

COMMONWEALTH OF VIRGINIA
FOURTEENTH JUDICIAL CIRCUIT

GEORGE F. TIDEY
JUDGE

L.A. HARRIS, JR.
JUDGE

CATHERINE C. HAMMOND
JUDGE

GARY A. HICKS
JUDGE



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CIRCUIT COURT OF THE COUNTY OF HENRICO

August 16, 2002

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GARY A. WYCOFF v. JOSEPH W. MORRISSEY
Case Number CL01-1107

Dear Counsel:

This matter is before the court on defendant's post-trial motions to set aside the jury award of \$1 million in punitive damages ("the Award") and order a new trial on the issue of punitive damages, or, in the alternative, either to remit the Award to a reasonable amount or to remit the Award to the maximum allowed in Va. Code § 8.01-38.1. The parties filed memoranda of law and today presented oral argument.

This personal injury case was tried to a jury on July 16, 17, and 18, 2002. The jury heard extensive evidence about a brawl between the parties on July 3, 1999. Each man testified that he was attacked and blamed the other. Not only the parties witnessed the event. Two independent witnesses, Mr. Wells and Mr. Daugherty, happened to be there and they were able to describe for the jury the conduct of the parties.

The evidence about Mr. Wycoff's injuries was not really in conflict. During the fight, he suffered a broken nose, severe facial lacerations, bruising, and brain injury. He needed surgery to repair wounds on his face as well as surgery later for injuries to his nose.

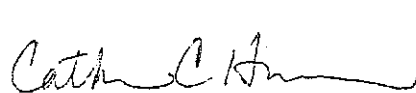
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The jury was instructed on the claim of punitive damages over the defendant's objections. The evidence in support of this claim included corroborated testimony that Mr. Morrissey repeatedly struck Mr. Wycoff in the face while Mr. Wycoff was lying on the ground defenseless, with Mr. Morrissey on top of him. After Mr. Morrissey got up, he sprayed a garden hose into Mr. Wycoff's face which was bleeding heavily. Mr. Wycoff testified that this was "torture." The jury did not have to accept Mr. Wycoff's version of the event. However, that testimony together with other evidence provided a sufficient basis for the jury to conclude that the defendant was prompted by ill will or a wicked intention. Much of this had to do with the manner and appearance of the witnesses on the stand.

The court has carefully considered the argument that the Award was excessive, or motivated by passion or prejudice against Mr. Morrissey. The Award was much larger than the compensation for the plaintiff's injuries. But the jury's verdict of compensatory damages of \$40,000 did exceed the medical special damages by more than \$20,000, suggesting that some value for pain and suffering was determined. Further, it is clear that in awarding compensatory damages the jury did not accept Mr. Morrissey's testimony that he was defending himself. The jury was instructed (on consent) that it could award punitive damages only upon finding that the defendant acted "with actual malice ... or under circumstances amounting to a willful and wanton disregard of the plaintiff's rights...." I cannot find anything to suggest that the jury's decision on punitive damages was based on anything other than the evidence. It was within the jury's duty to determine the need for deterrence and punishment and the jury did that.

Section 8.01-38.1 of the Code of Virginia imposes a cap on punitive damage awards. Pursuant to that statute the award is reduced to \$350,000. Judgment will be entered for that amount, plus \$40,000 in compensatory damages. Mr. Roberts should submit the order within ten days.

Very truly yours,



Catherine C. Hammond
Judge

CCH/sm