

IN THE COURT OF APPEALS OF IOWA

No. 0-743 / 00-0344
Filed March 14, 2001

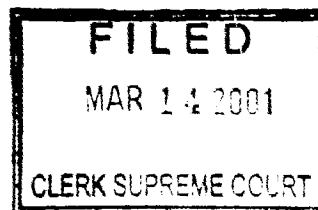
**JOHN S. JAEGER and KEVIN
KOETHE,**
Plaintiffs-Appellees,

vs.

MARTIN M. SCHUCHAT,
Defendant-Appellant,

and

**BRADLEY SCHUCHAT and FINANCIAL
MARKETING SERVICES, INC., an Iowa Corporation.**
Defendants.



Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg
(trial and post-trial motions), D. J. Stovall (temporary injunction), Judges.

Defendant Martin M. Schuchat among others was sued by plaintiffs John S. Jaeger and Kevin Koethe for breach of an option agreement contract and interference with business relationships. The jury returned verdicts finding defendant had breached the option agreement, had interfered with an independent contractor agreement of plaintiffs, and also had interfered with plaintiffs' prospective business relationships. In addition to actual damages the jury found Martin liable for \$150,000 in punitive damages. The actual damages having been paid, Martin challenges the punitive award contending the evidence does not support it. Defendant further contends the district court should have held as a matter of law on his counterclaim that plaintiffs breached certain agreements and the case should be remanded for the sole purpose of fixing and awarding him damages. **AFFIRMED IN PART AND REVERSED IN PART.**

Randy V. Hefner, Hefner, Bergkamp & Rhoads, P.C., Adel, and Kenneth L. Butters of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, and Thomas M. Werner, Des Moines, for appellant.

Robert G. Tully and Richard H. Doyle of Galligan, Tully, Doyle & Reid, P.C., Des Moines, and Luis Herrera of Herrera Law Office, P.C., Johnston, for appellees.

Heard by Sackett, C.J., and Zimmer and Miller, JJ.

SACKETT, C.J.

Defendant-Appellant Martin M. Schuchat among others¹ was sued by Plaintiffs-Appellees John S. Jaeger and Kevin Koethe for breach of an option agreement and interference with business relationships. The jury returned verdicts finding defendant had breached the option agreement, had interfered with an independent contractor agreement of plaintiffs and also had interfered with plaintiffs' prospective business relationships. In addition to actual damages the jury found Martin liable for \$150,000 in punitive damages. The actual damages having been paid, Martin challenges the punitive damage award contending the evidence does not support it. Defendant further contends the district court should have held as a matter of law on his counterclaim that plaintiffs breached certain agreements, and the case should be remanded for the sole purpose of fixing and awarding him damages. We reverse the award of punitive damages and affirm the district court's denial of recovery on defendant's counterclaim.

Defendant and his brother Bradley S. Schuchat each owned fifty percent of the stock in a general insurance agency, Financial Marketing Services, Inc. As a general agent, the corporation had contracts with various insurance companies and the ability to extend and grant contracts to other agents. Plaintiff Jaeger had worked as an independent contractor for the corporation for about fourteen years when he and plaintiff Koeth, who had no insurance experience, became partners with each other and signed an option agreement on December 3, 1997 to

¹ Defendants named in plaintiffs petition were Bradley M. Schuchat, Martin S. Schuchat and Financial Marketing Services, Inc. Judgments rendered against the other two defendants have been satisfied and they are not parties to this appeal.

purchase the stock of the corporation from Martin and Bradley Schuchat. The option price was \$360,000 for the purchase of the stock, which was to include the corporation assets of customer lists, renewals, agency contracts, and customer list software. No cash or fixed assets or equipment were included in the sale. The option provided that the corporation would notify in writing plaintiffs Jaeger and Koeth in the calendar year 1998 when the option may be exercised and plaintiffs would have ten days from the receipt of the notice to confirm their intent to purchase in writing. Closing was to be within thirty days of confirmation.

The option agreement further provided that until the option was exercised new commissions were to be split fifty/fifty between the corporation and plaintiffs and monthly gross commissions in excess of the new net commissions were to be paid ninety percent to plaintiffs and ten percent to the corporation. New net commissions payable to the corporation at the fifty percent rate were to be January 1998, \$10,000; February 1998, \$11,000; March 1998, \$12,000, and all remaining months of 1998, \$12,000. If the monthly new net commissions paid to the corporation at the fifty percent rate were not met by the plaintiffs, then the corporation could terminate the option on written notice to plaintiffs. A new option could be negotiated at that point if desired. Plaintiffs paid \$1800 for the option and it was to expire on December 31, 1998, or on the execution of the stock purchase agreement.

On January 1, 1998, both plaintiffs entered into Independent Contractor Agreements with the corporation. In June of 1998 Schuchats sought addendums to the option agreement, which plaintiffs refused to sign. In July of 1998 the

corporation changed the way leads were given plaintiffs. Rather than giving plaintiffs leads from all locations, plaintiffs were spoon-fed leads.

