

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

LEAH SELEVAN,	:	APPEAL NOS. C-110591
		C-110657
Plaintiff-Appellee/ Cross-Appellant,	:	TRIAL NO. A-0408342
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
LAWRENCE SELEVAN,	:	
	:	
Defendant-Appellant/ Cross-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

In 1984, Daniel Selevan established a trust for the benefit of his daughter, plaintiff-appellee/cross-appellant Leah Selevan. He named his brother, defendant-appellant/cross-appellee Lawrence Selevan, as trustee.

In 2004, Leah filed suit against Lawrence for breach of various fiduciary duties, including the duty to properly invest and account for the trust corpus, the duty to file all applicable tax returns for the trust, and the duty to keep the trust corpus separate from his own personal property. Following a bench trial in 2007, Leah was awarded \$15,000 plus “the amount of money equal to all taxes and penalties due to the I.R.S.” This court, however, reversed that judgment in *Selevan v. Selevan*, 183 Ohio App.3d 544, 2009-Ohio-3877, 917 N.E.2d 859 (1st Dist.).

Following a jury trial in 2010 on remand, Leah was awarded \$50,618.64 in compensatory damages and \$50,618.64 in punitive damages. The court also awarded her \$128,212.50 for attorney fees and \$5,738.25 in litigation expenses related to the second trial. Both Lawrence and Leah now appeal from that judgment.

Lawrence raises four assignments of error. In his first assignment of error, he argues that the trial erred in allowing the testimony of two expert witnesses. Lawrence contends that Jon Hoffheimer premised his testimony on an erroneous rule for prudent investors, and that Robert Sicking, Jr., employed a flawed methodology in calculating Leah's compensatory damages. The jury was instructed, however, on the correct rule for prudent investors set forth in former R.C. 1339.53, and there is no indication that the trial court abused its discretion in allowing the testimony of either witness. *See, e.g., State v. Ahmed*, 103 Ohio St.3d 27, 2004-Ohio-4190, 813 N.E.2d 637, ¶ 147; *Thoma Opticians v. Barnes*, 151 Ohio App.3d 566, 2003-Ohio-673, 784 N.E.2d 1207, ¶ 13 (1st Dist.), citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). His first assignment of error is overruled.

In his second and third assignments of error, Lawrence argues that the awards of compensatory and punitive damages, respectively, were contrary to the manifest weight of the evidence. The record, however, contains competent, credible evidence going to all the essential elements of Leah's claim for breach of fiduciary duty, and showing that Lawrence had acted with actual malice, including his threat of litigation that would have depleted the trust corpus mere months before he lost the entire corpus in extremely risky stock market transactions. *See C. E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 376 N.E.2d 578 (1978), syllabus; *Blair v. McDonagh*, 177 Ohio App.3d 262, 2008-Ohio-3698, 894 N.E.2d 377, ¶ 64 (1st Dist.),

quoting *Preston v. Murty*, 32 Ohio St.3d 334, 336, 512 N.E.2d 1174 (1987). His second and third assignments of error are overruled.

In his fourth assignment of error, Lawrence argues that the trial court erred in denying his motions for directed verdict and for judgment notwithstanding the verdict. Construing the evidence most strongly in favor of Leah, however, we cannot say that reasonable minds could have come to but one conclusion that was adverse to her. See *Wood v. U.S. Bank, N.A.*, 160 Ohio App.3d 831, 2005-Ohio-2341, 828 N.E.2d 1072, ¶ 40 (1st Dist.). His fourth assignment of error is overruled.

Leah raises two assignments of error. In her first, she argues that the trial court erred in failing to award prejudgment interest under R.C. 1343.03(A). This provision is inapplicable, however, because her claim for breach of fiduciary duty sounded in tort. See, e.g., *Desai v. Franklin*, 177 Ohio App.3d 679, 2008-Ohio-3957, 895 N.E.2d 875, ¶ 33 (9th Dist.). Her first assignment of error is overruled.

In her second assignment of error, Leah argues that the trial court erred in not awarding her litigation expenses related to the 2007 bench trial; however, she cites no authority for this proposition. Her second assignment of error is overruled.

The judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., DINKELACKER and FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on May 9, 2012

per order of the court \_\_\_\_\_  
Presiding Judge