm.

Facts

The plaintiffs, Connie Dawson, Barbara Dawson, Jennifer E. Roberts, and Cheryl Woods, are the surviving siblings of Frank Anthony Dawson (“Mr. Dawson”). The plaintiffs contracted with the defendants for legal representation in the wrongful death and survival action claims against the Sheriff of St. Tammany Parish, Louisiana for the suicide death of Mr. Dawson.¹

After executing the professional services agreement with the defendants, a lawsuit was filed on July 21, 2003, in the 22nd Judicial District Court for the Parish of St. Tammany, State of Louisiana. The lawsuit named Sheriff Rodney “Jack” Strain, Jr. as the defendant. At the time the lawsuit was filed, the named plaintiffs

¹ The contract was executed by Jennifer Roberts and the defendants on May 13, 2003.

included Mr. Dawson's four siblings, as well as, his biological father, Frank Winston, Sr.

Sheriff Strain responded to the lawsuit by filing Exceptions of No Right of Action and No Cause of Action.² Those exceptions were granted on November 11, 2003, and the lawsuit was dismissed. From that Judgment of Dismissal, an appeal was taken to the Court of Appeal for the First Circuit. On November 4, 2005, the First Circuit affirmed in part, reversed in part, and remanded to the district court to allow for the Petition for Damages to be amended. A Supplemental and Amending Petition was filed on January 25, 2007. Sheriff Strain answered that petition with a general denial and filed additional exceptions on February 12, 2007. Subsequent to that filing, no substantive filings were entered into the record for more than three years. Sheriff Strain filed a Motion for Abandonment that was granted on May 5, 2010, dismissing the lawsuit with prejudice.

Once the plaintiffs were made aware of the dismissal of their lawsuit, a legal malpractice claim was filed against the defendants in 2011. The issues of proper party plaintiffs and liability were determined upon partial motions for summary judgment, and there was a trial on damages. Judgment was ultimately rendered on December 22, 2017, awarding each plaintiff \$50,000 in damages. This appeal followed.

² The exceptions raised the issue of who was the proper party to file suit in a wrongful death and survival claim pursuant to La. C.C. 2315.1, et seq. The article ranks the persons that may recover damages due to another person's death.

On appeal, the defendants challenge the granting of a partial motion for summary judgment on the issue of liability and the damages award. The defendants also seek a new trial.

Standard of Review

This Court reviews the trial court's finding of fact under a manifestly erroneous or clearly wrong standard.³ This court will not disturb the trial court's rulings unless there is no reasonable factual basis for the finding or the record establishes that it is clearly wrong.⁴

First, the defendants challenge the granting of the motion for summary judgment on the issue of liability based on lack of notice. The partial summary judgment at issue was originally set for August 1, 2014, but was later continued until October 24, 2014. On October 21, 2014, then counsel for the defendants filed a motion to continue and a motion to withdraw as counsel of record. The trial court signed an order reiterating the date for hearing the partial motion for summary judgment as October 24, 2014. Further, no action was taken on the motion to withdraw. No one appeared for the defendants and the trial court granted the motion in favor of the plaintiffs.

This Court's review of the granting of a motion for summary judgment is *de novo* applying the same criteria as the trial court.⁵ "After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to

³ *Stobart v. State Through Dep't of Transp. & Dev.*, 617 So.2d 880, 882 (La. 1993).

⁴ *Id.*

⁵ *Couvillion v. Riverside Properties, L.L.C.* 2017-1000 p. 3 (La. App. 4 Cir. 6/20/18), 249 So. 3d 907, 908–09.

material fact and that the mover is entitled to judgment as a matter of law.”⁶ “The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.”⁷

Partial Motion for Summary Judgment

The defendants maintain that two partial motions for summary judgment were erroneously granted due to a lack of notice. The record indicates that the defendants’ attorney of record was personally served with the motion for partial summary judgment that was set and heard on October 24, 2014. Although the defendants’ attorney filed a motion to withdraw on October 21, 2014, that motion was not granted until November 20, 2014. Therefore, at the time of the hearing he was the proper party to receive service. As to notice on the second motion for partial summary judgment addressed by the defendants, the record contains a Sheriff’s return on service indicating that personal service was made on Mr. Gray. The record does not support any deficiencies in service.