Bradley Schuchat in August of 1998 became concerned about the insurance practices of plaintiffs in that plaintiffs were not leaving replacement and disclosure notices with customers as required by Iowa law and the corporation's contracts with insurance companies. Bradley consulted with the Iowa Insurance Department. As a result of an investigation conducted by Bradley confirming that plaintiffs were not leaving the required forms with their customers, plaintiff Jaeger entered into a consent order with the Iowa Insurance Department in August of 1999 agreeing to pay a \$750 fine, administrative costs of \$500 and to be on unsupervised probation for one year. In the consent order Jaeger admitted he had violated the Iowa insurance laws. Plaintiff Koeth at the same time entered into a consent order that revoked permanently his license to act as an insurance producer in the State of Iowa.

On August 21, 1998, the locks were changed on the corporate office and plaintiffs' only access to the office was during its business hours from nine in the morning to two in the afternoon. Though Bradley Schuchat contended he had the locks changed because a key to the office was lost, plaintiffs contended they asked for new keys but were not given them. Commission checks due plaintiffs were withheld beginning on August 25, 1998. In September of 1998 plaintiffs were no longer given leads by the corporation. Bradley called customer Mildred McClavey and told her Koethe misled her with the rates he quoted. The rates quoted were allegedly correct. The corporation withheld a policy of another customer. On December 3, 1998, the corporation terminated plaintiffs'

independent insurance agent contracts with the corporation and cancelled plaintiffs' option to purchase the corporation.

Plaintiffs sued, contending breach of the contract and interference with a contract they had with Bryan Robinson. The suit drew a counterclaim for, among other things, breach of the option and of the independent contractor's agreement. The case was tried to a jury. The jury awarded plaintiffs compensatory damages of \$159,349 and punitive damages against both Bradley and Martin Schuchat. The award against Bradley was \$250,000 and against Martin was \$150,000. The compensatory damage award and the punitive damage award against Bradley have been satisfied.

Martin contends the punitive damage award is not supported by the evidence. Martin moved for a directed verdict, a judgment notwithstanding the verdict and for a new trial on the punitive damage award. The district court denied the motions, finding substantial evidence to support the award of punitive damages without setting forth that evidence which it determined supported the award. The plaintiffs concede that Martin preserved error on this issue.

Plaintiffs contend the punitive damages are justified because defendant (1) locked plaintiffs out of the corporate offices, (2) withheld leads, (3) withheld customer policies, (4) withheld payment of commissions, (5) interfered with their relationship with an independent contractor Bryan Robinson, and (6) made false statements to customers.

In reviewing the evidence to determine if defendant's motions for a directed verdict and a judgment notwithstanding the verdict on the issue of sufficiency of the evidence should have been sustained, we view the evidence in

the light most favorable to the parties resisting the motion. Iowa R. App. P. 14(f)(2); *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 156 (Iowa 1993).

The district court gave the following instruction on punitive damages:

Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence that defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In fixing the amount of punitive damages, you may consider all the evidence including:

1. The nature of defendant's conduct.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant in view of defendant's financial condition.
3. The plaintiff's actual damages.

Iowa Code section 668A.1 (1999) sets the standard for awarding punitive damages:

- a. Whether, by a preponderance of clear, convincing, and satisfactory evidence, the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another.

"Willful and wanton" in the context of this statute means that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and which is usually accompanied by a conscious indifference to the consequences. *Fell v. Kewanee Farm Equip. Co.*, 457 N.W.2d 911, 919 (Iowa

1990) (quoting W. Page Keeton et al., *Prosser & Keeton on Torts* § 34, at 213 (1984)).

Punitive damages serve "as a form of punishment and to deter others from conduct which is sufficiently egregious to call for the remedy." *Coster v. Crookham*, 468 N.W.2d 802, 810 (Iowa 1991). Mere negligent conduct is not sufficient to support a claim for punitive damages. *Beeman v. Manville Corp. Asbestos Disease Compensation Fund*, 496 N.W.2d 247, 256 (Iowa 1993). Such damages are appropriate only when actual or legal malice is shown. *Schultz v. Security Nat'l Bank*, 583 N.W.2d 886, 888 (Iowa 1998).

Actual malice is characterized by such factors as personal spite, hatred, or ill will. *Id.* Legal malice is shown by wrongful conduct committed or continued with a willful or reckless disregard for another's rights. *McClure v. Walgreen Co.*, 613 N.W.2d 225, 231 (Iowa 2000).

Only evidence that is relevant to the underlying wrong for which liability is imposed can support an award of punitive damages. *Burke v. Deere & Co.*, 6 F.3d 497, 511 (8th Cir. 1993). In calculating punitive damages it is appropriate to consider "whether there is a reasonable relationship between the punitive damages award and the harm likely to result from defendant's conduct as well as the harm that actually has occurred." *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 460, 113 S. Ct. 2711, 2721, 125 L. Ed. 2d 366, 381 (1993). See also *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 581, 116 S. Ct. 1589, 1602, 134 L. Ed. 2d 809, 830 (1996).

