

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

VIRGINIA PAYNE,

Respondent

v.

ASHLEY L. MARKESON.

Appellant

DOCKET NUMBER WD75771

DATE: September 10, 2013

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Jack Richard Grate, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Alok Ahuja, J., and Edith Messina, Sp. J.

Attorneys:

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Co-Counsel for Appellant

Attorneys:

John Turner, Kansas City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**VIRGINIA PAYNE, Respondent, v.
ASHLEY L. MARKESON, Appellant**

WD75771

Jackson County

Before Division Four Judges: Welsh, C.J., Ahuja, J., and Messina, Sp. J.

Virginia Payne filed a lawsuit against Ashley Markeson in which she sought damages for injuries that she incurred in an automobile accident resulting from Markeson's driving while intoxicated. The jury found in favor of Payne and awarded compensatory and punitive damages. Markeson appeals the circuit court's denial of her motion to reduce the jury's verdict by the amount of Payne's settlement agreement with a co-defendant and the denial of her motion for remittitur as to punitive damages.

Reversed and remanded in part; affirmed in part

Division Four holds:

(1) The circuit court did not lack jurisdiction to rule on Markeson's motion to reduce the verdict pursuant to section 537.060, RSMo, on October 15, 2012, because the motion was effectively an authorized post-trial motion to amend under Rule 78.04, and ninety days from the filing of the last authorized post-trial motion had not yet expired. Rules 78.06 and 81.05(a). Markeson properly pleaded reduction as an affirmative defense, and the circuit court properly scheduled the matter for a hearing but erred in failing to dispose of the issue at that time. The judgment is reversed and remanded for the circuit court to address the reduction issue.

(2) The punitive damages award is not "grossly excessive" in relation to the interests of punishment and deterrence; nor is it "manifestly unjust" in light of the relevant factors of reprehensibility; disparity between the harm suffered and the award; and the award's correlation to awards in similar cases. The circuit court did not abuse its discretion in denying the motion for remittitur on that basis. The punitive damages award is affirmed.

Opinion by James Edward Welsh, Chief Judge

September 10, 2013

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