

12-30-2020

Boothe v. DOTD

Jacque P. Biggs

Follow this and additional works at: <https://digitalcommons.law.lsu.edu/jcls>



Part of the Civil Law Commons

Repository Citation

Jacque P. Biggs, *Boothe v. DOTD*, 13 J. Civ. L. Stud. (2020)

Available at: <https://digitalcommons.law.lsu.edu/jcls/vol13/iss2/11>

This Civil Law in Louisiana is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Journal of Civil Law Studies by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

LOWERING THE JNOV STANDARD: *BOOTHE V. DOTD*

Jacque P. Biggs*

I. Introduction	459
II. Background	460
III. Decision of the Court	462
IV. Commentary	463
A. Judgment Non Obstante Veredicto	463
B. Granting a New Trial	464
C. Code of Civil Procedure Article 1732 Amendment.....	466

Keywords: Louisiana, civil procedure, JNOV, jury, trial, new trial, damages, tort

I. INTRODUCTION

While not every civil case goes before a jury, Louisiana recognizes the right to a trial by jury under specified circumstances, which is way more restrictive than any of the other states, where trial by jury is commonplace.¹ This is not surprising given the historical roots of Louisiana in the civil law tradition, but jury trials set Louisiana apart from other civil law jurisdictions, where juries are not used in civil trials and typically limited to felony criminal trials only.² In jury trials, the jury then becomes the body that will decide

* J.D./D.C.L. candidate (May 2022) Paul M. Hebert Law Center, Louisiana State University. The author would like to thank Prof. William Corbett for his guidance throughout the writing of this case note.

1. See LA. CODE CIV. PROC. ANN. art. 1731(A) (2020). Louisiana had the highest jury threshold in the nation—no jury trial in cases that do not exceed \$50,000. The state legislature passed Act No. 37 of the First Extraordinary Session of 2020, which lowers the amount to a case that “does not exceed \$10,000.” This change takes effect Jan. 1, 2021 but is not retroactive.

2. Neither France nor Germany, for example, use juries in civil trials; instead, they opt to use panels of judges for more efficient proceedings. See Daniel Soulez Larivière, *Overview of the Problems of French Civil Procedure*, 45 AM. J. COMP. L. 737, 737 (1997); see also Benjamin Kaplan, *Civil Procedure—Reflections on the Comparisons of Systems*, 9 BUFF. L. REV. 409 (1960).

the fate of the parties on all issues of fact at the close of trial.³ Outside of the factual determinations made by the jury, judges resolve questions of law.⁴ One of the issues typically decided by a jury if it finds a defendant liable is the amount of damages to be awarded to a plaintiff. However, what happens when a judge disagrees with the jury verdict? *Boothe* discusses the power of the court to rectify what the court sees as a mistaken verdict by the jury.⁵ This note questions whether trial and appellate courts overstep their bounds by interfering with verdicts, and whether there is a better remedy than a judgment notwithstanding the verdict (“JNOV”) for an improper jury verdict.

II. BACKGROUND

The issues in *Boothe* stem from a car accident in 2008.⁶ After dropping her daughter off at school, Sherry Boothe was driving on Greenwell Springs Road.⁷ On her drive, she crossed over the Comite River Bridge and lost control of her car and crashed it.⁸ Police responded to the accident and the officer, Lt. Ruiz, found ice on the bridge.⁹ The bridge then had to be sanded to remove the ice.¹⁰ Following the accident, Boothe sued the Department of Transportation and Development (“DOTD”) for her and her children’s injuries.¹¹

For Boothe to succeed, the elements she needed to prove were that: (1) the DOTD had custody of the bridge that caused her injuries, (2) the bridge was defective because its icy condition created

3. See LA. CODE CIV. PROC. ANN. art. 1736 (2020). “The trial of all issues for which a jury trial has been requested shall be by jury.” Determinations of law are made by the judge.

4. *Question of law*, BLACK’S LAW DICTIONARY (11th ed. 2019). “An issue to be decided by the judge, concerning the application or interpretation of law.”

5. *Boothe v. Dep’t of Transportation & Dev. & Par. of E. Baton Rouge*, 18-1746 (La. 6/26/19), 285 So. 3d 451.

6. *Id.* at 453.

7. *Id.*

8. *Id.* at 454.

