

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0173

KIM LACOMBE AND BRENT LACOMBE

VERSUS

FORD MOTOR COMPANY
AND HOLLINGSWORTH RICHARDS, L.L.C.

JTP by TMH
JMG by TMH
TMH

Judgment Rendered: NOV 15 2011

On Appeal from the
18th Judicial District Court,
In and for the Parish of Pointe Coupee,
State of Louisiana
Trial Court No. 39,454

Honorable Alvin Batiste Jr., Judge Presiding

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BEFORE: CARTER, C.J., PARRO, GUIDRY, PETTIGREW, AND
HIGGINBOTHAM, JJ.

Parro, J. concurs without reasons. RHP by TMH
Carter, C.J. would affirm the judgment of the trial court and,
therefore, dissents without reasons. BSC by TMH

HIGGINBOTHAM, J.

Defendant, Ford Motor Company, appeals the portion of a judgment granting a judgment notwithstanding the verdict (JNOV) increasing the jury's general damage awards. For the following reasons, we reverse the JNOV.

FACTS AND PROCEDURAL HISTORY

This matter arises out of a house fire that occurred on July 28, 2005, in Livonia, LA. That night, Kim LaCombe was in her bed with her two children, Fallon, age 9, and Jude, age 5. Around 9:45 p.m., she heard a noise and got up to see about it. Out of the window, she saw a flame coming from her 2000 Ford Expedition. She first thought the fire was small and called her sister for help; however, when she looked again, the flames had engulfed the vehicle so she called 911. She got her children, and they tried to exit the carport door, however, the flames were too hot. They all made it out of the home via the front door. Afterward, they heard more explosions, the flames spread, and their home began to burn. The fire department, their family, and neighbors came to assist them in extinguishing the fire. They tried to salvage some of their things, however most everything was destroyed.

Ms. Kim LaCombe and Mr. Brent LaCombe filed suit against Ford Motor Company, the manufacturer of the vehicle, and Hollingsworth Richards, LLC, where she purchased the vehicle, for damages resulting from the fire caused by their 2000 Ford Expedition.¹ The parties stipulated that the fire that occurred in the LaCombes' 2000 Ford Expedition "originated in the speed control deactivation switch," and the switch "was a cause of the fire."

After a two-day jury trial, the jury returned a verdict finding Brent and Kim LaCombe 20% at fault and Ford 80% at fault for the damages caused by the fire.

¹ The LaCombes filed an amended petition requesting damages on behalf of their minor children, Fallon and Jude.

The jury awarded special damages in the amount of \$375,000 and general damages of \$50,000 for Ms. LaCombe, \$25,000 each for the two children, and \$10,000 for Mr. Brent LaCombe. After adjusting the award to reflect the 20% fault apportioned to the LaCombes, the parties were awarded \$388,000 in total damages. The trial judge signed a judgment on March 5, 2008, in accordance with the jury's verdict.

The LaCombes filed a "Motion for a Judgment Notwithstanding the Verdict and/or Motion for a New Trial," which contended that the jury's award for damages was inconsistent with the evidence presented and clearly wrong. The trial judge granted the JNOV as to general damages and increased the amounts from \$50,000 to \$200,000 for Ms. LaCombe, and from \$25,000 each to \$100,000 each for the two children. The trial court denied the JNOV regarding the damages to the contents of the LaCombes' home. These changes resulted in an award of total damages to the LaCombes of \$628,000.²

This appeal, taken by Ford, followed. Ford maintains that the trial judge erred in granting the JNOV and erred in increasing the general damage award.³

LAW AND ANALYSIS

A JNOV is a procedural device authorized by LSA-C.C.P. art. 1811 whereby the trial judge may correct a legally erroneous jury verdict by modifying the jury's finding on the issue of liability or damages, or both. See LSA-C.C.P. art. 1811F; See also Doming v. K-Mart Corporation, 540 So.2d 400, 402 (La. App. 1st Cir. 1989). Article 1811 controls the use of the JNOV procedure, but does not specify

² The total damage award after the JNOV totaled \$785,000, but was reduced by the 20% fault apportioned to the LaCombes.

³ The LaCombes briefed two assignments of error regarding payment of legal interest and the failure to grant the JNOV for the LaCombes' belongings. Ford filed a motion to strike these assignments of error. The LaCombes did not answer the appeal filed by Ford Motor Company nor did they file an appeal. Therefore, this court is without authority to modify the judgments in favor of the LaCombes. See LSA-C.C.P. art. 2133. Ford's motion to strike is granted. The LaCombes did file a notice of intent to appeal from a prior judgment, but requested that it be dismissed. The dismissal was signed by the trial judge on September 17, 2008.

the grounds on which a trial judge may grant a JNOV. **Hoyt v. State Farm Mutual Automobile Ins. Co.**, 623 So.2d 651, 662 (La. App. 1st Cir.), writ denied, 629 So.2d 1179 (La. 1993). However, the jurisprudential standard to be used in reviewing a JNOV was set forth by the supreme court in **Davis v. Wal-Mart Stores, Inc.**, 00-0445 (La. 11/28/00), 774 So.2d 84, 89, as follows:

A JNOV is warranted when the facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable jurors could not arrive at a contrary verdict. The motion should be granted only when the evidence points so strongly in favor of the moving party that reasonable men could not reach different conclusions, not merely when there is a preponderance of evidence for the mover. If there is evidence opposed to the motion which is of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motion should be denied. In making this determination, the court should not evaluate the credibility of the witnesses and all reasonable inferences or factual questions should be resolved in favor of the non-moving party.

