NO. 22702

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

WILLIAM SOLEVILLA NORVA, Plaintiff/Counterclaim-Defendant/Appellee, v. ROBERT E. EDRALIN, Defendant/Counterclaim-Plaintiff/Appellant, and DEPARTMENT OF DEFENSE POLICE CO., Defendant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NO. 1RC 98-5874)

MEMORANDUM OPINION
(By: Burns, C.J., Lim and Foley, JJ.)

This is an appeal of a May 28, 1999 judgment of the district court holding Defendant/Counterclaim-Plaintiff/Appellant Robert E. Edralin (Edralin) liable to Plaintiff/Counterclaim-Defendant/Appellee William Solevilla Norva (Norva) for special, general, and punitive damages. We affirm the May 28, 1999 judgment as to special and general damages, vacate the May 28, 1999 judgment as to punitive damages, and remand this case for an entry of amended findings of fact and conclusions of law on the issue of punitive damages.

BACKGROUND

On July 2, 1998, as a result of an incident at 5:30 a.m., on June 21, 1997, Norva filed a complaint against Edralin for damages resulting from an unprovoked assault and battery. On September 18, 1998, Edralin responded with a counterclaim for damages resulting from an assault and battery and defamation when

Norva "misrepresented the facts of this incident, defaming defendant[.]"

After a trial on January 15, 1999, February 19, 1999, and March 24, 1999, the trial court orally announced its findings, conclusions, and judgment on April 1, 1999, and instructed Norva's counsel to prepare the written findings, conclusions, and judgment. Norva's counsel submitted the Findings of Fact and Conclusions of Law (FsOF and CsOL) in accordance with the court's oral decision. The FsOF and CsOL was not approved by counsel for Edralin. The FsOF and CsOL was signed by the court and filed on May 28, 1999. It states as follows:

FINDINGS OF FACT

. . . .

1. The subject incident occurred about 5:30 a.m. on June 21, 1997, at Waianae Army Recreation Center; both [Norva] and [Edralin] were assigned to duty that morning with the subject incident occurring just prior to their duty shift.

2. Both [Norva] and [Edralin] were experienced Department of Defense (DOD) Police Officers.

3. The relationship between [Norva] and [Edralin] prior to the subject incident was not warm and friendly.

4. On the day prior to the subject incident, [Norva] and [Edralin] had a brief conversation and in [Norva's] mind he was unclear what [Edralin] stated.

5. On the morning of June 21, 1997, [Norva] and [Edralin] were assigned to the shift beginning at 5:30 a.m. together with Officer George Durazo and were waiting to draw their weapons from Officer Durazo who was not present then at the security office.

6. Another DOD Police Officer, Officer Rivera, was there and about to go off duty, and then subsequently left the office to use an adjoining restroom.

7. [Norva] asked [Edralin] a question regarding their conversation the previous day.

8. [Edralin] responded that [Norva] knew what he had said and then [Edralin] used expletives directed at [Norva].

9. [Norva] asked if there was a problem, that they should take it to the Lieutenant in charge of security, and then shook his finger at [Edralin].

10. [Edralin] suddenly struck [Norva] in the head, held [Norva] in a headlock, and struck [Norva] at least five (5) times with his other fist.

11. The Court gives great weight to the testimony of Officer Rivera, a neutral party, who testified that he heard the initial commotion while in the restroom and returned to the security office and saw [Edralin] holding [Norva] in a headlock and strike [Norva] with several blows.

12. Officer Rivera yelled at [Edralin] and [Norva] to stop.

13. [Norva] got out of the headlock and struck [Edralin] once in the face.

14. [Edralin] told Officer Rivera to get out, that the fight was between [Norva] and [Edralin], used further expletives, and said the fight was not over yet.

15. [Norva] suffered multiple bruises; [Edralin] a bloody nose.

16. After Officer Durazo showed up, Officer Rivera mentioned the incident to him, but neither party asked Officer Durazo for relief, although [Edralin] asked for five minutes to get cleaned up and [Norva] seemed excited and agitated.

