

SUPREME COURT OF LOUISIANA

No. 99-C-2522

RODNEY NICHOLAS, ET UX.

VERSUS

ALLSTATE INSURANCE COMPANY, ET AL.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
SECOND CIRCUIT, PARISH OF CADDO**

CALOGERO, Chief Justice, dissenting in part.

I agree with the majority's conclusion that the jury instruction for plaintiff's intentional infliction of emotional distress claim was so inadequate as to mandate a reversal of the jury's verdict in favor of the plaintiff. I write separately, however, to dissent from the majority's resolution of the merits of this case.

In *Buckbee v. United Gas Pipe Line Co.*, this Court found errors in the trial court's evidentiary rulings that may have affected the jury's conclusions. *See Buckbee*, 561 So. 2d 76, 86 (La. 1990). As a result, the court remanded the case to the court of appeal for an independent review of the record and a judgment on the merits. *See id.* at 86. The Court reasoned that remand was proper for two reasons:

First, the appellate court has the primary responsibility for reviewing the trial court's factual determinations. Second, the proper allocation of functions between the lower appellate courts and the Supreme Court is best served by consigning the first appellate review to the court of appeal and preserving to this Court discretionary review upon the litigant's petition for certiorari.

Id. at 87 (citing *Canter v. Koehring Co.*, 283 So. 2d 716, 724 (La. 1973)); *accord Gonzales v. Xerox Corp.*, 320 So. 2d 163, 166 (La. 1975). Consequently, the court concluded that the court of appeal "must disregard the jury's conclusions and review the record with a fresh eye." *Buckbee*, 561 So. 2d at 87.

The majority opinion, in a footnote, acknowledges this line of jurisprudence but

then concludes that “[i]n the present case, we find it appropriate for us to reach the merits of the case because the appellate court fleshed out salient factual differences in its majority and dissenting opinions.” *Ante* at 10 n.10. This position ignores the fundamental structure of our judicial system.

The Louisiana Supreme Court is the court of last resort in the state. As such, “[t]he supreme court has general supervisory jurisdiction over all other courts.” La. Const. Art. V, Sec. 5(A). While this court certainly has jurisdiction over both law and fact in civil cases, *see* La. Const. Art. V, Sec. 5(C), the preferable structure of our court system is one in which this court reviews the factual and legal conclusions reached by other courts within the state.

In this case, we have determined that the jury’s verdict cannot be accepted as it was tainted by an improper jury instruction. The court of appeal in this case reviewed the jury’s conclusions under a manifest error standard and simply searched the record for support of the jury’s conclusions. *See Nicholas v. Allstate Ins. Co.*, 30,735, p. 11, 16 (La.App. 2 Cir. 5/28/99), 739 So. 2d 830, 839, 842. Consequently, a valid independent review and determination on the merits has yet to be made by any court and it is not preferable for this court to undertake such a review at this juncture. In my view, the constitution and our jurisprudence both illustrate that the proper course of action would be to remand this case to the Second Circuit Court of Appeal for an independent determination of the merits of the plaintiff’s claims without deference to the jury’s initial verdict.