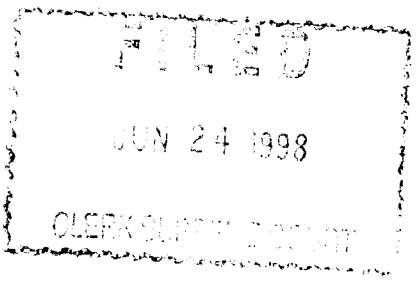
IN THE COURT OF APPEALS OF IOWA

No. 8-141 / 97-0386
Filed June 24, 1998



SAMUEL PATTERSON,
Appellee,

vs.

JACK CLARK,
Appellant.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Defendant appeals the judgment entered against him in this defamation action.

AFFIRMED.

Clark G. McDermott, Thomas D. Hanson and Dale A. Knoshaug of Hanson, Bjork & Russell, L.L.P., Des Moines, for appellant.

Jennifer S. Gerrish and Dwight James of the James Law Firm, P.C., Des Moines, for appellee.

Heard by Huitink, P.J., Mahan, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HUITINK, P.J.

Jack Clark appeals the judgment entered against him in this defamation action. We affirm.

I. Background Facts and Proceedings.

Jack Clark is president and forty percent stockholder of Boji Bay, a water amusement park in Okoboji.[1] During the summer of 1994, Sam Patterson worked as supervisor of lifeguards and concession stands at Boji Bay. Patterson's duties included contributing to the preparation of an operations manual outlining Boji Bay policies and rules and providing employee job descriptions. Patterson earned $600 per week. He was nineteen years old at the time.

Over the summer, Patterson and Clark were involved in a number of disagreements, including whether Patterson had given away unauthorized park passes, how to repair inner tubes, and the type of hats lifeguards should wear. The most serious confrontation involved a security check Patterson performed without Clark's knowledge. Craig Smith, another Boji Bay owner, directed Patterson to secretly remove an undisclosed amount of money from a cash register. The purpose of this test was to see if Larry Cox, the manager, could ascertain the amount of money missing. Clark terminated Patterson when he learned of the security check.[2]

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[1] Craig Smith owns thirty-five percent of Boji Bay's remaining stock, and Tim Cochran owns twenty-five percent.

[2] There was a week and one-half left in the season.

Upon leaving Boji Bay, Patterson gathered his belongings, a computer disk on his desk, and a copy of the operations manual marked "Sam's copy." The following day Clark could not find his copy of the manual marked "Jack's copy." He also noticed the manual had been deleted from the computer system. Clark blamed Patterson for taking his copy of the manual and deleting it from the computer. He informed the Milford police of the missing items and Patterson's alleged involvement. Patterson was subsequently charged with computer theft; however, the criminal case against him was dismissed.

Patterson sued Clark for allegedly making false and malicious statements about him to other Boji Bay employees, Patterson's parents and friends, and the Milford police. A jury awarded Patterson $30,000 in compensatory damages and $100,000 in punitive damages.

Clark appeals. He argues the district court erred in denying his motion for a directed verdict on the issue of punitive damages. He maintains the record does not support a finding he acted with malice. Clark also contends the district court erred in denying his motion for a new trial based on the issues of compensatory and punitive damages. He asserts the awards are not supported by the record.

II. Denial of Clark's Motion for a Directed Verdict.

Clark argues the district court erred in denying his motion for a directed verdict on the grounds the evidence regarding the egregiousness of his conduct was insufficient to generate a jury question on the issue of punitive damages.

We review the district court's ruling on motions to correct errors of law. Iowa R. App. P. 4. In rulings upon motions for directed verdicts, we review the evidence in the same light as the district court and determine whether a fact question was generated. *Frunzar v. Allied Property & Cas. Ins. Co.*, 548 N.W.2d 880, 884 (Iowa 1996). When reviewing the denial of a motion for a directed verdict, we view the evidence in the light most favorable to the nonmoving party. *Morgan v. American Family Mut. Ins. Co.*, 534 N.W.2d 92, 96 (Iowa 1995). "'[I]f there is substantial evidence to support the claim or defense, the motion for directed verdict . . . should be denied. Conversely, without such evidence, a directed verdict . . . is appropriate.'" *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 138 (Iowa 1996)(quoting *Valadez v. City of Des Moines*, 324 N.W.2d 475, 477-78 (Iowa 1982)).

Evidence supporting an award of punitive damages must be clear, convincing, and satisfactory. *See* Iowa Code § 668A.1(1)(a) (1997). An award for punitive damages is appropriate only when a party's conduct constitutes a willful and wanton disregard of the rights or safety of another. *Id.* The jury found Clark acted with actual malice. Actual malice in this context means the party made a statement about another with the knowledge it is false or with reckless disregard for the statement's truth or falsity. *Jones v. Palmer Communications, Inc.*, 440 N.W.2d 884, 894 (Iowa 1989).

