

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2002
A07-2174**

Adam K. Riess,
Respondent (A07-2002),
Appellant (A07-2174),

vs.

Kyle A. Davis,
Appellant (A07-2002),
Respondent (A07-2174),

Michelle M. Nelson,
Defendant (A07-2002),
Respondent (A07-2174).

**Filed December 2, 2008
Affirmed
Minge, Judge**

Hennepin County District Court
File No. 27-CV-05-14532

Gary L. Manka, Neil G. Clemmer, Katz, Manka, Teplinsky, Graves & Sobol, Ltd., 225 South Sixth Street, Suite 4150, Minneapolis, MN 55402 (for respondent/appellant Riess)

John P. Brendel, Maureen A. Hill, Brendel and Zinn, Ltd., 8519 Eagle Point Boulevard, Suite 110, Lake Elmo, MN 55042 (for appellant/respondent Davis)

Considered and decided by Lansing, Presiding Judge; Minge, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

MINGE, Judge

This appeal arises from a civil action in which the jury awarded compensatory damages and punitive damages to appellant/respondent Adam Riess, a party injured in a motor vehicle accident caused by exceptionally egregious conduct by appellant/respondent Kyle Davis, the driver of the other vehicle. Following the jury trial, Davis moved for a new trial on punitive damages, or in the alternative, remittitur. The district court denied the motion for a new trial but granted a conditional remittitur. We affirm.

FACTS

Under the influence of drugs and alcohol, Davis was driving in a highly reckless fashion when he almost collided with a police vehicle. The officer driving that vehicle attempted to stop Davis, who tried to elude him by driving over 100 miles per hour, crashing through a fence, spinning around in ditches, and driving in a plowed field. Ultimately, Davis was speeding west in the eastbound lanes of Minnesota Highway 55 with law enforcement in pursuit when his vehicle collided with the Riess vehicle, which was travelling east. Riess was injured and sued for compensatory and punitive damages.

In a bifurcated trial, the jury awarded Riess \$97,500 in compensatory damages. The trial then moved to the punitive damages phase. The only additional evidence presented at this stage consisted of portions of Davis's deposition, which were read to the jury. Although Davis was incarcerated at the time of trial, the jury was presented with

evidence that Davis did not serve any additional jail time for his criminal vehicular operation because he was already serving time on another offense.

The jury was asked to answer the following special verdict question: “What amount of money will serve to punish Defendant Kyle A. Davis and discourage others from behaving in a similar way?” The district court instructed the jury that it should consider seven factors when determining the amount of a punitive damage award. Factor five was “[t]he financial state of Kyle A. Davis.” After the jury had deliberated for a period, it submitted three written questions to the district court. Its second question was: “What is the answer to question # 5 on factors to consider for punitive damages [The financial state of Kyle A. Davis]?” The district court responded: “The answer is that there is no answer.” The jury returned a punitive damage award of \$1,000,000.

Davis filed a motion for a new trial on punitive damages or, in the alternative, remittitur. Davis argued that the verdict was contrary to law, without evidentiary support, and excessive as a matter of law. The district court denied Davis’s motion for a new trial but granted a conditional remittitur, finding that the jury awarded the \$1,000,000 in punitive damages “on account of passion or prejudice.” The remittitur reduced the award from \$1,000,000 to \$292,500, which is three times the compensatory award. Riess accepted the remittitur. This appeal follows.

DECISION

I.

The first issue on appeal is whether the record contains sufficient evidence of Davis’s financial condition for the district court to award punitive damages. Davis claims

that Reiss had the burden of establishing Davis's financial condition, that he failed to introduce such evidence, and that therefore the award was not supported by evidence and was excessive.

Punitive damages are allowed in civil actions "only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subd. 1(a) (2006). Further, Minnesota law outlines multiple factors that "shall" be considered when evaluating punitive damage awards:

Any award of punitive damages shall be measured by those factors which justly bear upon the purpose of punitive damages, *including* the seriousness of hazard to the public arising from the defendant's misconduct, the profitability of the misconduct to the defendant, the duration of the misconduct and any concealment of it, the degree of the defendant's awareness of the hazard and of its excessiveness, the attitude and conduct of the defendant upon discovery of the misconduct, the number and level of employees involved in causing or concealing the misconduct, *the financial condition of the defendant*, and the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject.

Minn. Stat. § 549.20, subd. 3 (2006) (emphasis added). The supreme court has stated that "[t]he purpose of punitive damages is to both punish and deter according to the gravity of the act giving rise to a punitive damage award, but an award should not exceed the level necessary to properly punish and deter." *Rosenbloom v. Flygare*, 501 N.W.2d 597, 601 (Minn. 1993) (quoting *Melina v. Chaplin*, 327 N.W.2d 19, 20 n.1 (Minn. 1982)).

