

Wolff v. Arugay, 7 ROP Intrm. 22 (1998)
MARTIN WOLFF and LORDESTA ELDEBEHEL,
Appellants,

v.

JANE ARUGAY and FLORDELIZA GARDUQUE,
Appellees.

CIVIL APPEAL NO 9-97
Civil Action No. 109-94

Supreme Court, Appellate Division
Republic of Palau

Argued: February 6, 1998
Decided: February 20, 1998

Counsel for Appellant Wolff: Marvin Hamilton, Esq.

Counsel for Appellees: Kevin N. Kirk, Esq.

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
and R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

I. BACKGROUND

Appellees Jane Arugay and Flordeliza Garduque filed this civil action seeking redress for injuries inflicted by appellants Martin Wolff and Lordesta Eldebechel. The Trial Division awarded compensatory damages and imposed punitive damages against appellant Wolff. Both Wolff and Eldebechel appealed, although only Wolff has pursued his appeal. ¹ Wolff argues that in determining the punitive damages award, the Trial Division failed to consider evidence of his poverty and improperly placed upon him the burden of proving his financial condition. We find no error in the Trial Division's decision.

II. ANALYSIS

1. Consideration of Wolff's assertions of indigency

Appellant Wolff's first contention is that the Trial Division failed to consider evidence of his indigency in assessing punitive damages. In support of this argument, Wolff points to the following passage from the Trial Division's opinion:

¹ Because Eldebechel has not taken any action since filing her notice of appeal, her appeal is dismissed.

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The Court recognizes that the wealth of the defendant can also be considered by the trier of fact in determining the correct amount of a punitive damages award. Restatement (Second) of Torts, 908(2)(1977). While defendant was heard to protest at trial that he was in dire financial straits, he wholly failed to produce any tangible evidence - - tax returns for example - - to substantiate this claim. It is clearly the burden of the defendant to prove his modest means if he wants this fact to be considered in mitigation of punitive damages. *Zarcone v. Perry*, 123 572 F.2d 52 (1978). Defendant has failed to carry this burden and accordingly, his financial situation was not considered in assessing the amount of punitive damages. In determining this punitive damages award, the Court considered the character of the defendant's acts and the degree of harm that these acts caused the plaintiffs. *Restatements (Second) of Torts*, § 908(2) (1977).

Trial Division Opinion at 15-16, n.7.

According to Wolff, this passage, specifically the part in which the court explained that Wolff's "financial situation was not considered in assessing the amount of punitive damages," shows that the court disregarded the evidence he submitted concerning his poverty.

We see it differently. Read as a whole, the passage indicates that the Trial Division considered the evidence Wolff presented about his modest means and found that evidence to be lacking in credibility. *See* 29A Am. Jur. 2d *Evidence* § 1447 (1994) (court may disregard implausible testimony). Wolff does not contend that such a finding was clearly erroneous. Even if he had, there is no reason to believe that the trial court's decision to give Wolff's self-serving testimony little weight was in error.

2. Burden to present evidence of financial condition

Appellant Wolff asserts that the Trial Division erred in placing the burden on him to present evidence of his financial condition. Wolff maintains that if a plaintiff asks the court to award punitive damages, he should bear the burden of presenting evidence of defendant's financial condition. In support of this argument, Wolff relies primarily on *Adams v. Murakami*, 813 P.2d 1348 (1991), a California Supreme Court decision implementing the rule that Wolff is asking us to adopt. However, we have reached the opposite conclusion recently and see no reason to change course. In *Robert v. Ikesakes*, 6 ROP Intrm. 234 (1997), we explained:

Appellants also argue that the punitive damages award is invalid because it was awarded without taking into account the wealth of Appellants. Consideration of various factors in setting the amount of punitive damages is sanctioned by the Restatement when it constitutes an attempt to further the punishment and/or deterrence goals of punitive damages. To that end:

[t]he wealth of the defendant is . . . relevant, since . . . the degree of punishment or deterrence resulting from a judgment is to some

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extent in proportion to the means of the guilty person.

Restatement (Second) of Torts 908, comment e (1977).

¶24 There is no indication in the record that any of the Appellants offered any evidence concerning their wealth. Had they done so, the evidence would be admissible because it is relevant. That does not mean that such evidence was required . . . Considering wealth is merely one way to ensure that a punitive damage award achieves its purpose. However, it is possible to set a punitive damage award which will achieve the punishment and/or deterrence goals without consideration of the wealth of the defendant.

Id. at 243.

Wolff argues that *Robert* can be distinguished because appellants in that case had not offered any evidence of their wealth while he presented such evidence in this case. The distinction does not change the holding adopted in *Robert*. While either party *may* introduce such evidence, we adhere to our conclusion that proof of a defendant's wealth is not a mandatory element of a plaintiff's claim for punitive damages.

Accordingly, the judgment of the Trial Division is AFFIRMED.