

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
MESWAET ABEL, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ZERIHUN WOLDE)	Case No. 2019-CP-26-07075
)	
)	
Plaintiff,)	<u>ORDER ON POST-TRIAL REVIEW OF PUNITIVE DAMAGES AWARD</u>
)	
vs.)	RECEIVED
)	Apr 10 2023
LACK'S BEACH SERVICE, INC.,)	SC Court of Appeals
)	
Defendant.)	

This case came before the court on July 25, 2022. At the end of a week-long trial, the jury returned a verdict in favor of the Plaintiff in the amount of \$13,730,000.00 actual damages and \$7,000,000 in punitive damages.

The practice of awarding punitive damages originated in principles of common law “to deter the wrongdoer and others from committing like offenses in the future.” Laird v. Nationwide Ins. Co., 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964) (quoting Bowers v. Charleston & W. C. Ry. Co., 210 S.C. 367, 42 S.E.2d 705 (1947)). “Punitive damages may properly be imposed to further a state's legitimate interests in punishing unlawful conduct and deterring its repetition.” B.M.W. of North America, Inc. v. Gore, 517 U.S. 559, 568 (1996). The state's interests in awarding punitive damages must remain consistent with the principle of penal theory that “the punishment should fit the crime.” Atkinson v. Orkin Exterminating Co., Inc., 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004) (quoting Mathias v. Accor Economy Lodging, Inc. and Motel 6 Operating L.P., 347 F.3d 672, 676 (7th Cir.2003)). Nevertheless, “while States possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards.” State Farm v. Campbell, 538 U.S.

408, 416 (2003). “To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property.” Id. at 417.

This Court must consider the three guideposts that indicate whether the due process requirement of fair notice has been met. In determining the constitutionality of a punitive damages award, Gore directed that courts consider: (1) the degree of reprehensibility of the defendant’s conduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Gore, 517 U.S. at 575.

1. Reprehensibility

First, any court reviewing a punitive damages award should consider the degree of reprehensibility of the defendant's conduct. Reprehensibility is “perhaps the most important indicium of the reasonableness of a punitive damages award.” Gore, 517 U.S. at 575. “This principle reflects the accepted view that some wrongs are more blameworthy than others.” Id. In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. Campbell, 538 U.S. at 419.

In this case, the harm to Mr. Wolde was physical and resulted in the loss of his life at forty-one years of age. The conduct of Lack’s in employing a decades-long system of “dual role” lifeguards even in the face of repeated warnings from USLA that the practice was

dangerous and violated USLA safety standards supports the punitive damages award. Furthermore, there was testimony that Lack's knowingly misrepresented to USLA that its lifeguards were no longer actively engaged in concessions in order to maintain its USLA certification for several years and then continued the practice even after losing its USLA certification. In addition, Lack's incentivized the lifeguards to focus more on the concessions role than the lifeguarding role by paying the guards a commission based on their beach rentals, all while knowing that the inattention would jeopardize public safety.

2. Ratio

Second, the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award. The ratio of actual or potential harm to the punitive damages award is "perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award." Gore, 517 U.S. at 580. Although the Supreme Court has "been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award," and has consistently declined to adopt a bright line ratio or simple mathematical test, the Court has remarked that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." Campbell, 538 U.S. at 424-25. Nevertheless, the Supreme Court has made clear that "there are no rigid benchmarks that a punitive damages award may not surpass," so long as "the measurement of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and the general damages recovered." Id. at 425-26. When determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, the court may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result

from such conduct; and the defendant's ability to pay. Nevertheless, a court may not rely upon these considerations to justify an otherwise excessive punitive damages award. In this case, the punitive damages awarded by the jury were less than the actual damages awarded and were less than a 1:1 ratio. While the actual damages awarded in this case were significant, they were not unreasonable given the fact that Mr. Wolde was only forty-one years of age at the time of his death, he left behind a widow and four young children, and he was the primary caregiver for the children. The jury was apprised of the defendant's net worth and the limits of its liability coverage and presumably took those factors into consideration in awarding punitive damages. Given the evidence that Lack's business practices posed a significant threat to public safety to an area that is a major attraction for tourists, the award is both reasonably related to the grave harm likely to result from the conduct and large enough to deter the defendant from continuing to engage in like conduct.

3. Comparative Penalty Awards

Third, the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant. In this case, there are no authorized civil penalties applicable or comparable to this case. As Plaintiff points out, there was testimony from Chris Brewster that Lack's was the only beach safety provider in the country to employ dual role lifeguards in such a setting.

This court has reviewed the Gore guideposts, along with the Gamble factors, and finds that the punitive damages award in this case is reasonable, is not grossly excessive or unduly

liberal, was not actuated by passion, caprice, or prejudice, or some other influence outside of the evidence, and does not violate due process.

IT IS SO ORDERED.

Kristi F. Curtis, Circuit Court Judge

Sumter, SC
November 2, 2022



Horry Common Pleas

Case Caption: Meswaet Abel , plaintiff, et al VS Lacks Beach Service , defendant, et al
Case Number: 2019CP2607075
Type: Order/Damages

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762