IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

TRANS HEALTH MANAGEMENT, INC., and TRANS HEALTHCARE, INC.,

Appellants,

v.

JOSEPH WEBB, by and through Rose M. Webb His Limited guardian of the Property,

Appellee.

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NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D12-1355

Opinion filed December 10, 2013.

An appeal from the Circuit Court for Alachua County.
Victor L. Hulslander, Judge.

Hala Sandridge of Fowler White Boggs P.A., Tampa, and Steven M. Berman, Seth P. Traub, and Duane A. Daiker of Shumaker, Loop & Kendrick, LLP, Tampa, for Appellants.

Sean Marotta of Hogan Lovells US LLP., Washington, D.C. and Carol A. Licko, of Hogan Lovells US LLP., Miami, Amicus Curiae in support of Appellants.

Bennie Lazzara, Jr., Isaac R. Ruiz-Carus, and Joanna M. Greber of Wilkes & McHugh, P.A., Tampa, Stuart C. Markham, Kristin A. Norse, and Robert W. Ritsch of Kynes, Markham & Feldman, P.A., Tampa, for Appellee.

PER CURIAM.

Appellants, Trans Health Management, Inc. ("THMI"), and its former parent company Trans Healthcare, Inc. ("THI"), appeal from an adverse $900 million final judgment entered following a trial on damages at which they were not represented by counsel. Concluding that the trial court abused its discretion by denying and striking the motion of non-Florida attorney Maria Ellena Chavez-Ruark to appear *pro hac vice* on Appellants' behalf, we reverse the final judgment and remand for a new trial. Because we reverse on this basis, we do not address the trial errors Appellants assert—some of which potentially constitute fundamental error.

Background

In June 2006, Appellee Joseph Webb ("Webb"), through his limited guardian, filed a complaint against Appellants and twenty other co-defendants, alleging negligent treatment while he was a patient at the University Place Care and Rehabilitation Center nursing home, in Gainesville, Florida. Webb alleged that nursing home staff actions or inaction caused him to suffer severe bedsores and a below-the-knee amputation. Subsequently, the trial court granted leave to add a claim under section 415.1111, Florida Statutes, for abuse, neglect, or exploitation of a vulnerable adult. Webb also sought to add a claim for punitive damages. The trial court dismissed the section 415.1111 claim with prejudice and

denied the request to add punitive damages.

Subsequently, in January 2009, a Maryland court appointed a receiver over the assets of THI and its related entities. THI had previously sold its interest in THMI, but continued handling the defense for THMI. The Maryland court set a claims bar date by which all creditors of the receivership estate were to have filed a notice of claim against the estate. When Webb filed no notice by the deadline, the receiver determined there was no longer a need to defend the instant lawsuit, and it accordingly discharged Appellants' counsel.

A successor judge was assigned to the case, and the court granted trial counsel's motion to withdraw as to THI in November 2010 and as to THMI in January 2011. It ordered that all subsequent papers be served on counsel for the receiver, Chavez-Ruark, who is licensed in Maryland.

Webb obtained leave from the successor judge to amend the complaint to re-assert the section 415.1111 claim and, later, to add a punitive damages claim. Having discharged counsel, Appellants filed no answer to Webb's amended complaint, and on September 19, 2011, the trial court entered defaults against Appellants on all three claims—negligence, exploitation, and punitive damages. Trial was then set solely to determine the amount of compensatory and punitive damages.

On the morning of trial, February 6, 2012, Appellants filed: (1) a motion to

vacate the defaults; (2) a motion for continuance; (3) a motion seeking permission for Chavez-Ruark to appear *pro hac vice*; and (4) Florida attorney Hala Sandridge's notice of appearance to serve as local counsel of record. All three of the motions were signed by foreign attorney Chavez-Ruark. The trial court inquired of Chavez-Ruark as to why the *pro hac vice* request was made so late. Chavez-Ruark responded that a settlement with Webb and other plaintiffs had been pending approval from the receivership court since December 27, 2011. But, on January 26 (roughly ten days before trial), the receivership court disapproved the settlement involving Webb. Chavez-Ruark asserted that disapproval of the settlement freed up receivership estate funds to pay for the defense of the instant case, and that, until the settlement was disapproved, the estate was on the hook for those settlement monies. The receiver could not use estate funds, otherwise earmarked for settlement, to pay for the defense.

