

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

**2011 CA 0826**

CALVIN SEVARIO AND MILDRED SEVARIO

VERSUS

SHERIFF MICHAEL CAZES, WARDEN BRIAN BELLELO AND  
PARISH COUNCIL OF WEST BATON ROUGE

**Judgment Rendered: November 9, 2011**

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APPEALED FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF WEST BATON ROUGE  
STATE OF LOUISIANA  
DOCKET NUMBER 36,973, DIVISION "D"

THE HONORABLE WILLIAM C. DUPONT, JUDGE

\* \* \* \* \*

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Sheriff Michael Cazes, Warden Brian  
Bellelo, and Sargeant Corey Hicks

**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

**McDONALD, J.**

This is an appeal of a district court judgment awarding damages to plaintiff, Calvin Sevario, against various defendants, including Sevario's employer, Sheriff Michael Cazes. For the following reasons, we affirm the judgment of the district court.

Calvin Sevario had been employed by the West Baton Rouge Parish Sheriff's Office (WBRSO) as a medic since 2001. On March 27, 2007, he was working at the West Baton Rouge Detention Center when he was attacked by an inmate wielding a shank - a toothbrush with a razor blade affixed to it. Sevario was working the evening shift which began at 5:00 p.m. About two hours later he was summoned by Sergeant Corey Hicks to come to the male holding area to assist James Nelson, a prisoner who seemed to be having a seizure. Sevario entered the cell which was occupied by several other prisoners as well as Hicks and a Corporal Allemand. Corporal Allemand left the area while Sevario was assessing Nelson. Determining that Nelson needed further medical assistance, Sevario gathered together his medical bag and began to escort Nelson out of the cell. Sergeant Hicks walked out ahead of them. As he was walking toward the exit, Sevario briefly spoke with an inmate. Then he was attacked by Jesus Wences-Adam who came off a bed in front of Sevario and placed the shank against Sevario's neck, threatening to cut his throat. Sevario immediately grabbed the inmate's arm and twisted it, causing him to drop the weapon. The inmate grabbed Sevario and they wrestled briefly. As they struggled, Sevario called for Sergeant Hicks who took physical control of the inmate. Sevario was not physically cut or injured in the altercation.

After the incident, Sevario contacted his supervisor who was at a conference in Lafayette, Louisiana. Being advised that there was no one to relieve him, he completed his shift which ended at 5:00 a.m. the next morning.

Sevario sought counseling for anxiety from his primary care physician, Dr. Gerald Barber, shortly thereafter. Dr. Barber prescribed Xanax for Sevario, who was suffering from anxiety. Still being unable to return to work at the sheriff's office, Sevario was evaluated by Dr. Cary Rostow on April 27, 2007, and found not fit for duty. The evaluation noted that Sevario was not fit for duty as he appeared to be in need of treatment for mental illness, and suggested Sevario seek treatment from a qualified mental health specialty provider while on medical or administrative leave.

Sevario sought counseling from Ford Baker in May and in June was referred by Baker to Dr. Cathy Castille, who saw Sevario primarily to monitor his medication and also for therapy. Sevario terminated his relationship with Mr. Baker in May 2008 because he did not feel it was beneficial. He began seeing Ron Breedlove, a mental health counselor, in January 2009. Dr. Castille continued to monitor his condition.

Sevario was paid through November 15, 2007. He was terminated by WBRSO on January 24, 2008, when he declined to seek disability, but did not feel able to return to work at the sheriff's office.

He and his wife filed suit on March 27, 2008 against the Parish Council of West Baton Rouge, Sheriff Michael Cazes, and Warden Brian Bellelo, alleging that Sevario is suffering from a serious psychological condition as a result of the incident at the jail, for which the sheriff and the warden are responsible. On June 18, 2008, the plaintiffs voluntarily dismissed the claims against the Parish Council of West Baton Rouge. On November 14, 2008, an amended petition was filed naming Sergeant Corey Hicks as a defendant.

