

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #046

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **21st day of October, 2022** are as follows:

BY Griffin, J.:

2022-C-00178

ASHLYN FRANKS, INDIVIDUALLY AND ON BEHALF OF HER
MINOR CHILD, ADDISON FRANKS VS. JOSHUA SIKES AND
LOUISIANA FARM BUREAU MUTUAL INSURANCE COMPANY
(Parish of Tensas)

COURT OF APPEAL JUDGMENT AMENDED. SEE OPINION.

SUPREME COURT OF LOUISIANA

No. 2022-C-00178

**ASHLYN FRANKS, INDIVIDUALLY AND ON BEHALF OF HER MINOR
CHILD, ADDISON FRANKS**

VS.

**JOSHUA SIKES AND LOUISIANA FARM BUREAU MUTUAL
INSURANCE COMPANY**

*On Writ of Certiorari to the Court of Appeal, Second Circuit,
Parish of Tensas*

GRIFFIN, J.

We granted this writ to address the propriety of a general damages award of \$5,000.00 to a two year-old child who suffered facial injuries from a dog bite. Finding the award constitutes an abuse of discretion, we increase the amount of general damages to \$50,000.00.

FACTS AND PROCEDURAL HISTORY

Ashlyn Franks visited Joshua Sikes at his grandfather's property in Tensas Parish. Ms. Franks was accompanied by her then two year-old daughter, Addison. Two hours after their arrival, Mr. Sikes' dog bit Addison causing severe injury to her upper left lip. Ms. Franks, individually and on behalf of Addison, filed a petition for damages against Mr. Sikes and the property's insurer, Louisiana Farm Bureau Mutual Insurance Company ("Farm Bureau"). The trial court found Mr. Sikes had no liability. Ms. Franks appealed. The court of appeal reversed on the issue of liability and awarded \$2,461.09 in stipulated past medical expenses, \$10,500.00 in future medical expenses, and \$5,000 in general damages observing that Addison's pain and functional difficulties largely resolved seven months after the attack. *Franks v. Sikes*, 54,177, pp. 11-13 (La.App. 2 Cir. 12/23/21), 331 So.3d 1107, 1114.

Ms. Franks' writ application to this Court followed, which we granted.¹
Franks v. Sikes, 22-0178 (La. 04/20/22), 336 So. 3d 457.

DISCUSSION

The narrow issue presented is whether the court of appeal abused its discretion in awarding \$5,000.00 in general damages under the specific facts and circumstances of this case. General damages are, by their nature, speculative, cannot be calculated with mathematical certainty, and include items such as pain and suffering (physical and mental), loss of enjoyment of life, and physical impairment and disability. *McGee v. A C & S, Inc.*, 05-1036, pp. 3-5 (La. 7/10/06), 933 So.2d 770, 774-75. When reviewing a general damages award, the "initial inquiry is whether the award for the particular injuries and their effects under the particular circumstances on the particular injured person is a clear abuse of the 'much discretion' of the trier of fact." *Youn v. Maritime Overseas Corp.*, 623 So.2d 1257, 1260 (La. 1993). Only after such a determination 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.* (citing *Coco v. Winston Industries, Inc.*, 341 So.2d 332, 333-34 (La. 1976)). We apply the above standard where, as here, the court of appeal acts as the finder of fact. *See Thibodeaux v. Donnell*, 17-0909, pp. 1-2 (La. 10/27/17), 227 So.3d 812, 813; *LeBlanc v. Stevenson*, 00-0157, pp. 6-7 (La. 10/17/00), 770 So.2d 766, 772-73 (finding amount of general damages "was reasonably awarded by the court of appeal to this plaintiff in these circumstances").

Ms. Franks argues the award of \$5,000.00 in general damages is abusively low. Farm Bureau counters that because Addison's functional difficulties resolved in short order and additional future procedures may prove unnecessary, the court of appeal did not abuse its great discretion. We disagree.

¹ We denied Farm Bureau's writ application challenging the issue of liability. *Franks v. Sikes*, 22-0237 (La. 04/20/22), 336 So.3d 461.

A detailed review of the record reveals evidence of severe damage to Addison's upper left lip, pain and suffering associated with the injury and her initial surgery, nerve damage that will require future surgery to correct a disfigurement, and the potential for other surgeries to minimize residual scarring. Ms. Franks testified that immediately after being bitten, Addison's face was bleeding so profusely it was difficult to tell where the blood was coming from. Ms. Franks further testified that Addison was "hysterical" and the ride to the hospital in the ambulance took almost two hours. Part of Addison's lip was hanging off of her face. Photographs in the record document her gruesome condition prior to surgery. Although the hospital immediately determined surgery was required, Addison could not be operated on until the next morning having recently eaten. Ms. Franks described Addison's night in the hospital as "awful" as she was throwing herself back and forth given allergic reactions to pain medication.

