IN THE COURT OF APPEALS OF IOWA

No. 2-272 / 11-1400
Filed June 27, 2012

RC & CA DOGHOUSE, L.L.C., and
CORY EDWARD STEINER,
Plaintiffs-Appellees,

vs.

DAVID RICCADONNA and
DOGHOUSE BAR AND LOUNGE, INC.,
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Karen Romano, Judge.

The defendants appeal from default judgment and damages entered against them in this action asserting claims of breach of contract, intentional interference with prospective business advantage, intentional interference with contract, conversion, trespass, and defamation. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Eric Eshelman, Des Moines, for appellants.

Brenda L. Myers-Maas, Clive, for appellees.

Heard by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DANILSON, J.

Defendants, David Riccadonna and Doghouse Bar and Lounge, Inc., appeal from entry of default judgment and the award of compensatory and punitive damages entered in favor of plaintiffs, RC & CA Doghouse, L.L.C. and Cory Steiner, on their claims of breach of contract, intentional interference with prospective business advantage, intentional interference with contract, defamation, conversion, and trespass. Riccadonna also appeals from a directed verdict dismissing his counterclaims.

Riccadonna sold a bar or lounge to the plaintiffs, reclaimed the lounge without justification, then after this action was filed, failed to comply with discovery or timely appear for the jury trial. We affirm the dismissal of his counterclaims and the award of compensatory damages, but determine the punitive damages were excessive. We reverse in part and remand to effectuate a remittitur or, if not accepted, a new trial on punitive damages.

I. Background Facts and Proceedings.

On December 31, 2009, Cory Steiner on behalf of RC & CA Doghouse, LLC, buyer, and Dave Riccadonna, seller, entered into a bill of sale for the business operated as Doghouse Bar and Lounge with a purchase price of $90,000. Riccadonna acknowledged he had received $16,000 cash and personalty[1] with a value equivalent to $38,525.36. Exhibit B attached to the bill of sale provided that buyer "shall acquire name rights," and seller "after closing, relinquishes all ownership interest in the business." Exhibit B further stated:

[1] The personalty included pool tables, a shuffleboard table, a foosball table, and a jukebox, in addition to the inventory of the premises known as the Doghouse Bar and Lounge.

- Contemporaneously herewith, the parties have entered into a promissory note relative to the balance due on the purchase price of the business.
- Seller retains the benefit of all credit card sales made up to the date of closing 12/31/09.
- Parties agree that the buyer shall manage the business until January 18, 2010 pending the receipt of all required licenses necessary for buyer to operate the business. Buyer shall be entitled to retain all payments made by credit card from and after the date of closing during the period of time that the buyer is managing the business. Specifically, buyer shall have the right to manage the business under seller's liquor license during this period of time.
- All liquor, beer, chairs, tables, lights décor, etc. shall remain with the business and is to be acquired by buyer.

Steiner had submitted an application for a liquor license on behalf of RC & CA Doghouse L.L.C. to the Iowa Alcoholic Beverages division on December 23, 2009. Dram shop insurance was submitted and approved on December 28, 2009. An application for a liquor license and all required supporting documents was submitted to the City of Ankeny by December 29, 2009. The supporting documents included the seven-year lease Steiner entered into with Frank Martin doing business as FM's Inc., the owner of the building where the Doghouse Bar and Lounge was located. Riccadonna signed the lease as guarantor on December 29. The liquor license application was scheduled to be approved by the Ankeny City Council on January 18, 2010.

On January 4, 2010, Steiner and a friend were bringing additional game machines to the Doghouse bar. They arrived at about 2 p.m. and found taped to the front door a three-page handwritten note, which read:

> CORY,
> You did <u>not</u> tell me that you planned to use my liquor license!
> In the state of Iowa that is considered "boot legging" ─ very Illegal!
> You did not attend council meeting and you are breaking the law by by "bootlegging"! Therefore the deal is off!

