

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

SCOTT BROWN,	:	APPEAL NO. C-130236
Plaintiff-Appellee,	:	TRIAL NO. A-1105788
vs.	:	<i>JUDGMENT ENTRY.</i>
JAMES WHITFIELD,	:	
Defendant-Appellant,	:	
and	:	
ROBERT WILDER,	:	
Defendant.	:	

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. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, defendant-appellant James Whitfield challenges the trial court's denial of his Civ.R. 12(B)(6) motion to dismiss plaintiff-appellee Scott Brown's claims for battery, punitive damages, and attorney fees. Whitfield also appeals the award of punitive damages to Brown. We affirm.

While Brown, a bartender, struggled to eject Whitfield's friend, defendant Robert Wilder, from a Cincinnati bar for harassing a female patron, Whitfield struck Brown in the head with a beer bottle. Brown sustained serious lacerations requiring

emergency-room and follow-up medical treatment. He was unable to work for some period and now has permanent scars on his face and head.

Whitfield was indicted on two counts of felonious assault for striking Brown. He ultimately pleaded guilty to and was convicted of aggravated assault, in violation of R.C. 2903.12. He was sentenced to 90 days' incarceration in the Hamilton County Justice Center and two years of community control.

Brown was originally awarded a default judgment on his claims against Whitfield. But in January 2013, that judgment was vacated. But Whitfield did not answer the complaint. Instead, he moved, under Civ.R. 12(B)(6), to dismiss the claims on grounds that Whitfield had been granted a discharge of his debts in a 2011 bankruptcy proceeding. Following a hearing, the trial court denied the motion, and the matter proceeded to trial. Each of the parties gave testimony. At the conclusion of trial, the court issued findings of fact and conclusions of law, including a finding that Whitfield had acted maliciously and intentionally in causing Brown's injuries. The court entered a judgment that found Whitfield and Wilder jointly and severably liable to Brown for \$5,000 in compensatory damages. It also awarded \$12,500 in punitive damages against Whitfield. Finally, the court journalized an agreed entry awarding Brown \$8,500 in attorney fees. Whitfield brought this appeal.

In his first assignment of error, Whitfield argues that the trial court erred in denying his motion to dismiss Brown's complaint for failure to state a claim upon which relief could be granted. *See* Civ.R. 12(B)(6). Whitfield moved to dismiss Brown's claims on grounds that he had been granted a discharge of his debts in bankruptcy.

First, we note the problematic nature of raising an affirmative defense, like discharge in bankruptcy, by means of a Civ.R. 12(B)(6) motion to dismiss for failure

to state a claim upon which relief could be granted. *See, e.g., State ex rel. Adkins v. Shanahan*, 132 Ohio St.3d 519, 2012-Ohio-3833, 974 N.E.2d 1196, ¶ 2; *Brown v. Village of Lincoln Hts.*, 195 Ohio App.3d 149, 2011-Ohio-3551, 958 N.E.2d 1280, ¶ 10 (1st Dist.).

Next, the bankruptcy court order allegedly granting the discharge is not available for our review. While the transcript of the motion hearing reflects that Whitfield had shown opposing counsel and the trial court a document referred to as “a discharge of debtor” order from the bankruptcy court of the Southern District of Ohio, that document was not admitted into evidence during the hearing, attached to Whitfield’s motion to dismiss, or otherwise made part of the record certified for our review. The obligation to provide a record that demonstrates the error complained of remains with the appellant at all times in an appeal. *See* App.R. 9 and 12(A)(1)(b). When portions of the record necessary to resolve an assigned error are omitted, this court has no choice but to presume the validity of the lower court’s proceedings. *See Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980); *see also State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300, ¶ 22. The first assignment of error is overruled.

In Whitfield’s second assignment of error, he asserts that the trial court erred in finding that he had acted with malice sufficient to justify an award of punitive damages. Punitive damages may be allowed in tort actions when the plaintiff demonstrates by clear and convincing evidence that the actions of the defendant “demonstrate malice.” R.C. 2315.21(C)(1) and (D)(4). For purposes of a punitive-damage award, malice is defined as behavior characterized by “hatred, ill will, or a spirit of revenge or a conscious disregard for the rights and safety of other persons

that has a great probability of causing substantial harm.” *Preston v. Murty*, 32 Ohio St.3d 334, 335, 512 N.E.2d 1174 (1987), syllabus.

After a thorough review of the record, we hold that there was clear and convincing evidence adduced at trial to support the conclusion that Whitfield acted intentionally and with malice when he struck Brown over the head with a beer bottle causing serious injuries to Brown’s head and face. The second assignment of error is overruled.

Whitfield’s final assignment of error, in which he contends that the trial court awarded punitive damages out of proportion to the amount of compensatory damages, is also without merit.

The purpose of punitive damages is not to compensate the plaintiff, but to punish and deter the conduct that the defendant has engaged in. *See Siuda v. Howard*, 1st Dist. Hamilton Nos. C-000656 and C-000687, 2002-Ohio-2292, ¶ 50, citing *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 651, 635 N.E.2d 331 (1994). There is no “bright-line mathematical formula for assessing the reasonableness of punitive damage awards.” *Barnes v. Univ. Hosps. of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344, 893 N.E.2d 142, ¶ 34. Rather, a court reviewing a punitive-damage award for excessiveness must independently analyze (1) the degree of reprehensibility of the party’s conduct, (2) the ratio of the punitive damages to the actual harm inflicted by the party, and (3) the civil or criminal penalties that could have been imposed for comparable conduct. *See id.* at paragraph two of the syllabus.

First, Whitfield’s conduct here was reprehensible. While Brown struggled to eject an unruly bar patron, Whitfield struck him with a beer bottle resulting in serious physical injuries, medical costs, and lost wages. Second, the \$12,500

punitive-damages award was only 2.5 times larger than the compensatory-damages award. *See, e.g., Burns v. Adams*, 4th Dist. Scioto No. 12CA3508, 2014-Ohio-1917, ¶ 98 (holding a 6.75-to-one ratio proportional where the defendant murdered the plaintiff's spouse); *see also T.P. v. Weiss*, 2013-Ohio-1402, 990 N.E.2d 1098 (5th Dist.) (affirming a 20-to-one ratio in a claim for assault and battery). Third, in his criminal case Whitfield had pleaded guilty to a fourth-degree felony punishable, in part, by a \$5,000 fine. And the punitive-damage award here is substantially less than the \$25,000 award upheld when a victim had prevailed on a civil, sexual-battery claim against her doctor. *See Hartman v. Perler-Tomboly*, 1st Dist. Hamilton Nos. C-120428, C-120597, and C-120604, 2013-Ohio-1752. Thus we hold that the punitive-damage award in this case was reasonable and proportionate. The third assignment of error is overruled.

Therefore, the trial court's judgment 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.

**CUNNINGHAM, P.J., HILDEBRANDT and DEWINE, JJ.**

To the clerk:

Enter upon the journal of the court on June 25, 2014

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