A bench trial was held on October 13, 2010. At the trial, Sevario testified that he did not feel that his condition was any better. He testified that his life has been altered by the incident at the jail and described many changes in his lifestyle

that have occurred since that time. The district court was extremely attentive during the trial, and frequently questioned the witnesses. After the trial, the judge found in favor of the plaintiffs and awarded Mr. Sevario \$50,000.00 in general damages plus \$7,847.86 in past medical expenses and \$10,000.00 to Mrs. Sevario for loss of consortium. The court apportioned fault at 60% to Jesus Wences-Adam, 10% to James Nelson, 20% to Sheriff Michael Cazes, and 10% to Sergeant Corey Hicks. From this judgment the plaintiffs have appealed claiming the court erred in failing to award past and future lost benefits and past lost wages, in apportioning the greater portion of fault to the inmates Jesus Wences-Adam and James Nelson, and abusing its discretion in failing to award more in general damages to Mr. Sevario, and more in loss of consortium to Mrs. Sevario.

Sheriff Cazes and Sergeant Hicks have answered the appeal claiming the apportionment of fault to the sheriff and sergeant should be reduced or reallocated to other persons and claiming that it was error to fail to allocate any fault to the plaintiff, Mr. Sevario.

#### DISCUSSION

Plaintiffs appeal the general damage award assessed by the district court. 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. **Nielsen v. Northbank Towing, Inc.**, 99-1118 (La. App. 1 Cir. 7/13/00), 768 So.2d 145, 158, quoting **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 is whether the award for the particular injuries is a clear abuse of the “much discretion” of the trier of fact. 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. **Nielsen, supra**, 768 So.2d at 158.

We note that Mr. Sevario is not completely disabled from employment, and in fact continues working for pre-incident employers. He reports many symptoms that he and his counselors feel would be exacerbated by certain employment settings, particularly, the sheriff's office. He received treatment for arm, leg, and gastrointestinal disorders after the incident, and he seemed to be fearful of having cancer, which his physician ruled out. Sevario also reported having anxiety before the incident. Considering the totality of the evidence, we find that the award made by the district court was not an abuse of its vast discretion.

The plaintiffs also contest the loss of consortium award given to Mrs. Sevario. This is also a general damage award subject to the district court's much discretion. We do not find that the award was an abuse of the district court's discretion.

The plaintiffs allege that the trial court erred in failing to award damages for past and future lost benefits. Evidence was admitted showing that benefits earned by sheriff's office employees, particularly insurance and retirement, equaled over 57% of the total employment compensation. However, in order to receive these benefits, it is necessary for the employee to be working for the sheriff's office. As Sevario is unable to continue his employment with the sheriff's office and declined to seek a disability retirement, he is not eligible to receive insurance and retirement benefits from WBRSO. Additionally, we note that Sevario has continued to work, often over 40 hours per week, at jobs that pay no benefits. There was no showing that he was unable to work at a job that provided such benefits. We find no error in the district court's failure to award these benefits. Sevario was paid by the sheriff's office through November 15, 2007, although he only worked for three days following the March incident. Apparently, the district court felt that Sevario was compensated for any effects which the court found could be attributed to the incident.

Plaintiffs argue that the sheriff, as the protector of plaintiffs such as Sevario, should be assessed with more than 30% of the fault (the sheriff was assessed with 20% of the fault, Deputy Hicks whose fault is vicariously subscribed to the sheriff, was found 10% at fault in this case). They rely on **Thomas v. Sheridan**, 2007-1291, 2008 WL 426289 (La. App. 1 Cir. 2/8/08) (unpublished), 977 So.2d 303 (table), writs denied, 2008-0563, 2008-0566 (La. 5/9/08), 980 So.2d 691, 692, where a nurse incurred post-traumatic stress disorder after a prisoner grabbed a deputy's gun and made threats and fired a warning shot before being subdued. We find that case distinguishable in most respects, the similarity being primarily that a prisoner was involved. The nurse was not employed by the sheriff's office and in significant other respects was not similarly situated to Sevario.

More difficult for us is the defendants' claim that Sevario should also be assessed with fault. Mindful of our standard of review, and the deference owed to the district court as having observed the demeanor of the witnesses, as opposed to our review of a "cold record," we find no error in the district court's allocation of fault. See Rosell v. ESCO, 549 So.2d 840, 844-45. (La. 1989).

After careful review of the record and evidence, we find no error on the part of the district court. All of the issues raised on appeal, by both parties, were covered in post-trial memorandum, including references to jurisprudence. Review of the jurisprudence does not support a finding of any error on the part of the district court. Accordingly, the judgment is affirmed. Costs are assessed to the plaintiffs.

**AFFIRMED.**