> Read your lease–
> No Illegal activity allowed!
> The city of Ankeny is not happy about what you have been doing!
> I had to put the liquor license in my name or they would have shut the place down (KEEP OUT)
> Do Not go inside.
> I have taken the bar back. You broke your lease and contract!
> Dave

On January 4, 2010, Riccadonna also renewed his own liquor license. Because only one liquor license may exist at a single premise, Riccadonna's license prevented the issuance of a license to Steiner. To support the renewal, Riccadonna also convinced the landlord, Frank Martin to sign a new commercial lease with him.

On January 13, 2010, RC & CA Doghouse and Steiner filed a petition against Riccadonna asserting claims of breach of contract, intentional interference with prospective business advantage, intentional interference with contract, defamation, conversion, trespass, specific performance, and a request for injunctive relief. Riccadonna filed an answer and counterclaims of unjust enrichment and breach of an oral agreement on March 24. An amended petition was filed, which Riccadonna answered on August 6, 2010. Plaintiffs replied to Riccadonna's counterclaims, denying the material allegations.

On August 26, 2010, a scheduling order was filed, discovery deadlines were imposed, and trial was set for July 18, 2011.

On September 2, Riccadonna's attorney moved to withdraw from the case. The motion was granted on September 16.

On September 8, the plaintiffs filed a motion to compel responses to discovery that had been served on Riccadonna on June 22, 2010. The motion was set for hearing on November 18, 2010.

On January 7, 2011, the plaintiffs filed a motion for leave to amend the petition to add Doghouse Bar and Lounge, Inc. as a party. They asserted that entity was a corporation owned and managed solely by Riccadonna. On January 27, 2011, the district court (Judge Rosenberg) granted the plaintiffs' motion to amend the petition. The amended petition was filed on February 3 and served on the Doghouse Bar and Lounge, Inc. on April 14, 2011.

On February 8, 2011, the plaintiffs filed a motion for summary judgment.

On February 10, 2011, the court filed an order stating:

> This matter came before the court for a contested hearing on November 18, 2010, regarding the motion to compel filed by the Plaintiffs. The Court, having considered the motion and the resistance thereto and the arguments of counsel finds that the motion should be, and is granted.
>
> Therefore, it is the order of the Court that the Defendants shall comply with the discovery requests of the Plaintiffs within 20 days from the date of this order. A failure to comply may result in sanctions being imposed upon the request of the Plaintiffs.

The February 10 order (signed February 9) indicates a copy was mailed to Riccadonna at his home address.

A hearing on the plaintiffs' motion for summary judgment was set for March 29, 2011. Notice of the hearing date was sent to Riccadonna at his home address on March 2.

On March 11, 2011, Riccadonna sought a fourteen-day extension to resist the motion for summary judgment, stating "I have contacted legal coun[sel] . . .

and I am in the process of retaining him to represent me." The court granted Riccadonna an extension until March 25, 2011.

On March 15, 2011, plaintiffs moved for sanctions against Riccadonna as he had yet to respond to discovery requests as ordered by the court. Those requests asked that Riccadonna identify his intended witnesses and exhibits; identify persons known to have relevant knowledge or information concerning his defenses or claims; identify and supply all documents he claimed to support his defenses (including that "any agreement between the parties is void or voidable under Iowa law for potential illegality of subject matter," and that plaintiffs "failed to satisfy conditions precedent" or "misrepresented material facts") or counterclaims. Plaintiffs requested the court award attorney fees and enter an order "establishing the undisputed facts set forth in the Plaintiffs' Statement of Undisputed Facts in Support of Motion for Summary Judgment (which has not been resisted by Dave Riccadonna to date) as binding on Defendant Riccadonna." They further requested that the court prohibit Riccadonna from introducing evidence that he had refused to produce in discovery and find him in contempt.

On March 23, 2011, Riccadonna filed a pro se motion, "Resistance to the sanctions against David Riccadonna and the case against David Riccadonna and the Doghouse Lounge, Inc. and Frank Martin, FMs Inc. to be dismissed."[2] Riccadonna asserted, in part, that he "did not receive any notification filed on 2/10/2011" and "had no knowledge that he had 20 days to produce documents."

[2] Frank Martin and FMs Inc. were added as defendants in an amended petition. They settled prior to the trial and are not before the court.

Riccadonna did not appear at the March 29 hearing on the summary judgment motion.

