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Kellogg v. Peterson, et al

CLARENCE E. KELLOGG and DORIS KELLOGG, Husband and Wife, Plaintiffs, v. CARL W. PETERSON and CURTIS J. YOHN, individually, and CURTIS J. YOHN, trading and doing business as C. YOHN EXCAVATING AND HAULING, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2001-1576P, Jury Trial Demanded

Punitive Damages; Remedies; Partial Summary Judgment

1. Regarding the imposition Pennsylvania courts have adopted the rule in Section 908 of the Restatement (Second) of Torts.
2. For punitive damages to be awarded, the conduct must be outrageous, either because the defendant's acts are done with an evil motive or because they are done with reckless indifference to the rights of others...and not awarded for mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence.
3. At a broad level, the most important point to underscore is that acts of negligence taken alone are not a sufficient basis for awarding punitive damages.
4. The act, or the failure to act, must be intentional, reckless or malicious.
5. Punitive damages may not be awarded for ordinary negligence or gross negligence.
6. Allegations of ordinary negligence, or even gross negligence, cannot be transformed into allegations supporting punitive damages by making conclusory assertions as to reckless indifference.
7. The purpose of punitive damages is to deter the offending party from repeat evil-motive or reckless-indifferent behavior that compromises the rights of others.

Appearances:

W. Patrick Delaney, Esq., *Counsel for Plaintiff*

Rolf Kroll, Esq., *Counsel for Defendant Peterson*

Robert Reed, Esq., *Counsel for Defendant Yohn*

OPINION

Van Horn, J., March 6, 2003

Background

On August 21, 2000, Clarence E. Kellogg and his wife, Doris Kellogg, were driving westward on State Route 641, known as Forge Hill Road, in Lurgan Township, Franklin County, Pennsylvania. At the time, Mr. Kellogg was operating a 1998 Dodge Caravan, and his wife was a front seat passenger. At approximately 9:00 a.m., Defendant Carl W. Peterson, employee of Defendant employer C. Yohn Excavating and Hauling,^[1] was operating a dump truck, owned by his employer, on the same road as the

Plaintiffs were traveling. The vehicle operated by Carl W. Peterson allegedly crossed the center line of State Route 641 and violently collided with the Plaintiffs' vehicle. From this accident arose the current negligence action, instituted on July 20, 2001, when Clarence E. Kellogg and Doris Kellogg filed a Complaint against Carl W. Peterson, Curtis J. Yohn, individually, and trading and doing business as C. Yohn Excavating and Hauling. Subsequently, attorneys for Peterson and Yohn filed Preliminary Objections to Plaintiffs' Complaint on August 14, 2001 and August 27, 2001, respectively. Both Defendants also filed briefs in support of their Preliminary Objections to Plaintiffs' Complaint, and Plaintiffs filed a Brief in Opposition to Defendants' Preliminary Objections ("Plaintiffs' Brief") on September 28, 2001. Oral argument was scheduled and heard on October 4, 2001. The matter of Defendants' Preliminary Objections was disposed of by Order of Court dated October 29, 2001. Plaintiffs filed an Amended Complaint, and Defendants filed Answers With New Matter to Plaintiffs' Amended Complaint. Plaintiffs then filed a Reply to each Defendant's New Matter. Subsequently, Defendants Peterson and Yohn filed Motions for Partial Summary Judgment (Punitive Damages) on October 2, 2002 and October 16, 2002, respectively, and all parties filed briefs in support of their respective positions. On January 27, 2003, Defendants filed a Motion for Mediation. By Order of Court dated January 28, 2003, the Court granted Defendants' request for mediation in the parties' settlement negotiations, and a Mediation Conference was scheduled and held on February 6, 2003, conducted by the Honorable Carol L. Van Horn at the Franklin County Courthouse, Chambersburg, Pennsylvania. At the close of the unsuccessful settlement negotiation Mediation Conference, oral argument was heard on the matter of Partial Summary Judgment (Punitive Damages). The matter is now ripe for disposition on the matter of Defendants' Motion for Partial Summary Judgment (Punitive Damages).

Discussion

Before the Court are Defendants' Motions for Partial Summary Judgment relating specifically to the claim of punitive damages. Regarding the imposition of punitive damages, Pennsylvania courts have adopted the rule in Section 908 of the Restatement (Second) of Torts, which provides as follows:

§ 908. Punitive Damages

- (1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.
- (2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

Feld v. Merriam, 506 Pa. 383, 485 A.2d 742 (1984); Restatement (Second) of Torts, § 908 (1977).

Comment (b) to § 908 states that for punitive damages to be awarded, "the conduct must be outrageous, either because the defendant's acts are done with an evil motive or because they are done with reckless indifference to the rights of others...and not awarded for mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence...." Restatement (Second) of Torts, § 908 (1977), Comment (b). In grappling with the language in the Restatement of the operative phrases, "outrageous conduct," "evil motive," and "reckless indifference to the rights of others," the Court in Medvecz v. Choi, 569 F.2d 1221, 1226 (3rd Cir. 1977) (applying Pennsylvania law) stated that "at a broad level, the most important point to underscore is that acts of negligence taken alone are not a sufficient basis for awarding punitive damages." So then, the "question is whether there has been sufficiently aggravated conduct contrary to the plaintiffs' interest, involving bad motive or reckless indifference, to justify the special sanction of punitive damages." Id. at 1227. In making such determination, "the state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious." Feld v. Merriam, 506 Pa. 383, 396, 485 A.2d 742, 748 (1984).

