

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

ERIC KLOULUBAK,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2018 Palau 3
Civil Appeal No. 17-003
Appeal from Civil Case No. 15-044

Decided: May 18, 2018

Counsel for Appellant..... Johnson Toribiong
Counsel for Appellees..... Caroline Baird, AAG

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Trial Court, the Honorable Kathleen Salii, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] Eric Kloulubak appeals the trial court’s award of \$100 damages for the night he spent in the Koror jail. On appeal, he argues that since the trial court found the conditions of his incarceration constitutionally deficient, his damages should be compensated at a rate of \$10,000 an hour, or \$180,000. Because the trial court’s findings of fact contain no clear error, and on those facts we also find no abuse of discretion regarding the award amount, we affirm.

BACKGROUND FACTS

[¶ 2] The trial court’s findings included the following:

On New Year’s Eve of 2014, Plaintiff Eric Kloulubak was under the influence of alcohol and engaged in a heated argument ... outside the

Peleliu Club in Medalaih, Koror. Around 1:45 a.m. on January 1, 2015, Plaintiff was arrested by BPD officers .. and transported to the Koror Jail where he was detained for over eighteen hours before being released from custody.

Due to overcrowding at the jail, Plaintiff was handcuffed to a metal pipe or post outside the jail, in view of the parking lot, together with other detainees. This pipe is referred to in the Bureau of Public Safety's logbook entries as the "Pipe of Shame" ...

[Four duty officers testified that they] observed Plaintiff as being intoxicated, loud, and argumentative, demanding that he be moved from the Pipe to the jail facilities. He also banged on the pipe with his hands and head; as a result, the other detainees who were cuffed to the pipe asked that Plaintiff be moved away from them. As a result of his conduct and request, officers then decided to move Plaintiff from the Pipe to a solitary cell inside the jail, for his protection as well as for the protection of the other detainees. He was processed and moved to one of the solitary cells at 2:35 a.m. on January 1, 2015, and was released at 11:10 p.m. the same day, just short of 24 hours since he was placed in custody. He was locked in the solitary confinement cell for most of that time.

Kloulukab v. ROP, CA 15-044, Decision at 2-3 (May 16, 2017) (hereinafter, "Trial Court Opinion").

[¶ 3] We note that this is not the first time the Trial Division has heard evidence regarding solitary confinement conditions at the jail. *In re Ngirchomlei*, CA No. 99-49 (Tr. Div. 1999) (ordering release of six inmates from solitary confinement, back to general prison population). *In re Angelino*, 22 ROP 183 (Tr. Div. 2014) (ordering release of an inmate from solitary confinement).

[¶ 4] After the Appellant pleaded guilty to disorderly conduct regarding his involvement in the incident at the Peleliu Club, he sued the Republic of Palau and various officers and supervisory personnel of the Bureau of Public Safety and the Ministry of Justice for violation of his constitutional rights during his confinement.

[¶ 5] The parties filed cross motions for summary judgment. The trial court dismissed the individually-named defendants, with the remaining defendant being the National Government. That dismissal is not appealed. Also not appealed is the trial court's rejection of the government's argument that it is not liable on the evidence presented. Consequently, this appeal concerns the adequacy of the damages award.

STANDARDS ON APPEAL

[¶ 6] A finding of fact concerning damages will not be set aside unless it is clearly erroneous. *Palau Marine Indus. Corp. v. Seid*, 11 ROP 79 (2004). Findings of the lower court are set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Gabriel v. Children of Urrei Bells*, 19 ROP 117 (2012).

[¶ 7] We have not had occasion to consider the standard of review for the adequacy of an award for general damages, but since such damages include pain and suffering, enjoyment of life, and similar intangibles not susceptible to mathematical calculation, the trial court's assessment of general damages will be reviewed for abuse of discretion.

TRIAL COURT FINDINGS

[¶ 8] Based on the trial court's findings of fact, the court held that the solitary confinement conditions at the Koror jail subjected Plaintiff to a violation of his constitution right to be free of "cruel, inhumane or degrading treatment," Palau Const. Art. IV § 10. The court then turned to assessing damages.

Compensatory damages, otherwise known as "actual damages," "are recoverable at law from a wrongdoer as compensation for the actual loss or injuries sustained by reason of the tortfeasor's wrongdoing. The term, while excluding damages characterized as punitive or exemplary, contemplates the usual common-law measure of damages."

Nebre v. Uludong, 15 ROP 15, 31 (2008) (quoting 22 AM. JUR. 2d *Damages* § 25 (2003)).

[¶ 9] There is no reason to adopt a separate compensation approach for damages brought to vindicate constitutional rights. Like all civil cases, Plaintiffs may plead and prove their actual damages for a legal wrong done. Because United States federal courts have long experience in litigation involving civil rights, we turn to that experience to consider standards for assessing general damages.

