

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0062

ANGELO J. MILAZZO

VERSUS

RANDALL WILKINS, INDIVIDUALLY, AND AS
NATURAL TUTOR OF BLAINE R. WILKINS AND
ALLSTATE INSURANCE COMPANY

Judgment Rendered: November 3, 2006.

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On Appeal from the
19th Judicial District Court,
in and for the Parish of East Baton Rouge
State of Louisiana
District Court No. 520,514

The Honorable Donald R. Johnson, Judge Presiding

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Angelo J. Milazzo

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BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

CARTER, C.J.

The sole issue raised on appeal by defendant/appellant, Allstate Insurance Company, is whether the trial court abused its discretion in making a \$10,000 general damage award to plaintiff/appellee, Angelo J. Milazzo. Milazzo answered the appeal, seeking attorney's fees for work done in defending this appeal.

Facts and Procedural History

On the evening of June 4, 2003, Milazzo's vehicle was rear-ended by a vehicle driven by minor Blaine R. Wilkins. Milazzo filed suit, and a bench trial on the issue of damages ensued. The parties stipulated that Wilkins was at fault and that Milazzo's damages would not exceed \$50,000. Concluding that Milazzo established by a preponderance of the evidence that for a period of ninety days he suffered stress and pain from his injuries, the trial court awarded Milazzo general damages in the amount of \$10,000.

General Damages

Allstate complains that the trial court abused its discretion in making a \$10,000 general damage award. The trier of fact is vested with vast discretion in fashioning an award of general damages, such that an appellate court should rarely disturb a general damage award on appeal. **LaBorde v. St. James Place Apartments**, 05-0007 (La. App. 1 Cir. 2/15/06), 928 So.2d 643, 648. It is only when an award is beyond that which a reasonable trier of fact could assess for the effects of a particular injury, to the particular plaintiff, under the particular circumstances of the case, that the appellate court should increase or reduce an award. **LaBorde**, 928 So.2d at 648. Although we might have made a lower general damage award had we been

sitting as the trier of fact, after conducting a thorough review of the record, we conclude that the \$10,000 general damage award is not above that which a reasonable trier of fact could assess under the circumstances of this case. Finding no abuse of the trial court's vast discretion in making the general damage award, this assignment of error has no merit.

Attorney's Fees

Milazzo answered this appeal and seeks damages in the form of attorney's fees, alleging Allstate's appeal is frivolous. Louisiana Code of Civil Procedure article 2164 is penal in nature and must be strictly construed. Appeals are favored, and damages for a frivolous appeal are granted only when clearly due. In order to assess damages for a frivolous appeal, it must appear that the appeal is taken solely for the purpose of delay or that counsel does not seriously believe in the view of law he advocates. **Guarantee Systems Construction & Restoration, Inc. v. Anthony**, 97-1877 (La. App. 1 Cir. 9/25/98), 728 So.2d 398, 405, writ denied, 98-2701 (La. 12/18/98), 734 So.2d 636.

Although we have determined that Allstate's appeal lacks merit, we cannot say that this appeal was taken solely for the purpose of delay or that Allstate's counsel did not seriously believe the position he advocated. Therefore, damages for a frivolous appeal are not warranted, and Milazzo's request is denied.

Conclusion

For the foregoing reasons, we affirm the judgment of the district court by summary disposition in accordance with Uniform Court of Appeal Rule

2-16.2A(2), (6), and (7). Costs of this appeal are assessed against Allstate Insurance Company.

AFFIRMED.