

# Supreme Court of Louisiana

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NEWS RELEASE #032

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 27th day of June, 2023 are as follows:

**BY McCallum, J.:**

2022-C-00961

CD, INDIVIDUALLY AND ON BEHALF OF THE MINOR, SD VS. SC, INDIVIDUALLY AND AS THE PARENT AND GUARDIAN OF DJ, ROCK SOLID CAMPS, LLC AND STATE OF LOUISIANA, DEPARTMENT OF HEALTH AND HOSPITALS, IN SOLIDO (Parish of Caddo)

REVERSED AND VACATED IN PART; TRIAL COURT JUDGMENT REINSTATED; AFFIRMED IN PART; AND REMANDED. SEE OPINION.

Retired Judge James Boddie appointed Justice ad hoc, sitting for Crichton, J., recused in case number 2022-C-00961 only.

[Weimer, C.J., dissents and assigns reasons.](#)

[Hughes, J., dissents for the reasons assigned by Weimer, C.J.](#)

[McCallum, J., additionally concurs and assigns reasons.](#)

**SUPREME COURT OF LOUISIANA**

**No. 2022-C-00961**

**CD, INDIVIDUALLY AND ON BEHALF OF THE MINOR, SD**

**VS.**

**SC, INDIVIDUALLY AND AS THE PARENT AND GUARDIAN OF DJ,  
ROCK SOLID CAMPS, LLC AND STATE OF LOUISIANA,  
DEPARTMENT OF HEALTH AND HOSPITALS, IN SOLIDO**

On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Caddo

**MCCALLUM, J.\***

We granted certiorari in this matter to consider whether the court of appeal erred by reducing the general damages awarded to SD, the minor victim of a sexual assault.<sup>1</sup> After reviewing the record, we find the jury did not abuse its discretion in assessing the amount of general damages, and the court of appeal erred in holding otherwise. For the following reasons, we reverse and vacate the court of appeal’s judgment, in part, and reinstate the trial court’s award of general damages in accord with jury’s verdict. In all other respects, the court of appeal’s judgment is affirmed, and the matter is remanded.

**FACTS AND PROCEDURAL HISTORY**

In the summer of 2010, SD and DJ attended the Rock Solid Camp, a Shreveport day camp providing sports and other activities to children of varying ages. SD was an eight-year-old special education student with a mild case of Cornelia de Lange Syndrome (“CdLS”).<sup>2</sup> At that time, fourteen-year-old DJ was on

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\* Retired Judge James H. Boddie Jr., appointed justice ad hoc, sitting for Justice Scott J. Crichton, recused.

<sup>1</sup> Supreme Court Rule XXXII, § 3 provides: “The identity of all minor children subject to any and all proceedings in this court, whether civil, criminal or otherwise, shall remain confidential in all briefs filed and all opinions rendered.” Accordingly, we have used the initials of the minor children involved in this matter to protect their identity.

<sup>2</sup> Cornelia de Lange syndrome is a genetic abnormality characterized by numerous physical, intellectual and behavioral differences. Children with CdLS usually have low birth weight, are

probation for aggravated sexual assault of a child under the age of fourteen in Texas and had been accused of a sexual assault in March 2010 at Northwest Regional Mental Health Center, where he had been receiving counseling. As a juvenile on probation, DJ was eligible for State-provided services. DJ's case coordinator at the Shreveport region Office of Behavioral Health ("OBH"), an arm of the State of Louisiana, Department of Health and Hospitals ("DHH"), approved the funding for DJ to attend Rock Solid Camp, and the State of Louisiana paid his camp tuition.

On July 26, 2010, Jared Green, a camp counselor, gave SD permission to use the men's restroom. When SD took longer than expected to return, Mr. Green went into the restroom and discovered SD and DJ in a shower stall pulling up their pants. Camp officials reported the incident to the Shreveport Police Department, which conducted an investigation.

SD was examined by a hospital sexual assault nurse examiner, but no physical injuries were noted. SD gave a taped video statement at the Gingerbread House indicating that DJ anally raped him.<sup>3</sup> DJ was arrested for aggravated rape and adjudicated delinquent. He was given a disposition of secure custody until reaching the age of 21, otherwise known as juvenile life.

CD, individually and as tutor of his minor son SD, filed a petition for damages, naming as defendants, SC, the mother of DJ; Rock Solid Camps, LLC; and the State of Louisiana, through DHH.<sup>4</sup> At the conclusion of a four-day trial, the jury returned a verdict in favor of SD and found all defendants liable. It allocated fault as follows: 65 percent to the State, 30 percent to Rock Solid Camps, LLC, and 5 percent to SC

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smaller in size and height, and have a smaller head circumference (microencephaly). Most also experience developmental delays that range from mild to profound learning disabilities. <https://www.chop.edu>

<sup>3</sup> The Gingerbread House is a facility in Shreveport where victims of sexual assault under the age of 16 are taken to give a taped interview.