On April 7, the plaintiffs filed a motion to strike Riccadonna's March 15 motion and resistance to sanctions. They renewed their request for sanctions for Riccadonna "failing to produce any discovery to date." The court set the motion for sanctions for hearing on May 17. A copy of the order was sent to Riccadonna at his home address.

On May 13, Riccadonna pro se filed a "General Answer to Petition" with these notations: "(Response to Court's request for information received on April 15, 2011)" and "I deny all allegations made against me." Some statements and attachments were included.

On May 17, Riccadonna failed to appear at the sanctions hearing. The court filed an order that same date requiring Riccadonna to pay attorney fees in the amount of $750, payment to be made within twenty days. The court also ordered that Riccadonna was "prohibited from introducing any matters into evidence which Defendant Riccadonna has refused to produce in discovery to date"; and found him in contempt.

On May 17, Riccadonna filed several documents with the court. One file-stamped 9:34 a.m. asks that the court reverse the decision for sanctions and reschedule a hearing as "I was out of town, stuck in traffic, with vehicle problems." A document file-stamped at 2:29 p.m. is a motion to reschedule the hearing on sanctions stating, "I failed to appear at 8:15. My vehicle broke down. I spoke to your assistant at 8:40 a.m. and explained the situation." He also filed

a "motion to resist motion to compel," contending it would be unfair to hold him in contempt as he did not know about a hearing on February 9, 2011.[3]

The court set a hearing on pending motions for June 3 at 8:15. Riccadonna appeared pro se at the June 3 hearing, and the court gave him an opportunity to explain his May 17 failure to appear and failure to comply with the discovery requests. Riccadonna stated he was late for that earlier hearing because "I was out of town, and I had car troubles at the same time and stuck in traffic at the same time and I couldn't make it on time, although I did come in late. I did appear." As for the failure to comply with discovery, Riccadonna explained, in part:

> Now [plaintiffs' attorney] has had some problems trying to get these discoveries from me and only because I have been trying to obtain an attorney, but I have over $10,000 in attorney bills from the previous attorney that backed out on me. I didn't want to back out, but I couldn't go because I didn't have any further assistance for money, and I can't drain my account for my business. I got to keep it going. Otherwise, I don't have any income.
>
> And [an attorney] at this point, he's trying to represent me if we have any negotiations to go forward with, but at this point he needs more of a retainer to go on further to represent me in any capacity past that. So the discoveries were delayed because of all of that. And you granted me a few extensions, and I appreciate that. And I was hoping that would help me to try to get some money raised, but that didn't go as well as I thought it would.
>
> The last time I was here to show good intent, I was planning on being—giving her the discovery requests, and I made sure I delivered them in person to her that same day, okay, because I planned on getting them to her.

Plaintiffs' counsel stated she still did not have the documents requested and Riccadonna's answers to interrogatories dropped off on May 17 were insufficient.

[3] There was no hearing held on February 9. This is the date of the order compelling his responses.

Riccadonna also claimed not to be getting notices of hearings. "I requested everything be sent to my home address because if they get sent to my business address, sometimes I get them, sometimes I don't . . . ." The court verified his home address, which was the one to which notices had been sent. Plaintiffs' counsel stated, "I've sent everything to that address."

On June 13, the court entered a written ruling, finding insufficient reason to reverse its prior order imposing sanctions or its finding of contempt.

Jury trial was set to begin at 9 a.m. on July 18, 2011. Riccadonna did not appear and did not answer the telephone. The presiding judge (Judge Romano) left a telephone message. After forty minutes, the court dismissed the jury panel and entered default against Riccadonna and Doghouse Bar and Lounge, Inc. Because the plaintiffs' claims for damages were not liquidated, the court proceeded to hear evidence on the damage issue.

At about 10 a.m., Riccadonna called the court and informed the court attendant he would arrive within one-half hour. The court recessed, but when Riccadonna did not arrive within the half hour, the trial on damages resumed. Riccadonna arrived in the court at about 11:10 a.m. and apologized, stating he was confused about the trial date. The court informed him default judgment had been entered against the defendants, they were in process of hearing evidence on damages, and he could participate in the remainder of the hearing. The court noted that its prior order prohibiting him from introducing evidence he had not produced in discovery would be followed. Riccadonna did participate in the remainder of the trial by cross-examining witnesses.

