IN THE COURT OF APPEALS OF IOWA

No. 7-059 / 95-2097

ORBRY WILLIAMS,

Plaintiff-Appellee,

vs.

MID-CENTRAL PLASTICS, INC.,

Defendant-Appellant.

FILED
MAR 28 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Defendant appeals the judgment entered against it in plaintiff's action for wrongful termination. **REVERSED; PUNITIVE DAMAGE AWARD VACATED.**

Jan M. Mohrfeld and William B. Serangeli of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellant.

Dennis M. Lawyer of Lawyer, Lawyer & Associates, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Cady and Vogel, JJ.

SACKETT, P.J.

Defendant-appellant Mid-Central Plastics, Inc. appeals, challenging a $60,000 punitive damage award to plaintiff-appellee Orbry Williams, a former at-will employee. Plaintiff sued defendant claiming he was terminated because he had filed and received worker's compensation benefits. Following a jury trial, the jury found plaintiff proved the filing for or receiving worker's compensation was the determining factor in his discharge from employment. Plaintiff was awarded $2500 for lost earnings and $1000 for emotional distress in addition to the punitive damages. On appeal, only the punitive damage award is challenged. We reverse and vacate the award of punitive damages.

Plaintiff began working for defendant when an employee at a temporary service. He later was employed by defendant and worked for it through 1993. During that period, plaintiff held jobs as a press operator, a mold setter, a technician, and a process coordinator.

Plaintiff had work-related injuries in 1987, 1988, and 1989 for which he received worker's compensation. He returned to work after these injuries. When he returned to work in October 1990 following his 1989 injury, he began working as a technician on a shift he had not worked before.

There was evidence of a June 1991 meeting of David Raper, a process coordinator; Kemp Johnson, a supervisor of operators in the factory; and Brian Duncan, production coordinator. At that meeting, Duncan instructed Raper to do

what was necessary to get rid of plaintiff because he was a liability to the company and his worker's compensation was too expensive. Raper refused, but Johnson told Duncan he would take care of it. At the end of the meeting, Duncan told the men the meeting was never to have taken place.

Following that time, there was substantial documentation in plaintiff's file of plaintiff's poor work performance, though plaintiff continued in defendant's employ.

Plaintiff was injured again in October 1992. At the time, he still worked as a technician. He received worker's compensation benefits and was released to return to work in June 1993 with a medical release dated May 12, 1993, from his surgeon, Dr. Hayne. The release authorized plaintiff to return to work June 7, 1993, *without restrictions.*

Defendant required an evaluation of plaintiff by defendant's own doctor. There is in evidence a progress note from Dr. Kevin Smith finding plaintiff completed work hardening, had good solid results on functional capacity testing, and had a physical demand classification of medium-to-heavy work defined as occasional lifting of up to seventy-five pounds, and plaintiff had been offered work. The note also indicated plaintiff was concerned about the work he would take upon return and had scheduled an appointment with Dr. Hayne.

On June 21, 1993, Dr. Hayne filed a second report releasing plaintiff for work on June 24, subject to the restrictions there be no lifting over thirty-five pounds and no bending or reaching. With that report plaintiff, who had been offered a job as a

press operator, was given a separation notice dated June 23, 1993, because the restrictions prevented him from accepting. Plaintiff's medical restrictions prevent plaintiff from working as a press operator. Under defendant's guidelines, the medical restrictions also preclude him from working as a technician.

Defendant contends the punitive damage award should be vacated because (1) the trial court erred in submitting the issue of punitive damages to the jury, and (2) the trial court erred in not properly considering after the trial the punitive damage award.

For punitive damages to be awarded, the tort must have been characterized by malice or willful disregard of plaintiff's rights. *See Sandhorst v. Mauk's Transfer, Inc.*, 252 N.W.2d 393, 399 (Iowa 1977). Punitive damages are not compensatory but are for punishment and deterrence. *Coster v. Crookham*, 468 N.W.2d 802, 809 (Iowa 1991); *Ryan v. Arneson*, 422 N.W.2d 491, 496 (Iowa 1988). An award of punitive damages is appropriate only when a party acts with actual or legal malice. *See Barnhouse v. Hawkeye State Bank*, 406 N.W.2d 181, 184 (Iowa 1987). Actual malice is shown by such things as personal spite, hatred, or ill will. *Parks v. City of Marshalltown*, 440 N.W.2d 377, 379 (Iowa 1989). Legal malice is established by showing wrongful conduct committed with a willful or reckless disregard for the rights of another. *Id.*

For a jury to award punitive damages, "the plaintiff must show by a preponderance of clear, convincing, and satisfactory evidence the conduct . . . from

which the claim arose constituted willful and wanton disregard for the rights or safety of another." Iowa Code § 668A.1(1)(a) (1995). Conduct is willful and wanton when 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. *See Fell v. Kewanee Farm Equip. Co.*, 457 N.W.2d 911, 919 (Iowa 1990). An award of punitive damages is not appropriate where room exists for reasonable disagreement over the relative risks and utilities of the conduct at issue. *See Kehm v. Procter & Gamble Mfg. Co.*, 724 F.2d 613, 623 (8th Cir. 1983) (applying Iowa law). An award of punitive damages will be particularly inappropriate where the risk alleged to have been disregarded could reasonably have been perceived by defendant as slight. *See Kimmel v. Iowa Realty Co.*, 339 N.W.2d 374, 383-84 (Iowa 1983). The willful and wanton disregard necessary to support an award of punitive damages must be established by clear, convincing, and satisfactory evidence, a statutorily imposed burden of proof greater than a mere preponderance of evidence. Iowa Code § 668A.1(1)(a); *see Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa App. 1983).

