

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0860

ELW

**KEVIN LOMAX ON BEHALF OF HIS
MINOR CHILD TYREE LOMAX**

B/C by Jmm

VERSUS

**SHERI DUHE MEKARI AND
ALLSTATE INSURANCE COMPANY**

Judgment Rendered: February 9, 2007

**Appealed from the
Twenty-third Judicial District Court in and for the
Parish of Ascension, Louisiana
Docket Number 77,927**

Honorable Pegram Mire, Jr., Judge Presiding

**Henri M. Saunders
Baton Rouge, LA**

**Counsel for Plaintiff/Appellee
Kevin Lomax on Behalf of his
Minor Child, Tyree Lomax**

**William F. Janney
Baton Rouge, LA**

**Counsel for Defendant/Appellant
State Farm Mutual Automobile
Insurance Company**

BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

Jmm

*McDonald J. agrees in part and dissents in part.
I would reduce the physical damage award
to \$5,000⁰⁰.*

WHIPPLE, J.

This appeal challenges a trial court's general damage award. We affirm, issuing this memorandum opinion in accordance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.

On June 14, 2003, Kevin Lomax was driving a vehicle in which his four-year-old son, Tyree, was a passenger, when his vehicle was struck on the driver's side by a vehicle operated by Sheri Mekari. The Lomax vehicle left the roadway, overturned several times, and landed on Kevin, who had been ejected from the vehicle. Tyree crawled through the windshield and stopped traffic to get help for his father. Rescuers lifted the vehicle off Kevin, who was unable to move. Kevin was taken to the emergency room by helicopter, and Tyree arrived at the hospital by ambulance. As a result of the accident, Kevin suffered a spinal cord injury and multiple cervical fractures, requiring a four-month hospital stay. Although not ejected from the vehicle, Tyree sustained a blow to the head and a cut or abrasion to the right side of his forehead, described as a "gash on the side of his head," as a result of striking his head on the glass and side of the car door.

Three layers of insurance coverage were available to the Lomaxes. Allstate Insurance Company and GEICO insured the Mekari vehicle. State Farm Mutual Automobile Insurance Company insured the Lomax vehicle under a policy providing underinsured motorist coverage. All three insurance companies paid the per person limits to Kevin for his injuries. GEICO also paid its per person limits of \$20,000.00 for Tyree's injuries.

On May 17, 2004, Kevin filed this lawsuit on behalf of Tyree against Allstate and Sheri Mekari, and later added State Farm as a defendant. Prior to trial, Ms. Mekari was released from liability beyond any insurance coverage,

and the parties stipulated that Ms. Mekari was solely at fault in causing the accident.

Trial proceeded against State Farm as plaintiff's uninsured motorist provider solely on the issue of the quantum due for Tyree's injuries and damages. Plaintiff testified at length regarding the emotional effects the accident had on his child, both at the scene and continuing for some time thereafter. These effects included a profound fear of riding in vehicles, frequent crying outbursts that lasted in excess of ten months, nightmares, nervousness, extreme anxiety and fear that his father was going to die. On several occasions, Tyree became extremely upset and had to be picked up from school because he was afraid his father was dead. The evidence also showed that as a result of the accident, treatment with a mental health provider was sought in an effort to help Tyree cope with his emotional problems, crying outbursts and anxiety over riding in vehicles.

The trial court found that Tyree had sustained injuries and damages as a result of the accident. The trial court rendered an award of \$40,000.00, ruling that Tyree was entitled to damages for emotional distress in the amount of \$25,000.00, as well as \$15,000.00 plus medical expenses for his pain and suffering. In rendering the emotional distress award, the trial court found as a fact that Tyree's mental anguish as a result of witnessing the injury to his father was "severe and debilitating," authorizing recovery under Louisiana Civil Code article 2315.6. Allstate was cast in judgment for the \$10,000.00 per person limit of its policy, and State Farm was ordered to pay \$11,263.50.

This appeal, taken by State Farm followed. State Farm contends that the court's \$25,000.00 award for Tyree's emotional distress and mental anguish is excessive, urging that there was no proof that the child's mental anguish was severe and debilitating. State Farm also argues that the trial

court abused its discretion in awarding Tyree \$15,000.00 for pain and suffering.¹

It is well settled that a trial court's discretion in assessing general damages is great, and even vast, so that an appellate court should rarely disturb an award of general damages. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award. 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).

After thoroughly reviewing the record, we find no error by the trial court in its decision to award damages herein; nor do we find an abuse of discretion in the amounts awarded under the facts of this case. On review, we find the record supports the awards made by the trial court. Accordingly, the judgment in favor of plaintiff is affirmed. All costs of this appeal are assessed to appellant, State Farm Mutual Automobile Insurance Company.

AFFIRMED.

¹In its first assignment of error, State Farm contends that this court should review the damage award de novo, positing that the trial judge committed legal error in awarding damages under article 2315.6 of the Louisiana Civil Code, which permits children who view an event causing injury to a parent to recover damages for mental anguish or emotional distress they suffer as a result of the parent's injury. State Farm argues that Tyree may not recover damages under this article because he was a "participant" in the accident. We find no merit to this argument.