<sup>4</sup> The record includes a certified document from the clerk of court for the Twenty-Sixth Judicial District Court for the Parish of Bossier indicating that CD had been duly appointed and confirmed as tutor of his minor child, SD, and had taken the oath as the law requires.

(DJ's mother), and assessed general damages in the amount of \$1,250,000. In accord with the jury's verdict, the trial court rendered a judgment against the defendants as follows: the State of Louisiana, DHH, in the amount of \$812,500 (subject to the statutory cap of \$500,000, as set forth in La. R.S. 13:5106, together with judicial interest as set forth in La. R.S. 13:5112); Rock Solid Camps, LLC, in the amount of \$375,000; and, SC, individually and as the parent and guardian of DJ, in the amount of \$62,500, with the latter two awards subject to judicial interest from the date of judicial demand. The State appealed.

A five-judge panel of the court of appeal affirmed the trial court judgment, in part, on liability and the allocation of fault. As to the general damages, three judges amended the judgment, in part, to reduce the award from \$1,250,000 to \$250,000, while two judges dissented, finding no abuse of the jury's discretion in assessing the amount. *CD v. SC*, 54,158, p. 44 (La. App. 2 Cir. 4/20/22), 339 So. 3d 88, 109 (Pitman, J. and Stone, J., dissenting). On the application of CD, individually and on behalf of SD, we granted certiorari. *CD v. SC*, 22-00961, p. 1 (La. 11/8/22), 349 So.3d 569, 570.

## **DISCUSSION**

The sole issue before this Court is whether the court of appeal erred in reducing the award of general damages. CD argues the jury did not abuse its discretion, as the evidence presented at trial provided the jury with a reasonable factual basis for the award. The State counters that the court of appeal properly reduced the general damages as there was no medical evidence of physical injury, the testimony from both mental health professionals established that there were concurrent and subsequent causes for SD's damages, and SD's congenital condition has affected his behavior before and after the incident at Rock Solid Camp.

General damages are those which are inherently speculative and cannot be fixed with mathematical certainty. *Bouquet v. Wal-Mart Stores, Inc.*, 08-309, p. 4

(La. 4/4/08), 979 So. 2d 456, 458. “[T]hey 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.” *Jones v. Mkt. Basket Stores, Inc.*, 22-841, p. 15 (La. 3/17/23), 359 So. 3d 452, 464, citing *Duncan v. Kansas City Southern Railway Co.*, 00-0066, p. 13 (La. 10/30/00), 773 So. 2d 670, 682. Vast discretion is accorded to the trier of fact in fixing general damage awards. *Jones*, 22-841, p. 15, 359 So. 3d at 464; La. C.C. art. 2324.1 (“In the assessment of damages in cases of offenses, quasi offenses, and quasi contracts, much discretion must be left to the judge or jury.”). The trier of fact is afforded much discretion in assessing the facts and rendering an award because it is in the best position to evaluate witness credibility and see the evidence firsthand. *Duncan*, 00–0066, p. 13, 773 So.2d at 682.<sup>5</sup>

The standard of review applicable to a general damages award is the abuse of discretion standard. *Bouquet*, 08-309, p. 4, 979 So. 2d at 459; *Coco v. Winston Indus., Inc.*, 341 So.2d 332, 335 (La.1976). 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. *Howard v. Union Carbide Corp.*, 09-2750, p. 5 (La. 10/19/10), 50 So. 3d 1251, 125-

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<sup>5</sup> We hold juries in high regard and accord them great deference in their decisions. In our justice system, juries bear an important responsibility. “Citizen participation in the disposition of civil cases has been an important, indeed central, and perhaps critical, element in the development of the American legal system. . . . The system has served many purposes, but its enduring purpose has been to secure a greater measure of trust in judicial institutions.” Paul D. Carrington, *The Civil Jury and American Democracy*, 2003 Duke Journal of Comparative & International Law Vol. 13:79, pp 79-94. This is one reason juries should be given much deference in their decisions. As this Court has previously noted, “[w]e give great deference to the trial court because it observes and participates in the live presentation, while the appellate court merely reviews the cold transcript.” *Hayes Fund for First United Methodist Church of Welsh, LLC v. Kerr-McGee Rocky Mountain, LLC*, 14-2592, p. 10 (La. 12/8/15); 193 So.3d 1110, 1116-17.

Confidence in juries, and their ability to handle and decide difficult, factual questions, is reflected in the legislature’s recent amendment to reduce the threshold amount for a jury trial. Effective January 1, 2021, the Legislature amended La. C.C.P. art. 1732, lowering the threshold amount to ten thousand dollars for trials by jury. See 2020 La. Sess. Law Serv. 1st Ex. See. Act 37 (H.B. 57)(WEST); La. C.C.P. art. 1732 (2021).