Punitive damage claims cannot arise from conduct which is merely objectionable. *See Coster*, 468 N.W.2d at 811. Punitive damages are not awarded as a matter of right but only as a form of punishment and to deter others from conduct which is sufficiently egregious to call for the remedy. *See id.* at 810; *Northrup v. Miles Homes Inc. of Iowa*, 204 N.W.2d 850, 861 (Iowa 1973); *Larson v. Great West Casualty Co.*, 482 N.W.2d 170, 174-75 (Iowa App. 1992).

An appellate court reviews a punitive damage award in a three-step process. *See Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 18-24, 111 S. Ct. 1032, 1043-46, 113 L. Ed. 2d 1, 20-24 (1991); *Spaur v. Owens-Corning Fiberglas Corp.*, 510 N.W.2d 854, 866 (Iowa 1994). We first must assure the jury was provided with adequate guidelines and the jury instructions adequately explained the nature, purpose, and basis for the award. *Id.* Next, we need review to determine that the trial court properly scrutinized the award. Lastly, we review to assure the award is reasonable and rational. *See Haslip*, 499 U.S. at 19-22, 111 S. Ct. at 1044-45, 113 L. Ed. 2d at 20-22.

In order for a post trial review process to provide a sufficiently meaningful constraint on the jury, the court in *Haslip* cited its approval of factors appropriate for the trial court's consideration. These include: (1) defendant's degree of culpability; (2) duration of conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter defendant or others from like conduct; (6) the profitability of the wrongful conduct and the desirability of removing that profit; (7) the financial position of defendant; (8) all the costs of litigation; (9) the imposition of criminal sanctions; and (10) the existence of other civil awards against defendant for the same conduct. *Id.* at 21-22, 111 S. Ct. at 1045, 113 L. Ed. 2d at 22; *see also Morgan v. Woessner*, 997 F.2d 1244, 1257 (9th Cir. 1993).

Consistent with due process, the trial court considering relevant facts must then consider in post verdict review whether a punitive damage award should be upheld. Our 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. *Ryan*, 422 N.W.2d at 496; *see also Beeman v. Manville Corp. Asbestos Disease Compensation Fund*, 496 N.W.2d 247, 255 (Iowa 1993).

In the third stage of scrutiny as an appellate court, we should determine if the defendant was afforded the two prior stages of scrutiny and then undertake a substantive review of the amount of the award. *Haslip*, 499 U.S. at 20-21, 111 S. Ct. at 1045, 113 L. Ed. 2d at 21-22. Punitive damages should be "reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition." *Id.* at 20-21, 111 S. Ct. at 1045, 113 L. Ed. 2d at 22.

Defendant does not challenge the way the jury was instructed. Defendant rather contends there was not substantial evidence to submit the issue. We are inclined to agree. Other than the statements plaintiff alleges Duncan made in 1991, there is little to support the finding plaintiff was discharged because of worker's compensation claims. Plaintiff continued to work for defendant after Duncan's statements were made. Plaintiff was offered a job when he returned after his October 1992 injury, and it was only when he presented a second medical report restricting him from the job that he was laid off.

The evidence is not clear and convincing that Duncan's statements were related to plaintiff's layoff. There is no evidence the direction came from anyone other than Duncan. Though plaintiff's work record was documented and he found the documentation in one of Johnson's files, no action was ever taken on the alleged work problems, nor did plaintiff ever complain about it to upper management. Plaintiff was paid worker's compensation benefits for his fourth injury and a position was made available for him on his return. The offer was only withdrawn after plaintiff obtained a second report from his doctor that precluded him from accepting the employment. The company doctor had followed Dr. Hayne's first report and found he was available without the restrictions in Dr. Hayne's second report.

This conduct does not, however, rise to the level to show by clear and convincing evidence a wanton disregard for plaintiff's rights. *See C. Mac Chambers Co. v. Iowa Tae Kwon Do Academy, Inc.*, 412 N.W.2d 593, 599 (Iowa 1987). We do not find the evidence shows the culpability necessary to support a punitive damage award. *Larson*, 482 N.W.2d at 175; *see also Kimmel*, 339 N.W.2d at 383-84.

We reverse and vacate the award of punitive damages.

REVERSED; PUNITIVE DAMAGE AWARD VACATED.