Dr. Herbert Maguire performed the initial surgery wherein necrotic tissue was debrided and the incision wounds made by the dog bite were sutured. After being discharged, Addison was limited to soft foods and no physical activity for approximately two weeks. A series of follow-up visits with Dr. Maguire revealed most of Addison's pain and functionality issues resolved within several months. However, the surgery performed by Dr. Maguire was not reconstructive in nature and he noted future surgery would be required. Dr. Clyde Smoot gave a similar assessment but advised Ms. Franks to wait a year after the injury to see if the scar tissue would soften with time. In the interim Addison had a bump on her upper left lip that drooped and would not move with the rest of her lip when she talked. Ms. Franks testified that other children would tease Addison and even adults would remark on her appearance. Addison displayed a fear of dogs and would run inside whenever she saw one.

A year and a half later, Addison was evaluated by Dr. Darrell Henderson who also opined that Addison required additional surgery.² Specifically, Dr. Henderson explained the bump and droop in Addison's upper left lip was caused by nonreactive muscle tissue due to a loss of nerve and blood supply. He considered Addison's lip to be "markedly disfigured." Dr. Henderson further stated reconstructive surgery would involve excising the dead muscle tissue which would be significantly invasive and may result in temporary interference with speech. Restrictions on food intake and physical activity, similar to those of the initial surgery, would be in place for approximately one month. The reconstructive surgery would leave behind a scar between Addison's lip and nose which Dr. Henderson acknowledged might be disguised with makeup. However, Dr. Henderson noted Addison would have to be reevaluated around age fifteen as there is a fifty-five percent chance the scar would become rough and irregular. Additional revision and dermabrasion treatments may be necessary if the scar is more pronounced than Addison would like but, ultimately, Dr. Henderson stated that Addison's lip could never be restored to its original appearance. In light of the above, we find the award of \$5,000.00 in general damages to be abusively low.

Having found the court of appeal abused its discretion, we examine comparable awards in similar cases to determine the lowest amount that could have been reasonably awarded here. *See Thibodeaux, supra; Coco, supra.* Prior awards are only a guide and, in reviewing the facts, "the test is whether the present award is greatly disproportionate to the mass of past awards for truly similar injuries."

² Farm Bureau argues that this delay and Ms. Franks' failure to proceed with the reconstructive surgery constitutes a failure to mitigate damages. It points to deposition testimony by Dr. Henderson where he states it is ideal to have such surgeries within three to four months of the injury. However, Dr. Henderson also stated a delay of a few years would make no appreciable difference until Addison approaches her late teens and her growth slows. We also note that when asked during trial whether she intends to have this reconstructive surgery performed, Ms. Franks testified "absolutely." She attributed the delay to the fact she was pregnant at the time of the initial injury and wanted her other daughter to reach an age where she could appreciate she could not play rough or inadvertently hit Addison's lip during recovery from the reconstructive surgery.

Bouquet v. Wal-Mart Stores, Inc., 08-0309, p. 5 (La. 4/4/08), 979 So.2d 459. We find two cases most relevant to this analysis.

In *McWard v. Independent Fire Ins. Co.*, a four year-old was awarded \$38,000.00 in general damages for a severe dog bite to his face. 482 So.2d 984, 985 (La.App. 3d Cir. 1986). Similar to Addison, the child therein required immediate triage surgery, additional surgery for scar revision, was subject to teasing from other children, and became fearful of dogs. *Id.*, 482 So.2d at 985-86. The Third Circuit affirmed the award in consideration of “the residual scarring and the necessity of continued treatment, as well as the traumatic effect to a small child of a dog bite to the face.” *Id.*, 482 So.2d at 986. Although we recognize the injury in *McWard* was of greater severity, it did not affect any muscle function. *Id.*, 482 So.2d at 985.

In the more recent case of *McBride v. Lichtenstein*, the Fourth Circuit affirmed an award of \$50,000.00 for a forehead scar resulting from injuries sustained by an eighteen year-old woman in a motor vehicle accident. 17-0715, p. 22 (La.App. 4 Cir. 12/5/18), 260 So.3d 658, 673; *see also Green v. Spriggs*, 05-1105, p. 7 (La.App. 3 Cir. 4/26/06), 930 So2d 1052, 1056 (defining disfigurement as “that which impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner”). This amount was in addition to \$32,000.00 for pain and suffering and \$50,000.00 for loss of enjoyment of life. *Id.* The Fourth Circuit cited plaintiff’s testimony regarding the impact of the scar on her self-esteem as supporting the award for loss of enjoyment of life. *Id.*, 17-0715, p. 25, 260 So.3d at 675.

Using the above cases as a guide, we find the lowest amount that could have been reasonably awarded is \$50,000.00. *See, Coco, supra.* This amount encompasses pain and suffering, disfigurement, and loss of enjoyment of life. It is clear from the record that Addison, only two years-old at the time, underwent a traumatic experience being bitten in the face by a dog with such force as to inflict

nerve and muscle damage to her lip. Immediately after the attack, she was “hysterical” and suffered through an “awful” night at the hospital. Although issues of pain and functionality abated, she must undergo additional surgery to correct a marked disfigurement in her lip and will always have a residual amount of scarring.

DECREE

For the foregoing reasons, we find the court of appeal abused its discretion in its award of \$5,000.00 in general damages. Accordingly, we increase that award to \$50,000.00.

COURT OF APPEAL JUDGMENT AMENDED