NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 08-541

	Opinion Delivered NOVEMBER 5, 2008
MOSES MULLINS APPELLANT	APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT, [NO. CV-07-142]
V.	HONORABLE DAVID N. LASER, JUDGE
ABERNATHY MOTOR CO. APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Moses Mullins appeals the jury verdict entered in his favor that awarded him $1000 in compensatory damages from appellee Abernathy Motor Company. Appellant purchased a used car from appellee but was never provided a title document. Appellant ultimately returned the vehicle to appellee and gave notice that he was rescinding the contract by rejecting or revoking his acceptance of the vehicle. He then sued appellee seeking recovery of the down-payment and monthly payments he had made, plus punitive, consequential, and incidental damages. Appellee defended itself from the complaint, was allowed to put on evidence of offsetting benefit to appellant to reduce any damage award and to have the jury instructed to consider offset, and was granted a directed verdict on punitive damages. After the jury determined that due to the breach, appellant was entitled to $1000 in compensatory damages, appellant filed this appeal.

On appeal, appellant contends that he is entitled to a new trial, alleging the following trial-court errors: (1) the grant of directed verdict to appellee on the issue of punitive damages; (2) the evidentiary ruling that allowed appellee to present evidence of an offset; (3) the giving of a jury instruction for it to consider reducing appellant's damages by the benefit appellant received under the contract; and (4) the exclusion of appellant's evidence of incidental and consequential damages resulting from appellee's breach of contract.

The following evidence was presented at this jury trial conducted in Mississippi County Circuit Court. Many of the facts were undisputed, as relative to the purchase and use of the vehicle. The parties differed on the manner in which the title document was handled.

Appellant bought a 2001 Lincoln Towncar with approximately 85,000 miles on it at appellee's Blytheville, Arkansas, location on November 2, 2005, for a price of $12,995. Appellant paid $1000 as a down payment and contracted to pay the balance in semi-monthly installments. Appellee's primary business location was in Jonesboro, and its business practice was to keep titles and other paperwork at the Jonesboro location.

At the time of purchase, appellant agreed in writing to appellee's procedure for acquiring title and registering the vehicle with the state governmental authorities. That agreement ensured the understanding that appellee would hold the title until the purchaser was prepared to register the vehicle, that there were five critical documents necessary for registration, and that appellee would mail the document by certified mail or allow the purchaser to pick it up at any time when ready to register. The agreement also noted that

there would be costs assessed to the purchaser if, due to the fault of the purchaser, appellee provided additional copies or duplicates of any of the necessary registration documents.

Appellee, via its owner and employees, testified that attempts were made to send the title to appellant via certified mail, but it was returned, although there were no postal receipts to corroborate that testimony. Appellee also attempted to send the title from the Jonesboro location to the Blytheville location via courier. When it became evident that the title was lost in the shuffle between the business locations, appellee initiated the process of acquiring a replacement title. Thereafter, the lost title resurfaced within the business entities.

Appellee's owner testified that it was in his business's best interest to have its customers register the vehicles with the State so that their banking business would be uninterrupted and so that their liens would be perfected. Another employee of appellee testified that after the purchase, appellant did not ask for the title but rather requested extended temporary tags from appellee, because appellant said he could not afford the sales tax due.

Appellant testified that he wanted appellee to refund his down payment plus all monthly installments he had paid for a total of $6,347.32. Appellant agreed that the dealership gave him a few extensions on temporary tags, but contended that it did so because it could not give him his title, which appellant wanted and asked for on several occasions. Appellant denied that appellee mailed him the certificate because his address, where he lived with his parents, had never changed. Appellant said he was employed and was able to pay sales tax, but he could not register without the title document. Appellant complained that once the temporary tags ran out for the last time, he had to resort to borrowing a family member's car,

but he also drove the Lincoln for some of the months he possessed it. Appellant stated that he was afraid to drive without proper registration and tags. Appellant said he became dissatisfied with the run-around, engaged counsel, and the lawsuit was initiated. Appellant returned the vehicle to appellee in April 2007 with 110,000 miles on it.

Appellee successfully argued to the judge to direct a verdict on punitive damages. Appellant unsuccessfully argued to the judge to give an instruction on incidental or consequential damages. The jury was instructed on the elements of a contract for the sale of goods; the duty of the seller to deliver title; the duty of good faith and fair dealing; the burden of proof on appellant to prove a rejection of the goods or revocation of acceptance; and compensatory damages to include the contract price "reduced by any expense saved in the consequence of the breach by Abernathy Motor Company." After the jury considered the evidence, it rendered a plaintiff's verdict for $1000 in compensation for appellant's loss. This appeal followed.

First, we consider the directed verdict on punitive damages. Appellant rested his contention on the assertion that the car dealer wrongly deprived him of title to the vehicle for more than a year, which was inconvenient and ultimately led to his lessened use of the vehicle. The trial judge agreed that there was an issue of fact on compensatory damages but not on punitive damages because there was a lack of evidence of bad faith, or willful or wanton conduct. We agree with the trial court's assessment.

Appellant correctly states that our supreme court has held punitive damages to be recoverable in a breach-of-contract case pursued under the Uniform Commercial Code. *See*

Gordon v. Planters & Merchants Bancshares, Inc., 326 Ark. 1046, 935 S.W.2d 544 (1996). The level of wrongdoing must meet with a wantonness or conscious indifference to the consequences such that malice may be inferred. *See id.* Appellant argues that he presented evidence of such conduct that should have been considered by the jury, not taken from it by the trial judge by granting a directed verdict. We disagree.