The trial court then asked Chavez-Ruark for what purpose(s) she sought to appear *pro hac vice*. She advised the court she would argue motions to vacate the defaults; if unsuccessful, she would ask to continue the trial "to allow our counsel to get up to speed." The court replied that waiting until the last minute was "frankly unacceptable" and stated it would not let Chavez-Ruark appear. When Chavez-Ruark attempted to provide additional information, the court refused to hear any further argument from her. The court then asked Sandridge if her purpose

was merely to sponsor the *pro hac vice* motion. Sandridge acknowledged that she was not retained, or prepared, to defend the case, but stated she assumed she "would be here with" Chavez-Ruark during trial. Upon request from Webb's counsel, the court struck the *pro hac vice* motion and the notice of appearance. Chavez-Ruark and Sandridge then left defense counsel's table.

The trial on damages proceeded, lasting three days, with no attorney present to represent the defendants. The jury returned a $900 million verdict for Webb: $100 million in compensatory damages on the negligence claim; $100 million in compensatory damages on section 415.1111 exploitation claim; and $700 million in punitive damages.

Analysis

Appellate review of the denial of a motion to appear *pro hac vice* is for abuse of discretion. *See Huff v. State*, 569 So. 2d 1247, 1249 (Fla. 1990).

Florida Rule of Judicial Administration 2.510(a) requires a foreign attorney seeking *pro hac vice* admission to file a verified motion to appear. A legally sufficient motion is one that complies with the requirements of rule 2.510(b) and the form provided therein. *See* Fla. R. Jud. Admin. 2.510(b)(1)-(8). "[A] motion for admission pro hac vice, while subject to the discretion of the trial court, should usually be granted on a pro forma basis if it is facially sufficient and if the attorney is a member in good standing of the bar of another jurisdiction." *THI Holdings,*

LLC v. Shattuck, 93 So. 3d 419, 423 (Fla. 2d DCA 2012). There must be "a legally permissible basis for denying admission pro hac vice." *Id.* at 424. "In determining whether to permit a foreign attorney to appear pursuant to this rule, the court may consider, among other things, information provided under subdivision (b)(3) concerning discipline in other jurisdictions." Fla. R. Jud. Admin. 2.510(a). The rule also provides five circumstances under which a foreign attorney is not permitted to appear. *See* Fla. R. Jud. Admin. 2.510(a)(1)-(5). "Although the denial of such a motion is within the discretion of the trial court, the ruling should be based on matters that appear of record before the court." *Huff*, 569 So. 2d at 1249-50. "If there is no reason to deny the motion, the court should defer to the choice made by the party and allow the foreign attorney to appear as counsel." Philip J. Padovano, *Fla. Civil Practice* § 6:1 (2012 ed.).

Here, Chavez-Ruark's motion complied with rule 2.510 and was legally sufficient, which Webb's counsel appropriately conceded at oral argument before this Court. The trial court relied on none of the bases for denial in rule 2.510. Rather, the court's reason for denying the motion appears to be that it (along with the motions to vacate the defaults and for continuance) was filed the morning of trial—a circumstance the court found "frankly unacceptable." We cannot find, and Webb has not provided, any decision by a Florida appellate court holding or suggesting that the filing of a motion to appear *pro hac vice* on the day of trial is a

legally permissible basis upon which to deny such a motion.