[¶ 10] “A Plaintiff who alleges the violation of a constitutional right is not entitled to compensatory damages unless he can prove actual injury caused by the violation.” *King v. Zamiara*, 788 F.3d 207, 213 (6th Cir. 2015) (citing *Carey v. Phipus*, 435 U.S. 247, 264, 98 S.Ct. 1042 (1978)). Moreover, “damages based on the abstract ‘value’ or ‘importance’ of constitutional rights are not a permissible element of compensatory damages.” *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 310, 106 S.Ct. 2537 (1986). However, “[w]hen a plaintiff seeks compensation for an injury that is likely to have occurred but difficult to establish, some form of presumed damages may possibly be appropriate.” *Id.* at 310-11. In these cases of difficult-to-establish injuries, “presumed damages may roughly approximate the harm that the plaintiff suffered and thereby compensate for harms that may be impossible to measure.” *Id.* at 311.

[¶ 11] The trial court’s approach here matched those standards. The transcript shows, as the trial court stated, “Plaintiff did little more than simply assert how much he should be given.” The Plaintiff’s case included “no evidence to show that Plaintiff missed any work, suffered any lasting physical effects, or suffered any lasting emotional effects.” Trial Court Opinion at 9.

[¶ 12] For example, Appellant made the following responses on cross-examination:

[¶ 13] Q : And you still go about your business, right? You still spend time with your kids, I’m sure. Go to various functions, despite the fact that this incident occurred?

[¶ 14] A : Yes.

[¶ 15] Q : Is that right? You haven't been to a doctor as a result of this incident, is that correct?

[¶ 16] A : No.

[¶ 17] Q : So, you haven't been diagnosed with any type of, uh mental conditions as a result of this incident?

[¶ 18] A : No.

[¶ 19] Q : And in fact, this incident happened about a year and 8 months ago, is that right?

[¶ 20] A : Yes, that's right.

[¶ 21] Q : And really, your daily life hasn't changed a bit, has it?

[¶ 22] A : How do you mean?

[¶ 23] Q : Well, you are still going to work, right? You are still spending time with your family, kids, none of those have changed?

[¶ 24] A : No.

[¶ 25] Q : Correct?

[¶ 26] A : Correct.

[¶ 27] Tr. 105:6-28 & 106:1.

[¶ 28] The trial court also noted that the Plaintiff's experience of unconstitutional treatment was "partly offset, however, by the fact that Plaintiff was intoxicated and likely asleep for much of the time he was confined." Trial Court Opinion at 10. The court's use of the expression "likely asleep" should not be interpreted simply as speculation. The testimony of Hobson Sechalboi, BPS Officer at the DOC, included the following responses:

[¶ 29] Q : So, when you checked up Mr. Kloulubak on your hourly head count, what was he doing?

[¶ 30] A : He was sleeping.

[¶ 31] Q : And every time you went around did you see him sleeping?

[¶ 32] A : Yes.

[¶ 33] Tr. 118:19-24.

[¶ 34] Allen Bemar, Corrections Officer at the DOC, testified:

[¶ 35] Q : And when you checked on him what was he doing?

[¶ 36] A : He was sleeping.

[¶ 37] Q : Did you ever see him doing anything else besides sleeping.

[¶ 38] A : Nope.

[¶ 39] Tr. 134:19-23.

[¶ 40] Melvin Ubedei, Corrections Officer at the DOC testified:

[¶ 41] Q : I'm trying to figure out, did you ever check in on Mr. Kloulubak to see what he was doing in that cell?

[¶ 42] A : Yes. I went and I did check on him that first time and he appeared to have calmed down and was sitting down. And the second time I went in for routine check he was already, he was asleep.

[¶ 43] THE COURT : He's what?

[¶ 44] A : He was asleep.

...

[¶ 45] Q : So, once Mr. Kloulubak is in the cell. You said that you were still checking, you were doing your head count, right? To make sure that everybody was there and you saw Mr. Kloulubak in the cell a couple of times. Did you have any further reactions with him?

[¶ 46] A : No. But earlier, early that morning I went to check on him again and when I went he was still asleep. So, I just moved that latch or unlatched, the latch for the door and then I left.

[¶ 47] Tr. 148:15-24 & 149:2-12.

[¶ 48] Q : How do you know that Eric was sleeping?

[¶ 49] A : I flashed in the window.

[¶ 50] Q : Was he lying down on his back or side?

[¶ 51] A : He was face up on the cement. And snoring.

[¶ 52] Tr. 157:13-16.

CONCLUSION

[¶ 53] The conditions for solitary confinement do not appear to have changed at all since the *Ngirchomlei* case in 1999. As deplorable as the facts are in this case, and as troubling as it is that for almost twenty years members of this Court have noted with disapproval the unchanging solitary confinement conditions at the Koror jail, a Plaintiff who asks for compensatory damages must prove them. In light of the dearth of evidence concerning damages, the trial court's assessment of presumed damages was not an abuse of discretion.

[¶ 54] Affirmed.

SO ORDERED, this 18th day of May, 2018.