

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

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IN THE COURT OF CENTRAL JURISDICTION

COURT OF APPEALS

Merle Skinaway, Jr.,

Appellant,

Case No. 2011 APP 03

vs.

**DECISION OF THE
COURT OF APPEALS**

Carleen Benjamin,

Respondent.

INTRODUCTION

This case is an appeal from an amended judgment of the District Court of the Court of Central Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians (“District Court”), and involves a claim for damages by Appellant Skinaway with respect to personal injuries he sustained when Respondent Benjamin’s dog jumped up on him. There is no dispute that Appellant Skinaway sustained a cut to his upper lip when a dog owned by Respondent Benjamin jumped up and scratched Appellant. There is also no dispute that the medical treatment required to treat Appellant Skinaway’s cut totaled \$991.16. The parties dispute, however, whether Appellant Skinaway is entitled to damages for his pain and suffering as a result of the injury from Respondent Benjamin’s dog. The District Court concluded, that in the circumstances of this case, Appellant Skinaway is not entitled to damages for his pain and suffering.

FACTUAL AND PROCEDURAL BACKGROUND

The District Court conducted a trial with respect to the appropriate measure of damages to be awarded to Appellant Skinaway as a result of his cut lip. At trial, Appellant Skinaway testified that he had medical damages from the cut when he was treated at the Pine Medical Center following the injury. While Appellant did not have an invoice from the Pine Medical Center at the time of trial, the record was left open for him to provide a copy of the invoice after the trial. At trial, Appellant Skinaway also testified that he had a scar as a result of the injury from Respondent Benjamin's dog, and that the scar was cause for mental suffering. At trial, Appellant Skinaway did not submit any evidence of damages for Appellant Skinaway's pain and suffering.

Additionally, Appellant Skinaway did not include any claim for pain and suffering damages in his original complaint; nor did Appellant at any time before trial amend his complaint to include a claim for pain and suffering damages. The only damages claimed in Appellant Skinaway's complaint were for the medical expenses required to treat his cut lip through the Pine Medical Center.

The only reference to an amount of pain and suffering damages was in the form of an affidavit and proposed order that Appellant Skinaway filed with the District Court following the trial. In addition to the medical bill in the amount of \$991.16, Appellant included in his affidavit and proposed order an award of \$5,000.00 as a compensation for his pain and suffering. Respondent Benjamin did not file an objection to the damages included in the affidavit and proposed order. The District Court concluded that Appellant Skinaway did not seek damages for mental suffering in his petition, nor were such damages addressed at trial. The District Court

denied the mental suffering damages because Appellant did not request the damages in his petition; because he did not amend his petition to include a claim for such damages; and because damages for pain and suffering were not raised at trial.

STANDARD OF REVIEW

This Court accords substantial deference to the findings of fact of the District Court. Because the trial court has the opportunity to observe firsthand the credibility of the witnesses at trial, the District Court's findings of fact will not be disturbed unless they are clearly erroneous. The District Court's conclusions of law, however, are not accorded any weight. This Court reviews *de novo* the conclusions of law applicable to the findings of fact in a particular case.

On appeal, the parties in this case, dispute the characterization of the District Court's denial of pain and suffering damages. Appellant Skinaway argues that the denial of the damages was based on an erroneous conclusion of law, after the District Court made factual findings in Appellant's favor. Appellant argues that the proper application of the law to the District Court's findings of fact should result in an award of pain and suffering damages in the amount of \$5,000.00.

Respondent Benjamin argues that rather than a *de novo* review, this Court should review the District Court's judgment according to the abuse of discretion standard because the lower court's determination that there was no evidence in the record to support an award of damages for Appellant's pain and suffering was a finding of fact. Respondent Benjamin argues that the District Court's findings of fact should be accorded substantial deference; and that this Court should not disturb the findings because the District Court did not abuse its discretion. Respondent argues further that the ultimate issue is, at best, a mixed question of law and fact;

and accordingly, the abuse of discretion standard of review is the appropriate standard for this Court to apply in reviewing the decision of the District Court.

DECISION

There is no dispute that Appellant Skinaway did not include a claim for pain and suffering damages in his original complaint; nor did he at any time before trial amend his complaint to include a request for pain and suffering damages. Furthermore, Appellant Skinaway did not put forward any testimony or exhibits to support a claim for pain and suffering damages at the trial of this matter. A review of the transcript of the trial court proceedings reveals that the Court left the record open after the trial concluded solely for the purpose of permitting Appellant Skinaway an opportunity to submit an itemized medical bill from the Pine Medical Center to support his claim for medical expenses. The District Court record is completely devoid of any indication that the record was being left open to also permit Appellant Skinaway an opportunity to submit a claim for pain and suffering damages.

Based on the evidence included in the trial court record, the District Court decided that Appellant Skinaway is not entitled to the pain and suffering damages. This Court concludes that the District Court's decision on this issue is in the nature of a mixed question of fact and law; and that the appropriate standard of review by this Court is whether the District Court abused its discretion when it found that Appellant Skinaway failed to carry his burden of proving his entitlement to pain and suffering damages. After considering the record below, this Court concludes that the District Court's findings of fact are supported by the evidence in the record and the lower court properly applied the law to the facts.

Even if this Court were to apply the *de novo* standard of review, and scrutinize whether the applicable law entitles Appellant Skinaway to the pain and suffering damages he seeks based

on the record now before us, we would conclude that the law compels a conclusion that Appellant is not entitled to the damages. The law requires that Appellant Skinaway prove by a preponderance of the evidence that he is entitled to the damages he seeks. The post-trial affidavit that Appellant submitted, which is completely devoid of any objective reasons to support his claim for \$5,000.00 in pain and suffering damages, is not sufficient to satisfy his burden in proving damages.

Accordingly, the decision of the District Court to deny pain and suffering damages to Appellant Skinaway is AFFIRMED.

BY THE COURT OF APPEALS:

Dated: 4-5-12

Brenda Moose
Brenda Moose, Associate Justice

Dated: 4-5-12

Clarence Boyd
Clarence Boyd, Associate Justice

Dated: 4/1/12

Joseph Plumer
Joseph Plumer, Special Magistrate