9. *Id.*

10. *Id.*

11. *Id.*

an unreasonable risk of harm, (3) the DOTD had actual or constructive notice of the icy condition and did not take any corrective measures within a reasonable time, and (4) the icy condition was a cause-in-fact of Boothe's injuries.¹² After listening to the testimony of Ms. Boothe, Lt. Ruiz, and DOTD employees, the jury found that the DOTD was not at fault for Ms. Boothe's injuries.¹³

Following the verdict, Boothe filed a motion for a judgment notwithstanding the verdict and an alternate motion for a new trial.¹⁴ The Court granted the motion for JNOV and found in favor of Boothe, awarding her \$919,191.20.¹⁵ In its decision, the District Court focused on the testimony of Lt. Ruiz and DOTD's own employees, while mostly ignoring Boothe's testimony.¹⁶ One DOTD employee admitted that while he normally has both sides of a bridge sanded when it is icy, they only sanded one side of the bridge in question.¹⁷ Combining that with Lt. Ruiz's testimony that the bridge was icy and the other DOTD employees' testimony that icy bridges are hazardous to motorists, the district court was convinced that the plaintiff satisfied all elements of her claim and found for her.¹⁸

The DOTD then appealed to the First Circuit, where the JNOV was affirmed, but damages were altered.¹⁹ The First Circuit did not find that the almost \$1-million award was an abuse of discretion, but it applied a statutory damages cap to reduce the award.²⁰ The First Circuit instead characterized the award as "relatively high" and left

12. *Id.* at 456 (citing *Comeaux v. Comeaux*, 98-2378 (La. 7/7/99), 748 So.2d 1123, 1127).

13. *Id.* at 453-54.

14. *See* LA. CODE CIV. PROC. ANN. art. 1811 (2020).

15. *Boothe*, 285 So. 3d at 454. The new trial was conditionally granted as well.

16. *Id.* at 457.

17. *Id.*

18. *Id.*

19. *Id.* at 455.

20. *Id.* La. R.S. 13:5106 capped general damages at \$500,000, so the court reduced the \$600,000 general damage award accordingly.

the special damages in place.²¹ Following this ruling, the DOTD appealed and the Louisiana Supreme Court granted certiorari.

III. DECISION OF THE COURT

The Court first addressed the DOTD's assertion that granting and affirming the JNOV was improper.²² The DOTD's assignment of error was that the evidence presented did not show that the condition of the road presented an unreasonable risk to Boothe when she wrecked.²³ In order to find that a JNOV is proper, the Court had to find that "evidence points so strongly in favor of the moving party that reasonable persons could not reach different conclusions, not merely when there is a preponderance of evidence for the mover."²⁴ The Supreme Court decided that the evidence did indeed meet this high standard and pointed towards the unrefuted testimony that the lower courts relied on.²⁵ After affirming the JNOV, the Court moved on to the assessment of damages.

Finding that there was an abuse of discretion by the district court in its \$600,000 general award damage, the Supreme Court vacated it.²⁶ In deciding this, the Court acknowledged that Boothe's injuries were serious, but her doctor did not place any limits on her activities.²⁷ The Court awarded a lesser amount of \$300,000 in general damages.²⁸ The judgment was affirmed in part and reversed in part, and there were two dissents.²⁹

21. *Id.*

22. *Id.* at 456.

23. *Id.* at 458.

24. *See* Joseph v. Broussard Rice Mill, Inc., 00-0628 (La. 10/30/00); 772 So. 2d 94, at 99.

25. *See supra* notes 14-16 and accompanying text.

26. *Boothe*, 285 So. 3d at 458.

27. *Id.*

28. *Id.* at 459 (citing *Collins v. Shelter Mutual Ins. Co.*, 36-528 (La. App. 2 Cir. 12/11/02); 833 So.2d 1166 as basis for their decision. There the Plaintiff was awarded \$150,000).

29. *Boothe*, 285 So. 3d at 459.

Justice Hughes's dissent was based on the reduction of Boothe's damage award.³⁰ He considered the majority's reduction as superficial and thought the amount was "picked out of thin air."³¹ Justice Hughes would have affirmed the decision from the appeals court.³²

In his dissent, Justice Crichton writes that he believes that the trial court substituted its judgment for the jury's.³³ Justice Crichton saw the trial court evaluated witness credibility inappropriately and did not resolve factual questions in favor of the DOTD.³⁴ Crichton would have reinstated the jury's verdict.³⁵

IV. COMMENTARY

While none of the three courts that heard *Boothe* disagreed with granting the JNOV, the Louisiana Supreme Court had one justice that thought that the JNOV should not have been granted. There may have been a less intrusive remedy that the Court could have given the plaintiff after deciding that the jury verdict was incorrect. The Boothe decision risks that JNOVs that do not meet the high standard may be granted more often.