Webb contends the trial denied the motion, not because Appellants waited until the last minute to file it, but because Appellants' only reason for seeking Chavez-Ruark's admission was to delay a long-scheduled trial. Webb further asserts that Chavez-Ruark said she was unprepared to defend the case at trial. On the contrary, Chavez-Ruark never stated she would not sit for trial or was incapable of doing so. She advised the court she intended to seek to vacate the default, and failing that, ask for a continuance; but she did not state this was all she was prepared to do. Indeed, the trial court cut her off midsentence and prohibited her from saying anything further. In our view, even if the court had heard and denied the motions to vacate and for continuance, Chavez-Ruark still could have appeared at trial on Appellants' behalf, if only for the purpose of raising objections and preserving errors for appellate review. The court's refusal to permit Chavez-Ruark to appear *pro hac vice* gave Webb an exclusive three-day audience with the jury, and enabled him to present damning evidence against the unrepresented corporate defendants, unfettered. Under the circumstances present in this case, we conclude the trial court abused its discretion by denying the *pro hac vice* motion, and that the error requires reversal.

Accordingly, we reverse the final judgment in its entirety, and remand the cause for a new trial. On remand, the court shall first give Appellants the

opportunity to re-file and argue their motions to vacate the defaults.

REVERSED and REMANDED with directions.

ROWE and MARSTILLER, JJ., CONCUR. VAN NORTWICK, J., CONCURS WITH SEPARATE OPINION.

Van Nortwick, J., concurring.

I concur completely with the majority opinion. I write separately only to provide guidance for any retrial by discussing briefly two other issues raised on appeal which, in my view, could have constituted reversible error.

$700 Million Punitive Damages Award

Appellants argue that "[t]he $700 million punitive damages award . . . was so excessive that it violated [appellants'] right to due process guaranteed by the United States Constitution." As the United States Supreme Court has explained:

> Despite the broad discretion that States possess with respect to the imposition of criminal penalties and punitive damages, the Due Process Clause of the Fourteenth Amendment to the Federal Constitution imposes substantive limits on that discretion. That Clause makes the Eighth Amendment's prohibition against excessive fines and cruel and unusual punishments applicable to the States. The Due Process Clause of its own force also prohibits the States from imposing "grossly excessive" punishments on tortfeasors.

Cooper Indus., Inc. v. Leatherman Tool Group, 532 U.S. 424, 433-34, 121 S.Ct. 1678, 1684, 149 L.Ed.2d 674 (2001).

In federal due process challenges to punitive awards, the United States Supreme Court has instructed that three guideposts are to be considered: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between

the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 418, 123 S.Ct. 1513, 1520, 155 L.Ed.2d 585 (2003). Under Florida law, a punitive damages award must satisfy three criteria, as follows:

> (1) the manifest weight of the evidence does not render the amount of punitive damages assessed out of all reasonable proportion to the malice, outrage, or wantonness of the tortious conduct;
>
> (2) the award bears some relationship to the defendant's ability to pay and does not result in economic castigation or bankruptcy to the defendant; and
>
> (3) a reasonable relationship exists between the compensatory and punitive amounts awarded.

R.J. Reynolds Tobacco Co. v. Martin, 53 So. 3d 1060, 1072 (Fla. 1st DCA 2010) (quoting Engle v. Liggett Group, Inc., 945 So. 2d 1246 (Fla. 2006)).

Even if the $700 million punitive damages award could satisfy the first two Martin criteria, it does not meet the third Martin criterion under this court's reasoning in R.J. Reynolds Tobacco Co. v. Townsend, 90 So. 3d 307 (Fla. 1st DCA 2012). In Townsend, this court reversed a $40.8 million punitive damage award as excessive even though the ratio of punitive damages to compensatory damages was lower than the ratio this court previously had approved in Martin.

The Townsend court found the punitive damages award "constitutionally excessive in view of the substantial $10.8 million compensatory damages award." 90 So. 3d at 314. In reaching our decision, this court relied on State Farm, 538 U.S. at 425, in which the Supreme Court stated: "When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee."

Townsend was an Engle-progeny[1] case, and included claims for negligence, strict liability, fraudulent concealment, and conspiracy to commit fraud. In comparison, only two claims are involved here—common law negligence and abuse/neglect/exploitation of a vulnerable person—neither of which resulted in Webb's death. Townsend involved a $10.8 million compensatory award. The compensatory damages awarded here were $200 million. In my view, under this court's reasoning in Townsend as well as the United States Supreme Court's reasoning in State Farm and related cases, the $700 million punitive damages award would be constitutionally excessive.