56; *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). 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 for the particular injuries and their effects upon this particular injured person. *Howard*, 50 So.3d at 1256; *Reck v. Stevens*, 373 So. 2d 498, 504-05 (La. 1979). Thus, the question is whether the award of the trial court can be reasonably supported by the evidence and justifiable inferences from the evidence before it. *Coco v. Winston Indus., Inc.*, 341 So. 2d at 334.

We now examine the evidence in the record. CD testified that he is a single father with three sons, twins SD and AD, and their older brother, BD. CD's former spouse, the boys' mother, abandoned the family when BD was three years old and the twins were ten months, and they have had no contact with her since then. Both twins were born with the genetic abnormality CdLS and are in special education at school. SD's grades range from B to F and his twin brother's range from A to D.

CD also testified about a subsequent assault on SD, which occurred in the family home. At the time, CD was married to a woman with a son approximately four years older than SD. Less than a year after the Rock Solid Camp incident, SD's stepbrother asked SD (then 9 years old) to touch his genitals and SD told him no. After CD reported the incident to the police, his wife and her son left the home. The couple have since divorced.

According to CD, SD has not been the same since the incident at Rock Solid Camp and, as a result, he spends twice as much time caring for SD than his two other sons. After the sexual assault at camp, SD began to struggle with anger and "has a lot more negativity." SD would "lash out" by yelling and throwing things at home and school. At the suggestion of a psychologist, SD now takes karate lessons, which he enjoys. SD's participation in karate along with his prescription medicines have

helped somewhat with SD's anger and negativity. SD has been in counseling since the July 2010 incident, and the treatment he receives at the Gingerbread House has assisted with his recovery. CD testified that he will have to take care of SD in the future even though SD would soon reach the age of majority.

The jury heard the testimony of Bonnie Howell, a licensed professional counselor at the Gingerbread House who treated SD after the sexual assault for five years. Ms. Howell testified that she did "play therapy" with SD and his play was serious, which indicated that he had been traumatized. She testified that SD's play also centered on SD trying to figure out how to obtain power. She characterized SD as angry, frustrated, and having "a lot of rage." During their second therapy session, SD told Ms. Howell that he wanted to "deal with" what DJ did to him and that he wanted to feel better about himself because he "felt bad." In describing the incident, SD told her, "I was so sad and scared. I did not know what was happening." Ms. Howell explained that the sexual assault was "very upsetting and traumatizing" and changed SD's life forever. SD was afraid, nervous, and anxious. She believed SD has suffered post-traumatic stress disorder as a result of the sexual assault at camp, even though it has never been medically diagnosed. Ms. Howell also explained that the stepbrother incident "re-traumatized" SD.

The jury also heard from Dr. Bruce McCormick, who testified that he and therapist Mark Nettles have been treating SD since November 2015. According to Dr. McCormick, CdLS would make SD more vulnerable and more likely to be a victim of an attack. He explained that SD's problems "could have" been brought about or exacerbated by molestation "to some extent." Dr. McCormick testified that bullying at school could have caused some of SD's emotional problems and the stepbrother incident could have had an effect on SD as well. While molestation can cause lasting effects on its victims, Dr. McCormick explained its effects are wide and varied, and include social distrust, difficulty functioning with other children and in

school, an unusual level of fear, behavioral problems, and vulnerability for mental health disorders as an adult. Although Dr. McCormick observed an improvement in SD's emotional and behavioral issues due to the prescribed medicines, he said SD continued to struggle with mental health problems as of the date of trial.

It is well-settled law that a tortfeasor takes his victim as he finds him. *Reck v. Stevens*, 373 So.2d at 502. Here, SD was an eight-year-old child with a genetic abnormality that made him especially vulnerable and exacerbated the negative effects of the rape. CD explained how the rape had profoundly changed and adversely affected his son's life and well-being. The counselor and mental health professional acknowledged the rape was traumatizing for SD, and resulted in fear, anger, rage, anxiety and nervousness. The rape has had a significant impact on SD's ability to trust and interact with others. SD continues to suffer the long term emotional and mental effects of the rape to this day. As Judge Pitman aptly acknowledged in her dissent, and Judge Stone agreed, an appellate court 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. *CD v. SC*, 54-158, 339 So. 3d at 110 (Pitman, J., dissenting). Based on our review of the evidence, we find the court of appeal erred by substituting its own judgment for that of the jury when it reduced the amount of general damages due SD. We hold the jury did not abuse its broad discretion in awarding general damages of \$1,250,000 and reinstate the trial court's award in accord with the jury verdict.

