

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0487

BEVERLY F. ANTHONY AND BARRETT M. SAUNDERS

VERSUS

LEONARD E. YOKUM JR.

Judgment Rendered: May 6, 2011

On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 2007-0002807

Honorable Brenda Bedsole Ricks, Judge Presiding

Christine Voelkel
Jacques F. Bezou
Covington, LA

Attorneys for Plaintiffs-Appellees,
Beverly F. Anthony and Barrett M. Saunders

Leonard E. Yokum, Jr.

In Proper Person, Appellant

BEFORE: GUIDRY, PETTIGREW, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

The defendant-appellant, Mr. Leonard Yokum Jr., appeals from a judgment in favor of the plaintiffs-appellees, Ms. Beverly Anthony and Mr. Barrett Saunders. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On February 7, 2006, Mr. Barrett M. Saunders was injured in an automobile accident. Subsequently, on February 23, 2006, Ms. Beverly F. Anthony, Mr. Saunders' mother, and Mr. Saunders retained Mr. Leonard E. Yokum Jr. to represent them in their claim arising out of the accident. The case settled in February 2007. However, Mr. Yokum failed to pay certain medical expenses out of the proceeds of the settlement, leaving approximately \$23,000.00 in unpaid healthcare liens. As a result, Ms. Anthony began receiving multiple phone calls and letters from creditors. Ms. Anthony and Mr. Saunders filed the instant suit in the 21st Judicial District Court against Mr. Yokum for legal malpractice. The medical expenses were paid by Mr. Yokum subsequent to the filing of the present suit, but prior to the matter coming to trial.

The matter proceeded to a bench trial after which the trial court rendered judgment finding that Mr. Yokum, pursuant to his admission, breached the applicable standard of care owed by an attorney to his client and was liable to Ms. Anthony for damages. The trial court awarded damages to Ms. Anthony¹ for mental anguish in the amount of \$5,500.00.

It is from this judgment that Mr. Yokum has appealed. In his sole assignment of error, Mr. Yokum contends that the trial court erred in granting judgment in the amount of \$5,500.00 for unsupported injury of mental anguish.

¹ Mr. Barrett Saunders was named as a plaintiff in the present suit. He was not mentioned in the judgment of the trial court. Silence in a judgment of any demand duly before the court is deemed a rejection of that claim. See **Barham & Arceneaux v. Kozak**, 02-2325 (La. App. 1st Cir. 3/12/04), 874 So.2d 228, 241, writ denied, 04-0930 (La. 6/4/04), 876 So.2d 87. Therefore, we will presume that his claim was denied.

LAW AND ANALYSIS

This court has previously held that mental anguish damages are appropriate in a legal malpractice suit. **Sherwin-Williams Co. v. First Louisiana Const., Inc.**, 04-0133 (La. App. 1st Cir. 5/6/05), 915 So.2d 841, 847. See Henderson v. Domingue, 626 So.2d 555, 559 (La. App. 3d Cir. 1993), writ denied, 93-2976 (La. 1/28/94), 630 So.2d 799 (noting the general entitlement to mental anguish damages under general tort principles and affirming the trial court's award for mental anguish sustained as a result of legal malpractice).

General damages involve mental or physical pain or suffering, inconvenience, loss of gratification or intellectual or physical enjoyment, or other losses of lifestyle that cannot be measured definitively in terms of money. **Boudreaux v. Farmer**, 604 So.2d 641, 654 (La. App. 1st Cir.), writs denied, 605 So.2d 1373, 1374 (La. 1992). The factors to be considered in assessing quantum of damages for pain and suffering are severity and duration. **Jenkins v. State ex rel. Dept of Transp. and Development**, 06-1804 (La. App. 1st Cir. 8/19/08), 993 So.2d 749, 767, writ denied, 08-2471 (La. 12/19/08), 996 So.2d 1133. Much discretion is left to the judge or jury in the assessment of general damages. LSA-C.C. art. 2324.1. A general damage award is reviewed for an abuse of discretion. **Smith v. Goetzman**, 97-0968 (La. App. 1st Cir. 9/25/98), 720 So.2d 39, 48.

Ms. Anthony alleges she suffered mental anguish as a result of Mr. Yokum's negligence. Ms. Anthony stated "I was upset a lot." She testified that she received telephone calls from creditors on a daily basis to her office, her cell phone, and her home. She also received letters from creditors, felt harassed, and could not get an answer from Mr. Yokum. Based on the evidence, we cannot find that the trial court abused its vast discretion in the awarding of \$5,500.00 dollars for the mental anguish Ms. Anthony suffered.

CONCLUSION

Accordingly, the judgment of the trial court is affirmed. All costs of this appeal are assessed against defendant-appellant, Mr. Leonard Yokum Jr.

AFFIRMED.