

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

MARGARET CASAREZ,	:	APPEAL NO. C-070891
	:	TRIAL NO. A-0604060
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
LARRY MEEHAN,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellee Margaret Casarez and defendant-appellant Larry Meehan began a personal relationship that led to a business relationship. Casarez told Meehan about her idea to open a bed-and-breakfast (“B&B”), and about a property she was looking into for the B&B at 2233 Park Avenue in Cincinnati. Meehan and Casarez agreed to enter a partnership. Meehan would provide the funds to purchase the Park Avenue property. When the B&B became profitable, Casarez would pay Meehan 50% of her portion of the profits until she had paid Meehan 50% of the property’s purchase price.

Meehan purchased the property in his own name. The work to renovate the property into a B&B began in August 2004. Casarez moved into the property and put in “sweat equity” by doing physical labor such as cutting tile and tearing out walls and

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

flooring. She met with subcontractors and spent her own money. Casarez gave up her job as an instructor at ITT Tech to devote more time to the B&B project.

In November 2004, Casarez, Meehan, and Meehan's daughter attended an auction. Meehan purchased various items, including a Victorian mailbox, two armoires, a sideboard, mahogany doors, and a stained-glass window. Casarez testified that Meehan had bought the mailbox, the armoires, and the sideboard as gifts for her. The other items were to be used in the B&B.

The personal relationship between Casarez and Meehan began to sour. In April 2005, Meehan slipped an envelope under Casarez's door. The envelope contained an eviction notice and a letter from Meehan. Attached to Meehan's letter was a letter purporting to be from Brandon Philpot, who was interested in buying the property and turning it into condominiums. It is undisputed that the Philpot letter was a forgery.

Casarez left the property, taking with her the Victorian mailbox, the armoires, and the sideboard. Casarez testified that she had taken the items because they were gifts to her from Meehan. Six months later, Meehan called police and reported that Casarez had stolen the items. Meehan knew that Casarez was terrified of police. Casarez had confided to Meehan that she was terrified of interacting with police because of the way she had been forced to pick a rapist out of a police lineup when she was 19 years old. Casarez was forced to return the items to Meehan. The police officer who was present at the exchange wrote out a receipt that stated that Casarez was returning the items under protest and that ownership would be resolved in civil litigation.

After being evicted from 2233 Park Avenue, Casarez bought the property at 2226 Park Avenue and continued the B&B project. Casarez eventually opened the 2226 property as a B&B, but it closed within six months.

Casarez filed suit against Meehan for breach of contract and conversion. The jury found in favor of Casarez and awarded her compensatory damages of \$212,029 and punitive damages of \$125,000. Casarez was also awarded attorney fees and prejudgment interest. Meehan filed alternative motions for judgment notwithstanding the verdict, a new trial, or remittitur, which the trial court denied. Meehan has appealed.

Meehan's assignment of error alleges that the trial court erred in denying his alternative motions for judgment notwithstanding the verdict, a new trial, or remittitur.

Meehan argues that the jury's award of \$125,000 in punitive damages on a conversion claim involving property valued at \$6750 was influenced by passion or prejudice, or was excessive as a matter of law and violated Meehan's due-process rights.

"The purpose of punitive damages is not to compensate a plaintiff, but to punish and deter certain conduct."<sup>2</sup> Punitive damages are an issue within the province of the jury.<sup>3</sup> The trial court is in the best position to determine whether the award of punitive damages is so excessive that it must have been the result of passion and prejudice.<sup>4</sup> To support a finding of passion and prejudice, it must be demonstrated that the jury's assessment of damages was so overwhelmingly disproportionate as to shock reason and sensibilities.<sup>5</sup> The size of the award alone does not prove of passion and prejudice.<sup>6</sup> Similarly, a large disparity between the compensatory-damage award and the punitive-damage award, standing alone, is not cause to reverse a jury's award of punitive

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<sup>2</sup> See *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 1998-Ohio-294, 700 N.E.2d 859, quoting *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 1994-Ohio-324, 635 N.E.2d 331.

<sup>3</sup> See *Strasel v. Seven Hills OB-GYN Assocs., Inc.*, 170 Ohio App.3d 98, 2007-Ohio-171, 866 N.E.2d 48.

<sup>4</sup> See *Villella v. Waiken Motors, Inc.* (1989), 45 Ohio St.3d 36, 543 N.E.2d 464.

<sup>5</sup> See *Strasel v. Seven Hills OB-GYN Assocs., Inc.*, *supra*; *Pena v. Northeast Ohio Emergency Affiliates* (1995), 108 Ohio App.3d 96, 670 N.E.2d 268.

<sup>6</sup> See *Miller v. Lindsay-Green, Inc.*, 10th Dist. No. 04AP-848, 2005-Ohio-6366.

damages.<sup>7</sup> The burden was on Meehan to demonstrate that passion and prejudice played a role in the jury's determination of punitive damages.<sup>8</sup>

The evidence showed that Meehan had used the police to accomplish his conversion of items that he knew belonged to Casarez. Meehan knew how terrified Casarez was of having contact with the police because of her past experience. Meehan knew how distressing it would be for Casarez to have to deal with the police.

There was substantial evidence to support the jury's award in light of Meehan's behavior, which exhibited complete disregard for Casarez's ownership rights and her emotional health. The jury decided to punish Meehan for using the police to accomplish his conversion of the items when he knew that Casarez would certainly suffer emotional harm from having to deal with the police. The jury's assessment of damages was not so overwhelmingly disproportionate as to shock reason and sensibilities. There is nothing in the record to indicate that the jury was influenced by passion and prejudice.