Next, the defendants challenge the merits of the partial motions for summary judgment on the issue of liability. To establish a valid legal malpractice claim, the plaintiff must prove: “1) the existence of an attorney-client relationship; 2) negligent representation by the attorney; and 3) loss caused by that negligence.”⁸ The plaintiff bears the burden of proving each of these elements. However, in limited circumstances, courts may presume damages once the plaintiff establishes

⁶ La. C.C.P. art. 966(A)(3).

⁷ La.C.C.P. art. 966(D)(1).

⁸ *Saussy v. Bonin*, 2012-1755 (La. App. 4 Cir. 9/4/13), 125 So. 3d 1, 5, *writ denied*, 2013-2365 (La. 12/6/13), 129 So. 3d 537 (quoting *Costello v. Hardy*, 03-1146, p. 9 (La.1/21/04), 864 So.2d 129, 138).

that an attorney-client relationship existed and the defendant was negligent.⁹ The plaintiffs argue that this Court should apply that case law to this case and find a rebuttable presumption of damages.

In *Jenkins*, the Louisiana Supreme Court recognized that a rebuttable presumption of damages is appropriate in certain legal malpractice cases. Specifically, the court held that “once the client has proved that his former attorney accepted employment and failed to assert the claim timely, then the client has established a prima facie case that the attorney’s negligence caused him some loss, since it is unlikely the attorney would have agreed to handle a claim completely devoid of merit.”¹⁰ “[A]n appellate court must determine whether the negligent attorney met his burden of producing sufficient proof to overcome plaintiff’s prima facie case.” The *Jenkins* court limited its holding to the situation in which “the final or complete loss of an opportunity to assert a legal claim (or, conversely, to present a defense) caused by the attorney’s negligent failure to comply with the applicable procedural standards or constraints.”¹¹

This Court finds that the instant case presents the situation contemplated by the *Jenkins* court. Here, the defendants accepted employment suggesting that the claim had merit. Further, the defendants’ negligence resulted in the plaintiffs’ cause of action being dismissed as abandoned due to the defendants’ failure to comply with applicable legal procedural standards. Accordingly, the rebuttable presumption of damages is applicable in this matter. Therefore, our review is to determine if the defendants presented sufficient evidence to overcome the plaintiffs’ prima facie case.

⁹ *Jenkins v. St. Paul Fire & Marine Ins. Co.*, 422 So.2d 1109, 1110 (La.1982).

¹⁰ *Id.*

¹¹ *Id.*

In the trial court, the defendants opposed the partial motion for summary judgment on the grounds that the plaintiffs could not prove a loss because the siblings did not have a cause of action under La. C.C. article 2315.1, et seq pertaining to who has the right to bring survival actions and wrongful death actions.

On the first issue raised in opposition, the defendants argued that because Mr. Dawson was survived by his biological father, Frank Winston, Mr. Winston was the proper party to bring a claim under La. C.C. article 2315.1, not Mr. Dawson's siblings.¹² However, article 2315.1(E) provides that "a father or mother who has abandoned the deceased during his minority is deemed not to have survived him." In this case, the record reflects that each of the siblings and Frank Winston attested to the fact that he did not provide emotional or financial support for Frank Dawson as a child. Accordingly, the right of action would then belong to the plaintiffs, his surviving siblings. That argument failed to rebut the presumption of damages.

In granting the partial motion for summary judgment, the trial court found that plaintiffs had established that the underlying claims were viable. On appeal, the defendants contend that the plaintiffs failed to establish that the plaintiffs would have prevailed on the merits of the underlying lawsuit. We disagree. In support of the partial motion for summary judgment, the plaintiffs provided affidavits, records from the St. Tammany Parish Sheriff's Office including deputy statement reports, and the St. Tammany Parish Coroner's report all substantiating that Frank Dawson was under suicide watch after threatening to hang himself. Frank Dawson committed suicide during the time he was under suicide watch.

¹² Frank Dawson's biological mother predeceased him.

Those documents present the underlying viable case for negligence on the part of the St. Tammany Parish Sheriff. Therefore, we find the court properly granted the partial motion for summary judgment on liability.

Damages

Next, the defendants challenge the amount of damages awarded the plaintiffs as excessive. The plaintiffs' damages in a legal malpractice suit are determined by the damages, if any, they would have received had they prevailed in the underlying lawsuit.¹³ The trial court conducted a bench trial on damages. The plaintiffs each testified to their relationship with their deceased brother and the sense of loss they have experienced due to his death.

