Proving Mental Anguish Damages In Personal Injury Cases

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I. Introduction

Over the past 25 years, the law on mental anguish damages has gone through a remarkable evolution. There has been a concerted and steady effort by the Texas Supreme Court to limit the recovery of mental anguish damages. This effort is multi-faceted. It encompasses an increase in the level of proof required to sustain an award in cases in which mental anguish damages are permitted, a mandate to appellate courts to closely scrutinize such awards, and restrictions on the types of cases in which such damages are even available. In this paper, we will trace the evolution of the law on mental anguish through significant Texas Supreme Court cases.

In order to withstand appellate scrutiny, plaintiff's lawyers must now present direct evidence of the nature, duration and severity of their clients' mental anguish, which either establishes (1) a substantial disruption in the plaintiffs' daily routine, or (2) a high degree of mental pain and distress, which is more than mere worry, anxiety, vexation, embarrassment, or anger.

II. Non-Physical Injury Cases

A. The standard is set – *Parkway*

1. *Parkway Company v. Woodruff*, 901 S.W.2d 434 (Tex. 1995)

The Court chose to "fire the first shot" at mental anguish damages in *Parkway Company v. Woodruff*, 901 S.W.2d 434 (Tex. 1995), opinion by Justice Cornyn, joined by Phillip, Gonzalez, Hightower, Hecht, Enoch, Spector, and Owen, dissent on other grounds by Gammage. This was not a personal injury case; rather, it was a suit brought by a homeowner against a contractor for flood damage. At the time, the Plaintiff's trial bar largely assumed the holding was confined to mental anguish damages in non-personal injury cases – until the Court used *Parkway* and its progeny as precedent to deny mental anguish damages in personal injury cases, as well.

The Woodruff's home flooded and was badly damaged due to negligence by the defendant contractor in building it in a floodplain. The Woodruffs sued and recovered, *inter alia*, for their mental anguish resulting from the flooding.

The Court, after a historical review of mental anguish damages, set the standard for recovery of mental anguish damages in cases <u>not</u> involving physical injury. Plaintiffs may recover when they "have introduced **direct evidence** of the **nature, duration and severity** of their mental anguish, thus establishing a **substantial disruption in the plaintiffs' daily routine.**" *Parkway*, 901 S.W.2d at 444 (emphasis added).

This significant language provided the theme for a series of later cases which restrict the recovery of mental anguish damages – even cases involving physical injury.

The *Parkway* Court noted that, historically:

> "some types of *disturbing or shocking injuries* have been found sufficient to support an inference that the injury was accompanied by mental anguish. As a general matter, though, *qualifying events have demonstrated a threat* ***to one's physical safety*** *or* ***reputation*** *or involved the* ***death*** *of, or* ***serious injury*** *to, a family member*."

Id. at 445 (emphasis added).

In setting this new, heightened standard for establishing mental anguish in non-physical injury cases, the Court called for close judicial scrutiny of the plaintiffs' evidence:

> "Although we stop short of requiring this type of evidence [i.e., direct evidence of the nature, duration and severity of the mental anguish, thus establishing a substantial disruption in the plaintiffs' daily routine] in **all** cases in which mental anguish damages are sought, *the absence of this type of evidence*, particularly when it can be readily supplied or procured by the plaintiff, ***justifies close judicial scrutiny*** *of other evidence* offered on this element of damages."

Id. at 444 (emphasis added).

In *Parkway*, the Court pointed to two passages of testimony relevant to the issue of mental anguish damages. First, Mr. Woodruff testified that he was "*hot*" and that he was "*very disturbed*." Mrs. Woodruff testified that "it's just *not pleasant* walking around on cement floors," that their whole life "*changed*," and that it was "*just upsetting*." In addition, she testified that both she and Mr. Woodruff had become "*very quiet*," and that it had caused "*some friction*" in their marriage. *Id.* at 445 (emphasis added).

The Court ruled that, although the Woodruff's "felt anger, frustration, or vexation," these feelings were nothing more than "mere emotions," which did not rise to the level of compensable mental anguish. *Id*.

It didn't take long for *Parkway* to become "well-established law."

B. The standard is applied – *Stoker, Saenz* and *Latham*

1. *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338 (Tex. 1995)

In 1995, the Texas Supreme Court followed the *Parkway* opinion with *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338 (Tex. 1995). *Stoker*, however, was not a case in which mental anguish damages were truly considered by the majority. Rather, the only issue that the majority considered was whether Republic Insurance Company was liable to the

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