After resting, the plaintiffs' moved for directed verdict on Riccadonna's counterclaims. Riccadonna stated in response:

> I do have evidence that could show all of those [counterclaims], but we're not accepting evidence at this point. But I would move, if we may, to continue this portion of it for another hearing so that I may appear with an attorney and all my documents to address that, please.

Plaintiffs resisted any continuance. The court found "absolutely no basis to further continue this matter in light of Mr. Riccadonna's failure to adequately defend or prosecute his counterclaims in this matter." Finding no evidence to support the counterclaims, the court directed verdict for the plaintiffs on the counterclaims.

The court stated to plaintiffs' counsel,

> the claims against Mr. Riccadonna personally appear to have been established. However, you did add another party, the Doghouse Bar and Lounge, Inc. If you could tell me upon what theory you believe that corporation is liable in any way, as it looks like the documents you've presented were signed personally by Mr. Riccadonna.

Counsel stated she "intended to offer an exhibit just showing he is the sole owner and officer of that corporation."

The court filed its ruling and judgment entry on August 3, 2011. The court found the plaintiffs had established $20,303.84 in out-of-pocket expenses. The court found, based in part on the Doghouse credit card receipts for the period between December 29, 2009, and January 4, and "in part on the earnings [Steiner] currently receives for his new bar," plaintiffs had established lost earnings in the amount of $30,000 (six months at $250 per day, five days per

week). The court awarded $5000 in damages for defamation. And finally, the court found

> David Riccadonna acted with willful and wanton disregard of Plaintiff's rights and that punitive damages are warranted. The Defendant, within days of signing a contract with Plaintiffs, repeatedly and continually violated and interfered with the contract the parties entered into. The court finds that Plaintiffs are entitled to $20,000.00 for punitive damages and that Riccadonna's conduct was directed specifically at Plaintiffs.

Judgment was entered against Riccadonna and Doghouse Bar and Lounge, Inc., jointly and severally, in the amount of $75,303.84.

Riccadonna and Doghouse Bar and Lounge, Inc. now appeal. They contend the court erred in entering default judgment against them. They further assert the court erred in calculating damages and in awarding punitive damages. Finally, they assert the court erred in directing verdict on Riccadonna's counterclaims.

II. Default Judgment.

"A default is the failure to take the step required in the progress of an action, and a judgment by default is a judgment against the party who has failed to take such step." *Kirby v. Holman*, 25 N.W.2d 664, 674 (Iowa 1947) (internal quotation and citation omitted). Our civil procedure rules state "a party shall be in default" when that party "[f]ails to serve and, within a reasonable time thereafter, file a motion or answer as required"; "[f]ails to be present for trial"; "[f]ails to comply with any order of court"; or "[d]oes any act which permits entry of default under any rule or statute." Iowa R. Civ. P. 1.971(1), (3), (4), (5).

We find no abuse of discretion in the court's finding of default. No attorney ever appeared for Doghouse Bar and Lounge, Inc. and no answer was

filed on its behalf. *See* Iowa R. Civ. P. 1.971(1); *Hawkeye Bank & Trust v. Baugh*, 463 N.W.2d 22, 25 (Iowa 1990) (adopting the rule that a corporation may not represent itself through nonlawyer employees, officers, or shareholders); *accord In re N.N.E.*, 752 N.W.2d 1, 12 (Iowa 2008) ("As a general rule, Iowa requires businesses to appear only by lawyer . . . ."). Riccadonna did file an answer pro se, but failed to comply with court orders, which led to the court finding him in contempt and precluding him from producing evidence he had failed to produce. *See* Iowa R. Civ. P. 1.971(3). Riccadonna then failed to timely appear for trial. *See* Iowa R. Civ. P. 1.971(4). And even though the court recessed the hearing on damages to allow the time he claimed it would take him to arrive, Riccadonna was later still.

