STATE OF MICHIGAN

COURT OF APPEALS

MARY M. SALTER,

Plaintiff-Appellee,

v

JAMES E. LANNI,

Defendant-Appellant.

UNPUBLISHED
January 19, 1999

No. 197685
Oakland Circuit Court
LC No. 94-475258 AP

Before: Hoekstra, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order entering judgment in favor of plaintiff in the amount of $500,000 in this assault and battery action. We affirm.

Defendant first argues that the trial court erred in denying his motion for summary disposition pursuant to MCR 2.116(C)(7) and (8) because plaintiff's claim was barred by the statute of limitations. We disagree. We review de novo a trial court's decision on a motion for summary disposition to determine if the moving party was entitled to judgment as a matter of law. *Guerra v Garratt*, 222 Mich App 285, 288; 564 NW2d 121 (1997).

When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7) on the ground that the plaintiff's claim is barred by the statute of limitations, the court must accept the plaintiff's well-pleaded allegations as true and construe them in the plaintiff's favor. *Guerra, supra,* 222 Mich App 289. The court must consider the documentary evidence submitted by the parties to determine whether a genuine issue of material fact exists with respect to whether the plaintiff's claim is barred by the statute of limitations. *Id.* A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Jackson v Oliver*, 204 Mich App 122, 125; 514 NW2d 195 (1994). The court must consider the plaintiff's factual allegations as true and should grant the motion only where the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Id.*

Normally, an assault and battery claim is barred by the statute of limitations unless it is brought within two years after it accrued. MCL 600.5805(2); MSA 27A.5805(2); *Lemmerman v Fealk*, 449

Mich 56, 63; 534 NW2d 695 (1995). However, a person who is under 18 years of age when a claim accrues "shall have 1 year after the disability is removed" to file the action even though the limitation period has run. MCL 600.5851(1); MSA 27A.5851(1). Here, plaintiff's infancy disability was removed on the day she turned 18 years old, April 21, 1993. Therefore, plaintiff had until April 21, 1994, her nineteenth birthday, to file her claim. Plaintiff filed her claim on April 21, 1994, and, therefore, her claim was timely filed. Defendant's argument that plaintiff's claim was not timely filed because he was not served with process until June 2, 1994, is without merit. A civil action is commenced by filing a complaint with the court. MCR 2.102(B); *Buscaino v Rhodes*, 385 Mich 474, 481; 189 NW2d 202 (1971). Defendant was properly served with process within 91 days after the date the complaint was filed. MCR 2.102(D). Accordingly, the trial court properly denied defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (8).

Defendant next argues that the trial court erred in denying his motion to adjourn the trial because he did not have notice of the trial date. We disagree. We review a trial court's decision regarding a motion for an adjournment for an abuse of discretion. *City of Lansing v Hartsuff*, 213 Mich App 338, 350; 539 NW2d 781 (1995).

Generally, attorneys and parties must be given 28 days' notice of the date of trial. MCR 2.501(C). However, where there is an adjournment of a previously scheduled trial, the 28 days' notice requirement does not apply. Here, the original trial date was May 9, 1995. The trial date was adjourned at least three times before the trial eventually commenced on March 8, 1996. Defendant claims that he believed the case was scheduled for mediation on March 8, 1996, and that he never received notice that the trial was scheduled to begin on that day. Defendant contends that, because of the lack of notice, he was not prepared for trial, he did not have his file and notes, he was not able to notify his witnesses, and he was not able to retain an attorney. However, defendant has not specifically demonstrated how he was prejudiced by the alleged lack of notice. Therefore, in light of the previous adjournments and the fact that defendant was apparently prepared for trial on the dates previously set for trial, we do not believe the trial court abused its discretion in denying defendant's motion for an adjournment.

Defendant next argues that his rights to be free from double jeopardy and excessive fines were violated by the trial court's order awarding plaintiff $500,000 in damages. We disagree. We review constitutional issues de novo. *Kuhn v Secretary of State*, 228 Mich App 319, 324; 579 NW2d 101 (1998).