This court has held that “evidence of a defendant’s financial condition is an important consideration in determining whether a punitive damages award is excessive, but is not necessarily an essential element to prove entitlement to those damages.” *Nugent v. Kerr*, 543 N.W.2d 688, 691 (Minn. App. 1996), *review dismissed* (Minn. July 10, 1996). Even if the jury was not provided with evidence of the defendant’s financial condition, the district court can evaluate the award under the statutory factors if the court has the evidence before it when reviewing the award. *Johnson v. Ramsey County*, 424 N.W.2d 800, 807 (Minn. App. 1988) (upholding a remittitur where the jury was not provided with any evidence of the defendant’s financial condition but district court had judicial notice of the defendant’s salary), *review denied* (Minn. Aug. 24, 1998); *see also Rosenbloom*, 501 N.W.2d at 602 (ordering a remittitur where the jury did not have any evidence of the defendant’s financial condition but the district court had evidence of the defendant’s gross and net income); *Estate of Hartz v. Nelson*, 437 N.W.2d 749, 757 (Minn. App. 1989) (remanding a punitive damage award and ordering a conditional remittitur where no evidence was presented as to ability to pay), *review denied* (Minn. July 12, 1989).

As a threshold matter, Davis does not challenge the district court’s determination that his actions showed a deliberate disregard for the rights and safety of others. Davis’s challenge is to the limited evidence of his financial condition introduced in order to measure a punitive damage award under Minn. Stat. § 549.20, subd. 3. Davis further points to the uncertainty of the district court record in support of this claim. The transcript of the trial states that excerpts from Davis’s deposition were read into the

record during the punitive damages phase of the trial. Unfortunately, the record does not disclose what portions of the deposition were read. On appeal, the parties do not agree what portions of the deposition properly constitute the record.¹ Although Davis argues that we should not consider any portion of the deposition, Davis's trial attorney told the jury during his closing argument that "you've just heard the testimony that he didn't complete high school, that he's been in jail for a long time." Further, the district court found that the jury was presented with evidence of Davis's current incarceration and unemployment as well as his lack of a high school diploma. Regardless of what the jury knew, it is clear that this evidence was before the district court when it ruled on the request for remittitur or a new trial on punitive damages. Because a defendant's ability to pay is not an essential element for establishing punitive damages, but is rather an important condition for the *evaluation* of the award, we conclude that whether this information was presented to the jury is not dispositive. It was sufficient that the information was before the district court in the posttrial proceedings.

Davis further argues that the evidence was insufficient because evidence of his assets or net worth was not presented to the jury or the district court. However, the appellate courts have sustained punitive damage awards or offered conditional remittiturs (in contrast to a new trial) where the only evidence of financial condition was the defendant's income. In *Johnson* and *Rosenbloom*, evidence of the defendant's income or salary was considered a sufficient basis for scrutinizing the award under Minn. Stat.

¹ Both Reiss and Davis appealed the district court decision and have reciprocal offsetting obligations to produce a record on appeal.

§ 549.20; *Johnson*, 424 N.W.2d at 807; *Rosenbloom*, 501 N.W.2d at 602. While evidence of Davis’s unemployment, incarceration, and limited education may not provide a complete picture of Davis’s financial condition, we conclude that such information provided the district court with an adequate and sufficient basis to measure the award.

Finally, we note that Davis claims that Riess, as plaintiff, bears the burden of building the record in regard to Davis’s financial condition. Though we do not reach this issue because the record, though not ideal, is sufficient, we note that Davis does not have strong legal support for his position.²

II.

The second issue before this court is whether the district court abused its discretion in ordering a conditional remittitur. Both parties on appeal contend that the district court erred in granting conditional remittitur. Davis argues that in light of his abysmal financial condition, at a minimum the district court should have reduced the