Iowa Rule of Civil Procedure 1.977 provides that "[o]n motion and for good cause . . . the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty." The burden is on the movant to plead and prove good cause. *Cent. Nat'l Ins. Co. of Omaha v. Ins. Co. of N. Am.,* 513 N.W.2d 750, 754 (Iowa 1994). Good cause is a "sound, effective, and truthful reason*. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect*." *Id*. (emphasis added).

In ruling on a motion to set aside a default judgment, the district court is vested with broad discretion and will only be reversed if that discretion is abused. *Brandenburg v. Feterl Mfg. Co.,* 603 N.W.2d 580, 584 (Iowa 1999).

The pertinent factors to consider in determining whether there has been "excusable neglect" have been summarized:

> First, did the defaulting party actually intend to defend? Whether the party moved promptly to set aside the default is significant on this point. Second, does the defaulting party assert a claim or defense in good faith? Third, did the defaulting party willfully ignore or defy the rules of procedure or was the default simply the result of a mistake? Last, whether relief is warranted should not depend on who made the mistake. [citation omitted]
>
> The first two factors carry forward requirements our prior cases have established for proving excusable neglect constituting good cause. *See, e.g.*, *In re Marriage of Huston,* 263 N.W.2d 697, 698 (Iowa 1978) ("The movant must affirmatively show he intended to defend and took steps to do so, but because of some misunderstanding, accident, or excusable neglect failed to do so."); *Edgar v. Armored Carrier Corp.*, 256 Iowa 700, 707, 128 N.W.2d 922, 926 (1964) (holding that district court has discretion to set aside a default and default judgment when the defendant (1) acts promptly, (2) in good faith intends to defend, and (3) shows a meritorious defense).
>
> As to the third factor, to uphold a denial of a motion to set aside a default and default judgment, there must be substantial evidence that the *defaulting party willfully ignored or defied* the rules of procedure. "Willfully" and "defying" signal conduct that goes beyond negligent or careless conduct. Such words indicate conduct on the part of the defaulting party showing a deliberate intention to ignore, and resist any adherence to, the rules of procedure. This requirement of willfulness is consistent with our previous holdings that excusable neglect warranting relief from a default excludes conduct amounting to no care, no attention and approaching gross neglect or willful procrastination. *See Hobbs v. Martin Marietta Co.*, 257 Iowa 124, 131-32, 131 N.W.2d 772, 777 (1964).
>
> If there is substantial evidence the default occurred as a result of a mistake, such evidence, of course, is inconsistent with conduct that willfully ignores or defies the rules of procedure. In *Central National,* when we used the word "mistake" in the third factor, we had in mind the dictionary meaning of that word: "an error in action, calculation, opinion, or judgment caused by poor reasoning, carelessness, insufficient knowledge . . . ." Webster's Encyclopedic Unabridged Dictionary of the English Language 1232 (2d ed.1996).
>
> In *Central National* our intention underlying the fourth factor (relief should not depend on who made the mistake) was to eliminate any distinction between conduct on the part of the defaulting party versus conduct on the part of the party's insurer or attorney.

Id. at 585-86.

The determination of whether a movant has established cause within meaning of rule is not a factual finding, but a legal conclusion, which is not binding upon us. *Id*. at 584; *see also Sheeder v. Boyette*, 764 N.W.2d 778, 780 (Iowa Ct. App. 2009).

We acknowledge that the underlying purpose of rule 1.977 is "to allow a determination of controversies on their merits rather than on the basis of nonprejudicial inadvertence or mistake." *Brandenburg,* 603 N.W.2d at 584. But we do not find Riccadonna met his burden of proof here.

Riccadonna informed the court he failed to appear on time for trial because he was "confused" about the trial date. Yet the trial date was set on August 26, 2010, and remained unchanged thereafter. *See Dew v. Am. Heritage Life Ins. Co.*, 431 N.W.2d 8, 10 (Iowa Ct. App. 1988) (reiterating principle that good cause is not shown by claim of confusion where one is served with a proper notice of a civil action). And, while Riccadonna eventually appeared during the hearing to determine damages and stated he wished to defend his claims, he was not prepared to proceed at that time and asked for further continuance. The matter had been pending for more than a year. He had earlier been precluded from introducing evidence in support of his defenses and counterclaims for failing to comply with a court order to produce responses to plaintiffs' discovery requests. Under these circumstances, we find no abuse of discretion in entry of default judgment.