17. [Norva] later that morning asked to call the Lieutenant to report the incident, then left for emergency medical treatment for a black eye and numerous cuts and bruises incurred on June 21, 1997.

18. At the time of the incident, [Norva] was a GS5 in the Federal Civil Service earning $21,301.00 per year.

19. [Norva] was off duty two weeks due to his injuries.

20. [Norva] later used forty hours of leave due to his injuries.

21. [Norva] received periodic treatment thereafter for his injuries which had aggravated prior neck injuries incurred while he had been on active duty.

22. [Edralin] was put on administrative leave, transferred to other duties at another duty station, and then later reinstated.

23. [Norva] and his wife later encountered [Edralin] off duty at a shopping center who followed them.[1]

24. [Norva's] wife left for the Philippines allegedly because of nervousness over the encounter.

25. [Norva] incurred $4,265.00 in medical bills after the incident.

26. [Norva] used $4,641.00 in leave time after the incident.

CONCLUSIONS OF LAW

. . . .

1. [Edralin] did initiate the physical contact with [Norva].

2. [Norva] had done nothing to warrant [Edralin's] conduct.

3. [Norva's] version of the subject incident is accurate because:

A. [Norva] would have been subjected to discipline if he had initiated the physical contact and the incident occurred just prior to the beginning of the shift;

B. [Norva] had a prior neck injury which was a major handicap and it is unlikely he would start a fight; and

C. [Norva's] testimony was corroborated by Officer Rivera's witnessing part of the actions and words during the subject incident.

7. [Norva's] striking [Edralin] was a reflex defensive action only.

8. [Norva's] special damages are as follows:

A. $820.00 for annual and sick leave (80 hours);

B. $224.00 for emergency medical care; and

C. $1,420.00 for subsequent medical expenses (since [Norva] had two pre-existing neck injuries, but did show a portion of his medical treatment was attributable to the June 21, 1997 incident, it is reasonable that 1/3 of his medical expenses be attributed to the subject incident).

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[1] In its oral decision, the trial court stated, in relevant part, as follows: "On at least one occasion, after the incident, [Norva] and his wife, while on a shopping trip, encountered [Edralin] who followed them for a period of time."

9. [Norva's] estimated additional leave time used is not attributable to the subject incident.

10. There is no persuasive evidence [Norva's] wife left Hawai‘i due to [Edralin].

11. [Norva] suffered disruption in his life, pain and suffering, psychological anxiety, and anxiety over his employment due to [Edralin].

12. [Norva] established a cause for punitive damages because [Edralin's] action was egregious and extraordinary because:

A. A reasonable person would find no provocative acts by [Norva];

B. [Norva] and [Edralin] were Department of Defense Police Officers who were authorized to carry weapons; and

C. [Edralin's] hostility and use of provocative language towards Officer Rivera who was trying to stop the fight.

13. [Edralin] has not established a sustainable claim.

14. [Norva] is awarded the following damages against [Edralin]:

A. Special damages in the amount of $2,464.00;

B. General damages in the amount of $10,000.00; and

C. Punitive damages in the amount of $5,000.00.

D. Total damages equal $17,464.00.

[15.] [Edralin] is not entitled to recover anything on his counterclaim.

(Footnote added.)

POINTS ON APPEAL

Edralin asserts the following points on appeal:

1. The FsOF and CsOL fail:

a. To identify the cause of action upon which findings and conclusions are being made.

b. To include any findings as to legal causation.

c. To include any findings as to any elements of a cause of action being found.

d. To specify the standard of proof that is being applied.

e. Incorrectly states the law on punitive damages.

