IN THE COURT OF APPEALS OF IOWA

FILED
JUN 4 1986
CLERK SUPREME COURT

137

FILED JUNE 4, 1986

6-129
85-1382

JOHN MATHEW HIFFERNAN,

Plaintiff-Appellee,

vs.

CITY OF COUNCIL BLUFFS, IOWA et al,

Defendants-Appellants.

Appeal from the Iowa District Court for Pottawattamie County (No. 55125) - E.F. Hanson, Judge.

Defendant appeals a judgment in an action for false arrest and a jury verdict in favor of plaintiff for $55,000. **AFFIRMED.**

Richard B. Wade, City Attorney, Council Bluffs, Iowa for defendant-appellant.

Lyle A. Rodenburg, Council Bluffs, Iowa, for plaintiff-appellee.

Heard by Snell, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Defendant appeals a judgment in an action for false arrest and a jury verdict in favor of plaintiff for $55,000. It is contended that 1) the award of damages was excessive and 2) the trial court erred in failing to submit a jury instruction on mitigation of damages. We affirm.

The facts of this case are not disputed. In October, 1983, a restaurant owner reported the theft of a barrel of used grease. He indicated that a man in a truck drove up to the restaurant and stole the barrel valued at $15.00. Officer Mehlin, who was assigned to the case, located the truck used in the theft and contacted the owner, John Hiffernan. Hiffernan is in the business of selling recycled grease; he claimed a mistake had been made and produced cancelled checks to the restaurant which he alleged were for the purchase of the grease.

Two days later, another policeman, Officer Stehly, stopped Hiffernan's truck and spoke to him regarding the theft. Plaintiff explained again that there had been a mistake. The police station verified the story and Stehly did not pursue the matter any further.

After Hiffernan's story was confirmed, the case was determined to be unfounded and was closed. Four days later Officer Howard, saw Hiffernan's truck at his place of business. Apparently, unaware that the case had been closed, Howard arrested Hiffernan on a charge of fifth degree theft and plaintiff was taken to jail.

In June 1984, plaintiff filed a suit against the city of Council Bluffs based on the false arrest by Howard.

At trial, the city admitted fault and the case went to the jury on the issue of damages. A verdict was returned awarding $55,000. The city's motion for a new trial was overruled and this appeal followed.

I

139

The city first claims that the award of damages was excessive.

The assessment of damages is traditionally a jury function and will only be disturbed for the most compelling reasons. Nelson v. Steiner, 262 N.W.2d 579, 583 (Iowa 1978). We will reduce or set aside an award of damages only if it is 1) flagrantly excessive or inadequate; 2) so out of reason as to shock the conscience or sense of justice; 3) the result of passion, prejudice or other ulterior motive; or 4) lacking in evidentiary support. Olson v. Drahos, 229 N.W.2d 741,742 (Iowa 1975).

It is the city's contention that the award is the result of passion or prejudice and is lacking in evidentiary support. In considering this claim, we view the evidence in a light most favorable to the verdict and need only consider the evidence favorable to the plaintiff whether it is contradicted or not. Id. at 743.

Reviewing the record in light of this standard, we conclude that the award of damages should not be disturbed. At trial, Hiffernan presented evidence of business loss due to the publicity which followed his false arrest. The record also reflects that plaintiff suffered emotional distress which caused him to seek psychiatric care. Such evidence is sufficient to support an award of $55,000 in damages. It cannot be said that the verdict is a result of passion or prejudice. Accordingly, it is affirmed.

II

The City also complains that Hiffernan had an opportunity to explain to the arresting officer that the matter had been cleared up and failed to do so. Hiffernan's silence is characterized as a failure to mitigate damages and the city claims that the jury should have been instructed on this point of law. We disagree.

Plaintiff's alleged silence may have had some bearing on the issue of liability. However, it has no relevance to the damages which resulted from the false arrest and provides no basis for the city's requested instruction. We therefore conclude that the city's instruction on mitigation of damages was properly rejected by the trial court.

AFFIRMED.