The standard of review for a JNOV on appeal is a two part inquiry. In reviewing a JNOV, the appellate court must first determine if the trial [judge] erred in granting the JNOV. This is done by using the aforementioned criteria just as the trial judge does in deciding whether or not to grant the motion. After determining that the trial court correctly applied its standard of review as to the jury verdict, the appellate court reviews the JNOV using the manifest error standard of review. (Citations omitted.)

The rigorous standard of JNOV is based upon the principle that when there is a jury, the jury is the trier of fact. **Trunk v. Medical Center of Louisiana at New Orleans**, 04-0181 (La. 10/19/04), 885 So.2d 534, 537. Simply stated, if reasonable persons could have arrived at the same verdict given the evidence presented to the jury, then a JNOV is improper. **Cavalier v. State, Dept. of Transp. and Development**, 08-0561 (La. App. 1st Cir. 9/12/08), 994 So.2d 635, 644. However, if a trial judge determines a JNOV is warranted because reasonable persons could not differ in deciding that an award was abusively high or low, then the trial judge must determine the proper amount of damages. **Id.**

On review of a JNOV award of higher quantum, the appellate court employs the same criteria as the trial judge. If reasonable persons, in the exercise of impartial judgment, could reach differing opinions on whether the award was abusively low, then the trial judge erred in granting the JNOV and the jury's damage award should be reinstated. **Junot v. Morgan**, 01-0237 (La. App. 1st Cir. 2/20/02), 818 So.2d 152, 160. On the other hand, if reasonable persons could not disagree, then the trial judge properly granted the JNOV, and the appellate court should review the damage award based on the trial judge's independent *de novo* assessment of damages under the abuse of discretion standard. **Id.**, 818 So.2d at 161. This determination is made with consideration given to the individual circumstances of the injured plaintiff. After an analysis of the facts and circumstances peculiar to the particular case and plaintiff, an appellate court may conclude that the award is inadequate or too great. **Lapeyrouse v. Wal-Mart Stores, Inc.**, 98-547 (La. App. 5 Cir. 12/16/98), 725 So.2d 61, 66, writ denied, 99-0140 (La. 3/12/99), 739 So.2d 209. Only then is a resort to prior awards appropriate, and then for the purpose of determining the highest or lowest point which is reasonably within that discretion. **Id.**

If reasonable and fair-minded jurors in the exercise of impartial judgment could have awarded \$100,000 for general damages, then the trial judge erred in granting the JNOV and modifying the jury's verdict, and the jury's verdict should be reinstated. See Cavalier, 994 So.2d 635, 645.

In the instant case, the trial court granted the JNOV on the issue of general damages, because it found by comparison to the Harrington case the jury abused its discretion in the amount of general damages awarded. The trial court in oral reasons given for granting the JNOV stated, "[i]n light of the Harrington case, the court is going to increase the amount." The trial court did not first determine if

reasonable and fair-minded jurors in the exercise of impartial judgment could reach the conclusion they reached. The court compared the jury's award to prior awards before determining whether it was excessive or inadequate.

Regarding plaintiffs' general damage claim, the record reveals that Ms. LaCombe and her children were in their home when the fire started, had to leave the home quickly, heard explosions, and watched their home burn. Several witnesses testified about how Ms. LaCombe and her children were affected by this fire. The children were described the night of the fire to be crying and very upset, and afterwards to be clingy and fearful. Ms. LaCombe was described as visibly upset the night of the fire, and "walked around kind of in a daze" for some time afterwards. The family lost the home they had built to fulfill their wants and needs. This was clearly very difficult for the LaCombes.

Neither Ms. LaCombe nor her children suffered any physical injury as a result of the fire, and they did not require any medical attention. The parties did not seek counseling, and the children's clinginess was described as improving. The LaCombes were able to rent a home quickly near the home they lost, and were eventually able to buy a home.

After a thorough review of the record, we find reasonable and fair-minded persons could have arrived at the same verdict, given the evidence presented to the jury regarding entitlement to and calculation of general damages. The jury's award of general damages was reasonable in light of the evidence presented and well within its vast discretion. Therefore, we conclude that the district court erred in granting the LaCombe's motion for JNOV on the issue of damages.

For the foregoing reasons, Ford Motor Company's motion to strike is granted and the assignment of error urged by the LaCombes and relating to payment of legal interest and the trial court's failure to grant an additur for cost of

the LaCombes belongings are stricken. The trial court's judgment of September 23, 2010, granting the JNOV is reversed and the trial court's judgment of March 5, 2008, reflecting the jury's verdict is reinstated. Costs of this appeal are assessed to Kim and Brent LaCombe.

MOTION TO STRIKE GRANTED; JUDGMENT OF SEPTEMBER 23, 2010, REVERSED; JUDGMENT OF MARCH 5, 2008, REINSTATED