III. Hearing on Damages.

Generally, a defaulting party has the right to be heard and participate, cross-examine witnesses, offer proof in mitigation, and challenge causation on

the question of damages. *See Hallett Constr. Co. v. Iowa State Hwy. Comm'n*, 154 N.W.2d 71, 74 (Iowa 1967). But this is so if the "defaulting party appears prior to trial of the question of damages."[4] *See Williamson v. Casey*, 220 N.W.2d 638, 640 (Iowa 1974). Doghouse Bar and Lounge Inc. never appeared in this case. And despite the court recessing to allow Riccadonna to appear for the remainder of the hearing on damages, he appeared later still. Nonetheless, the court allowed him to participate upon his arrival, and he did cross-examine the witnesses.

When default judgment is entered all the plaintiffs' material allegations are taken as true. *Hallett Constr.*, 154 N.W.2d at 74. But the determination of the amount of damages must be proved. *Id.* We review the trial court's ruling on damages for correction of errors at law. *Brokaw v. Winfield-Mt. Union Cmty. Sch. Dist.*, 788 N.W.2d 386, 388 (Iowa 2010). Its "findings of fact have the force of a special verdict and are binding on us if supported by substantial evidence." *Id*. Evidence is substantial if a reasonable mind could find it adequate to reach the same findings. *Jones v. Lake Park Care Ctr., Inc.*, 569 N.W.2d 369, 372 (Iowa 1997). "'Evidence is not insubstantial merely because we may draw different conclusions from it; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding.'" *Brokaw*, 788 N.W.2d at 393 (citation omitted).

[4] Iowa Rule of Civil Procedure 1.973 says that the damage hearing may be submitted to a jury only upon the demand of the party not in default. Being in default, the defendants were not entitled to a jury trial on the merits or for the trial on damages. Iowa R. Civ. P. 1.971(3).

A. Out-of-pocket expenses. The defendants contend that there is insufficient proof to sustain the damages awarded. They contest the plaintiffs' claims for out-of-pocket expenses in the following amounts. As to a shuffleboard game, which Steiner testified he special ordered for Riccadonna and could not return ($5295), they argue the plaintiffs are still in possession of the game. They also contend there is nothing but Steiner's testimony to support the claim for $1326.75[5] he was due in "management fees" or that he paid $1550 to other employees while managing the Doghouse Bar and Lounge prior to being locked out on January 4, 2010. They also contest the claim for $5200 for Steiner's lost time for setting up games for Riccadonna as Steiner testified "I just came up with that number." They ask that the out-of-pocket damage award be reduced to $13,371.75.

"[A]ll that is required to justify an award of damages 'is that the plaintiff produce the best evidence available and that this evidence afford a reasonable basis for estimating the loss.'" *Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 688 (Iowa 1990). Here we believe the evidence supports a reasonable basis for the loss and there is substantial evidence to support the court's finding that the plaintiffs were entitled to $20,303.84 for out-of-pocket expenses.

B. Expected earnings. With respect to the court's award for expected earnings, the defendants assert Steiner's testimony as to expected earnings was completely speculative. We disagree. Our courts have recognized a distinction between proof of the fact that damages have been sustained and proof of the

[5] This appears to be a typographical error as the claimed amount was $1326.84.

amount of those damages. *Larsen v. United Fed. Sav. & Loan Ass'n of Des Moines*, 300 N.W.2d 281, 288 (Iowa 1981). "If uncertainty lies only in the amount of damages, recovery may be had if there is a reasonable basis in the evidence from which the amount can be inferred or approximated." *Id.* (citations omitted); *accord Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 641 (Iowa 1996).