Punitive damages must be reasonably related to actual damages. *Ryan v. Arneson*, 422 N.W.2d 491, 496 (Iowa 1988). The primary focus in review of a

punitive damage award is the relationship between the punitive damage award and the wrongful conduct of the offending party. *Id.* In determining whether punitive damages are so excessive that they demonstrate passion and prejudice on the part of the jury, we consider whether the punitive damage award is reasonably related to the malicious conduct of the defendant, which resulted in actual injury or damage to the plaintiff. *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 147 (Iowa 1996); *Ryan*, 422 N.W.2d at 496.

Certain evidence plaintiffs rely on to support their award of punitive damages concerns the conduct of Bradley Schuchat. Plaintiffs argue this evidence supports the punitive award against Martin because Bradley and Martin owned the corporation in equal shares and both were involved in its management. Defendant argues he should not be charged with conduct of Bradley he did not control. We agree.

Punitive damages may be awarded upon a showing of legal malice. *Midwest Management Corp. v. Stephens*, 353 N.W.2d 76, 82 (Iowa 1984). Such malice may be proven by showing that a defendant acted with personal spite, hatred, or ill will. *Lala v. Peoples Bank and Trust Co. of Cedar Rapids*, 420 N.W.2d 804, 807 (Iowa 1988). To sustain this punitive damage award plaintiffs are required to prove Martin engaged in a persistent course of conduct demonstrating he acted with no care and without regard to the consequences of his action. *Hamilton v. Mercantile Bank*, ___ N.W.2d ___ (Iowa 2001). The requisite malice also may be implied from circumstances when a defendant has acted illegally or engaged in wrongful conduct with a reckless disregard for the

rights of the plaintiff. *Id.*; *Barnhouse v. Hawkeye State Bank*, 406 N.W.2d 181, 184 (Iowa 1987).

An award of punitive damages is intended both to punish and deter such conduct. *Briner v. Hyslop*, 337 N.W.2d 858, 865 (Iowa 1983). In *Briner* the court reasoned the purpose for awarding punitive damages would not be well served by a rule that granted punitive damages against an employer whose own conduct did not constitute legal malice. *Id.* at 865-67. Similarly, the reasons for awarding punitive damages would not be well served by awarding them against Martin if his own conduct did not constitute legal malice. See *id.* Bradley's conduct does not support an award of punitive damages against Martin absent evidence Martin ratified and or approved of the conduct. See *id.*

With these principles in mind we look to the evidence submitted. The changing of the locks was done by Bradley. Information about the keys as well as the request to the plaintiffs to leave the office on September 8, 1998 came from Bradley. There is no evidence that Martin authorized the lock change. Nor is there any evidence that Martin affirmed it or authorized it out of ill will or spite towards the plaintiffs. There was no evidence plaintiffs were guaranteeing unlimited access to the office, and the office was open during specified daytime hours.

There was no evidence defendant was bound to supply plaintiffs with leads. The option agreement did not promise that plaintiffs would receive leads from the defendants, though there was evidence they had received leads in the past.

The allegations as to interference with Bryan Robinson's agreement with the plaintiffs were (1) that the lockout and withheld commissions prevented plaintiffs from paying Robinson and (2) that Bradley told Robinson if he wanted to get paid he would have to sign a letter saying he needed to be paid through the corporation. While plaintiffs contend their commissions were reduced as a result of this change, there are no allegations made or evidence shown to prove that Martin was a party to this transaction, or that he directed or affirmed it.

Plaintiffs also contend that they were thwarted in their attempt to write business through American Equity because they understood Bradley threatened to sue American Equity. Again, there is no evidence that Martin was a party to this transaction or that he directed or affirmed it.

This was the story of a proposed business relationship gone sour. The option to purchase was terminated and the jury awarded plaintiffs actual damages for the termination. At the time it was terminated plaintiff Kevin Koethe was in a position where he could no longer sell insurance in Iowa, having lost his license to do so permanently. There is no evidence that the actions of Bradley that plaintiffs claim support the punitive damage award were ratified or affirmed or directed by Martin. Even if these actions do support an award of punitive damages against Bradley, a matter we are not required to decide, they are not sufficient to show by clear and convincing evidence the factors necessary to support a punitive damages award against Martin. The district court should have granted Martin's motion for judgment notwithstanding the verdict and set aside the award of punitive damages.

Martin also contends we should hold as a matter of law that plaintiffs breached the independent contractor and option agreements, and we should remand the matter to the district court for a trial to determine the damages to which he is entitled. Martin contends the plaintiffs violated these agreements by violating Iowa law and not leaving replacement notices with corporation customers. He advances plaintiffs were found to have violated Iowa law by the Iowa Insurance Department, and they entered into consent order concerning this conduct. Martin argues that, in light of this evidence, the jury failed to do substantial justice when it found plaintiffs did not violate the option and independent contract agreements. Martin did not personally seek damages from the plaintiff rather the corporation did. The corporation is not a party to this appeal. Martin has no standing to challenge this issue on appeal and we do not address it.

AFFIRMED IN PART AND REVERSED IN PART.