A claim for punitive damages must be submitted to the jury if there is any substantial evidence to support a punitive damages instruction. *See Stein v. Lukas*, 308 Ark. 74, 823 S.W.2d 832 (1992). The trial court must apply an objective standard, focusing on whether the defendant knew or should have known that in light of the surrounding circumstances its conduct would naturally or probably result in injury and that it continued such conduct in reckless disregard of the circumstances from which malice may be inferred. *HCA Health Services v. Nat'l Bank of Commerce*, 294 Ark. 525, 745 S.W.2d 120 (1988). On appeal of the grant of a directed verdict, we determine whether appellant presented substantial evidence of such malicious behavior. *See Schmidt v. Stearman*, 98 Ark. App. 167, 253 S.W.3d 35 (2007). There was no substantial evidence, and we hold that the trial court did not err in finding such substantial evidence lacking. The trial court agreed, as do we, that the evidence viewed most favorably to appellant shows inefficiency and poor business practices. However, the evidence simply did not rise to the level required to meet the threshold for punishing the defendant in this instance. *Compare Carpenter v. Automobile Club Interinsurance Exchange*, 58 F.3d 1296 (8th Cir. 1995) (applying Arkansas law and its strict standards for giving of punitive-damage

instruction, and affirming district court's refusal to give punitive-damage instruction); *City Nat'l Bank of Fort Smith v. Goodwin*, 301 Ark. 182, 783 S.W.2d 335 (1990).

Appellant next contends that the trial court abused its discretion by permitting appellee to present evidence of offset, i.e., evidence of the benefit of the use of the Lincoln for over a year or the saving of a necessary expense, to reduce any amount of appellant's damages. The trial court is afforded considerable discretion in evidentiary rulings, which will not be overturned on appeal absent an abuse of discretion. *Dodson v. Allstate Ins. Co.*, 345 Ark. 430, 47 S.W.3d 866 (2001). Appellant's attorney did object to appellee's cross examination of appellant, but after a long discussion among the attorneys and the judge, the judge admonished appellee's attorney to move on with his cross examination of appellant and avoid asking questions about other damages that appellant might want. The case proceeded without incident on this point. We cannot discern any abuse of discretion when the trial court limited appellee's attorney at the point of objection. When a party receives the relief he requests, he has no basis to seek reversal.

The preceding point leads to the next, which is appellant's allegation that the trial court erred in giving the jury an instruction on offset, by giving a version of Arkansas Model Jury Instruction 2519: "Any damages recoverable by Moses Mullins are to be reduced by any expenses saved in consequence of the breach by Abernathy Motor Company."

We will not reverse a trial court's decision to give an instruction unless the trial court abused its discretion. *Marx v. Huron Little Rock*, 88 Ark. App. 284, 198 S.W.3d 127 (2004). Appellant agrees that the instruction itself is proper but contends that the provision on offset

was inapplicable to the buyer's remedy under the U.C.C. that he was pursuing. Appellant contends that he did not sue for damages for non-delivery, which would permit reduction of damages by offset. Ark. Code Ann. § 4-2-713. Rather, appellant contends he sued because of non-conforming goods, which permits full reimbursement of the contract price. In response, appellee notes that Ark. Code Ann. § 16-63-206 allows for setoff to be pleaded in any action for recovery of money, and further, that such setoff claims have been allowed in suits based upon the U.C.C. and the return of vehicles. Appellee further notes that the objection at trial, and the only aspect preserved for review here, is that there was no evidence of expenses saved.

We need not decide whether the setoff provision was applicable to the remedy appellant was seeking because appellant failed to preserve any objection on that issue. The attorneys discussed the jury instructions with the judge, and the judge noted that appellant was objecting to the offset instruction. Appellant's attorney clarified his objection by stating that he did not think there was any evidence of expenses saved by appellant. Parties are bound by the scope and nature of their objections at trial.

Thus, the question on appeal is limited to whether there was any evidence to support appellee's contention that appellant was saved expenses as a consequence of this transaction. If there was such evidence, then there was no abuse of discretion in giving the instruction. There was evidence that appellant was in possession of the vehicle for almost a year and a half, that he drove 25,000 more miles on it, and that it was a good vehicle but that he could not

get it registered. A party is entitled to an instruction if there is any evidence to support giving it, and here, there was.

Appellant's last point on appeal is that the trial court abused its discretion in excluding appellant's evidence of two-weeks of lost wages resulting from the breach of contract. Appellant asserts that this was proper evidence of incidental damages. We disagree that appellant has shown an abuse of discretion.

Appellant testified that he had driven the Lincoln but that he was fearful of doing so without proper tags and registration. Appellant also stated that he parked the car in the yard during some periods of time and borrowed another vehicle for his transportation needs. Appellant also admitted that he had driven the car some without proper tags and registration. Then, appellant began testifying about having missed an opportunity for a night job because of not being able to drive the Lincoln at night. Appellee objected, which was sustained "at this time." Appellant proffered that he lost $370 in wages for each of those two weeks.

Incidental damages are those proximately caused by the breach. *See Ozark Kenworth Inc. v. Neidecker*, 283 Ark. 196, 672 S.W.2d 899 (1984). Causation is generally a question of fact, but in this instance, evidence of causation is wholly lacking. While appellant showed some hesitance to drive the Lincoln unregistered, he did so for months, and when he decided not to drive it, he acquired transportation from other sources. We believe that the trial court's discretion was not abused in this instance.

After our appellate review, we affirm the judgment entered in favor of appellant at trial.

GLOVER and HEFFLEY, JJ., agree.