2. More specifically, Edralin contends that:

a. FOF no. 19 fails to indicate whether any unlawful conduct by Edralin was a legal cause of Norva being off duty for two weeks, does not find when those two weeks off duty occurred, and does not specify the injuries to which it is referring.

b. FOF no. 21 fails to indicate whether any unlawful conduct by Edralin was a legal cause of injuries to Norva, and whether treatment for those injuries was reasonable and necessary.

c. FOF no. 25 fails to indicate whether any unlawful conduct by Edralin was a legal cause of injuries to Norva, what injuries the medical bills relate to, and whether they are for treatment that is reasonable and necessary.

d. FOF no. 26 fails to indicate when the leave was taken and whether any unlawful conduct by Edralin was a legal cause of Norva using this leave time.

e. COL no. 8 fails to apportion Norva's medical expenses between the present neck injury and Norva's two pre-existing neck injuries, and to indicate whether any unlawful conduct was a legal cause of any of these special damages and whether any of these items are reasonably related to any of Norva's claims.

f. COL no. 11 fails to indicate when the damages stated therein occurred and whether any unlawful conduct by Edralin was a legal cause of them.

g. COL no. 12 does not indicate what standard of proof the court used and it is an incorrect statement of the law on punitive damages.

h. COL no. 14 is wrong because of all of the above deficiencies.

STANDARD OF REVIEW

We review a trial court's findings of fact under the clearly erroneous standard. A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made. State v. Okumura, 78 Hawai‘i 383, 392, 894 P.2d 80, 89 (1995) (citations and internal quotation marks omitted). The Hawai‘i Supreme Court has "defined 'substantial evidence' as credible

evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Roxas v. Marcos, 89 Hawai‘i 91, 116, 969 P.2d 1209, 1234 (1998) (quoting Kawamata Farms v. United Agri Products, 86 Hawai‘i 214, 253, 948 P.2d 1055, 1094 (1997) (quoting Takayama v. Kaiser Found. Hosp., 82 Hawai‘i 486, 495, 923 P.2d 903, 912 (1996) (citation, some internal quotation marks, and original brackets omitted))).

We review the trial court's conclusions of law de novo under the right/wrong standard. Raines v. State, 79 Hawai‘i 219, 222, 900 P.2d 1286, 1289 (1995). "Under this . . . standard, we examine the facts and answer the question without being required to give any weight to the trial court's answer to it." State v. Miller, 4 Haw. App. 603, 606, 671 P.2d 1037, 1040 (1983). *See also* Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 119, 839 P.2d 10, 28, reconsideration denied, 74 Haw. 650, 843 P.2d 144 (1992). Thus, "[a COL] is not binding upon the appellate court and is freely reviewable for its correctness." State v. Bowe, 77 Hawai‘i 51, 53, 881 P.2d 538, 540 (1994) (citation omitted).

Conclusions of law must carefully enunciate and explain the trial court's resolution of the law, so that an appellate court is able to conduct a just and orderly review of the rights of the parties. 9 J. Moore, Moore's Federal Practice

§ 52.15[3](3rd 1999) (quoting Browning v. Kramer, 931 F.2d 340, 344 (5th Cir. 1991)).

RELEVANT RULE

Rule 52(a) of the Hawai‘i District Court Rules of Civil Procedure requires that "[i]n all actions tried upon the facts, the court upon request of any party shall find the facts specially and state separately its conclusions of law thereon." In these situations, the trial judge is required "to make brief, definite, pertinent findings . . . as are necessary to disclose to this court the steps by which the trial judge reached his or her ultimate conclusion on each factual issue." Upchurch v. State, 51 Haw. 150, 156, 454 P.2d 112, 116 (1969).

DISCUSSION

A.

Edralin challenges the sufficiency of the findings and conclusions and presents the question of how thorough the district court's findings and conclusions have to be.

There are three purposes for findings of fact. First, they aid the appellate court by affording it a clear understanding of the ground basis of the decision of the trial court. 9A Charles Wright & Arthur Miller, Federal Practice and Procedure § 2571 (2d ed. 1995 & Supp. 2000). Second, they make definite precisely what is being decided by the case in order to apply the doctrines of estoppel and res judicata in future cases

and promote confidence in the trial court's decision-making. Id. Third, requiring them requires the trial court to evoke care in ascertaining the facts. Id.

> [T]he trial court is required to make adequate findings of fact and conclusions of law in non-jury actions. The criteria for findings of fact are that they should be "clear, specific and complete without unrealistic and uninformative generality on the one hand, and on the other without an unnecessary and unhelpful recital of non-essential details of evidence." The ultimate test as to the adequacy of a trial judge's findings is "whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision and whether they are supported by the evidence."