As a final matter, we note the record reflects that SD attained the age of majority between the date the jury returned its verdict and the date the trial court rendered and signed the written judgment. While SD's father, CD, had the authority pursuant to La. C.C. art. 683 to file the petition on behalf of SD, the record does not reflect that the proper party plaintiff was substituted after SD reached the age of

majority.<sup>6</sup> Nor does the record reflect that CD filed a petition for continuing or permanent tutorship under La. C.C. art. 354 *et seq.*<sup>7</sup> Therefore, we remand the case to the trial court to determine whether the judgment must be recast in light of SD's reaching the age of majority.

### **DECREE**

Accordingly, for the foregoing reasons, the court of appeal's judgment is reversed and vacated, in part, and the trial court's award of general damages is reinstated. In all other respects, the court of appeal's judgment is affirmed and the matter is remanded to the trial court consistent with this opinion.

**REVERSED AND VACATED IN PART; TRIAL COURT JUDGMENT REINSTATED; AFFIRMED IN PART; AND REMANDED**

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<sup>6</sup> See *Succession of Triola*, 17-301, p. 12 (La. App. 5 Cir. 12/27/17); 236 So.3d 792, 801 (“The tutorship of a minor normally ends but in one way - the attainment of majority.”).

<sup>7</sup> Louisiana C.C. art. 354 *et seq.* provide for continuing or permanent tutorship of persons with intellectual disabilities.

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DEPARTMENT OF HEALTH AND HOSPITALS, IN SOLIDO**

*On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Caddo*

**WEIMER, C.J.**, dissenting.

I respectfully dissent.

As the majority recognizes, general damage awards are inherently speculative as they require monetizing considerations (such as mental or physical pain or suffering, inconvenience, and loss of intellectual gratification or physical enjoyment) that are not easily susceptible to measurement in terms of dollars and cents. See, **Duncan v. Kansas City S. Ry. Co.**, 00-66, p. 13 (La. 10/30/00), 773 So.2d 670, 682. For that reason, and because the trier of fact has a firsthand view of the testimony and evidence and is in the best position to evaluate witness credibility, the trier of fact is accorded “much discretion” in fixing damages. **Reck v. Stevens**, 373 So.2d 498, 501 (La. 1979). While that discretion is “‘great,’ and even vast,” it is not unfettered. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993). An award of general damages must be tethered to the particular injuries and their effects under the particular circumstances on the particular injured person. *Id.*

In this instance, the court of appeal applied the appropriate standard of appellate review of general damage awards and articulated, cogently, its reasons for concluding that the award of \$1.25 million in general damages is 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. **CD v. SC.**, 54,158, pp. 39-41 (La.App. 2 Cir. 4/20/22), 339 So.3d 88, 107-08. In reaching its conclusion, the court acknowledged the significant mental trauma suffered by SD; however, it also considered the lack of physical injury, the circumstances operating in SD's life independent of the incident at Rock Solid that contributed to his mental distress and his need for therapy, and the fact that SD had demonstrated important markers of recovery and, at his last examination by his treating physician, appeared to be doing well. *Id.* I agree with the court of appeal's assessment that given the totality of evidence regarding the particular injuries to this particular plaintiff under the particular circumstances of this case, the award of \$1.25 million is beyond that which a reasonable trier of fact could assess. The facts of this case are tragic and rightly invoke outrage and indignation; however, the general damage award here—given the particular facts and the evidence—appears more punitive than compensatory and, thus, I find it was an abuse of the jury's great discretion.

Where I depart from the court of appeal is with the conclusion that \$250,000 is the highest award for general damages reasonably within the jury's discretion. While previous reported cases involving similar facts can certainly serve as guideposts in assessing general damages once an abuse of discretion is found, no two cases are ever fully alike. **Coco v. Winston Industries, Inc.**, 341 So.2d 332, 335 (La. 1976). Indeed, as the court cautioned in **Coco**:

whether two cases are so similar as to produce like quantum judgments is hardly discernible by gleaning the facts of the comparable decision from simply a written opinion of an appellate tribunal. ... Furthermore, it is impossible for an appellate court to judge what evidence in a particular case was given special weight by the trier of fact.

*Id.* at 335-36.

Strict reliance on general damage awards in cases which come “close to” the circumstances under consideration, but which involve readily distinguishable facts and circumstances (such as the court of appeal demonstrated in its assessment of damages in this case) does not further the goal of fair compensation. In this instance, taking into account the particular facts and circumstances of this case in light of their effect on this particular plaintiff, I would find an award in a range well-above that of the court of appeal, but below the \$1.25 million awarded by the jury as adequate compensation for the injuries suffered by SD.

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**MCCALLUM, J.**, additionally concurs with reasons.

The inability of the various members of the court of appeal, and then this Court, to agree on the amount of the award to SD further supports that deference should be given to the jury who heard and evaluated the evidence firsthand.