

NOT RECOMMENDED FOR PUBLICATION
File Name: 07a0457n.06
Filed: June 28, 2007

NO. 06-5345

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

LISA K. DAY,

Plaintiff-Appellee,

v.

INGLE'S MARKETS, INC.,

**ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF TENNESSEE**

Defendant-Appellant.

/

BEFORE: SUHRHEINRICH and GIBBONS, Circuit Judges; and HEYBURN, District Judge.*

PER CURIAM. Plaintiff-Appellee Lisa Day (“Day”) filed this state malicious prosecution claim under Tennessee law against her former employer, Defendant-Appellant Ingles Markets, Inc. (“Ingles Markets”), after she was acquitted of a state criminal theft charge initiated by Ingles Markets. A jury trial on the malicious prosecution claim resulted in a verdict in Day’s favor, and she was awarded compensatory and punitive damages in the amounts of \$500,000.00 and \$2,500,000.00, respectively, against Ingles Markets. On January 25, 2006, the district court entered an order denying Ingles Markets’s post-verdict motion for judgment as a matter of law, or, in the alternative, for a new trial or for remittitur.

Ingles Markets appeals from the district court’s judgment and post-trial order, contending

*The Honorable John G. Heyburn, II, United States District Judge for the Western District of Kentucky, sitting by designation.

that the district court erred in: (1) failing to enter judgment as a matter of law for Ingle's Markets on the basis that the probable cause element of Day's malicious prosecution claim was res judicata; (2) awarding punitive damages; (3) finding sufficient evidence in support of Day's claim; and (4) failing to find the damage award excessive.

Having had the benefit of oral argument and having reviewed the parties' briefs and applicable law, we conclude that the matter should be affirmed for the reasons stated in the district court's well-reasoned opinion dated January 25, 2006, *Day v. Ingle's Markets, Inc.*, No. 2:01-CV-325, 2006 WL 239290 (E.D. Tenn. Jan. 25, 2006).

SO ORDERED.