

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

**Billy J. McKinzie and Wife, Judy McKinzie, Individually and as Next Friend of Stuart McKinzie, a Minor v. Michael Wayne Fleming and Star Tool Company**

588 F.2d 165 (5th Cir. 1979) · No. No. 78-2209 · Decided January 18, 1979

SUMMARY

The Fifth Circuit held that a jury's zero damages awards for physical pain, mental anguish, and loss of household services were unsupported by the undisputed evidence of injuries sustained in an automobile collision. The court affirmed the liability determination but reversed and remanded for a new trial limited to damages.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                      |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Fifth Circuit                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Roney; Gee; Fay                                                                                                                                                                                                                                                      |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                              |
| DECIDED               | January 18, 1979                                                                                                                                                                                                                                                     |
| DOCKET                | No. 78-2209                                                                                                                                                                                                                                                          |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | In this diversity action arising from an automobile collision, a jury apportioned liability but awarded zero damages for pain and suffering and for Judy McKinzie's loss of household services. The plaintiffs appealed the damages findings.                        |
| STANDARD OF REVIEW    | A denial of a motion for new trial based on an allegedly inadequate jury verdict is generally reviewed for abuse of discretion. However, reversal is required when the evidence provides no sound basis for the verdict and the trial court refuses to set it aside. |
| PRECEDENTIAL VALUE    | published and precedential                                                                                                                                                                                                                                           |
| PARTIES               | Billy J. McKinzie, Judy McKinzie, Stuart McKinzie v. Michael Wayne Fleming, Star Tool Company                                                                                                                                                                        |

TOPICS

damages

personal injury

standard of review

appellate procedure

comparative fault

## PRACTICE AREAS

personal injury

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## QUESTIONS PRESENTED

1. Whether the jury's zero-dollar findings for Judy McKinzie's and Stuart McKinzie's physical pain and mental anguish were so against the great weight and preponderance of the evidence as to require a new trial on damages.
2. Whether the jury's zero-dollar finding for Judy McKinzie's past and future loss of household services was supported by the evidence.

## HOLDINGS

1. Under Texas law, when undisputed evidence establishes an injury with resulting pain and suffering, a jury's award of zero damages is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust, requiring reversal.
2. The zero finding for Judy McKinzie's loss of household services could not stand where the undisputed evidence showed that her injuries impaired her ability to perform household work.

## KEY QUOTATIONS

*“Under Texas law when the undisputed evidence reveals injury with resulting pain and suffering, the jury's answer of “0” damages is considered so against the great weight and preponderance of the evidence to be clearly wrong and manifestly unjust, that reversal is required.”* (¶ 11)

## FACTUAL BACKGROUND

On May 5, 1976, Judy McKinzie entered an intersection with her two children and collided with a truck driven by Michael Fleming while the truck was making a left turn after stopping at a stop sign. Judy and her son Stuart sustained documented injuries, including bruises, abrasions, dental trauma, pain, numbness, vomiting, and contusions. Medical testimony and records supported that Judy experienced pain and that her ability to perform household work was impaired, while Stuart recovered from his injuries within a few days.

## PROCEDURAL HISTORY

The McKinzie's sued Fleming and Star Tool Company in the United States District Court for the Northern District of Texas. The jury found Judy McKinzie 25 percent negligent and Fleming 75 percent negligent, but answered zero to interrogatories concerning Judy's and Stuart's past and future physical pain and mental anguish and Judy's loss of household services. The Fifth Circuit affirmed the judgment as to liability, reversed the damages portion, and remanded for a new trial on damages.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The judgment was affirmed as to liability and reversed and remanded for a new trial on the issue of damages.

## CASES CITED

- Givens v. Lederle, 556 F.2d 1341 (5th Cir. 1977)
- Vidrine v. Kansas City Southern Ry. Co., 466 F.2d 1217 (5th Cir. 1972)
- Rosiello v. Sellman, 354 F.2d 219 (5th Cir. 1965)
- Whiteman v. Pitrie, 220 F.2d 914 (5th Cir. 1955)
- Dupree v. Blackmon, 481 S.W.2d 216 (Tex. Civ. App.—Beaumont 1972, writ ref'd n.r.e.)
- Bittick v. Ward, 448 S.W.2d 174 (Tex. Civ. App.—Beaumont 1969, writ ref'd n.r.e.)
- Bazzano v. Ware, 530 S.W.2d 650 (Tex. Civ. App.—Beaumont 1975, writ ref'd n.r.e.)
- Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, 431 F.2d 409 (5th Cir. 1970)