

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1635

LAUREN FIELDS

VERSUS

BRENDA SAUCIER AND CURTIS SAUCIER

DATE OF JUDGMENT: APR 29 2013

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 549,131, DIV. 23, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILLIAM A. MORVANT

* * * * *

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BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Disposition: AFFIRMED.

KUHN, J.

Defendant-appellant, Brenda Saucier,¹ appeals the trial court's judgment awarding damages to plaintiff-appellee, Lauren Fields, for personal injuries Fields sustained when two of Saucier's dogs bit her. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

When Brenda and her husband, Curtis, evacuated Orange, Texas, in anticipation of the landfall of Hurricane Rita, they stayed with Fields in her single-wide, approximately sixty-foot long, trailer located in central Baton Rouge. The Sauciers arrived with five dogs and three cats where they joined Fields and her three cats in the two bedroom mobile home. The dogs ranged in size from about 60 lbs to about 100 lbs; four of the dogs were part Boxer and the fifth dog was a part Shepherd mix. Although it was initially expected that the Sauciers would stay a few days, because their mobile home in Orange was destroyed by a tornado, they stayed in Fields' home about six weeks.

In the morning hours of November 6, 2005, as the Sauciers were preparing to return to Orange, two of the dogs bit Fields on her hands and arms. She was taken by ambulance to the emergency room at Earl K. Long Medical Center where she was treated and released to seek additional medical care from her personal physician.

Fields subsequently filed this lawsuit. After Saucier filed an answer and discovery was conducted, the matter proceeded to trial. The trial court listened to

¹ It is undisputed that since the commencement of litigation, Saucier's husband, Curtis, died. Although Curtis was named as a defendant, Curtis's estate has not been substituted as a party plaintiff, judgment was rendered solely against Brenda, and on appeal no complaints have been raised against Curtis.

testimony, admitted medical records into evidence, viewed photographs of Fields' injuries (taken shortly after the dog bites), and examined her permanent scars. Articulating oral reasons for judgment, the trial court concluded that Saucier was liable to Fields for her medical expenses and general damages in the amount of \$45,000. A judgment in conformity with the trial court's determinations was subsequently signed, and this devolutive appeal followed.

On appeal, Saucier contends the evidence was insufficient to support the trial court's imposition of liability. She also challenges the quantum of the trial court's general damages award.

Liability:

La. C.C. art. 2321 sets forth the liability an owner of an animal has for the damages it causes, stating in relevant part:

The owner of an animal is answerable for the damage caused by the animal. However, he is answerable for the damage only upon a showing that he knew or, in the exercise of reasonable care, should have known that his animal's behavior would cause damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nonetheless, the owner of a dog is strictly liable for damages for injuries to persons or property caused by the dog and which the owner could have prevented and which did not result from the injured person's provocation of the dog.

The manifest error standard of review applies to all factual findings, including sufficiency of the evidence challenges. *Hall v. Folger Coffee Co.*, 2003-1734 (La. 4/14/04), 874 So.2d 90, 98-99; *Barnett v. Saizon*, 2008-0336 (La. App. 1st Cir. 9/23/08), 994 So.2d 668, 672. The fact finder's reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on review where conflict exists in the testimony. Unless documents or objective

evidence so contradict a witness's story, or the story itself is so internally inconsistent or implausible on its face that a reasonable fact finder must discredit it, this court may not reverse. See *Stobart v. State, Dep't of Transp. and Dev.*, 617 So.2d 880, 882-83 (La. 1993).

Challenging the sufficiency of the evidence, Saucier maintains that the "much more believable and probable scenario of facts should be conclusively inferred from [her] testimony." Saucier urges that Fields' testimony was "totally at odds with common sense and human experience." We disagree.

Although Saucier stated that she heard her husband shout loudly "Get away from those dogs," several times, she also testified that she did not see the dogs bite Fields. But Fields' unequivocal testimony was that Spot -- a large mixed breed dog (that included Boxer and Shepherd) who weighed about 100 lbs -- jumped up and clamped onto her left hand. At the same time, Wink -- a slightly smaller mixed breed dog (that included Boxer and Labrador) who weighed about 60 lbs -- clamped onto her right hand. Because a trier of fact is free to believe in whole or part the testimony of any witness, see *Scoggins v. Frederick*, 98-1814 (La. App. 1st Cir. 9/24/99), 744 So.2d 676, 687, writ denied, 99-3557 (La. 3/17/00), 756 So.2d 1141, the trial court did not err in believing Fields' version of events over inferences that may have been drawn from Saucier's testimony. Saucier has offered no documentary evidence that contradicts Fields' version of events, nor is Fields' version internally inconsistent or so implausible on its face that the trial court's decision to credit it constitutes error.

The trial court imposed liability under a negligence theory. See La. C.C. art. 2321; see also *Pepper v. Triplet*, 2003-0619 (La. 1/21/04), 864 So.2d 181, 199

(stating negligence liability under traditional duty/risk analysis). We initially note that it is undisputed that Spot and Wink bit Fields and that as a result she sustained injuries to her hands and arms. And clearly, Saucier had the duty to protect Fields from injuries from her dogs. See *Pepper v. Triplet*, 864 So.2d at 199.