It is the role of this trial Court to determine whether Plaintiffs have pled sufficient facts from which a jury could reasonably conclude that the Defendants acted outrageously because "punitive damages may not be awarded for ordinary negligence or gross negligence." Slappo v. J's Development Associates, Inc., 791 A.2d 409, 417 (Pa. Super. 2002).

"It is well settled that punitive damages will lie only in cases of outrageous behavior, where defendant's egregious conduct shows either an evil motive or reckless indifference to the rights of others. Punitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct."

Id. quoting Bannar v. Miller, 701 A.2d 232, 242 (Pa. Super. 1997) (citations omitted), appeal denied, 555 Pa. 706, 723 A.2d 1024 (1998).

In the case at bar, Plaintiff's Amended Complaint alleges that Defendant Peterson's negligent, reckless, willful, and wanton misconduct consisted of the following:

- (a) crossing the highway centerline;
- (b) traveling at speeds in excess of the posted speed limit;
- (c) traveling too fast for road conditions;
- (d) failing to keep a lookout for other vehicles, roadway hazards, and/or traffic signs;
- (e) failing to take evasive action to avoid the collision;
- (f) failing to keep proper control of his vehicle;
- (g) failing to operate in a reduced gear;
- (h) operating his vehicle with inadequate brake adjustment;
- (i) operating his vehicle without properly inspecting the vehicle for proper brake adjustment;
- (j) operating his vehicle with inadequate tire tread;
- (k) failing to engage the third axle of his vehicle.

Plaintiffs' Amended Complaint, ¶ 12.

Plaintiffs' Amended Complaint listed Defendant Yohn's negligent, reckless, willful, and wanton misconduct as the following:

- (a) failing to properly examine or inspect the 1985 Ford Louisville dump truck described above;
- (b) failing to properly maintain the braking system of the 1985 Ford Louisville dump truck described above;
- (c) failing to properly maintain the tires and tread of the 1985 Ford Louisville dump truck described above;
- (d) failing to instruct the agents and employees of C. Yohn Excavating and Hauling to carry out proper inspection and maintenance of the 1985 Ford Louisville dump truck described above;
- (e) failing to warn the employees and agents of C. Yohn Excavating and Hauling concerning the condition of the 1985 Ford Louisville dump truck described above;
- (f) failing to properly supervise employees and agents of C. Yohn Excavating and Hauling concerning the obligations to examine, inspect, and maintain the 1985 Ford Louisville dump truck described above;
- (g) placing in service the 1985 Ford Louisville dump truck described above when the same was not roadworthy;
- (h) entrusting the operation of the 1985 Ford Louisville dump truck described above to a driver who is not qualified to examine, inspect, or operate said vehicle in its condition then and there existing;
- (i) failing to properly instruct the driver to engage the third axle when the dump truck was loaded.

Plaintiffs' Amended Complaint, ¶ 13.

Given the above, Defendants conceded at oral argument on the Motion for Summary Judgment that Plaintiffs may have made allegations sufficient to support a negligence claim. However, Defendants argue that Plaintiffs' Amended Complaint fails to claim particular acts by Defendants sufficient to support a finding that the Defendants acted outrageously, with an evil motive, or reckless indifference to the Plaintiffs, as a claim for punitive damages must. This Court agrees.

Plaintiffs' Amended Complaint fails to show knowledge on the part of the Defendants that would support an allegation of an evil motive or reckless indifference to the rights of the Plaintiffs. Allegations of ordinary

negligence, or even gross negligence, cannot be transformed into allegations supporting punitive damages by making conclusory assertions as to reckless indifference. Slappo v. J's Development Associates, Inc., 791 A.2d 409, 417 (Pa. Super. 2002). Therefore, this Court finds that Plaintiffs failed to present facts supporting allegations of intentional disregard of a known risk, reckless indifference, or outrageous conduct of the Defendants sufficient to sustain an award of punitive damages.

The purpose of punitive damages is to deter the offending party from repeat evil-motive or reckless-indifferent behavior than compromises the rights of others. Here, it is inconceivable that (a) Defendant Peterson would have been so recklessly indifferent to his own survival as to knowingly disregard safety procedures that he routinely performed for years before driving the dump truck down a road that he knew was steep and winding; or (b) that Defendant Peterson would have to be deterred from such behavior in the future since he can no longer drive as a result of losing his leg in the accident with Plaintiff.

Conclusion

Plaintiffs have failed to show that Defendants' conduct that led to the accident and this cause of action rose to the level of outrageous conduct necessary for the imposition of punitive damages. For the foregoing reasons, Defendants' Motion for Partial Summary Judgment (Punitive Damages) is granted.

ORDER OF COURT

AND NOW, this sixth day of March, 2003, upon review of Plaintiffs' Amended Complaint filed on behalf of each of the above-captioned Plaintiffs, review of Defendants' Motion for Partial Summary Judgment relating to punitive damages, review of the Briefs filed by all parties in connection with said Motion for Partial Summary Judgment, and after Oral Argument, IT IS HEREBY ORDERED that Defendants' Motion for Partial Summary Judgment relating to punitive damages is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs' expert report obtained from James D. Madden, P.E., dated December 9, 2002, and Plaintiffs' expert report obtained from Steven W. Rickard dated December 13, 2002, may be used at trial. In the event Defendants have difficulty in meeting the timeline for their own experts to evaluate Plaintiffs' experts' reports, Defendants may file a Motion for a Continuance.

IT IS FURTHER ORDERED that a Pre-Trial Conference shall be held on Monday, April 21, 2003 at 1:30 p.m. The parties are directed to comply with the Franklin County Rules of Court relative to the filing of Pre-Trial Statements.

^[1] C. Yohn Excavating and Hauling is a proprietorship owned and operated by Curtis J. Yohn, who was joined individually in this action.