Shannon v. Murphy, 49 Haw. 661, 668, 426 P.2d 816, 820 (1967) (citations omitted).

If and when the trial court fails to make specific findings of particular fact, the appellate court may assume that it impliedly made findings consistent with its general holding, so long as those implied findings are supported by evidence. Century Marine Inc. v. United States, 152 F.3d 225, 231 (9th Cir, 1998).

In light of the above, although we agree that the FsOF and CsOL could have been clearer, it is our decision that Edralin's points regarding the failure of the FsOF and CsOL to expressly identify the cause of action, find the elements of the cause of action, determine legal causation, and specify the use of the more probable than not standard of proof when it was used are without merit.

B.

Edralin asserts that COL no. 12 is wrong. We conclude that it is ambiguous.

As far back as 1857, punitive damages were authorized "if it appeared that the defendant had been actuated by malice, or committed the assault without provocation." E.R. Coffin v. Thomas Spencer, 2 Haw. 23 (1857). In 1918, punitive damages were authorized "when it appears that the defendant was actuated by malicious motives, as, for instance, when a violent assault and battery has been committed without any apparent provocation, or upon slight and inadequate provocation." Leong Sam v. Harry Keliihoomalu, 24 Haw. 477, 480 (1918). In 1946, punitive damages were authorized in Vasconcellos v. Juarez, 37 Haw. 364, 366-67 (1946), where the actions of the defendant "consisted of an unprovoked and brutal beating of the aging fifty-nine-year-old [plaintiff] by the thirty-six-year-old [defendant] in the prime of his life." In Jendrusch v. Abbott, 39 Haw. 506, 511 (1952), punitive damages were assessed "for the vicious and brutal nature of the assault by the defendants[.]" In modern times, "it is well settled in Hawai‘i that punitive damages are allowed for 'willful, malicious, wanton or aggravated wrongs where a defendant has acted with a reckless indifference to the rights of another.'" Ozaki v. Ass'n of Apartment Owners, 87 Hawai‘i 273,

289, 954 P.2d 652, 668 (App. 1998) (citations omitted). In sum, the current law on punitive damages is as follows:

> Accordingly, for all punitive damage claims we adopt the clear and convincing standard of proof. The plaintiff must prove by clear and convincing evidence that the defendant has acted wantonly or oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or where there has been some wilful misconduct or that entire want of care which would raise the presumption of a conscious indifference to consequences.

Masaki v. General Motors Corp., 71 Haw. 1, 16-17, 780 P.2d 566, 575 (1989) (citing Bright v. Quinn, 20 Haw. 504, 511 (1911)).

The question is whether COL no. 12 satisfies the above requirement. The word "egregious" means "notorious, extraordinary, extreme, flagrant or asocial." Webster's New International Dictionary, 727 (3rd ed. 1981). The word "extraordinary" means "more than ordinary" or "most unusual." Id. at 807. In light of those definitions, a finding that an assault and battery by the defendant was "egregious and extraordinary" may or may not be a finding that "the defendant has acted wantonly or oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or where there has been some wilful misconduct or that entire want of care which would raise the presumption of a conscious indifference to consequences." The facts stated in COL no. 12, upon which the court based its ultimate finding that Edralin's acts were "egregious and extraordinary," do not resolve this ambiguity.

In addition, there is no indication in the record that the court did or did not apply the special clear and convincing standard of proof when it found the facts upon which it based its award of punitive damages.

CONCLUSION

Accordingly, we affirm the May 28, 1999 judgment as to special and general damages, vacate the May 28, 1999 judgment as to punitive damages, and remand this case for an entry of amended findings of fact and conclusions of law on the issue of punitive damages.

DATED: Honolulu, Hawai‘i, April 18, 2001.

On the briefs:

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for Defendant/Counterclaim
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Douglas Thomas Moore,
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Chief Judge

Associate Judge

Associate Judge