Steiner testified that he managed the Doghouse Bar and Lounge for a period of time during which the average credit card receipts were in excess of $400 per day. Steiner ultimately opened another bar. Steiner testified more typical expected earnings would be approximately $250 a day. Using that amount for a six-month period, the district court awarded $30,000 in expected earnings. We affirm that award. Here, Steiner did not start a new business; rather, he took over an existing business. Although the amount of damages was uncertain, Steiner's proof of a basis from which to infer or approximate the proper amount was reasonable. The revenue stream was the best evidence available under these circumstances. However, we agree with the district court that Steiner should be limited to an award of only six months of lost profits for a total sum of $30,000.

C. Reputation damages. The defendants argue next that the defamation damages in the sum of $5000 should be set aside. In *Rees v. O'Malley*, 461 N.W.2d 833, 839 (Iowa 1990), the court noted that while statements that are libelous per se require no proof of damages, in order for the fact finder to determine the extent of injury, there must be evidence of reputation and the extent of publication.

Steiner testified that he found the note posted on the front door of Doghouse Bar and Lounge. The door was visible to anyone approaching the bar and surrounding businesses. In bold letters, the note accused Steiner of bootlegging, a criminal activity. Steiner, the manager of the bar, was embarrassed and angry. Ryan Reavis testified he, too, saw the note "telling [Steiner] he was a criminal and to keep out." Reavis "felt embarrassed for him that it was out in public like that." We conclude an award of $5000 was within the fact-finder's bounds in determining the natural and probable consequences of Riccadonna's statements. *See Rees*, 461 N.W.2d at 840.

D. Punitive damages. We review an award of punitive damages for correction of errors at law. *Wolf v. Wolf*, 690 N.W.2d 887, 893 (Iowa 2005). "Punitive damages are always discretionary, and are not a matter of right." *Brokaw*, 788 N.W.2d at 395; *see also Smith v. Wade,* 461 U.S. 30, 52 (1983). ("[A] key feature of punitive damages [is] that they are never awarded as of right, no matter how egregious the defendant's conduct.").

The amended petition asked for punitive damages in conjunction with asserted claims[6] of tortious breach of contract, interference with business advantage, intentional interference with contract, defamation, conversion/theft, and trespass. By virtue of Riccadonna's default we accept the allegations as true. *See Hallett Constr.*, 154 N.W.2d at 74. Steiner testified Riccadonna acted with willful and wanton disregard of his rights and the record supports his belief.

[6] Those material allegations include that defendants' conduct in breaching the bill of sale, and in intentionally and improperly interfering with the prospective relationship with city of Ankeny to obtain a liquor license, and in interfering with written contracts, defaming Steiner, and in locking him out of the bar "amounts to willful or reckless disregard of Plaintiffs' rights."

Steiner installed an ATM and brought various bar games to Riccadonna's new bar. Then, Riccadonna intentionally prevented Steiner from getting his own liquor license for the Doghouse; had the landlord sign a new lease with Riccadonna; changed the locks on the door of the Doghouse bar; and posted a defaming statement on the public entrance to the establishment—all while willfully and maliciously interfering with Steiner's contract rights. We find the award of punitive damages is warranted. *See Wolf*, 690 N.W.2d at 893 (noting plaintiff must offer evidence of defendant's persistent course of conduct to show that the defendant acted with no care and with disregard to the consequences of those acts).

But we must also determine whether the amount of punitive damages awarded was excessive. *See Ezzone v. Riccardi*, 525 N.W.2d 388, 399 (Iowa 1994). "The purpose of imposing punitive damages in such a case is to punish the willful and wanton conduct and deter the defendant, and others, from repeating such conduct in the future." *Hamilton v. Mercantile Bank of Cedar Rapids*, 621 N.W.2d 401, 407 (Iowa 2001). In *Ezzone* our supreme court held that we may order remittitur of a punitive damages award if the award is excessive. *Id.*

> This and future reviews will be conducted on the basis of principles previously announced in punitive damages cases. Awards will be tested with a view of the extent and nature of the outrageous conduct, the amount necessary for future deterrence, and with deference to the relationship between the punitive award and plaintiff's injury, as reflected in any award for compensatory damages. In addition to these traditional factors, we shall consider all circumstances surrounding the conduct and relationship between the parties.

