

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-000405-MR

BAXTER BLEDSOE, JR.;  
BAXTER BLEDSOE, LTD.;  
AND UNITED SIGN, LTD.

APPELLANTS

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE JOHN KNOX MILLS, JUDGE  
ACTION NO. 97-CI-00161

UNITED GRAFFIX INCORPORATED D/B/A  
TRI-STATE OUTDOOR ADVERTISING CO., INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: Baxter Bledsoe, Jr.; Baxter Bledsoe, Ltd; and United Sign, Ltd. (collectively Bledsoe), appeal from the November 2, 2010, judgment of the Laurel Circuit Court. That order entered judgment in favor of United Graffix Incorporated, d/b/a Tri-State Outdoor Advertising Co., Inc. (Tri-State), in the

amount of \$96,000.00 in punitive damages. Because we find no error with the trial court's judgment, we affirm.

This case has a lengthy history, has been litigated for approximately fifteen years, and is before this Court for the fourth time. In short, the underlying action involves ownership of a billboard located along I-75 in Laurel County, Kentucky, and allegations of conversion of said billboard. For the sake of brevity, we will not recite the entire factual and procedural history, but will instead convey only those facts relevant to this most recent appeal.

In 2006, Tri-State received a jury verdict in its favor which found that a third party unrelated to this appeal, Glen House, had illegally converted the billboard in question. Tri-State was awarded \$19,500 in compensatory damages. The award was later reduced by the trial court to \$17,200. After determining it had improperly dismissed Tri-State's claim for conversion against Bledsoe, the trial court ordered a new trial to be held regarding Bledsoe's liability. In the interim, House tendered the full amount of compensatory damages. In an effort to circumvent a double award in favor of Tri-State, the trial court then dismissed all remaining claims of conversion against Bledsoe and effectively denied Tri-State's ability to seek any damages, including punitives, from Bledsoe. Tri-State appealed to this Court and in an unpublished opinion rendered on October 30, 2009, we reversed and remanded the matter to the trial court "for a trial to determine if Mr. Bledsoe . . . [is] liable for conversion and if so, whether or not punitive damages

are warranted.” *United Grafix Inc. v. Williams*, 2009 WL 3486648 (Ky. App. 2009)(2008-CA-001004-MR) (unpublished).

Following a new trial, Bledsoe moved for a directed verdict. The trial court, noting this Court’s prior opinion, denied the motion and opined that it was essential for the jury to determine whether the elements supporting conversion and a punitive award were present. The jury found Bledsoe had wrongfully converted the billboard in question and Tri-State was entitled to punitive damages in the amount of \$96,000.00. On November 2, 1010, a judgment in Tri-State’s favor was entered in conformity with the jury’s verdict. Bledsoe filed a motion to alter, amend, or vacate the judgment and argued Tri-State’s evidence failed to support a finding that he had engaged in conduct sufficient for a finding of gross negligence and also that the trial court had misinterpreted the opinion of the Court of Appeals. Additionally, he filed a motion for a judgment notwithstanding the jury verdict and argued that the award was excessive and unsupported by the evidence. Both motions were denied and this appeal followed.

Bledsoe’s first argument on appeal is that punitive damages cannot be imposed for ordinary negligence and Tri-State failed to offer evidence that Bledsoe was either negligent or grossly negligent. It is well-established that an award of punitive damages be accompanied by a showing of gross negligence, or failure to exercise slight care. *City of Middlesboro v. Brown*, 63 S.W.3d 179 (Ky. 2001). The Supreme Court of Kentucky has stated that to show gross negligence, “there must be an element either of malice or willfulness or such an utter and wanton

disregard of the rights of others as from which it may be assumed the act was malicious or willful.” *Id.* at 181.

For purposes of our review, a properly instructed jury verdict will be upheld if it is supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). “Substantial evidence means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Id.* If the jury verdict is unsupported by substantial evidence, it will be set aside as clearly erroneous. *Id.*

In support of his argument that Tri-State failed to show gross negligence, Bledsoe essentially reargues his conversion defenses to this Court: he improperly relied upon third-party assertions regarding ownership of the sign; any failure to verify ownership of the sign was in good faith; and he genuinely believed the billboard was owned by another party. Tri-State, however, presented evidence to the jury contrary to Bledsoe’s defense which included: a letter from Bledsoe indicating he was aware the billboard was owned by another company; a letter to Tri-State’s general counsel indicating he was assuming control over the billboard; and evidence he profited from continued use of the billboard during the entire time the case was being litigated.

“The determination of the weight of conflicting evidence and of the credibility of witnesses rests exclusively within the province of the jury.” *Cross v. Clark*, 213 S.W.2d 443, 446 (Ky. 1948). The jury indicated to the trial court it believed that Bledsoe “wrongfully exercised dominion or control over the billboard

and such acts constituted a serious interference with [Tri-State]’s right to that property.” Given the evidence submitted, as well as the jury’s discretion in weighing that evidence, Bledsoe has failed to show the finding of conversion was unsupported by substantial evidence. Although Bledsoe offered evidence in his favor, it was not enough to constitute clear error.

