

Summary of SC92871, *Lillian M. Lewellen v. Chad Franklin and Chad Franklin Auto Sales North LLC*

Appeal from the Clay County circuit court, Judge Larry D. Harman
Argued and submitted October 2, 2013; opinion issued August 19, 2014

Attorneys: Lewellen was represented by Douglas F. Noland of the Noland Law Firm LLC in Liberty, (816) 781-5055, and Franklin and the dealership were represented by Patric S. Linden and Kevin D. Case of Case & Roberts PC in Kansas City, (816) 979-1500.

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 customer, an automobile dealership and its owner all appeal from the trial court's judgment making the dealership and its owner liable for paying the customer a single actual damages award as well as for individually paying punitive damages awards that the court reduced, pursuant to a statutory cap on punitive damages, from the amount the jury awarded. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the judgment in part and vacates it in part. Because the statutory cap on punitive damages curtails the jury determination of punitive damages as it existed at the time the state's constitution was adopted in 1820, it unconstitutionally infringes on the right to a jury trial. The trial court erred, therefore, in applying the statutory cap to reduce the punitive damages the jury awarded to the customer for her fraudulent misrepresentation claim against the dealership's owner. This portion of the judgment is vacated, and the Court enters judgment awarding the customer the amount of punitive damages the jury assessed against the owner.

The trial court's judgment is affirmed in all other respects. The trial court did not err in overruling the motion by the dealership and its owner to reduce punitive damages further, as the amounts did not violate their due process rights. The punitive damages awards assessed are not grossly excessive considering their intentional and flagrant trickery and deceit employed to target a financially vulnerable person, causing her to lose her means of transportation, subject her to suit and damage her credit. The trial court also did not abuse its discretion in imposing discovery sanctions against the dealership and its owner. Its order was not vague or ambiguous, the dealership and its owner do not specify what their counsel would have done differently had the order been more clear, and they are unable to show the court's actions prejudiced them.

Facts: Chad Franklin, owner of Chad Franklin National Auto Sales North LLC in Kansas City, advertised on television a program in which customers could purchase vehicles for monthly payments as low as \$49. In response to these advertisements, Lillian Lewellen visited the dealership after her van's transmission failed. She told an employee she was interested in the \$49-per-month payment plan and repeatedly stated she was unable to pay more than \$49 per month for a vehicle. From a portion of the lot for vehicles eligible for that program, Lewellen selected a 2002 Lincoln. A dealership salesperson explained that, through the program, the dealership would send her a check for the difference between her \$49 monthly obligation and the monthly payment owed to the bank financing the purchase. Feeling pressured, Lewellen agreed to buy the Lincoln through the program. The sales contract listed the Lincoln's total sales price at

nearly \$19,950, including fees for a service contract and gap insurance, and the van's trade-in value at \$1,365. The salesperson did not discuss the added fees or the trade-in value with Lewellen, who was unaware these provisions were in the contract. Another employee helped her complete a credit application. Lewellen listed her monthly income as \$920, but a separate document the employee prepared misstated Lewellen's monthly income as \$18,000. Her payment for the Lincoln was set at \$387.45 per month, but the employee assured Lewellen she was obligated to pay only \$49 per month. When Lewellen did not receive a check from the dealership to make up the difference in the payments, she made multiple inquiries and eventually received a check for about \$3,290. This money, plus her own \$49 per month, allowed Lewellen to make nine payments to the bank. The dealership never sent her another check. She contacted the bank to explain the situation, continuing to make her \$49 monthly payments. After the bank repossessed Lewellen's Lincoln and sued her for breach of contract, she sued Franklin and the dealership for fraudulent misrepresentation and unlawful merchandising practices.

During discovery, because Franklin and dealership representatives repeatedly failed to appear for depositions, the trial court sustained Lewellen's motion for sanctions against them, ordering that their pleadings be struck and that any documents they did provide could be admitted in evidence against them. Following a trial, the jury awarded Lewellen actual damages awards of \$25,000 each against each defendant for each claim (for \$100,000 in total actual damages) plus \$1 million in punitive damages against each defendant for each claim (for \$4 million in total punitive damages). Because the harm Lewellen suffered was the same through both legal theories under which she sued, Lewellen was prohibited from collecting judgments under both theories. She elected (chose) to take judgments against Franklin under the fraudulent misrepresentation claim and against the dealership under the unlawful merchandising practices claim. The trial court held that Lewellen's actual damages were the same for each claim and ordered that she receive only \$25,000 in total actual damages. It also ordered the dealership to pay Lewellen about \$82,800 in attorney fees under the merchandising practices act. The trial court overruled Franklin and the dealership's motion for a new trial, in which they alleged the court failed to provide adequate notice of the discovery sanctions, but, pursuant to the section 510.265, RSMo, cap on punitive damages, reduced the punitive damages awards to \$500,000 against Franklin and \$539,050 against the dealership. Lewellen, Franklin and the dealership all appeal.

