

Ulsh v. Paxson

FLORINE H. ULSH, Plaintiff, v. JAMES H. PAXSON AND SONS, INC.,
and RANDY D. CAMPBELL, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2001-226

Demurrer to Claim for Punitive Damages Arising from Vehicle Accident

- 1) A claim for punitive damages does not constitute an independent cause of action; rather, such damages are merely incidental to and derivative of a cause of action.
- 2) Under a fair reading of the entire complaint as drafted, a demand for punitive damages which follows Counts alleging negligence and vicarious liability is not a demand for punitive damages as a distinct cause of action in itself, but is instead a claim for a type of damages in addition to compensatory damages.
- 3) Punitive damages may be awarded for conduct which is outrageous because of the defendant's evil motive or for his reckless indifference to the rights of others and conscious action in deliberate disregard of those rights.
- 4) The concept of punitive damages includes a type of reckless conduct, reckless disregard of safety, which occurs where the actor knows or has reason to know of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act in conscious disregard of, or indifference to, that risk.
- 5) In order to determine whether a particular kind of conduct is outrageous, it is necessary to look to the act itself, together with all the circumstances, including the motive of the actor and the relationship between the parties, in deciding whether punitive damages are appropriate.
- 6) Paragraphs in a complaint filed by a plaintiff, who alleges she was injured when the defendant's tractor-trailer went through an intersection against a stop sign, averring that the defendant took no action to assist her afterward and that he lied to police about what caused the collision at a time when he knew the plaintiff was in no position to tell her version of events, should not be stricken as scandalous or impertinent simply because they pertain to matters which allegedly occurred after the accident.
- 7) The defendant's conduct at the scene immediately after the accident is relevant to proving punitive damages because it is part of the total circumstances of the accident; it would be inappropriate at the pre-discovery stage of the litigation to preclude the plaintiff from trying to prove the defendant's state of mind before and during the accident by reference to his behavior immediately afterward.

Appearances:

Neil J. Rovner, Esq.

Wayne A. Ely, Esq.

OPINION

Herman, J., January 9, 2002

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Introduction

Before the court are the defendants' preliminary objections to the complaint filed by the plaintiff seeking damages for injuries allegedly arising from an automobile accident. The accident occurred on March 22, 2001 at an intersection in Fulton County. Counsel for the parties agreed to submit the objections to the court on written argument alone. This matter is ready for decision.

Background

The complaint alleges the plaintiff sustained personal injuries after her car was struck by a tractor-trailer negligently driven by the defendant Randy Campbell, an employee of defendant James H. Paxson & Sons (Paxson). Specifically the plaintiff alleges Campbell failed to obey a stop sign and proceeded through the intersection. The plaintiff seeks compensatory and punitive damages from both defendants.

Discussion

The first preliminary objection is a demurrer or alternatively a motion to strike paragraphs 28 and 29(a)-(d). At the outset we note that a demurrer should be sustained only where it is clear from the factual averments and all reasonable inferences therefrom that no recovery is possible under any theory of law. *Rutherford v. Presbyterian-University Hospital*, 612 A.2d 500 (Pa.Super. 1992). The paragraphs at issue aver as follows:

Claim II -- Punitive Damages

Paragraph 28. Paragraphs 1 through 27 are incorporated herein as if set forth at length.

Paragraph 29. Punitive damages are claimed for the following reasons:

- a. The behavior of Randy D. Campbell, which is attributable to James H. Paxson & Sons, Inc., was outrageous behavior in allowing an 18-wheel semi-trailer to speed through an intersection which was controlled by clearly visible stop signs without care for other vehicles on the roadway. His actions were in deliberate disregard and indifference to the risk he posed to the Plaintiff and others;
- b. Failure to take any action to aid [the plaintiff] until demanded to do so by a passerby;
- c. Lying to a police officer, attempting to put the blame of the accident upon [the plaintiff], who at the time was in no condition to be interviewed; and
- d. Randy D. Campbell failed to properly adjust his brakes, deliberately proceeded through the intersection at an excessive and unreasonable and imprudent rate of speed in a deliberate attempt to cross the highway with complete disregard and indifference to the risk he posed to Plaintiff and other vehicles on the road.