There was substantial evidence at trial Clark told other people Patterson was a thief. Smith testified Clark told him Patterson had stolen tickets to the park. Stat

Cochran, a Boji Bay employee, testified Clark told him Patterson was a "thief" and had stolen tickets and computer information. Ron Patterson, Sam's father, testified Clark told him his son was a "thief" and had stolen information from Boji Bay. Milford Police Chief Alan Zimmerman testified Clark told him Patterson had taken Boji Bay documents and a computer disk. Clark also told Zimmerman he suspected Patterson of taking money and tickets from Boji Bay. However, in his deposition read into the record, Clark stated he did not believe Patterson was stealing passes.

In viewing the evidence in the light most favorable to the verdict, we find there was sufficient evidence to submit the issue of punitive damages to the jury. Based on the record, a reasonable juror could have found Clark knowingly made false statements about Patterson or acted with reckless disregard for the statements' truth or falsity. We affirm the district court on this issue.

III. Denial of Clark's Motion for a New Trial.

We review the district court's ruling to correct errors of law. Iowa R. App. P. 4. A party may be granted a new trial when a jury awards excessive or inadequate damages. Iowa R. Civ. P. 244(d). In rulings upon motions for new trials, we give the district court broad but not unlimited discretion in determining whether the verdict effectuated substantial justice between the parties. *See* Iowa R. App. P. 14(f)(3). "We will not find abuse of discretion unless it is shown that the trial court's discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable." *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990).

A. ***Punitive Damage Award.*** Clark contends the district court erred in denying his motion for a new trial. He argues the record contains insufficient evidence to support the jury's punitive damages award and the $100,000 award is excessive.

There is substantial evidence Clark maliciously told several people Patterson was a thief in an attempt to injure his reputation. The record shows Clark told several people Patterson stole park tickets although he did not believe that was true. Clark also intimated to the Milford police Patterson stole money from Boji Bay; however, Clark knew Smith authorized Patterson to take money from the register while performing a security check.

Based on our limited review of the record, we find sufficient evidence exists to support the jury's award. Punitive damages are awarded to punish the wrongdoer, not to compensate the victim. *Spaur v. Owens-Corning Fiberglass Corp.*, 510 N.W.2d 854, 865 (Iowa 1994). A reasonable juror could have found Clark acted with actual malice when he told others Patterson was a thief. We cannot say the district court exercised its broad discretion on grounds clearly unreasonable.

We also find the award is not excessive. The supreme court has stated:

> [Punitive damages] [a]wards will be tested with a view of the extent and nature of the outrageous conduct, the amount necessary for future deterrence, and with deference to the relationship between the punitive award and plaintiff's injury, as reflected in any award for compensatory damages. In addition to these traditional factors, we shall consider all circumstances surrounding the conduct and relationship between the parties. Any provocation of the conduct by plaintiff will be a factor.

Ezzone v. Riccardi, 525 N.W.2d 388, 399 (Iowa 1994)(citations omitted). The defendant's financial position is another factor the jury may consider in awarding punitive damages. *Id.* at 867.

Patterson testified he has had trouble sleeping and concentrating since Clark's accusations. He also expressed great embarrassment over being called a thief. Smith testified Patterson's decision-making ability has suffered because of the incident, and he often questions his own decisions. In addition, Clark's personal worth was shown to be in the area of thirteen million dollars. Based on these facts, it was not unreasonable for the jury to punish Clark for his malicious statements.

We find the district court did not abuse its discretion in denying Clark's motion for a new trial. The evidence supports the jury's award of punitive damages. We affirm on this issue.

B. Compensatory Damage Award. Clark maintains the district court erred in denying his motion for a new trial because the evidence does not support the jury's award of compensatory damages. He also asserts the award is excessive.

The supreme court has stated:

> Slander generally consists of the oral publication of defamatory matter. Certain statements can be characterized as slander per se. Words are libelous per se if they are of such a nature, whether true or not, that the court can presume as a matter of law that their publication will have a libelous effect. Thus, statements categorized as slander per se are actionable without proof of malice, falsity, or special harm.

Wilson v. IBP, Inc., 558 N.W.2d at 139 (citations omitted).

Slander per se is also actionable without proof of damages. *Rees v. O'Malley*, 461 N.W.2d 833, 839 (Iowa 1990). However, recovery is limited to damages which are the natural and probable consequence of the slander or its republication. *Lara v. Thomas*, 512 N.W.2d 777, 786 (Iowa 1994). Although the plaintiff is not burdened with proving damages, he must present evidence of his reputation before the statement and the extent of publication, so the jury can assess the plaintiff's injury. *Wilson v. IBP, Inc.*, 558 N.W.2d at 140.

We find there is substantial evidence supporting the jury's finding compensatory damages were warranted. Patterson presented evidence of his good reputation prior to Clark's accusations. Patterson, Patterson's father, Smith, and Cochran testified Clark told them Patterson had stolen several items from Boji Bay and was a thief. We also agree with the district court the jury's compensatory damages award is not excessive as a matter of law. Patterson presented evidence of loss of earnings, loss of reputation, mental pain and suffering, embarrassment, and loss of enjoyment of life. A reasonable juror could have found Patterson was entitled to $30,000 in compensatory damages. The district court did not abuse its discretion in denying Clark's motion for a new trial. We affirm on this issue.

We have considered Clark's remaining arguments and find them to be without merit. The decision of the district court is affirmed in its entirety.

AFFIRMED.