AFFIRMED IN PART; VACATED IN PART.

Court en banc holds: (1) Because section 510.265 violates the right to a trial by jury, the trial court erred in applying this statutory cap to reduce the punitive damages the jury awarded to Lewellen for her fraudulent misrepresentation claim against Franklin. Section 510.265 provides that no award of punitive damages against any defendant shall exceed the greater of \$500,000 or five times the net amount of the judgment the plaintiff is awarded against the defendant. Article I, section 22(a) of the Missouri Constitution provides that the right to a jury trial "shall remain inviolate." In its 2012 decision in *Watts v. Lester E. Cox Medical Centers*, this Court held that this constitutional phrase means that any change in the right to a jury determination of damages as it existed when Missouri first adopted its constitution in 1820 is unconstitutional. In its 2005 decision in *Scott v. Blue Springs Ford Sales Inc.* and 2012 decision in *Estate of Overbey v. Chad Franklin National Auto Sales North LLC*, this Court recognized rights to jury trials on punitive damages that predate the constitution. Under *Blue Springs Ford*, *Overbey* and *Watts*, therefore,

the cap on punitive damages imposed by section 510.265 “necessarily changes and impairs the right of a trial by jury ‘as heretofore enjoyed.’” At the time the constitution was adopted in 1820, assessing punitive damages always had been left to the jury’s discretion, juries tried fraud actions, and it was a jury function to determine the amount of punitive damages in such actions. Because section 510.265 changes that right to a jury determination of punitive damages as it existed in 1820, curtailing the jury’s determination of damages, it unconstitutionally infringes on Lewellen’s right to a jury trial. The trial court erred, therefore, in applying the statutory cap to reduce the punitive damages the jury awarded to Lewellen for her fraudulent misrepresentation claim against Franklin. This Court vacates only this portion of the judgment and enters judgment awarding Lewellen \$1 million in punitive damages against Franklin.

(2) The circuit court did not err in overruling the motion by Franklin and the dealership to reduce punitive damages on the grounds that the awards violated their due process rights. Because the statute operates wholly independently of the facts of the case, section 510.265 does not codify due process. But this Court still has a duty to determine whether an award of punitive damages is grossly excessive or arbitrary in violation of federal and state constitutional due process. The United States Supreme Court requires courts to consider three guideposts in determining if an award of punitive damages comports with due process: the reprehensibility of the defendant’s misconduct; the disparity between the harm and the punitive damages award; and the difference between the punitive damages award and penalties authorized or imposed in similar cases.

(a) Franklin’s and the dealership’s repetitive use of intentionally deceptive business practices targeting financially vulnerable persons is reprehensible and weighs in favor of a higher punitive damage award. Because the United States Supreme Court has noted that repeated misconduct is more reprehensible than an individual instance of malfeasance, this Court finds that any sufficiently similar misconduct, regardless of when it occurred, is relevant in assessing the reprehensibility of a defendant’s conduct.

(b) The double-digit ratios between punitive and actual damages finally awarded – 40:1 against Franklin and 22:1 against the dealership – are warranted in this case and are not grossly excessive, as their conduct was particularly egregious. To bring in more business, Franklin created aggressive advertisements – including one bait-and-switch campaign targeting financially vulnerable customers – and then his dealership failed to live up to the advertised promise, leaving customers without their trade-in vehicle, with bills they could not afford to pay, repossession of the new vehicle, suits for defaulting on the loans, and bad credit. Franklin showed no remorse, made no attempt to rectify the consequences and then refused to respond to Lewellen’s discovery requests. The \$25,000 amount of actual damages was relatively low, and courts in other cases have used actual damages awards not much larger to justify higher ratios.

(c) Although the punitive damages awarded are larger than the penalties authorized under the state’s merchandising practices act, this Court considers all three guideposts. The punitive damages awards assessed against Franklin and the dealership are not grossly excessive considering their intentional and flagrant trickery and deceit employed to target a financially vulnerable person, causing her to lose her means of transportation, subject her to suit and damage her credit.

(3) Because Franklin and the dealership fail to demonstrate how the trial court's order was vague or how it prejudiced them, the trial court did not abuse its discretion when it imposed discovery sanctions against them after they twice failed to appear for depositions. The trial court's sanctions order was not vague or ambiguous because it specifically informed counsel what counsel could and could not do. It was clear that documents Franklin and the dealership produced during discovery could be admitted only as evidence against them. In addition, it limited counsel's participation in jury selection to asking appropriate questions not otherwise asked and permitted counsel to cross-examine witnesses only about the issue of damages. Statements the court made at the pretrial conference made clear counsel would be allowed to make objections to evidence counsel believed was improper. Franklin and the dealership do not specify what their counsel would have done differently to prepare for trial or during trial had the trial court's sanctions order been clearer, nor are they able to show prejudice.