The defendants argue Claim II must be stricken because Pennsylvania does not recognize a separate cause of action for punitive damages. *Hilbert v. Roth*, 149 A.2d 648 (Pa. 1959); *Daley v. John Wanamaker, Inc.*, 464 A.2d 355 (Pa.Super. 1983). The plaintiff agrees that a claim for punitive damages does not constitute an independent cause of action but that such damages are merely incidental to and derivative of a cause of action. *Feingold v. Southeastern Pennsylvania Transportation Authority*, 517 A.2d 1270 (Pa. 1986). However, the plaintiff goes on to argue, and we agree, that a reading of Claim II in the context of the entire complaint reveals the defendants have misinterpreted the purpose of Claim II.

Count I alleges Campbell was negligent and grossly negligent. Count II alleges Paxson is liable for Campbell's conduct in its capacity as his employer. These two Counts set forth a cause of action in negligence. The complaint then makes a claim for compensatory damages (Claim I), followed by Claim II set forth above. These are both Claims for damages which flow from the negligence and gross negligence asserted in Counts I and II. A fair reading of Claim II in its proper context is that the plaintiff is not alleging punitive damages as a distinct cause of action but rather as a type of damage claim in addition to that for compensatory damages. This is an acceptable pleading and therefore this preliminary objection will be overruled.

The second objection is a motion to strike scandalous or impertinent matter. This objection pertains to paragraphs 29(b) and 29(c) set out above and also to paragraphs 15 and 17(e) which aver as follows:

15. Following the collision, Defendant Randy D. Campbell falsely told the police officer that he had stopped at the intersection of State Route 8022 and State Route 522 and looked both ways before entering the intersection.

17(e). Defendant Randy D. Campbell was negligent and grossly negligent in lying to a police

officer about his failure to stop, thereby creating a false police report...

The defendants contend these paragraphs should be stricken because they involve matters which (allegedly) took place only after the accident and therefore do not advance the plaintiff's contention that Campbell was negligent in proceeding into the intersection. We disagree.

Section 908(2) of the Restatement (second) of Torts states that "punitive damages may be awarded for conduct that is outrageous because of the defendant's evil motive or for his reckless indifference to the right of others and conscious action in deliberate disregard of them..." *Feld v. Merriam*, 485 A.2d 742 (Pa. 1984); *Rizzo v. Haines*, 555 A.2d 58 (Pa. 1989). Section 500 recognizes a type of reckless conduct, "reckless disregard of safety," which occurs "where the actor knows or has reason to know...of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act...in conscious disregard of, or in difference to, that risk." It is necessary to look to the act itself together with all the circumstances, including the motive of the actor and the relationship between the parties in deciding whether punitive damages are appropriate. The actor's state of mind is therefore critical to this analysis. *Feld*, supra; *Rizzo*, supra; *Focht v. Rabada*, 268 A.2d 157 (Pa.Super.1970). Where the pleadings allege facts consistent with evil motive or reckless disregard, it is for the jury to decide whether the actor's conduct was indeed sufficiently outrageous to justify punitive damages. *McDaniel v. Merck, Sharp & Dohme*, 533 A.2d 436 (Pa.Super. 1987).

Bearing these principles in mind, we find the averments in paragraphs 15, 17(e), 29(b) and 29(c) sufficient to allow the plaintiff to proceed with her claim for punitive damages. Defendant Campbell's conduct at the scene immediately after the accident is relevant because it is part of the total circumstances of the accident. It would be inappropriate at this pre-discovery stage of the litigation to preclude the plaintiff from trying to prove Campbell's state of mind before and during the accident by reference to his behavior immediately afterward. This preliminary objection will also be overruled.

ORDER OF COURT

Now this 9th day of January, 2002, the court hereby overrules the preliminary objections filed by the defendants to the plaintiff's complaint.