In order to support an award of damages based on negligence, the record must show that Saucier knew or should have known that her animals' behavior would cause damage. On this element, the trial court stated:

I've got the testimony of [Dorothy Delores] Vasquez and [Fields] ... who indicated that ... [Saucier] advised them that some of these animals may bite. I'm not quite sure what she told [Vasquez] ... but basically warned the children to stay away from the animals. [Fields] testified that [from] prior discussions ... Wink had bitten both Mr. and Ms. Saucier. ...

In furtherance of the question of whether ... these animals could cause damage, I've got [Saucier] who admits that Wink and Spot or Roxie during the trip [from Orange to Baton Rouge] apparently got muzzles off and fought in the car. I've got that testimony confirmed by [Fields] likewise that when they got [to her home] Wink had been injured due to a fight[.] Roxie was aggressive towards ... Spot. So the testimony of all three witnesses ... indicates that the combination of Spot, Roxie, and Wink was troublesome. So we've got the knowledge element.

We find no error in the trial court's finding that Saucier knew or should have known that Wink and Spot had dangerous propensities.

In addition to the knowledge element of Article 2321, the record must support findings that the damage could have been prevented by the exercise of reasonable care and that the owner failed to do so (i.e., the legal causation and breach of duty elements under the traditional duty/risk analysis). Insofar as these elements, the trial court stated:

Could the damage have been prevented? [Saucier] said, I put leashes on them for the specific purpose of trying to take them out of the

trailer to leave. ... But she doesn't hold onto the leashes. She lets them go.

It is undisputed that Spot was wearing a leash at the time he bit Fields and that Saucier failed to hold onto his leash. Fields' testimony supports an inference that Wink, who was tied to the kitchen table, was aroused by Spot's presence. Fields stated that Wink had pulled the kitchen table in order to reach her when he jumped on her. Thus, a reasonable factual basis exists to support the trial court's finding that Saucier failed to prevent the damage, i.e., she breached her duty to protect Fields when she failed to hold onto Spot's leash. And we have found no legal error in the trial court's determination that Saucier could have prevented the incident by holding onto Spot's leash, i.e., that Saucier's failure to hold onto Spot's leash was the legal cause of Fields' injuries. See *Bellanger v. Webre*, 2010-0720 (La. App. 1st Cir. 5/6/11), 65 So.3d 201, 207-08, writ denied, 2011-1171 (La. 9/16/11), 69 So.3d 1149 (legal cause presents a legal question and requires a proximate relation between the actions of a defendant and the harm which occurs and such relation must be substantial in character). Accordingly, the record supports the trial court's imposition of liability against Saucier.

Quantum of General Damages:

Saucier contends the trial court's award of \$45,000 in general damages is excessive. She asks that this court reduce that amount.

"General damages" involve mental or physical pain and suffering, inconvenience, loss of gratification or intellectual or physical enjoyment, or other losses of lifestyle that cannot be measured definitively in terms of money. *McGee v. A C and S, Inc.*, 2005-1036 (La. 7/10/06), 933 So.2d 770, 774. The trier of fact

is accorded much discretion in fixing general damage awards. La. C.C. art. 2324.1; *Cheremie v. Horst*, 93-1168 (La. App. 1st Cir. 5/20/94), 637 So.2d 720, 723. The discretion vested in the trier of fact is great, even “vast,” so that an appellate court should rarely disturb an award of general damages. *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 record shows Fields had medical expenses in excess of \$5,000. She had permanent scarring that the trial court was able to view under a close examination at Saucier’s request. Fields described what she observed immediately after the mauling. She stated, “The blood, the cuts on my arms, the pain. I am a big woman, and there was fat – I thought it was muscle, but it was fat poking through; and I turned over my hand, and I could see the bones beneath my little finger exposed.”

Fields was taken by ambulance to the hospital. She was given morphine for the pain while the wounds were washed and the numerous stitches were made, which included 19 on just her left hand and arm. Fields described that her hands felt like they were “on fire.” She detailed the intense physical pain she endured immediately upon attack and throughout her treatment.

She was released with an extension block stack splinting in her right hand. Fields was unable to use either hand and went to her mother’s home, where she was cared for by a home health nurse. For the first several days, Fields was unable to dress herself or engage in any activity that required her to use her hands.

Fields participated in follow-up medical treatment from November 2005 through June 2007. She actively felt pain in the bite sites and took prescription

medication for that pain through March 2006. As of the trial date, although she had regained mobility in her hands and had no permanent nerve damage, Fields had residual numbness on the left hand along the side from her little finger. She has permanent disfigurement from the scars, which is more pronounced on her left hand and arm. Fields has also a lingering wariness of interaction with domesticated animals.

In light of the undisputed intense pain she endured, along with the extensiveness of her injuries, the residual numbness, and the permanent disfigurement, we find no abuse of discretion in the trial court's award of \$45,000 to Fields for general damages.

DECREE

For these reasons, the trial court's judgment is affirmed. Appeal costs are assessed against defendant-appellant, Brenda Saucier.

AFFIRMED.