

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

TONY JOHNSON,	:	APPEAL NO. C-090571
Plaintiff-Appellee,	:	TRIAL NO. 08CV-36984
vs.	:	<i>JUDGMENT ENTRY.</i>
TRACEE LOVE,	:	
Defendant-Appellant.	:	

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

Defendant-appellant Tracee Love tricked plaintiff-appellee Tony Johnson into moving his coveted furnishings into a residence by falsely informing him that the temporary protection order (“TPO”) that she had obtained against him was no longer in effect. Love then purposely omitted Johnson’s name from the lease for the shared residence.

Later, Love had Johnson arrested for violating the TPO by living with her. When Johnson appeared before the trial court on the alleged violation, he sought, and the court permitted him, to retrieve his belongings with the assistance of his son and the local police department. But Love refused to allow Johnson’s son to enter the residence to retrieve Johnson’s belongings. Johnson then filed a complaint for conversion, seeking a return of

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

the property or compensation for the value of the items, as well as punitive damages and attorney fees for Love's willful and malicious conduct.

The case proceeded to a trial before the court. The court found that Love had fabricated testimony and caused her daughter to give "feckless and incredible testimony." The court entered judgment against Love for compensatory and punitive damages, including an award of attorney fees. Love now appeals from that judgment, raising three assignments of error.

In her first assignment of error, Love contends that the trial court abused its discretion by showing favoritism to Johnson's counsel, thereby denying her a fair trial. We conclude, based on our review of the record, that the trial court acted within its discretion with respect to the challenged matters and that Love was not denied an impartial and fair trial. To the extent that Love is arguing that the trial court should have been disqualified due to its bias against her, we note that we lack jurisdiction over such a claim,² which is governed by the procedure set forth in R.C. 2701.031. Accordingly, we overrule the first assignment of error.

We overrule Love's second assignment of error, which challenges the weight of the evidence to support the judgment and the damages for conversion, because some competent, credible evidence supports the trial court's finding that Johnson owned the items of personal property and that the property was valued at \$9,000.³

Love's third assignment of error challenges the award of punitive damages and attorney fees on the ground that the evidence failed to support a claim for punitive damages. The award of punitive damages in tort cases, including a case involving a claim

² *State v. Hunter*, 151 Ohio App.3d 276, 2002-Ohio-7326, 783 N.E.2d 991, at ¶21.

³ See *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280, 376 N.E.2d 578; *Bishop v. East Ohio Gas Co.* (1944), 143 Ohio St. 541, 545-546, 56 N.E.2d 164; see, also, *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 625, 605 N.E.2d 936.

for conversion, is governed by R.C. 2315.21. Punitive or exemplary damages are not recoverable against a defendant in a tort action unless the trier of fact has awarded specified compensatory damages and “the actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud * * *.”⁴

Actual malice has been described as either “(1) that state of mind under which a person’s conduct is characterized by hatred, ill will, or a spirit of revenge, or (2) a conscious disregard for the rights and safety of others that has a great probability of causing substantial harm.”⁵ The plaintiff has the burden of establishing malice by clear and convincing evidence.⁶

Although we disagree with the trial court’s finding that Love had “caused [Johnson] to lose his freedom,” we do agree with the trial court’s determination, based on the evidence, that Love had intentionally abused the “domestic violence process” to deprive Johnson of his property. Further, we concur that the egregiousness of her conduct, including her fabrication of testimony, was sufficient to show actual malice and support an award of punitive damages.⁷ Thus, we conclude that the trial court did not err by awarding punitive damages and attorney fees on this basis. Accordingly, we overrule the third assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

⁴ R.C. 2315.21(C).

⁵ *Cabe v. Lunich*, 70 Ohio St.3d 598, 601, 1994-Ohio-4, 640 N.E.2d 159, citing *Preston v. Murty* (1987), 32 Ohio St.3d 334, 512 N.E.2d 1174.

⁶ R.C. 2315.21(D)(4).

⁷ See *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 1994-Ohio-324, 635 N.E.2d 331 (an intentional alteration, falsification, or destruction of medical records by a doctor, to avoid liability for medical negligence is sufficient to show actual malice); *Meyers v. Hot Bagels Factory, Inc.* (1999), 131 Ohio App.3d 82, 97-98, 721 N.E.2d 1068 (a businessman’s verbal assault on a customer that resulted in emotional distress demonstrated actual malice).

OHIO FIRST DISTRICT COURT OF APPEALS

CUNNINGHAM, P.J., HILDEBRANDT and DINKELACKER, J.J.

To the Clerk:

Enter upon the Journal of the Court on February 18, 2011
per order of the Court _____.
Presiding Judge