

Summary of SC91369, *Estate of Max E. Overbey, Deceased, and Glenna J. Overbey v. Chad Franklin National Auto Sales North, LLC, and Chad Franklin*

Appealed from the Clay County circuit court, Judge Rex Gabbert

Argued and submitted Nov. 2, 2011; opinion issued Jan. 31, 2012

Attorneys: The Overbeys were represented by Douglass F. Noland and Thomas K. Mendel of the Noland Law Firm LLC in Liberty, (816) 781-5055. Franklin was represented by Patric S. Linden and Kevin D. Case of Case & Roberts PC in Kansas City, (186) 448-3707.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A couple sued an automobile dealership and its owner for fraudulent representations in violation of the Missouri Merchandising Practices Act that they alleged were made when they purchased a vehicle from the dealership. The jury awarded the couple \$4,500 in actual damages and \$1 million in punitive damages against the owner. Because the amount of punitive damages a plaintiff may recover is statutorily capped at the higher of \$500,000 or five times actual damages, the trial court reduced the award to \$500,000. Both the couple and the owner appeal. In a 5-to-2 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms. The legislature created the cause of action set out in the Missouri Merchandising Practices Act. It had a right, therefore, to determine the elements of a claim under that act as well as the remedies available. By choosing to sue under the act, rather than under the common law, the couple was limited to the remedy provided in that act. The parties' other claims are without merit.

Chief Justice Richard B. Teitelman dissents. He would find that the statutory cap on damages violates the right to a trial by jury under the Missouri Constitution. Determining damages in a civil action is one of the most significant constitutional roles performed by the jury, and arbitrarily limiting punitive damages without reference to facts found by the jury or the limits of due process is inconsistent with the intended deterrent purpose of punitive damages.

Facts: Max and Glenna Overbey went to Chad Franklin National Autosales North LLC after seeing its commercials advertising a "payment-for-life" program, which guaranteed a low monthly payment for life and the ability to trade in vehicles periodically. The salesman sold them a vehicle for what he told them would be \$49 per month with the promise that they could trade the vehicle in after six months for a similar one with similarly low rates. When the Overbeys returned, they were told that National was unaware of any program, that the Overbeys could not trade in their vehicle and that they were liable for \$700 monthly payments until they paid the full \$37,191 allegedly due on the vehicle. The Overbeys sued National and its sole owner, Chad Franklin, alleging they made fraudulent misrepresentations that violated the Missouri Merchandising Practices Act. The jury awarded \$76,000 in actual damages and \$250,000 in punitive damages against National, which did not appeal. The jury awarded \$4,500 in actual damages and \$1 million dollars in punitive damages against Franklin, but the trial judge reduced the punitive damage award to \$500,000 as required under the punitive damages cap contained in section 510.265, RSMo. Supp. 2010. The Overbeys appeal, claiming the reduction in the punitive damage award violated their right to trial by jury and other constitutional provisions.

Franklin cross-appeals, claiming the Overbeys did not prove a case against him personally and that even the reduced punitive damage award was arbitrary and excessive.

AFFIRMED.

Court en banc holds: (1) The evidence showed that Franklin was sole owner of National, that National advertised the payment-for-life program as did another of his dealerships, that he personally was involved in dealership business, that he appeared in at least one of the other dealership's advertisements, and that numerous other persons who also bought vehicles under the program now have filed similar complaints with Missouri's attorney general. This evidence was sufficient to support the jury's conclusion. Further, the legislature provided in section 510.265 that an award of up to the higher of either five times the actual damage award or \$500,000 may be appropriate, and the trial court reduced the damages to the latter amount. In *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003), the United States Supreme Court recognized that punitive damage awards that are a large multiple of the actual damage award may be justified if "a particularly egregious act has resulted in only a small amount of economic damages." Here, the conduct was intentional, was part of a pattern of misconduct against the financially vulnerable, and no remorse was shown. The award was not excessive.

(2) The trial court correctly held that the punitive damages cap in section 510.265 did not violate the right to trial by jury, due process, equal protection, the separation of powers doctrine or the prohibition against special legislation. The Overbeys sued under a statutory cause of action, the Missouri Merchandising Practices Act. The legislature created this cause of action and, therefore, had the power to define the remedies available under the act. As such, section 510.265 does not violate the right to trial by jury or the separation of powers doctrine as applied to statutory causes of action such as this one. Additionally, the Overbeys' equal protection rights and the Missouri Constitution's prohibition against special legislation are not violated by the fact that section 510.265 provides that the punitive damages cap will not apply to: claims brought by the state of Missouri; claims in which the "defendant pleads guilty to or is convicted of a felony arising out of the acts or omissions pled by the plaintiff;" and claims brought for housing discrimination under the Missouri Human Rights Act. These exceptions are not improper if the legislature had a rational basis for them. The state sues on behalf of all its citizens and, therefore, greater recoveries may be necessary to remedy the harm done to the citizens of Missouri than are necessary to remedy harm done to individual plaintiffs. An injury committed in the course of a felony is especially reprehensible. Housing discrimination is against the public policy of this state and may result in minimal actual damages but involve egregious misconduct often against groups that have faced discrimination in the past. Accordingly, all three exceptions have a rational basis. Further, because the Overbeys had no property right in the original jury verdict, the reduction in the amount of the verdict did not violate due process.

Dissenting opinion by Judge Teitelman: The author would find that the statutory cap on punitive damages violates the Overbeys' right to a jury trial. That the federal constitution authorizes limits on a jury's constitutional role in awarding damages has limited relevance to the interpretation of Missouri's more emphatic statement of the right to a trial by jury. Under article I, section 22(a) of the Missouri Constitution, "the right of trial by jury as heretofore enjoyed shall remain inviolate." The dictionary defines "inviolate" as "free from change or blemish, pure or

unbroken.” If the action is a civil action for damages, then the right to a jury trial attaches and must “remain inviolate.” Because the constitutional right to a civil jury trial is contingent on there being an action for damages, statutory limits on those damages directly curtails one of the most significant constitutional roles performed by the jury. Further, arbitrarily limiting punitive damages without reference to facts found by the jury or the limits of due process is inconsistent with the intended deterrent purpose of punitive damages. By setting substantive limits on recovery regardless of the evidence, statutes such as section 510.265, RSMo, unavoidably limit the constitutional role of the jury.