Meehan next argues that the punitive-damage award was excessive as a matter of law and violated his due-process rights. In reviewing an award of punitive damages for excessiveness, a court must independently analyze the three "guideposts" set forth by the United States Supreme Court in *BMW of North America, Inc. v. Gore*.<sup>9</sup> The guideposts are (1) the degree of reprehensibility of the defendant's conduct, (2) the ratio of the punitive damages to the actual or potential harm inflicted by the defendant, and (3) sanctions for comparable conduct.<sup>10</sup>

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<sup>7</sup> See *Villella v. Waikem Motors, Inc.*, *supra*.

<sup>8</sup> See *Strasel v. Seven Hills OB-GYN Assocs., Inc.*, *supra*; *Knor v. Parking Co. of Am.* (1991), 73 Ohio App.3d 177, 596 N.E.2d 1059.

<sup>9</sup> (1996), 517 U.S. 559, 116 S.Ct. 1589.

<sup>10</sup> See *Barnes v. Univ. Hosps. of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344, 893 N.E.2d 142.

The first guidepost, the degree of reprehensibility of the defendant's conduct, is "the most important indicium of the reasonableness of a punitive-damages award."<sup>11</sup> In reviewing the reprehensibility of the defendant's conduct, the court must consider whether (1) the harm caused was physical rather than economic; (2) the conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct was financially vulnerable; (4) the conduct was an isolated incident or involved repeated actions; and (5) the harm resulted from intentional malice, trickery, deceit, or mere accident.<sup>12</sup>

In this case, Meehan deliberately used the police to accomplish the conversion because he knew that it would cause emotional distress to Casarez. Casarez's distress manifested itself in physical symptoms. Meehan's conduct displayed complete indifference to the effect the contact with police would have on Casarez's health. The reprehensibility of Meehan's conduct weighs in favor of sustaining the punitive-damage award.

The second guidepost is the ratio of the punitive-damage award to the actual or potential harm suffered by the plaintiff. The Ohio Supreme Court and the United States Supreme Court have consistently rejected the application of a "bright-line mathematical formula for assessing the reasonableness of punitive-damage awards."<sup>13</sup> Both courts have recognized that low compensatory-damage awards may properly support a higher ratio than high compensatory-damage awards, especially if a "particularly egregious act" has resulted in a small compensatory-damage award.<sup>14</sup> The Ohio Supreme Court

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<sup>11</sup> See *id.*, quoting *BMW of North America, Inc. v. Gore*, *supra*.

<sup>12</sup> See *Barnes v. Univ. Hosps. of Cleveland*, *supra*, citing *State Farm Mutual Automobile Insurance Co. v. Campbell* (2003), 538 U.S. 408, 123 S.Ct. 1513.

<sup>13</sup> See *Barnes v. Univ. Hosps. of Cleveland*, *supra* at ¶34.

<sup>14</sup> See *id.*

noted in *Barnes v. Univ. Hosps. of Cleveland*<sup>15</sup> that it had “allowed a 6250-to-one ratio to stand,” but had “invalidated a 20-to-one ratio.” The award in any case “must be based upon the facts and circumstances of the defendant’s conduct and the harm to the plaintiff.”<sup>16</sup>

In this case, the ratio of the punitive-damage award to the compensatory-damage award was approximately 19-to-one. In light of Meehan’s conduct, we hold that the measure of punishment was reasonable and proportionate to the amount of harm caused Casarez and the compensatory damages awarded.

The third guidepost involves comparing the punitive damages awarded to the civil or criminal penalties that could be imposed for comparable misconduct.<sup>17</sup> The existence of a criminal penalty indicates the seriousness with which the state views the wrongful action.<sup>18</sup> In Ohio, theft of property with a value of more than \$5000 but less than \$100,000 is a felony of the fourth degree and is punishable with a \$5000 fine and six to 18 months in prison.<sup>19</sup> In this case, the \$125,000 punitive-damage award was reasonable in view of the sanctions available for comparable misconduct.<sup>20</sup>

We hold that the punitive-damage award was not excessive as a matter of law and did not violate Meehan’s due-process rights.

Meehan also argues that the jury’s verdict in favor of Meehan on her breach-of-contract claim and the damages awarded on that claim were against the manifest

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<sup>15</sup> See *id.*

<sup>16</sup> See *State Farm Mutual Automobile Insurance Co. v. Campbell*, *supra*.

<sup>17</sup> See *Barnes v. Univ. Hosps. of Cleveland*, *supra*, at ¶36.

<sup>18</sup> See *State Farm Mutual Automobile Insurance Co. v. Campbell*, *supra*.

<sup>19</sup> See R.C. 2913.02 and 2929.14.

<sup>20</sup> See *Allen v. Niehaus*, 1st Dist. Nos. C-000213 and C-000235, 2001-Ohio-4021.

weight of the evidence. A judgment supported by some competent, credible evidence will not be reversed as being against the manifest weight of the evidence.<sup>21</sup>

The record contains evidence that Casarez and Meehan entered into a contract to develop a B&B, that Meehan memorialized the basic terms of that agreement in writing, that Meehan breached the contract, and that Casarez suffered damages. The evidence showed that Casarez put “sweat equity” into the business, doing physical labor and meeting with subcontractors. She also put some of her own money into the project. Casarez eventually gave up her teaching position to concentrate her energy on making the B&B a reality. We hold that the record contains competent, credible evidence to support the jury’s verdict. The assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., CUNNINGHAM and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on December 10, 2008

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>21</sup> See *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.