Mr. Dawson was the sixth of seven children born to Idella Roberts. Idella Roberts died when Mr. Dawson was two and the children were raised by their maternal grandmother, Lucille Roberts. The plaintiffs explained that Mr. Dawson struggled with mental illness and had special needs as a student. Mr. Dawson lived with his grandmother until her death and then resided with his younger sister, Jennifer Roberts. Although Mr. Dawson was incarcerated or institutionalized at times during his life, his siblings continued to provide emotional support for Frank. The trial court heard the witnesses testify that even though Mr. Dawson had struggles in his life, it did not diminish the love his siblings had for him or the emotional loss they felt from his death. At the close of trial, the trial court requested quantum memorandums. The plaintiffs submitted a memorandum; the defendants did not.

¹³ *Guidry v. Coregis Ins. Co.*, 2004-325 (La. App. 3 Cir. 12/29/04), 896 So. 2d 164, 171 (citing *Jenkins v. St. Paul Fire & Marine Ins. Co.*, 422 So.2d 1109 (La.1982)).

It is well settled law that trial courts have much discretion in fixing damages, and it is not the role of the appellate court when reviewing general damages to decide what it considers to be an appropriate award, but rather to review the exercise of discretion by the trier of fact.¹⁴ The plaintiffs provided the trial court with some guidance for calculating damages through a quantum memorandum. Two cases were cited, *Manuel v. City of Jeanerette*¹⁵ and *Buxton v. Allstate Ins. Co.*¹⁶ In *Manuel*, there was an award of \$25,000 in damages for the death of a prisoner who hung himself while in jail, and in *Buxton*, siblings were awarded \$25,000 each for the wrongful death of their sister. Considering these awards in present value, the trial court did not abuse its discretion in awarding each sibling \$50,000 in damages.

Written Reasons for Judgment

Lastly, the defendants maintain that they should be granted a new trial on damages because written reasons were requested but not provided by the trial court. La. C.C.P. art. 1917 provides a party ten days from the mailing of notice of signing of judgment in which to request written reasons. Here, the notice of signing of judgment was mailed on December 22, 2017, and the request for written reasons was filed on January 3, 2018.¹⁷ Thus, the filing of the request was timely. Unfortunately, subsequent to issuing the judgment in this matter, the trial judge fell ill and was unable to return to her court duties. Therefore, written reasons were unable to be obtained.

¹⁴ *Youn v. Maritime Overseas Corp.* 623 So.2d 1257 (La. 1993).

¹⁵ 702 So.2d 709 (La.App. 3 Cir. 1997).

¹⁶ 434 So.2d 605 (La.App. 3 Cir. 1983).

¹⁷ January 1, 2018 and January 2, 2018, were holidays for Orleans Parish Civil District Court.

It is a “well-settled rule that the district court’s oral or written reasons for judgment form no part of the judgment, and that appellate courts review judgments, not reasons for judgment.”¹⁸ Further, on appeal, judgments are often upheld for reasons that differ from those assigned by the district judges. “The written reasons for judgment are merely an explication of the trial court’s determinations. They do not alter, amend, or affect the final judgment being appealed....”¹⁹

The cases cited by the defendants regarding the need for a new trial pertain to judges that leave the bench prior to rendering judgment. That is not the situation in this case. Here, we have the trial court’s judgment, a complete record, and full transcript of the trial on damages. Considering the sole issue of the judgment was quantum and the vast discretion given the trial court on that issue, this Court finds that the precepts of judicial economy and fundamental fairness are better served by ruling on this matter.²⁰

Conclusion

For the reasons discussed, the judgments of the trial court are affirmed.

AFFIRMED

¹⁸ *Wooley v. Lucksinger*, 2009-0571, pp. 77-78 (La. 4/1/11), 61 So.3d 507, 571-72 (quoting *Bellard v. American Cent. Ins. Co.*, 2007-1335 p. 25 (La.4/18/08), 980 So.2d 654, 671); *Greater New Orleans Expressway Commission v. Olivier*, 2002-2795 p. 3 (La.11/18/03), 860 So.2d 22, 24 (“Appeals are taken from the judgment, not the written reasons for judgment.”).

¹⁹ *Id.* (quoting *State in the Interest of Mason*, 356 So.2d 530, 532 (La. App. 1 Cir.1977)).

²⁰ See La. C.C.P. art. 2164.