

[Cite as *H.J. v. Baddley*, 2009-Ohio-4318.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

H.J., ET AL.

Plaintiff-Appellees

-vs-

THOMAS BADDLEY

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Julie A. Edwards, J.

Case No. 2008CA171

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2007CV2832

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

August 24, 2009

APPEARANCES:

For Plaintiff-Appellees

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Thomas Baddley appeals the January 31, 2008 Judgment Entry entered by the Stark County Court of Common Pleas, which awarded \$65,000 in damages for future injury and permanency to plaintiffs-appellees H.J., et al.

STATEMENT OF THE CASE AND FACTS

{¶2} On July 12, 2007, Appellees filed a Complaint in the Stark County Court of Common Pleas, alleging Appellant “negligently sexually, physically, mentally and emotionally molested” Appellee H.J., his step-granddaughter. The Complaint sought compensatory and punitive damages for the temporary and permanent physical, mental, and emotional injuries. The matter proceeded to bench trial on January 17, 2008.

{¶3} The trial court admitted the parties’ joint exhibits 1, 2, and 3. Joint Exhibit 1 was the Indictment issued against Appellant by the Portage County Grand Jury, charging him with numerous sex offenses against Appellee H.J. Joint Exhibit 2 was Appellant’s written plea of guilty. Joint Exhibit 3 was the Portage County Court of Common Pleas’ sentencing entry.

{¶4} Appellee H.J., who was fifteen years old at the time of trial, testified she was living with her father, Appellee R.J., and her step-mother, M.J., in 2003 and 2004. Appellant is M.J.’s father. While H.J. lived with her father, there were times when she and Appellant were alone, often before school while her father was sleeping and after school when she was home alone. H.J. described how Appellant penetrated her vagina with his fingers and kissed her breasts. These assaults occurred in H.J.’s bedroom, and other rooms in her father’s home as well as in a barn and Appellant’s car. H.J.

explained she did not disclose what was happening because she feared her father and step-mother would not do anything about it or would think she was lying. On October 19, 2006,¹ H.J. disclosed the assaults to her mother, Appellee D.J., when she (H.J.) started to get sores in her vaginal area. D.J. attempted to contact the police, however, was unable to reach the appropriate department. Thereafter, D.J. contacted her friend, a social worker with the Stark County Department of Job and Family Services, who spoke to H.J. and advised the girl to tell her father. H.J. eventually disclosed the incidents to her father, her step-mother and her step-mother's sisters. H.J. stated M.J. did not believe her and no one showed any concern for her well being. On cross-examination, H.J. stated her grades have not been very good since the matter came to light. H.J. conceded she has experienced difficulties as a result of her parents' long running custody dispute.

{¶15} D.J. testified she arrived at Appellee R.J.'s house on October 19, 2005, to pick up H.J. for visitation. D.J. recalled H.J. came "flying out of the house, *** on the verge of crying, and got in the car screaming, get out of here, get out of here". Tr. at 38. As D.J. drove, H.J. began crying and told her mother Appellant was raping her. D.J. telephoned the police from her cell phone, however, no one was able to put her in contact with the correct department. D.J. subsequently took H.J. to see her friend, Karen Haddad, a social worker with the Stark County Department of Job and Family Services. Haddad advised D.J. authorities in Portage County would investigate the matter the next day.

¹ H.J. testified the date was October 19, 2006, but her mother testified to the year 2005.

{¶16} Following H.J.'s disclosure, D.J. scheduled counseling for the girl with Gayle Mager at Northeast Ohio Behavioral Health. D.J. testified her insurance covered the sessions. H.J. met with Mager approximately ten times. At the time of trial, H.J. was not seeing the counselor on a regular basis, but D.J. stated her daughter needed to do so. D.J. described the changes in H.J.'s behavior since the disclosure. She explained H.J. had temper tantrums or would "freak out" when she thought she saw Appellant or his car. D.J. added the incident had taken its toll on their family. D.J. also noted, although H.J. has always struggled as a student, her schooling has suffered as a result. At the end of D.J.'s direct examination, counsel for Appellees entered into evidence a copy of H.J.'s patient account at Northeast Ohio Behavioral Health.

{¶17} Appellee R.J. testified, although he ultimately agreed to commence the action against Appellant, he was hesitant to do so and wanted to settle the matter. Neither party presented expert testimony of any kind.

{¶18} The trial court took the matter under advisement. Via Judgment Entry filed January 31, 2008, the trial court granted judgment in favor of Appellee H.J. on all four counts in the Complaint pertaining to her; in favor of Appellee D.J. on one of the three counts pertaining to her; against Appellees D.J. and R.J. on counts four and six of the Complaint. The trial court found Appellees H.J. and D.J. established by a preponderance of the evidence Appellant's conduct proximately caused the injuries of which they complained. The trial court further found Appellee H.J. communicated her injuries and sufficient evidence was presented to measure damages. The trial court ordered Appellant to pay damages to Appellee H.J. in the amount of \$195,000, which

included \$65,000 for future damages. The trial court also ordered Appellant to pay Appellee H.J. \$100,000 in punitive damages.

{¶9} It is from this judgment entry Appellant appeals, raising as his sole assignment of error:

{¶10} “I. THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING FURTHER DAMAGES AND DAMAGES FOR PERMANENCY WHEN SUCH DAMAGES WERE PURELY EMOTIONAL AND SUBJECTIVE IN NATURE AND NOT SUPPORTED BY EXPERT TESTIMONY.”

I

{¶11} An award of future damages is limited to damages reasonably certain to occur from the injuries. *Stone v. Patarini* (June 21, 2000), Lorain App.No. 98CA007242, citing *Hammerschmidt v. Mignogna* (1996), 115 Ohio App.3d 276, 281-282, 685 N.E.2d 281. “[I]n awarding prospective damages, [the trier of fact is] confined to those damages reasonably certain to follow from the claimed injury. Generally in the case of an objective injury, such as the loss of a body member, [the trier of fact] may draw [its] conclusions as to future pain and suffering from the fact of the injury alone, the permanency being obvious. However, in a case involving a subjective injury, expert medical testimony is needed to prove future pain and suffering or permanency.” *Jordan v. Elex, Inc.* (1992), 82 Ohio App.3d 222, 230-231.

{¶12} “[A]n injury is ‘objective’ when, without more, it will provide an evidentiary basis for a [trier of fact] to conclude with reasonable certainty that future damages, such as medical expenses will probably result.” *Powell v. Montgomery* (1971), 27 Ohio App.2d 112, 119, 56 O.O.2d 279, 272 N.E.2d 906. In the instant action, Appellees did

not offer any evidence regarding permanent physical injuries to H.J. Rather, the injuries claimed were psychological, resulting in H.J.'s withdrawal from her family, the loss of her relationship with R.J. and her step-mother, behavioral problems, and poor academic performance. We conclude the alleged injuries were subjective in nature and expert evidence was required in order to establish the injuries and the probability of future damages. Because Appellees failed to present any expert testimony, we find the trial court erred in awarding future damages.

{¶13} In his brief, Appellant states the trial court awarded H.J. \$65,000, in damages for future injury and permanency. Appellee's submit the trial court awarded only \$45,000, in damages for future injury and permanency. We agree. The trial court awarded H.J. \$20,000, for the loss of her enjoyment of life, and such an award does not require expert testimony.

{¶14} Appellant's sole assignment of error is sustained as to the issue of damages for future injury and permanency.

{¶15} The judgment of the Stark County Court of Common Pleas is reversed and the case is remanded to the trial court to reenter judgment consistent with this opinion and the law.

By: Hoffman, J.

Farmer, P.J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

