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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6160-04T3

ELISA MARIA GONZALEZ,

Plaintiff-Respondent,

v.

JOHN R. SHEARING,

Defendant-Appellant.

Submitted September 19, 2006 - Decided February 28, 2007

Before Judges Payne and Graves.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Docket No. L-1817-02.

John Shearing, appellant pro se.

Nemergut & Duff, attorneys for respondent
(Howard Duff, of counsel; Peter J. Morales,
on the brief).

PER CURIAM

The parties were married on January 31, 1996. They have one child. On May 4, 2001, plaintiff Elisa Gonzalez obtained a final domestic violence restraining order, which is still in effect. Following the domestic violence incident, plaintiff filed a complaint alleging that "[t]hroughout the marriage," defendant caused her to suffer physical and psychological

injuries by subjecting her to "violent and punishing forms of physical and psychological abuse," including a violent physical assault on April 20, 2001, when defendant "forcibly kidnapped" their son, who was four years old at the time, from plaintiff's custody.

Plaintiff's personal injury case was tried before Judge Pisansky and a jury in January 2005, prior to the parties' divorce on October 14, 2005. On January 28, 2005, the jury awarded plaintiff compensatory damages in the amount of $110,000, and the jury found that plaintiff was also entitled to punitive damages. After hearing additional testimony on March 14, 2005, the jury awarded punitive damages to plaintiff in the amount of $100,000. On May 27, 2005, Judge Pisansky denied defendant's motion for judgment notwithstanding the jury's verdict (R. 4:40-2), a new trial (R. 4:49-1), or remittitur.

On appeal, defendant presents the following arguments:

> POINT I
>
> THE PLAINTIFF HAS UNCLEAN HANDS.
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> POINT II
>
> THERE WAS NO EVIDENCE SUPPORTING THE DECISION THAT I WAS IN THE PROPER STATE OF MIND TO COMMIT AN ASSAULT OR THAT I INTENTIONALLY CAUSED EMOTIONAL HARM TO THE PLAINTIFF.

POINT III

FALSE SLANDER[O]US EVIDENCE WAS ADMITTED OVER MY OBJECTION, WHICH UNFAIRLY BIASED THE JURY.

POINT IV

THERE IS NO BASIS FOR THE JURY'S VERDICT ON COMPENSATORY DAMAGES[.]

POINT V

THERE IS NO BASIS FOR THE JURY'S AWARD OF PUNITIVE DAMAGES[.]

POINT VI

LEGAL ARGUMENTS IN SUPPORT OF A NEW TRIAL

Based on our review of the record and the applicable law, we are satisfied that the compensatory and punitive damages awarded to plaintiff do not constitute a manifest injustice that shocks the judicial conscience, and defendant's contentions to the contrary are without sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(B), (E). We therefore affirm with only the following comments.

Defendant did not dispute that he physically assaulted his wife on April 20, 2001, when he forcibly took their son from plaintiff's custody, and he admitted to the jury that his conduct was outrageous:

> Q. And you said that the acts that you did on April 20th, 2001, damaged your son and damaged Elisa. You said that.

A. That's correct.

Q. No question about that.

A. No question.

Q. Pretty crazy stuff, right?

A. Yes, sir.

Q. You admit that now that your fears of the kidnapping by Elisa were unfounded; isn't that true?

A. I do admit that.

Q. And you admit that you were just paranoid at that point.

A. Paranoid is a good word. I think that's a technical word, but I'm not going to argue with you.

Q. You would agree that Elisa went through something that day that no person should ever go through.

A. I agree.

Q. And that your conduct was outrageous.

A. It was.

. . . .

Q. Okay. So you're up against the door?

A. Yes, sir.

Q. And then you get into the car.

A. Yes.

Q. Anything -- and then there's a period of time when you're in the car and you're choking her, you're reaching back into the car seat, right?

A. Well, choking implies that I was trying to stop her air supply. I was trying to restrain her. I'm not justifying what I did, but it wasn't choking.

. . . .

Q. The bruises to her stomach that are shown on P-10, I assume . . . you caused those?

A. I don't remember causing those.

Q. P-9 shows a bruise on her arm. Did you cause that?

A. I suspect I caused that.

Q. P-11 are scratches on Elis[]a's neck. Did you cause those?

A. I suspect I did.

Q. P-12 shows scratches on this woman's hand. Did you cause those?

A. I suspect I did.

Q. You admit you assaulted her, correct?

A. I did assault her.

Q. And you injured her.

A. I did injure her.

. . . .

