

IN THE COURT OF APPEALS OF IOWA

No. 2-070 / 91-343

FILED

APR 28 1992

CLERK SUPREME COURT

BRIAN KEITH MAINERS and ROSE MAINERS,

Appellees,

650

vs.

JOHN WILLIAM WALLACE,

Appellant.

Appeal from the Iowa District Court for Polk County,
Peter A. Keller, Judge.

Defendant Wallace appeals the district court's judgment in this intentional tort action awarding the plaintiffs Mainers compensatory and punitive damages and dismissing Wallace's counterclaim for damages. **AFFIRMED.**

Robert C. Oberbillig, Des Moines, for appellant.

John D. Hudson of Carney, Hudson, Williams, Blackburn & Grask, Des Moines, for appellees.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

Brian Mainers and John Wallace had an altercation on October 23, 1989, concerning a car Mainers sold to Wallace. Mainers sold the car for \$300 in cash and a VCR; he claims he agreed to guarantee the car engine for fifteen days while Wallace contends the guarantee covered anything that was wrong with the car. After the purchase of the car the car had engine problems, and the parties agreed Mainers would come over to Wallace's home on October 23, 1989, to find out the results of an engine analysis. At the meeting on that date Wallace told Mainers there was no problem with the engine but that he wanted his money back because he had discovered the car's frame was rusted. An argument ensued between the parties, resulting in an altercation. Wallace claims Mainers assaulted him and specifically pulled his hair and threw a beer bottle at him. Although Mainers was vague about the incident to police officers right after the altercation, he eventually stated Wallace hit him with a brick as he was attempting to leave Wallace's property. Wallace did not make the claim initially after the accident, but he stated at the trial that a neighbor hit Mainers with the brick during the altercation.

As a result of the serious head injury, Mainers was taken to a Des Moines hospital and eventually to University Hospital in Iowa City. He was placed in intensive care, suffering from a head laceration, skull fracture, and clot underneath the skull but outside of the brain. Mainers

apparently continues to suffer from mild mental impairments, including memory loss, and headaches. His condition prevented him from having sexual relations with his wife for a month. His wife also indicated Mainers was irritable, forgetful, and had more of a temper with his children. Mainers claims that as a result of his injuries, he was unable to return to work for three months. Wallace states that as a result of the assault by Mainers, he had various abrasions.

Brian and Rose Mainers commenced an action against John Wallace, seeking compensatory and punitive damages resulting from the injuries sustained from the assault. Specifically, Rose brought a loss of consortium claim against Wallace for the loss of her husband's companionship. Wallace filed a counterclaim, seeking damages on the basis of a violation of the oral warranty on the automobile, the assault and battery committed by Mainers on October 23, 1989, an earlier assault against Wallace by Mainers, and punitive damages for the willful wrongs committed by Mainers.

After trial the court entered a judgment awarding Brian Mainers \$35,000 as compensatory damages and \$15,000 as punitive damages and awarding his wife \$5000 on the consortium claim. The court dismissed Wallace's counterclaim. In reaching this result, the district court determined Wallace assaulted Mainers with a brick causing serious injuries, Mainers' assault did not cause Wallace

any injury, Mainers' wife had sustained a loss of companionship and society, and the act giving rise to liability was intentional such that an award of punitive damages was appropriate.

On February 27, 1991, Wallace filed a notice of appeal. Our scope of review is on assigned error only. Findings of facts in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). "Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings." Waukon Auto Supply v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989) (citation omitted). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reinsurance Co., 431 N.W.2d at 785 (citation omitted).

I. Wallace first argues there is not substantial evidence in the record to support a finding he is the one who hit Mainers. He argues Mainers did not tell the police officers immediately that Wallace hit him on the head with a brick. Wallace suggests his neighbor, Tony, was perhaps the person who hit or threw the brick at Mainers.

We find reasonable minds could examine the evidence in this case and conclude Wallace hit Mainers on the head with a brick. Even if the evidence in this case could support a finding that Tony actually hit Mainers, it could also

support the finding that Wallace hit Mainers. "The possibility of drawing two inconsistent conclusions from the same body of evidence does not prevent a finding from being supported by substantial evidence." Baty v. Binns, 354 N.W.2d 777, 780 (Iowa 1984) (citation omitted).

Mainers was "foggy" at the time of his police interviews; nonetheless, Wallace was named as Mainers' assailant on the police report. Because substantial evidence exists to support the trial court's finding Wallace hit Mainers on the head with a brick, we are bound by that finding of fact. We affirm the trial court determination here.

II. Wallace next argues there is not substantial evidence to support a finding of punitive damages against him. The trial court found Wallace's actions were intentional and that an award of punitive damages is appropriate. Wallace argues the trial court made no findings of willful and wanton disregard. See Iowa Code § 668A.1 (1991). Wallace did not, however, file a timely motion under Iowa Rule of Civil Procedure 179(b) to enlarge or amend findings. He may not now challenge the absence of any particular finding of fact or conclusion of law on appeal. Nowlin v. Scurr, 331 N.W.2d 394, 396 (Iowa 1983). We find Wallace is precluded from complaining on appeal of the absence of a specific finding that his conduct was willful and wanton.

III. In addition, Wallace feels there is not substantial evidence in the record to support a finding of damages for loss of consortium on behalf of Rose Mainers. The trial court found Rose was entitled to an award of \$5000 for the loss of companionship, society, and enjoyment of her husband.

The record shows the Mainers were unable to have sexual relations for at least a month. Their family had to speak softly because the use of normal voices gave Brian Mainers a headache. Evidence suggests Mainers' increased moodiness and loss of patience has put a strain on the relationship between him and his family. The trial court found Mainers' problems with headaches and irritability will continue for the foreseeable future. We find the trial court award was proper.

IV. Finally, Wallace argues the trial court erred in failing to award him damages on his counterclaim. We find the evidence presented would permit reasonable minds to conclude Mainers' warranty of the automobile extended only to the engine, and that even if Mainers had assaulted Wallace, Wallace suffered no injury and was not entitled to compensatory or punitive damages.

Wallace contends that even if he is not awarded compensatory damages, he should receive punitive damages. In order to receive an award of punitive damages, however, actual damages must be shown. Pringle Tax Serv., Inc. v. Knoblauch, 282 N.W.2d 151, 154 (Iowa 1979). "The reason

for requiring actual damages to be shown is that punishment and deterrence are warranted only when harm has been done." Id.

The trial court found Wallace failed to prove any injury or damages. Because Wallace suffered no injury, compensatory as well as punitive damages were properly denied by the district court.

We affirm the trial court in all respects.

AFFIRMED.