

**Reversed and Rendered and Opinion filed July 12, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-00179-CV**

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**MARVIS EKHATOR ODIA, D/B/A ODIA MOTORS, Appellant**

**V.**

**OSCAR LOPEZ AND FLOR LOPEZ, Appellees**

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**On Appeal from the County Civil Court at Law No. 2  
Harris County, Texas  
Trial Court Cause No. 699,459**

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**OPINION**

Oscar and Flor Lopez sued Marvis Ekhaton Odia, d/b/a Odia Motors, for violations of the Texas Deceptive Trade Practices Consumer Protection Act (“DTPA”), fraud, breach of contract, and for negligent misrepresentations. Before the charge was submitted to the jury, Odia objected that no evidence supported submission of a question on mental anguish. The court overruled that objection. The jury then found that Odia violated the DTPA and made negligent misrepresentations to the Lopezes. However, the jury found that the DTPA violations were not committed knowingly or intentionally, found no fraud or breach of contract occurred, and found the Lopezes suffered no economic damages.

The jury awarded the Lopezes \$2000.00 for mental anguish damages. During trial, Odia stipulated that \$4,000.00 constituted reasonable and necessary attorney's fees. Based on the jury's answers to the charge, the trial court entered a judgment in favor of the Lopezes, and awarded them \$6,000.00, which included amounts for mental anguish damages and attorney's fees. In three points of error, Odia appeals this judgment and claims that (1) the trial court erred in awarding mental anguish damages under the DTPA because the jury found that Odia did not knowingly or intentionally violate the DTPA, (2) no direct or circumstantial evidence at trial supports the trial court's award for mental anguish damages, and (3) the Lopezes are not a prevailing party under the DTPA and therefore are not eligible to receive statutory attorney's fees. We reverse and render the trial court's judgment, and order that the Lopezes take nothing from Odia.

### **FACTUAL BACKGROUND**

In 1996, Oscar and Flor Lopez purchased a 1993 Acura from Odia Motors. Odia's asking price for the car was \$9,400.00, but he reduced the price to \$8,400.00 after the Lopezes discovered some body damage to the rear bumper of the car. The Lopezes paid \$8,400.00 for the Acura, and took it "as is, without either express or implied warranties of merchantability or fitness . . . ."

Later, Flor scratched the side of the car, and took it to a body shop for repairs. The mechanic at the body shop told her that he thought the car had been in a wreck before she and her husband purchased it. Flor then took the car to Odia, asking him to reduce the purchase price or to repair it. He told her that nothing was wrong with it. She did not believe him, and testified that she got upset and told him that she purchased the car to drive her children in, but was afraid to drive it in its current condition. Odia would not make any deals with her. Next, Flor tried to sell the car at an Acura dealership. It was at this time that she discovered that the vehicle identification number ("VIN") on the car did not match the VIN on the title. The evidence at trial showed that the VIN numbers differed by only one, or perhaps two digits. The Acura dealership also would not purchase the car,

because they found it had only salvage value. Eventually, Odia made the corrections to the VIN number, and title was transferred in 1999. Flor asked Odia to take the car back, but he refused.

## **DISCUSSION AND HOLDINGS**

### **A. Mental Anguish**

In points of error one and two, Odia complains that the trial court erred in entering judgment allowing Oscar and Flor Lopez to recover \$2,000.00 for mental anguish damages. He first complains that, as a matter of law, the Lopezes cannot recover for mental anguish damages under the DTPA because the jury found that Odia did not knowingly or intentionally violate the DTPA. In point of error two, Odia contends that an award for mental anguish damages is also barred because there was no evidence of mental anguish at trial.

Under the DTPA, a prevailing consumer can recover mental anguish damages if the trier of fact “finds that the conduct of the defendant was committed knowingly . . . [or] intentionally.” TEX. BUS. & COM. CODE ANN. § 17.50(b)(1) (Vernon Supp. 2000). While the jury found that Odia violated the DTPA, the jury also specifically found that the violation was not knowingly or intentionally committed. Thus, as a matter of law, Oscar and Flor Lopez cannot recover mental anguish damages under the DTPA. Point of error one is sustained.

### **B. Attorney’s Fees Under the DTPA**

In Odia’s third point of error, he argues that the trial court erred in awarding attorney’s fees to Oscar and Flora Lopez because the jury awarded no economic damages under the DTPA and the Lopezes’ claim for mental anguish damages is barred as a matter of law. The Lopezes’ sole claim for attorney’s fees stems from their DTPA claim. The DTPA states that “each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys’ fees.” TEX. BUS. & COM. CODE ANN. § 17.50(d) (Vernon Supp.

2000). Odia argues that the Lopezzes did not prevail because they did not recover any damages. We agree.

In arguing that the Lopezzes did not prevail under the DTPA, Odia relies on the Dallas Court of Appeals' decision in *Harma v. Gulden*, which states that to prevail under the DTPA, the plaintiff must "prove he is a consumer, the act complained of must be a producing cause of actual damages, and section 17.50(a) must prohibit the act." 898 S.W.2d 16, 18 (Tex. App.—Dallas 1995, writ dism'd w.o.j.). Odia contends that without a finding for damages caused by the DTPA violation, the Lopezzes cannot be considered to have prevailed under the DTPA.

The Lopezzes point us to several DTPA cases where a party, who prevailed under the DTPA, was awarded attorneys' fees despite the fact that the damages they would have recovered under the DTPA were offset by the damages awarded to their opposing party for counterclaims. See *Satellite Earth Stations East v. Davis*, 756 S.W.2d 385, 387, (Tex. App.—Eastland 1988, writ denied); *Building Concepts, Inc. v. Duncan*, 667 S.W.2d 897 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.); *Doerfler v. Espensen Co.*, 659 S.W.2d 929, 931 (Tex. App.—Corpus Christi 1983, no writ). However, those cases are not on point because, in those cases, damages were awarded, but were merely offset. Here, no economic damages were awarded, and the Lopezzes are not entitled to an award of mental anguish damages because the jury found that any violation of the DTPA was not knowing or intentional.

The plain language of the DTPA states that a consumer can only maintain an action where conduct, prohibited under the DTPA, is a *producing cause* of economic damages, or damages for mental anguish. TEX. BUS. & COM. CODE ANN. § 17.50(a) (Vernon Supp. 2000). Here, the jury found that Odia violated the DTPA. However, the jury also found there were no economic damages, and the jury failed to make a finding that would entitle the Lopezzes to mental anguish damages. Thus, on this record, a simple "yes" finding by the jury to whether Odia violated the DTPA does not make the Lopezzes "prevailing

parties” under the DTPA. In short, the Lopezes did not prevail under the DTPA, and are therefore not entitled to recover their attorney’s fees. Odia’s third point of error is sustained.

Because we have sustained Odia’s first point of error related to mental anguish damages, we need not address Odia’s second point of error, attacking the sufficiency of the evidence in support of a finding of mental anguish. Having sustained points of error one and three, we reverse the trial court’s judgment and render judgment that the Lopezes take nothing from Odia.

/s/ Wanda McKee Fowler  
Justice

Judgment rendered and Opinion filed July 12, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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