

CERTIFIED FOR PARTIAL PUBLICATION
COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

STEVEN GRASSILLI,

Plaintiff and Respondent,

v.

RICHARD BARR et al.,

Defendants and Appellants.

D044931

(Super. Ct. No. EC19095)

ORDER MODIFYING
OPINION AND DENYING
PETITIONS FOR REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

The petitions for rehearing are denied.

It is ordered that the opinion filed on September 13, 2006, be modified as follows:

1. On page 52 and continuing on page 53, in the paragraph beginning "In response, defense counsel argued," the third and fourth sentences are deleted, and the following two sentences are inserted in their place:

In an apparent attempt to suggest the officers were responsible for paying the compensatory damage award, defense counsel also stated the officers "are going to be

punished handsomely with having to write a check" Grassilli's counsel interrupted and objected on the basis of "[m]isstatement of the law."

2. On page 54, in the first full paragraph beginning with "Defendants contend the punitive damages award is excessive," in the third sentence the phrase "defense counsel's" is changed to "Grassilli's counsel's."

3. On page 63, the text of footnote 11 is deleted and changed to read:

In a petition for rehearing in this court, Grassilli submitted information showing that several months after the judgment was entered, defense counsel stated the CHP had decided to indemnify defendants for the punitive damages award. Defendants agree their counsel made this statement. Grassilli argues this information means defendants' financial conditions are irrelevant to our analysis. We disagree.

Events occurring after the judgment are not properly before a reviewing court. But even if we could consider this new information, it does not show the officers will be indemnified or a likelihood that this will occur. Under section 825, subdivision (b), an employing public agency's intention or desire to indemnify its employee for a punitive damage award is only the preliminary step to a valid indemnification by the state government. The code section mandates that before indemnification can occur, the employing agency *and* the Legislature must make specific findings that the employee acted in good faith and without actual malice and in the apparent best interests of the public entity. (§ 825, subd. (b).) As noted, on the record before us, there is no reasonable basis for believing the Legislature could or would properly find these requirements were met in this case.

Based on our conclusion that there is no reasonable possibility of indemnification on the record before us, we need not reach the issue whether section 825, subdivision (b)'s prohibition on admitting evidence of public entity indemnification applies to a punitive damages claim based solely on a federal cause of action. We likewise decline to offer guidance, for any subsequent retrial, on the admissibility of evidence of the CHP's stated intent to recommend indemnification. Given the lack of a developed factual record on the issue, it would be inappropriate for us to rule on the issue at this time.

4. Footnote 12 is deleted.

5. On page 76 and continuing on page 77, in the paragraph beginning "Defendants argue the amount of time," the last sentence of the paragraph is deleted.

There is no change in the judgment.

HALLER, Acting P. J.

cc: All parties.