Jury Instructions on Punitive Damages

[1] In Engle v. Liggett Group, Inc., 945 So. 2d 1246 (Fla. 2006), the Florida Supreme Court explained that the amount of punitive damages assessed must not be out of all reasonable proportion to the malice, outrage, or wantonness of the tortious conduct and that an award of punitive damages must bear some relationship to the defendant's ability to pay and does not result in economic castigation or bankruptcy of the defendant. Further, the Supreme Court held that an award of punitive damages must bear a reasonable relationship to the award of compensatory damages.

Appellants argue that the trial court improperly "directed" the jury to find for Webb on several elements of punitive damages. The issue of appellants' liability under the claim for punitive damages, however, was decided by way of the defaults entered by the trial court. Thus, the only issue for the jury's determination was how much—if anything—Webb should be awarded in punitive damages. The instructions given by the trial court were consistent with the instructions relating to the first stage of the bifurcated procedure in Florida Standard Jury Instruction (Civil) 503.1.

However, Florida Standard Jury Instruction 503.1 also provides instruction for the second stage of a bifurcated trial, including the following directive:

> You are to decide the amount of punitive damages, **if any,** to be assessed as punishment against (defendant(s)) and as a deterrent to others. This amount would be in addition to the compensatory damages you have previously awarded. In making this determination, you should consider the following:
>
> . . .
>
> **You may in your discretion decline to assess punitive damages.**

(Emphasis added).

Here, the trial court failed to read Standard Instruction 503.1 relating to the jury's discretion to assess punitive damages or not. Also problematic are the instructions which were actually given to the jury. The trial court instructed the jury: "[t]he Court has determined and now instructs you that the defendants . . .

had a specific intent to harm . . . Webb[.]" The court also instructed the jury that: "[t]he Estate of Joseph Webb is therefore entitled to recover . . . punitive damages. . . ." The court further instructed: "[t]he conduct of the employees or agents of the defendants, Trans Healthcare, Incorporated, and Trans Health Management, Incorporated, was so reckless or wanton in care that it constituted a conscious disregard or indifference to the life, safety, or rights of Joseph Webb."

In considering the jury instructions given below, I find instructive the Fourth District's decision in Humana Health Ins. Co. of Fla., Inc. v. Chipps, 802 So. 2d 492, 495-96 (Fla. 4th DCA 2001). Like the instant case, the plaintiff therein, Chipps, had obtained a default as to liability for punitive damages, and trial proceeded on the amount of punitive damages. Id. at 496. The Fourth District discussed the jury instructions given by the trial court:

> The trial judge instructed the jury that Humana's conduct was "so gross and flagrant as to show a reckless disregard of human life or the safety of persons exposed to the effects of its conduct." The court also told the jury that Humana's conduct "showed such an entire lack of care that Humana must have wantonly and recklessly disregarded the safety and welfare of the public." The court did not instruct the jury that it had the discretion to decline to assess punitive damages or to award only a nominal amount.

Id. The Humana court compared the instructions given by the trial court to the standard instruction on punitive damages concluding:

> The jury instructions here interfered with the jury's fact-finding

> function by characterizing and summarizing the evidence. While there is overlap between the issues of entitlement to punitive damages and the amount of such damages to be awarded, care should have been taken to let the jury arrive at its own decision regarding the egregiousness of the defendant's conduct.

Id. In other words, because the trial court did not let the jury decide the egregiousness of the defendant's conduct, "the jury instructions invaded the province of the jury by characterizing the conduct of the defendants." Id. 495-96.

As in Chipps, the trial court below did not instruct the jury that it had discretion to award no punitive damages; rather, it instructed the jury that Webb was "entitled" to such an award which constitutes, in effect, an instruction that it must award some amount. I agree with appellants that this instruction invaded the jury's province to use its own discretion in determining the award.