Q. Is it fair to say you were obsessed with Elisa?

A. Yes.

Q. And do you have an obsessive quality to you?

A. . . . I hope I've gotten over that now, but yes.

Q. You did back then.

A. Yes.

Q. In fact, you described it as a stalker disposition.

A. I did. At that time, yes, I did.

The jury also heard testimony from plaintiff's expert witnesses, Dr. John Calvin Chatlos, a board certified psychiatrist, and Susan Levine, a licensed clinical social worker. Dr. Chatlos diagnosed plaintiff as having a "major depressive disorder and post-traumatic stress disorder," and he confirmed that plaintiff's post-traumatic stress disorder is causally related to the incident on April 20, 2001. Dr. Chatlos testified "with pretty good medical certainty" that plaintiff was "never going to . . . return to totally normal." And Susan Levine testified as follows:

Q. Do you believe that Elisa has been working with you and working with Dr. Chatlos in order to get better?

A. Very much so.

Q. Any question in your mind about that?

A. No.

Q. Okay, and are there any indications, anything you have seen in your dealing with Elisa, during the past four years, that would indicate to you that she was treating these symptoms for purpose of this litigation or just because she just didn't want to get better.

A. Absolutely not.

Defendant failed to present any countervailing expert testimony to either refute or call into question the testimony provided by plaintiff's expert witnesses. Consequently, it was not unreasonable for the jury to accept the testimony of Dr. Chatlos and Susan Levine regarding the nature and the extent of the emotional distress plaintiff experienced as a result of defendant's behavior on April 20, 2001.

The verdict of a jury should not be set aside "unless, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses," it clearly appears that there was a miscarriage of justice under the law. Dolson v. Anastasia, 55 N.J. 2, 6-7 (1969) (quoting R. 4:49-1(a)); Baxter v. Fairmont Food Co., 74 N.J. 588, 599 (1977); Law v. Newark Bd. of Educ., 175 N.J. Super. 26, 37 (App. Div. 1980); see also R. 2:10-1. Our Supreme Court has characterized "the standard for authorizing a new trial as one that requires a determination that the jury's verdict is 'contrary to the weight of the

evidence or clearly the product of mistake, passion, prejudice or partiality.'" Crawn v. Campo, 136 N.J. 494, 512 (1994) (quoting Lanzet v. Greenberg, 126 N.J. 168, 175 (1991)).

The trial court's reasons for denying defendant's motion for judgment notwithstanding the verdict, a new trial, or remittitur included the following:

> Defendant claims that there's no basis for the jury award of compensatory damage.
>
> . . . .
>
> With respect to the court's role in . . . assessing [the] jury award of compensatory damages in this case, the damages for pain and suffering, this court should only set aside the damages award if it's plainly wrong or shocks the consci[ence] of the court, see [Carey] v. Lovett, 132 N.J. 44, page 66.
>
> Further the determination of excessiveness of a jury award should be made by viewing the evidence in a light most favorable to the party opposing the motion for relief, Caldwell v. Haines, 136 N.J. 422 page 432.
>
> There was testimony at trial by the plaintiff consisting of the physical injuries she suffered as a result of the assault of April 20, 2001 and resulting in emotional trauma.
>
> In her case in chief, she . . . presented two expert witnesses, a treating psychiatrist, Dr. Calvin Chatlos, and her treating therapist Susan Levine, who both testified that plaintiff suffered from post-traumatic stress disorder directly a causal result of the April 20, 200[1] assault.

. . . .

Again this testimony was essentially uncontroverted since the defendant presented no expert to refute this testimony and in light of this essentially unchallenged testimony, there has been no evidence presented whatsoever that indicates that the jury's award was plainly wrong or that it shocked the consci[ence] of this court.

. . . .

The defendant claims that there is no basis for the jury award for punitive damages.

. . . .

The defendant . . . contends that he adequately demonstrated that his conduct was, in fact, not malicious and motivated only by his desire to rescue his son from a perceived kidnapping.

. . . .

Plaintiff testified at length to injuries she suffered set forth by pictures admitted into evidence and that she required treatment at the local hospital. Two experts testified on her behalf as to the extent of permanency and the emotional trauma she suffered as a result of the assault.

In regard to defendant's financial status, it should also be noted that defendant testified that he had no present interest in the trust, that he drove a taxi and often lived in his van. He also testified that he has been able to borrow against the trust to pay for legal expenses.

> As mentioned previously, during the course of this trial, each party was able to present evidence as to the conduct of all parties, and the jury was asked to make a determination based on the evidence presented of which a significant portion was the credibility of the parties and their witnesses.
>
> [T]he jury determined in its sound discretion the defendant was liable for punitive damages and there is no evidence of mistake, passion, prejudice or partiality on the part of the jury herein.

The record fully supports this analysis by the trial court, and it was clearly appropriate for Judge Pisansky to defer to the jury's decisions.

Affirmed.