Id. And in *Wolf*, 690 N.W.2d at 894, our supreme court summarized the considerations in determining the excessiveness of punitive damages:

> The Supreme Court has stated that an appellate court reviewing a punitive-damage award for excessiveness should consider three "guideposts." These guideposts are:
>
> > (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 [trier of fact] and the civil penalties authorized or imposed in comparable cases.
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> . . . *Degree of reprehensibility.* The degree of reprehensibility of the defendant's conduct is said to be the most important indicium of the reasonableness of a punitive-damage award. The Court has said that a number of factors should be considered in determining the reprehensibility of the defendant's conduct:
>
> > [1] [T]he harm caused was physical as opposed to economic; [2] the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; . . . [3] the conduct involved repeated actions or was an isolated incident; and [4] the harm was the result of intentional malice, trickery, or deceit, or mere accident.
>
> The Court also said that
>
> > [t]he existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect.

(Internal citations omitted.)

Here, the defendants had already been deprived of defending against the plaintiffs' allegations or introducing evidence to support their counterclaims. Most of the harm to the plaintiffs was economic loss that can be recompensed by the award of compensatory damages. There was no risk of health or safety of others although some emotional distress clearly was caused by the defamation. In this context, we find the punitive damage award was excessive. We conclude the judgment for punitive damages in favor of plaintiffs against defendants is affirmed

in the amount of $5000 if plaintiffs agree to a remittitur of all punitive damages exceeding that amount. *See Wilson v. IBP, Inc.*, 558 N.W.2d 132, 148 (Iowa 1996).

IV. Directed Verdict on Counterclaims.

Riccadonna also challenges the propriety of the district court directing verdicts for the plaintiffs on the counterclaims. We review a district court's ruling on a motion for directed verdict for correction of errors at law. *Pavone v. Kirke*, 801 N.W.2d 477, 486 (Iowa 2011). A directed verdict is required if there was no substantial evidence to support the elements of the plaintiffs' claim. *Id*. at 487. As a result of having failed to answer discovery requests despite being court-ordered to do so, Riccadonna was prohibited from introducing evidence that he failed to disclose.

A court may impose just sanctions for failure to obey an order to provide or permit discovery, including "refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence . . . or rendering a judgment by default against the disobedient party." Iowa R. Civ. P. 1.517(2)(b). The district court has inherent power to maintain and regulate cases proceeding to final disposition within its jurisdiction. *Lawson v. Kurtzhals*, 792 N.W.2d 251, 258 (Iowa 2010). The court's power includes the authority to exclude evidence for failure to supplement discovery. *Id.*; *see Preferred Mktg. Assocs. Co. v. Hawkeye Nat'l Life Ins. Co.,* 452 N.W.2d 389, 393 (Iowa 1990).

Riccadonna failed to appear for the trial on the merits of his claims and the jury was excused. His failure to appear effectively waived his right to a jury trial.

Vaux v. Henseal, 277 N.W.2d 718, 720 (Iowa 1938). Riccadonna's request for a continuance was also denied. Effectively, the trial judge's refusal to take up the merits of Riccadonna's claim may have been construed as a dismissal, although the judgment of dismissal was entered by the court granting Steiner's motion for directed verdict.[7]

The district court did not err in directing verdict for plaintiffs on defendants' claims of unjust enrichment and breach of oral contract because at the time of the jury trial Riccadonna did not appear and did not present substantial evidence to support the elements of the claim. *Pavone*, 801 N.W.2d at 487.

V. Conclusion.

We affirm the entry of default against defendants on the merits of plaintiffs' claims. We find substantial evidence supports the award of compensatory damages in the amount awarded by the district court. We order remittitur of the punitive damages to $5000 pursuant to Iowa Rule of Civil Procedure 1.1010(2)(b). If plaintiffs reject the remittitur of punitive damages, a new trial shall be ordered on that issue alone.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

[7] The judgment of dismissal could have been entered as a further sanction upon Riccadonna in light of his prior refusals to comply with discovery requests, failure to comply with a court order, and subsequently failing to appear timely for the jury trial if such failures were done willfully or in bad faith. *See Smiley v. Twin City Beef Co.*, 236 N.W.2d 356, 360 (Iowa 1975).