

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000811-MR

WILLIAM HICKS

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 04-CI-00341

RICHARD ARCHIE

APPELLEE

OPINION AFFIRMING

** ** *

BEFORE: MOORE AND NICKELL, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: William Hicks appeals from a jury verdict in favor of Richard Archie that awarded him medical expenses and punitive damages for assault and battery. Hicks raises three issues on appeal: (1) the award of punitive damages was excessive; (2) the trial court erred by refusing to grant a continuance; and (3) the trial court erred by refusing to grant a new trial when Archie failed to provide CR 8.01 information. We affirm.

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

The incident underlying this appeal originated in the worsening estrangement of Silas Hicks, William's father, and Earmelie Archie Hicks, Richard's mother. Although Hicks and Archie were brothers-in-law as a result of their parents' marriage, the two had never met each other until August 7, 2005. On that day, Hicks went to the residence of Earmelie Hicks ostensibly to retrieve a phone number on behalf of his father. Archie was home on leave from the United States Navy visiting his mother. When Hicks arrived at the home, Earmelie Archie was concerned as both Hicks and his father, Silas, had a history of threatening her. Hicks was visibly angry when he approached the door and Archie asked him to leave the property. Hicks then lost control and began shouting and Archie stated that if Hicks would not leave then he would call the police. Hicks refused to leave and continued shouting. As Archie turned to instruct another family member to call the police, Hicks struck him through the screen door causing a laceration beneath Archie's left eye. Hicks continued to attempt to gain entry into the home through the torn screen door. He stepped toward Earmelie and attempted to strike her as well. Archie struck Hicks twice and Hicks went back into the yard where he continued his tirade. When police arrived on the scene, they arrested both Hicks and Archie and transported Archie to the hospital for treatment. The charges against Archie were eventually dismissed and Hicks pled guilty to fourth-degree assault.

Archie filed suit against Hicks in the Greenup Circuit Court seeking damages for assault and battery. Following a jury trial, Archie was awarded \$1,316.90 for medical expenses, zero dollars for pain and suffering, and \$38,750.00 in punitive damages. This appeal followed.

Hicks first argues that the award of punitive damages was constitutionally excessive. In order to satisfy due process, punitive damage awards must be evaluated under three factors: “(1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the civil penalties authorized or imposed in comparable cases.” *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 418, 123 S.Ct. 1513, 1520, 155 L.Ed.2d 585 (2003). While few awards in practice may constitutionally exceed a single-digit ratio between compensatory damages and punitive damages, the United States Supreme Court has consistently rejected a bright-line ratio or mathematical formula to determine the reasonableness of a punitive damages award. *Id.* at 424-5. Appellate courts review the application of these factors to a punitive damages award under the de novo standard. *Id.* at 418.

“[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.” *Id.* at 419 (quoting *BMW of North America v. Gore*, 517 U.S. 559, 575, 116 S.Ct. 1589, 1599, 34 L.Ed.2d 809 (1996)). Courts are to determine the reprehensibility of a defendant's conduct by considering whether: “the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” *Id.* Hicks argues that this was a simple assault and battery case that was the result of an isolated incident of misunderstanding between relatives.

We find that Hicks's conduct was sufficiently reprehensible to support the jury's award of punitive damages. First, the harm caused by Hicks was obviously physical rather than economic. Secondly, Hicks displayed an indifference to the health and safety of others by striking Archie after he had turned away and by attempting to strike his ailing mother. It is not apparent from the record whether Archie was financially vulnerable. While Hicks argues that this was an isolated incident, the evidence showed the circumstances of this case to involve repeated acts of hostility and threats to his mother and other relatives at that residence. On the occasion of the battery, Hicks was asked repeatedly to leave the premises, then struck Archie and attempted to strike his mother. Afterwards, he engaged in a tirade on the lawn spewing profanities. The award was reasonable under this factor.

Next, we examine the disparity between the compensatory damages and the punitive damages award. Archie was awarded \$1,316.90 for medical expenses, zero dollars for pain and suffering, and \$38,750.00 in punitive damages. The ratio between the compensatory damages is approximately 29 to 1. As stated above, there is no bright-line ratio or mathematical formula to determine the reasonableness of a punitive damages award. Additionally, ratios exceeding single digits may be appropriate where a “particularly egregious act has resulted in only a small amount of economic damages.” *Campbell*, 538 U.S. at 425. The Court also stated that: “[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.” *Id.* Conversely, a small amount of compensatory damages might require a higher ratio of punitive damages to sufficiently punish or deter future conduct. We find that the

award is reasonable based upon the egregiousness of Hicks's conduct coupled with the relatively small amount of compensatory damages.

Thirdly, we evaluate the civil penalties authorized or imposed in comparable cases. While we are unaware of any civil penalties for assault and battery, we note that the existence of a criminal penalty does have a bearing on the seriousness with which the Commonwealth views this wrongful action. *Id.* at 428. However, criminal penalties are of little use in the determination of the appropriateness of punitive damages. *Id.* Nevertheless, in light of the circumstances surrounding this incident and the egregiousness of Hicks's conduct, we find the award of punitive damages in this case to be reasonable.

Next, Hicks argues that he should have been granted a continuance when his original counsel left the practice of law and was substituted by younger, allegedly more inexperienced, counsel. We are cited to no authority in support of this position. Additionally, Hicks's new counsel was substituted over two months before the scheduled trial date with a warning from the court that the trial would proceed as scheduled. Based upon our review of the record, we conclude the trial court did not abuse its discretion by failing to grant Hicks a continuance.

Finally, Hicks argues that he is entitled to a new trial because Archie failed to disclose the specific elements of damages as required by CR 8.01. CR 8.01(2) states in pertinent part:

[w]hen a claim is made against a party for unliquidated damages, that party **may** obtain information as to the amount claimed by interrogatories. **If this is done**, the amount claimed shall not exceed the last amount stated in answer to the interrogatories . . .

(emphasis added). No interrogatories were served in this case and this matter was explored during the deposition testimony of Archie. Hicks suffered no prejudice and the trial court did not abuse its discretion by denying the motion for a new trial.

Accordingly, the judgment of the Greenup Circuit Court is affirmed.

ALL CONCUR.

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