

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2005 CA 2205**

**TINA G. DOUGHTY**

**VERSUS**

**AMERICAN NATIONAL PROPERTY AND CASUALTY  
COMPANY, ET AL.**

**Judgment Rendered: November 3, 2006**

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On Appeal from the Twenty-First Judicial District Court  
In and For the Parish of St. Helena  
State of Louisiana  
Docket No. 18,313

Honorable Brenda Bedsole Ricks, Judge Presiding

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**BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.**

**McCLENDON, J.**

Defendant, American National Property and Casualty Company (American), appealed an award of general damages to plaintiff, Tina G. Doughty, that the insurer believed was excessive. After a thorough review of the particular facts in this case, we find no abuse of the vast discretion afforded the trial court, and affirm the judgment.

**FACTS AND PROCEDURAL BACKGROUND**

On December 11, 2002, Ms. Doughty suffered a soft tissue injury caused by a rear-end collision. Immediately after the accident, Ms. Doughty was treated in the emergency room of the local hospital. The emergency room doctor x-rayed her lower back, prescribed medication, and released her the same day. While in the emergency room, she told the doctor of a prior back injury in 1994.

On December 16, 2002, she followed up the emergency care with a visit to her treating physician, Dr. Richard F. Rathbone. In his deposition, Dr. Rathbone stated that he first treated Ms. Doughty for the accident-related injury on December 16, 2002. On that day, she told the doctor's nurse about the earlier back problem in 1994 and the accident on December 11<sup>th</sup>. The doctor testified that Ms. Doughty complained of low back pain and pain radiating down the lower extremity. Upon examination, he noted "two-plus spasm in the lumbosacral paraspinal muscles." After taking an x-ray, he initially thought that the pain was primarily caused by a visible, mild compression fracture at L2. He treated her with a brace and medication. She returned on December 27, 2002, with complaints of back pain, and again he noted objective symptoms of muscle spasm. He prescribed medication, exercise, rest, and continued use of the back brace.

Dr. Rathbone next saw Ms. Doughty in February of 2003. She was still complaining of lumbosacral pain, and exhibited tenderness with muscle spasm. The doctor prescribed a muscle relaxant and an anti-inflammatory. She returned in March with continued tenderness, and the doctor noted decreased range of motion in her back and a slightly smaller muscle spasm of one-plus.

The doctor's next entry relative to the accident injury was October 16, 2003. Ms. Doughty reported that the pain had continued throughout the summer. His examination revealed "one-plus tenderness of the lumbosacral spine radiating down into both buttocks," with "marked tenderness over the piriformis muscle." Dr. Rathbone testified that the type of pain experienced by Ms. Doughty was common with a rear-end collision. He opined that she was experiencing "irritation of a muscle that goes right next to the sciatic muscle in your buttocks." He prescribed medication and exercises, and suggested an MRI if she was not better in two weeks. Ms. Doughty did not return until December 10, 2003, with complaints of "off-and-on back pain primarily in the lower back but occasionally between the scapulae, . . . with radicular pain down the right lower extremities."

In March of 2004, she mentioned back pain during a doctor's visit for other ailments, and the doctor noted some back spasm. She again mentioned some back pain during a June 3, 2004 visit, but the back pain was not the focus of the visit.

Eventually Dr. Rathbone learned that the fracture occurred in 1994, and not on the date of the accident. However, he stated that his prognosis and treatment plan remained the same. When asked during the deposition for a specific diagnosis, the doctor related a "rear-end collision with secondary lumbosacral strain with radicular pain [and] the lumbosacral

paraspinal muscles injured along with the piriformis muscle and secondary to the results of the accident.” In his opinion, the acute stage of the injury occurred from December 2002 to March of 2003. However, he stated that Ms. Doughty would probably experience flare-ups of pain because of the type of injury she received. He believed that if she exercised and kept “stretched,” the flare-ups would only occur on an infrequent basis.

Dr. Rathbone also testified that, “the last thing you will ever call [Ms. Doughty] is a malingerer. She will work to the bitter end, and she will suffer rather than do physical therapy . . . , and she will take very few medications. And she has a higher tolerance of pain than most people.” Later in the deposition, he stated, “I hope when I’m in a motor vehicle accident[,] I hit somebody like her that . . . doesn’t complain . . . .” He continued, “I felt like she had a pretty good amount of spasm, but she just kind of sucked it up . . . and she is not the kind of person that will be in every Monday . . . asking for some more pills.”

At trial, Ms. Doughty testified that she was a teacher, who walked and stood for most of the school day. Before the December 11, 2002 accident, she had not experienced back pain for quite some time. After the accident, especially if she had to stand or drive for a long period, or if she overexerted herself in the yard or while playing with her children, she experienced pain. She testified that as of the date of the trial on March 14, 2005, she continued to suffer periodic flare-ups that interdicted her ability to participate in many of the strenuous activities associated with her role as a teacher, wife, and mother. The doctor gave her medication, reminded her to keep up with her exercises, and told her she would probably have to learn to live with the flare-ups. When opposing counsel seemed to question the time lapses between medical visits, and noted that it looked like she was not taking the

pain medication every day, she responded, “But you don’t understand, the medicine that I had was pain pills, strong pain pills. And no, I do not want to have to live on a strong pain pill everyday.” However, she added that, “if I chose to live like a normal person my age and go out in the yard and try to do something and it hurt, yes, I would take my medicine . . . .”

Having stipulated to liability, the only issue at trial was the damages. In the trial court’s written reasons for judgment, the court specifically found Ms. Doughty to be credible. After hearing and reviewing all the evidence, the trial court awarded Ms. Doughty \$1282.50 in special damages and \$29,500.00 in general damages. The tortfeasor’s insurer, American, was ordered to pay its policy limit of \$25,000.00, and Ms. Doughty’s carrier for underinsured motorist coverage, State Farm Mutual Automobile Insurance Company, was ordered to pay the excess amount. American appealed.

#### DISCUSSION

American challenges the award of general damages as an excessive amount for a three month soft tissue injury. If those were the facts of this particular case, we would be in agreement. However, based on the essentially undisputed testimony of the treating physician and Ms. Doughty, which the trial court accepted as credible, the acute stage of the injury lasted for three to four months, followed by periodic flare-ups of pain accompanied by occasional objective symptoms of muscle spasms, for about ten months. Ms. Doughty testified that when she overexerted herself, she still experienced flare-ups of pain. In addition, the doctor stated that the injury was of the type that would probably continue to cause periodic flare-ups; a prognosis confirmed by Ms. Doughty’s testimony.

Although the award is higher than this court may have granted under these facts, we cannot substitute our judgment for that of the trier of fact. It

was the factfinder who reviewed the evidence at trial and heard, first hand, the testimony of Ms. Doughty. See Stobart v. State, Department of Transportation and Development, 617 So.2d 880, 882 (La.1993). In light of the testimony of Ms. Doughty, coupled with the prognosis and strongly felt comments of the doctor concerning Ms. Doughty's truthfulness and tendency to work through pain, we cannot say that the trial court abused its "vast" discretion. Youn v. Maritime Overseas Corp., 623 So.2d 1257, 1262 (La.1993).

The judgment is affirmed. The costs of the appeal are assessed to defendant, American National Property and Casualty Company.

**AFFIRMED.**