² The Minnesota decisions reviewing Minn. Stat. § 549.20 have not definitively resolved the issue of who bears the burden of establishing defendant’s financial condition. Compare *Melina*, 327 N.W.2d at 20 (upholding a denial of a motion for a new trial despite the fact that there was no evidence presented at any stage of the defendant’s financial condition), and *Nachtshem v. Wartnick*, 411 N.W.2d 882, 891 (Minn. App. 1987) (citing *Melina* and holding “[o]nce a plaintiff establishes the right to recover punitive damages it is incumbent upon the defendant to establish his inability to pay them.”), overruled on other grounds by *Powell v. Anderson*, 660 N.W.2d 107, 114 (Minn. 2003), with *Johnson*, 424 N.W.2d at 807 (interpreting *Melina* and stating “[i]t seems doubtful to us that the supreme court intended . . . to shift to the defendant the burden of proof of ability to pay”). However, we note that in the federal courts, it is well established that the plaintiff does not have the burden of proving the defendant’s financial condition to support a punitive damage award; instead evidence of financial condition is typically something that the defendant can introduce to limit the award. See *Mason v. Oklahoma Turnpike Auth.*, 182 F.3d 1212, 1214 (10th Cir. 1999); *Grabinski v. Blue Spring Ford Sales, Inc.*, 136 F.3d 565, 571 (8th Cir. 1998); *Kemezy v. Peters*, 79 F.3d 33, 36 (7th Cir. 1996); *Fishman v. Clancy*, 763 F.2d 485, 490 (1st Cir. 1985).

award further. In contrast, Riess argues that the jury award was supported by the evidence and it was an abuse of discretion to reduce the jury award.

“The ‘open-ended and volatile nature of punitive damages’ requires a reviewing court to exercise close supervision over the award.” *Mrozka v. Archdiocese of St. Paul & Minneapolis*, 482 N.W.2d 806, 813 (Minn. App. 1992) (quoting *Estate of Hartz*, 437 N.W.2d at 757), *review denied* (Minn. May 24, 1992). While it is the jury’s province to determine whether or not the evidence supports a grant of punitive damages, the court reviews that award to determine if, under the statutory factors, the award is excessive. *Marston v. Minneapolis Clinic of Psychiatry & Neurology, Ltd.*, 329 N.W.2d 306, 312 (Minn. 1982). “Generally, a district court has broad discretion in determining if damages are excessive and whether the cure is a remittitur.” *Hanson v. Chicago, Rock Island & Pac. R.R.*, 345 N.W.2d 736, 739 (Minn. 1984). Appellate courts review the grant of remittitur for abuse of discretion. *Mrozka*, 482 N.W.2d at 813.

Riess argues that the determination of damages is the province of the jury and that the court should modify a jury’s damage award only in the most egregious circumstances. Contrary to Riess’s argument, the close supervision of punitive damages is mandated by both statute and precedent providing the district court with broad discretion in granting a conditional remittitur of punitive damage awards. Minn. Stat. § 549.20, subd 3; *Mrozka*, 482 N.W.2d at 813.

Riess further argues that there is no evidence to support the district court’s conclusion that the jury acted with passion or prejudice in rendering its verdict and therefore the district court abused its discretion. Though the district court did find that

the jury acted with passion or prejudice in awarding punitive damages, as the court's holding in *Caspersen* indicates, a finding of passion or prejudice is not necessary to sustain a remittitur. *Caspersen v. Webber*, 298 Minn. 93, 100, 213 N.W.2d 327, 331 (1973).

Here, the district court evaluated the evidence presented in support of the punitive damage award and concluded that the award was excessive. The district court reviewed the jury verdict based on seven relevant factors set forth in Minn. Stat. § 549.20 and noted that the punitive damages were more than ten times the amount of compensatory damages. We conclude the district court acted within its discretion in reducing the jury verdict to an amount that was both reasonable in light of the facts of this case and would serve to appropriately punish and deter. While the basis for the district court's finding of passion or prejudice is not explained, the district court's thorough evaluation of the statutory factors and case law provides an adequate explanation of the court's decision to grant a remittitur.

Davis challenges the remittitur by arguing that the district court's remittitur had no relation to the defendant's financial condition and left the award at such a high amount that Davis would be unable to satisfy it.³ As stated in our analysis on the sufficiency of the evidence, it is clear that the district court had before it information concerning Davis's current income and Davis's earning potential. The district court did not state explicitly that it reduced the award based on ability to pay. However, the district court

³ It should be noted that Davis does not claim that the award was so excessive that it violated his constitutional right to due process.

reviewed the evidence in support of the punitive damage award and concluded that the award was excessive, that it was based on passion or prejudice, and that a reduction to three times the compensatory amount would properly serve to punish Davis and deter future conduct.

We note that the question of what financial burden this award will have on Davis cannot be fully answered without evidence of his net worth. No such evidence appears in the record. Had Davis himself presented additional evidence of his financial condition and supplemented what was already introduced by the plaintiff, perhaps Davis would have a stronger argument. However, the district court had before it evidence of all of the necessary factors to properly evaluate the award under Minn. Stat. § 549.20, including information about Davis's financial condition. We conclude that on this record the district court did not abuse its discretion in refusing to order a larger conditional remittitur.

Affirmed.

Dated: