

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**Amanda M. Watkins**

**Case No. 2:08-cv-134**

**Plaintiff**

**Judge Graham**

**v.**

**Magistrate Judge Kemp**

**New Albany Plain Local Schools, et al.,**

**Defendants.**

OPINION AND ORDER

Plaintiff Amanda M. Watkins sued Gerald Nixon for assault and battery related to an incident that occurred on the campus of the New Albany High School in March of 2007<sup>1</sup>. Despite being properly served, Mr. Nixon failed to file an answer and the clerk put on an entry of default on March 24, 2009 (doc. 42). A bench trial on the issue of damages was held on April 26, 2011.<sup>2</sup>

**I. FINDINGS OF FACT**

Having considered the testimony and documentary evidence, the court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). The court takes its findings of fact from the testimony of witnesses, documentary

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<sup>1</sup> Co-defendants New Albany Plain Local Schools (NAPLS), Principal Scott Stewart (Stewart), Assistant Principal Richard Stranges (Stranges), Girls Track and Field Coach Otis Winston, (Winston), District Athletic Director Rex Reeder (Reeder), Security Officer Richard Fisher (Fisher), Dean of Students Regina LeMaster (LeMaster), the Village of New Albany (Village) and New Albany Police Officer Joel Strahler (Strahler) were dismissed with prejudice by order of the court on May 10, 2010 (doc. 103).

<sup>2</sup> Although plaintiff previously filed a request for trial by jury, she withdrew that request and consented to trial by the court on the record of the April 26, 2011 proceedings.

evidence admitted during the hearing, and evidence already in the record of this case. Plaintiff called two witnesses: Amanda M. Watkins and Erica D. Watkins. Defendant Gerald Nixon did not attend. The allegations of the complaint relating to Mr. Nixon's liability were deemed to be true as a result of his failure to answer the complaint, and the purpose of the hearing was to determine the nature and extent of the injuries and damages plaintiff was entitled to recover as a result of Mr. Nixon's actions.

1. Plaintiff Amanda M. Watkins was a student at New Albany High School ("high school") until she graduated in 2008.
2. On March 20, 2007, plaintiff learned that her boyfriend, defendant Nixon, was involved in illegal activities and terminated their relationship. Throughout that day, Nixon repeatedly tried to contact plaintiff to discuss their relationship.
3. After classes, on March 20, 2007, plaintiff was preparing for track practice when Nixon confronted her near the locker room and asked to talk.
4. Amanda agreed and the conversation quickly became heated. Nixon began yelling in Amanda's face and placed his forearm with some pressure against Amanda's neck.. Nixon then struck Amanda across the face with his right hand, in which he was holding his cell phone. The cell phone struck Amanda in the right ear, jaw and face, knocking her to the ground. Shortly thereafter, Nixon fled the scene.
5. After being struck, Amanda's ear felt hot, she was dizzy, her vision was slightly blurry and she saw flashes of light.
6. At some point, Amanda got up off of the ground and ran to the athletic weight room where she believed her cousin would be and from whom she could obtain help. Her

cousin was not there, but the New Albany High School athletic trainer for track, Reginald Young, was present.

7. Upon entering the weight room, Amanda collapsed to the ground again. Mr. Young helped Amanda up to a seat. A clerk in the office brought a bag of ice to place on Amanda's face which by now was swelling and red.
8. That evening, Amanda went to an urgent care facility for treatment. When she sought treatment, her face was swollen and she had a constant ringing in her ear. She was diagnosed with a contusion of the face and told that the ringing in her ear would likely last for a few weeks. Amanda was prescribed an anti-inflammatory medication. The doctor also wrote her an excused absence from school and restricted her from participating in track for 4-5 days. (Plaintiff's Ex. A).
9. The cost of the urgent care visit was \$119.34. (Plaintiff's Ex. B). The cost of the prescription anti-inflammatory medication was \$10.00. (Plaintiff's Ex. C).
10. In the morning, Amanda's face remained swollen and her neck was stiff. She was embarrassed about what had happened the previous day. Her classmates were all talking about the assault and this gossip continued throughout Amanda's senior year.
11. Amanda attempted to return to school the following day. However, she was asked by the principal, assistant principal and school resource officer to leave the school both because they were worried about her injuries and because they were worried that her presence at school would create a distraction among the students. Nixon was a star athlete and Amanda was a "prominent" student and the school officials felt that having Amanda on campus would create a stir. Although the principal promised to send Amanda's work home so she would not fall behind and become ineligible for track, not all of her work

was sent home. In addition, one of her teachers did not immediately excuse her absence and this affected her cumulative GPA.

12. As a result of her injuries, Amanda was forced to miss a week of track practice and two track meets.
13. After the assault on March 20, 2007, Nixon continued to stalk and harrass Amanda at school. The harrassment continued throughout her junior and senior years of high school.
14. In April of 2007, Amanda's mother Erica D. Watkins (Mrs. Watkins) filed a juvenile court action against Nixon seeking a "stay away order" from the court. (Plaintiff's Ex. E).
15. On June 19, 2007, Amanda obtained a "No Contact Order" against Nixon. (doc. 74-7).
16. On October 26, 2007, Mrs. Watkins sought a Civil Protection Order from the Franklin County Court of Common Pleas against Nixon. (doc. 74-8). The court issued a temporary, ex parte civil protection order. (doc. 74-9). A permanent protective order was denied. (doc. 74-13).
17. Mrs. Watkins testified that she incurred attorney's fees related to the civil protection order. She provided receipts for payments made to attorney James Green between November 2007 and April 2008 in the amount of \$8,675.00. (Plaintiff's Ex. J).
18. Amanda testified that the swelling in her face lasted for about three days. The contusion and blow to her jaw caused her jaw to lock up and this continued for approximately six to seven weeks. Amanda continues to have clicking in her jaw and it will sometimes tighten up and get stiff. The ringing in her ear continued for two to three months.
19. For a few months after the assault, Amanda underwent physical therapy through the athletic department at her high school. The therapy was necessary because Amanda continued to have a stiff jaw and neck.

20. As a result of the assault, Amanda suffered emotional and psychological injuries. At school she was constantly subjected to Nixon's harassment. She became withdrawn and developed trust issues, including with her own family members.
21. As a result of her emotional state, Amanda began seeing a psychiatrist, Dr. Michael R. Watkins, whose office was located in Dayton, Ohio. Amanda saw Dr. Watkins approximately 16 to 20 times over a three month period. Mrs. Watkins testified that the visits actually continued for a period of seven or eight months. Mrs. Watkins also testified that Dr. Williams concluded that Amanda suffered from post-traumatic stress disorder as a result of the assault and continued stalking by Nixon.
22. Mrs. Watkins testified that Dr. Williams charged \$350.00 for an initial evaluation and that Amanda had two evaluations for a total of \$700.00 but did not provide a copy of the medical bills for either evaluation. Each subsequent visit was \$125.00. Plaintiff testified that she saw Dr. Williams approximately 16 to 20 times but only presented the court with bills for three visits. The total medical bills for Dr. Williams provided by plaintiff to the court amounted to \$625.00. (Plaintiff's Ex. G).
23. Mrs. Watkins also testified that Amanda suffered extreme hair loss as a result of Nixon's assault and continued harassment. Amanda also had difficulty sleeping and eating. Mrs. Watkins testified that she believed Amanda continued to suffer from post-traumatic stress disorder for about one and half years after graduating from high school.
24. Mrs. Watkins testified that shortly after the assault, Amanda began suffering tooth pain and had to have two or three root canals and some crowns placed on her teeth. Amanda testified that she noticed the pain in her molars a few weeks after the assault and that the

dentist informed her she had a chipped tooth and this was the reason she needed a root canal. Amanda did not ask the dentist for an opinion on whether the assault caused the damaged teeth and did not provide a report or records from the dentist. She did provide dental bills in the amount of \$10,572.20, of which the Watkins family was responsible for \$4,779.45. (Plaintiffs Exs. H & I).

### **III. Analysis**

In Ohio, “it is a rule of universal application that in a tort action, the measure of damages is that which will compensate and make the plaintiff whole.” Pryor v. Webber, 263 N.E.2d 235, 238 (Ohio 1970). The testimony revealed that the plaintiff received an injury to her ear and jaw when she was struck across the face by Nixon, who was holding a cell phone in his hand at the time of the blow. As a result of the blow to her face, Amanda experienced immediate pain and emotional distress and received medical attention the same evening. She continued to experience residual physical effects, including a ringing in her ears and a clicking in her jaw, for several weeks after the incident. In addition, plaintiff produced evidence sufficient to establish that she also suffered psychological damages as a result of the incident. Thus, the court finds that plaintiff did suffer a physical and emotional injury as a proximate result of defendant’s intentional tort.

The amount or value of compensatory damages for personal injury rests in the discretion of the trier of the facts. Martin vs. Collins, No. 81041983, Ohio App. LEXIS 14047 (Ct App. Ohio June 23, 1983). Compensatory damages “measure actual loss, and allow recovery for direct pecuniary losses resulting from an injury such as medical expenses, loss of time or money, loss due to the permanency of the injuries, disabilities or disfigurement, and physical and mental pain

and suffering.” Bailey v. Allberry, 624 N.E.2d 279, 280 (Ohio 1993)(quoting Fantozzi v. Sandusky Cement Prod. Co. 597 N.E.2d 474, 482 (1992). A plaintiff may recover the cost of medical treatment incurred as a result of the personal injury and may testify that the treatment was related to the injuries sustained. See Rimsky v. Snider, 701 N.E.2d 710, 713 ( Ct. App. Ohio 1997) (admitting medical bills for treatment upon testimony of plaintiff relating the bills to the injury sustained). Under Ohio Rev. Code § 2317.421, “a written bill or statement, or any relevant portion thereof, itemized by date, type of service rendered, and charge, shall, if otherwise admissible, be prima-facie evidence of the reasonableness of any charges and fees stated therein for medication. . .or medical, dental, hospital . . .rendered by the person, firm, or corporation issuing such bill or statement.”

Plaintiff submitted the following written medical bills and/or statements which the court finds were related to the injury caused by Nixon:

1. Urgent Care: \$119.34
2. Prescription: \$10.00
3. Dr. Williams (psychiatrist): \$625.00

The court finds that the total amount of medical bills submitted by plaintiff related to her treatment was \$754.34. Although plaintiff also testified that she received dental treatment as a result of the incident, she did not provide any report or treatment records that would indicate that the treatment was related to the incident. Nor did plaintiff or her mother testify that any dentist told them that the dental treatment was related. The court finds that the plaintiff failed to prove by a preponderance of the evidence that the dental treatment, which did not commence until

several weeks after the assault, was related to the personal injury and therefore the court is not awarding compensation for claimed dental injuries.

In addition to recovery of the cost of medical bills, plaintiff is entitled to an amount of money that will make her whole. Pryor v. Webber, 263 N.E.2d at 238. Such damages may also include awards for bodily pain and suffering. Drehmer v. Fylak, 837 N.E.2d 802 (Ct. App. Ohio 2005). The court finds that plaintiff did incur pain and suffering as a result of Nixon's assault. Plaintiff testified that she remained in physical pain for several days after the assault. She further testified that she suffered emotional and psychological damage. According to plaintiff's mother, Amanda had difficulty sleeping and eating, engaged less with her family and friends, and lost significant amounts of hair as a result of the assault, Nixon's continued stalking, and the continuing school gossip about her and the assault. Based on this testimony, the court finds that an award of \$25,000.00 for physical and emotional pain and suffering a reasonable amount to compensate plaintiff.

Finally, plaintiff's mother testified that as a result of Nixon's assault and continued harassment, she was forced to hire attorney James Green to seek a civil protective order against Nixon. According to the transcript of the civil protective order hearing held on December 12, 2007 before Franklin County Court of Common Pleas Magistrate Pamela Erdy, the matter was originally set for an ex parte civil stalking protection order on October 26, 2007. (Doc. 76, p. 3). A continuance was granted for Amanda to obtain counsel on November 8, 2007. Plaintiff submitted receipts for payment to Mr. Green on November 3 and 8, 2007 in the amount of \$1,075.00 for "consultation" and "retainer". (Ex. J). These bills are clearly related to the civil protective order. A third receipt, dated November 30, 2007 which was approximately two

weeks before the civil protective order is for \$5,000.00. (Ex. J). It is reasonable to conclude that this payment was also related to the civil protective order hearing. However, plaintiff also submitted two additional receipts for payment to Mr. Green: 1) a receipt dated December 19, 2007 for payment in the amount of \$2,000.00 for “legal representation – complaint”; and 2) a receipt dated April 10, 2008 in the amount of \$100.00 for “office consult.” (Ex. J). Both of these receipts are for payments made after the civil protective order hearing. Without additional evidence that these bills were related to the civil protective order, the court finds that plaintiff has failed to prove by a preponderance of the evidence that these legal bills were related to the civil protection order. Accordingly, the court finds that the plaintiff incurred \$6,075.00 in legal fees related to pursuit of the civil protective order.

In an intentional tort case, the trier of fact may consider awarding punitive damages. Martin vs. Collins, No. 8104, 1983 Ohio App. LEXIS 14047 (Ct. App. Ohio, June 23, 1983) (the finding of the trial court that the defendant committed the intentional tort of assault and battery put the issue of punitive damage in the case for the trier of fact). Punitive damages are allowed in tort actions involving malice, which has been defined as “that state of mind under which a person's conduct is characterized by hatred or ill will, a spirit of revenge, retaliation or a determination to vent his feelings upon other persons.” Simpson v. Hernandez, No. L-84-390, 1985 Ohio App. LEXIS 6345 (Ct. App. Ohio, April 12, 1985 )(citations omitted) (finding that the action of striking the plaintiff was deliberate and with malice). The “purpose of punitive damages is not to compensate a plaintiff, but to punish and deter certain conduct.” Richmond v. Gerard, No. 95APE06-738, 1996 Ohio App. LEXIS 1043 (Ct. App. Ohio Mar. 19, 1996). The court has found that Nixon intentionally struck Amanda Watkins across the face while holding a

cell phone, knocking her to the ground and causing her to sustain significant injuries, and that he continued to stalk and harass her for over a year, inflicting additional emotional distress.

Punitive damages are appropriate in this case to deter the defendant from engaging in this type of wrongful conduct in the future. Accordingly, the court awards \$25,000.00 in punitive damages.

In conclusion, the court finds that the plaintiff is entitled to reimbursement for her medical bills in the amount of \$754.34. She is entitled to reimbursement for her attorney's fees related to the civil protective order in the amount of \$6,075.00. The court finds that plaintiff incurred damages for physical and psychological injuries in the amount of \$25,000.00. The court further awards \$25,000.00 in punitive damages.

Accordingly, the court awards plaintiff \$56,829.34 in total damages.

The clerk shall enter judgment in favor of Amanda Watkins and against Gerald Nixon in the amount of \$56,829.34 plus costs.

IT IS SO ORDERED.

s/ James L. Graham  
James L. Graham  
UNITED STATES DISTRICT JUDGE

Date: May 23, 2011