It is also important to note the record indicates that the jury was properly instructed on the requirement of gross negligence before awarding punitive damages. The jury instruction included the following language:

Punitive damages may not be awarded if the plaintiff does not prove by clear and convincing evidence that the defendants acted with gross negligence which evidences a willful, wanton, or reckless disregard for the rights of others including the plaintiff. A “wanton” act is one done in reckless or callous disregard of, or with indifference to, the rights of the plaintiff. An honest mistake, an error in judgment, or incompetence does not constitute wanton or reckless disregard for the rights of others. You may not award punitive damages merely because you found by preponderance of the evidence that the defendants converted the billboard.

If you find that the defendants’ liability for conversion turns upon the resolution of complex legal issues about which there was room for good-faith disagreement, then you may not find that defendants acted within [sic] gross negligence and may not award punitive damages.

The instruction appears to properly inform the jury of its duty to first determine the existence of gross negligence and Bledsoe has failed to argue otherwise.

Bledsoe next argues that the assessment of punitive damages violated the United States Constitution. We review constitutional challenges to punitive

damages awards *de novo*. *Ragland v. DiGiuro*, 352 S.W.3d 908, 916 (Ky. App. 2010), citing *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001)). To determine whether a jury's award of punitive damages satisfies due process, we must consider three factors:

(1) the degree of reprehensibility of the defendant's conduct; (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.

*Ragland* at 917 (citation omitted).

The reprehensibility of the defendant's conduct is the most important factor in determining the reasonableness of a punitive damage award. *Id.* To support an explicit or implicit finding of reprehensibility, a trier of fact should consider whether:

the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

*Id.* (citation omitted). While the existence of only one of these factors may not support a punitive damages award, a combination of several of them may. *Id.*

In this case, the harm to Tri-State was wholly economic, there being no evidence Bledsoe disregarded Tri-State's health or safety. It is clear Bledsoe's conduct was financially motivated and that he profited substantially over an

extensive period. Additionally, the jury's verdict awarding the punitive damages against Bledsoe establishes that the evidence convinced jurors to find his conversion of the billboard had resulted from either gross negligence, or willful, wanton, or reckless disregard for the rights of Tri-State. Given the evidence in support of Bledsoe's knowledge that Tri-State owned the billboard, the jury could reasonably infer malice, trickery, or deceit. Weighing all these factors together, it was reasonable for the jury to believe Bledsoe bore guilt and responsibility for conversion of the billboard.

We next look to the disparity between the actual harm suffered and the punitive damages award.

Under Kentucky's first blush rule, a damage award may be considered excessive if it causes the mind at first blush to conclude that it was returned under the influence of passion or prejudice on the part of the jury. Even if liberal, an award that does not shock the conscience or is not clearly excessive may not be set aside.

*Id.* Given the ongoing profitability of the billboard during the length of the underlying litigation, the award does not, at first blush, shock the conscience or appear to be clearly excessive. Bledsoe argues the disparity between the harm and the amount of the award is unreasonable because he was never attributed a percentage of the fault and therefore any attempt to determine appropriate punitive damages would be speculation. We disagree.

In essence, Bledsoe benefitted from House having paid the entirety of the compensatory award before Bledsoe's percentage of fault could be adjudged.

Additionally, Bledsoe is confusing the lack of a specific finding regarding his degree of fault for purposes of apportioning the underlying award of compensatory damages with the jury's finding that he was at fault and liable for purposes of punitive damages. Given the jury's verdict, Bledsoe was held wholly accountable for punitive damages. Because the jury did not apportion the punitive damages but assessed the entire amount on Bledsoe, we determine the award's reasonableness by looking to the relationship between the punitive damage award and the compensatory award as a whole. The ratio between the two awards is 5.5:1. Given the ratio upheld in comparable punitive award cases, which is the third factor in determining whether the award satisfies due process, the amount of punitive damages awarded in this case is not disproportionate to the amount of compensatory damages. *See Craig & Bishop, Inc. v. Piles*, 247 S.W.3d 897, 906 (Ky. 2008) (upholding \$8,600 compensatory award and \$50,000 punitive award for a 5.8:1 ratio under a finding of conversion); *First and Farmers Bank of Somerset, Inc. v. Henderson*, 763 S.W.2d 137, 139 (Ky. App. 1988) (upholding \$16,000--reduced to \$1,988.24 by a successful counterclaim--compensatory award and \$75,000 punitive award for a 4.69:1 ratio--37.72:1 after counterclaim reduction--under a finding of conversion).

Bledsoe's final argument on appeal is that punitive damages are not permitted without the commission of an underlying tort. However, Bledsoe again ignores the fact that the jury found he had converted Tri-State's property. Bledsoe is urging us to substitute his interpretation of the evidence for that of the jury. As



previously discussed, the finding of conversion was supported by substantial evidence and will therefore not be disturbed. Accordingly, Bledsoe's final argument is without merit.

For the foregoing reasons, the November 2, 2010, judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marcia Milby Ridings  
London, Kentucky

Jay Milby Ridings  
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REPLY BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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