A. Judgment Non Obstante Veredicto

Awarding a JNOV to a party means taking away the verdict that a panel of jurors decided, so anytime this motion is granted it should bear some scrutiny. The Code of Civil Procedure itself does not provide a detailed standard for granting one.³⁶ The JNOV standard from *Joseph* is that "evidence points so strongly in favor of the moving party that reasonable persons could not reach different conclusions, not merely when there is a preponderance of evidence for the

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. In fact, there is no standard articulated in the Code that guides the judge. See LA. CODE CIV. PROC. ANN. art. 1811 (2020).

mover.”³⁷ Justice Crichton argues in his dissent in *Boothe* that the Court substituted its own judgment for the jury’s, raising further questions on whether reasonable persons could actually disagree.³⁸

If both a jury and a justice disagree on whether a verdict can withstand a JNOV motion, it is possible that the JNOV should not have been granted. If Justice Crichton is correct, then there is a rational worry that the role of the jury to decide a case can be interfered with by a judge that thinks the jury’s determination of the facts is incorrect.³⁹ While it seems that the *Boothe* case could have been decided either way, caution should be taken when deciding that the jury was incorrect. Different minds have indeed found that there could be two different conclusions. The Court may have come to the wrong conclusion in *Boothe*.

The evidence here seemed to point somewhat towards liability for the DOTD, but having the power taken away from the jury when it is not absolutely clear that *Boothe* should have won defies the demanding JNOV standard. There is an alternative option for the Court that still leaves the decision to the jury.

B. Granting a New Trial

The Louisiana Supreme Court could have chosen to grant a new trial instead of a JNOV.⁴⁰ If a party loses at trial, that party does not have to choose between moving for a JNOV or a new trial.⁴¹ Since both the new trial and the JNOV were granted by the district court, the Supreme Court could have determined that the higher standard for granting a JNOV was not met but sent the case back to be heard by another jury.⁴² The new trial standard “clearly contrary to the law

37. See *Joseph*, 772 So. 2d 94 at 99.

38. See *Boothe*, 258 So. 3d at 459.

39. See LA. CODE CIV. PROC. ANN. art. 1736 (2020).

40. See *id.* at art. 1972(1): “A new trial shall be granted, upon contradictory motion of any party, in the following cases: when the verdict or judgment appears clearly contrary to the law and the evidence.”

41. See *id.* at art. 1811(A)(2).

42. *Id.* at art. 1811(C). If the court grants a JNOV, then the court is required to conditionally grant the motion for a new trial. Thus, if the court’s ruling for a

and evidence” is lower than the *Joseph* standard for JNOV.⁴³ Justice Crichton’s dissent argued that the trial judge assessed the witnesses’ credibility and drew her own inferences.⁴⁴ When a trial court grants a new trial, the judge is allowed to both assess credibility and draw her own inferences.⁴⁵ If Justice Crichton was correct, then the Louisiana Supreme Court should have reversed the lower court on the JNOV, but left the provisional new trial in place.

Granting a new trial over a JNOV still lets a jury decide the outcome of the case rather than the judge fully invading the province of the jury. The jury is not there by accident, or automatically. A party to the suit must specifically ask for a jury trial in a pleading and pay a bond to the court for it.⁴⁶ Further, a party is only eligible for a jury if the party’s cause of action is above a certain dollar amount.⁴⁷ If there is a JNOV granted, a case in which a party that has a right to jury trial and has done all that is required to preserve that right has it taken away from the jury and goes back the hands of the judge. If the party who prayed for the jury and paid the bond is the losing party in the JNOV, this seems problematic.

Granting a new trial, though, would avoid that problem by taking the case from the hands of one jury and placing it into the hands of another. So, the trier of fact is still a jury of their peers, rather than one judge. This is a much less radical remedy than a JNOV. In a case where the record does not clearly support a JNOV, the new trial is a much better intervention by the judge.

JNOV is overturned on appeal, the appellate court can remand the case for a new trial.

43. See *id.* at art.1972(1).

44. See *Boothe*, 258 So. 3d at 459.

45. See *Martin v. Heritage Manor South*, 00-1023 (La. 4/31/01); 784 So. 2d 627, 637.

46. See LA. CODE CIV. PROC. ANN. art. 1733(A) (2020).

47. See *id.* at art. 1732(A)(1).

C. Code of Civil Procedure Article 1732 Amendment

One final consideration is whether there will be more JNOVs granted because the jury threshold has been lowered.⁴⁸ Assuming that there will be more jury trials under the amended Louisiana Code of Civil Procedure article 1732(A)(1), there will likely be at least some uptick of motions for new trial and JNOV. If this is correct, then courts may be more likely to grant JNOVs, even if they do not unquestionably meet the *Joseph* standard. Because jury trials are more time-consuming and expensive than bench trials, an influx of trials that must be tried twice in front of a jury may strain the resources of courts. If this is the case, then judges may decide that they can solve the problem by granting JNOVs on lesser evidence than in the past and save the courts time and money and strain on the resource of citizens serving on juries. It bears watching to see if this comes to fruition in coming days.

48. See LA. CODE CIV. PROC. ANN. art. 1732(A)(1) (2021). The jury threshold is being lowered to \$10,000 from \$50,000, effective Jan. 1, 2021.