Both the United States and the Michigan Constitutions provide that a person may not be twice placed in jeopardy for a single offense. US Const, Am V; Const 1963, art 1, § 15; *People v Mehall*, 454 Mich 1, 4; 557 NW2d 110 (1997). However, a civil proceeding is typically presumed not to invoke double jeopardy protections unless a defendant can show that it is the equivalent of a criminal proceeding by clear proof that the penalty imposed is so punitive in purpose or effect that it is rendered criminal. *People v Duranseau*, 221 Mich App 204, 207; 561 NW2d 111 (1997). Furthermore, double jeopardy principles are not violated when the civil penalty serves a purpose distinct from any punitive purpose. *Id.* at 206; *People v Artman*, 218 Mich App 236, 244; 553 NW2d 673 (1996).

Here, defendant has not demonstrated that "the penalty imposed is so punitive in purpose or effect that it is rendered criminal." *Duranseau, supra,* 221 Mich App 207. Furthermore, the purpose of the civil judgment was to compensate plaintiff for the injuries she sustained as a result of defendant's conduct, and was distinct from the punitive purpose of the criminal sanctions. Therefore, the imposition of the civil judgment did not violate double jeopardy principles.

Defendant's argument that the trial court's order entering judgment in favor of plaintiff in the amount of $500,000 violated the constitutional prohibition of the imposition of excessive fines is without merit. US Const, Am VIII; Const 1963, art 1, § 16. The Excessive Fines Clause is concerned with "criminal process and with direct actions initiated by government to inflict punishment," and does not apply to damage awards in civil cases between private parties where the government has neither prosecuted the action nor has any right to receive a share of the damages awarded. *Browning-Ferris Industries of Vermont, Inc v Kelco Disposal, Inc,* 492 US 257, 262-264; 109 S Ct 2909; 106 L Ed 2d 219, 230-231 (1989).

Defendant next argues that the trial court violated his right to due process by denying his request for a jury trial, denying his motion for discovery, and denying his motion to subpoena witnesses necessary to his defense. We disagree. When a party has failed to comply with the provisions of MCR 2.508, we review the trial court's decision to impanel a jury for an abuse of discretion. *Adamski v Cole,* 197 Mich App 124, 130; 494 NW2d 794 (1992). We also review a trial court's ruling regarding discovery for an abuse of discretion. *Harrison v Olde Financial Corp,* 225 Mich App 601, 614; 572 NW2d 679 (1997).

"A party who fails to file a demand or pay the jury fee as required by this rule waives trial by jury." MCR 2.508(D)(1). Here, defendant requested a jury trial in his answer to plaintiff's complaint. However, he did not pay the jury fee. The lower court record contains a second demand for a jury trial and a motion for waiver of the jury fee, dated October 1, 1995. However, defendant did not follow the proper procedure to schedule the motion for a hearing, and the trial court never heard the motion. Furthermore, the second jury demand was not timely. Under these circumstances, the trial court did not abuse its discretion in failing to impanel a jury. *Adamski, supra,* 197 Mich App 130.

Furthermore, the trial court did not abuse its discretion in denying defendant's discovery requests. The court properly denied defendant's request for admissions because plaintiff had answered the request in a timely manner. The court properly denied defendant's motion to compel discovery and for production of documents filed October 24, 1994, because the information sought could have been obtained from third parties, and the documents sought were not in the possession or control of plaintiff. To the extent that plaintiff could have provided defendant with some of the information pertaining to the discovery requests, defendant's motions for discovery were not properly scheduled for a hearing by the court. Under these circumstances, the trial court did not abuse its discretion in denying defendant's motions for discovery.

Defendant next argues that the trial court erred in denying his motion for a new trial or for remittitur. We disagree. A trial court's decision regarding a motion for remittitur or a motion

for a new trial is reviewed for an abuse of discretion. *Palenkas v Beaumont Hospital*, 432 Mich 527, 531, 533-534; 443 NW2d 354 (1989); *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997). Furthermore, because the trial court is in the best position to make an informed decision regarding the excessiveness of a verdict, the trial court's decision on the motion must be given due deference on appeal. *Palenkas, supra*, 432 Mich 531, 534.

When a trial court determines that excessive damages were awarded by the jury and appeared to be influenced by passion or prejudice, or where the verdict was clearly or grossly excessive, the court may grant a new trial. MCR 2.611(A)(1)(c) and (d). In the alternative, the court may deny the motion for a new trial and grant remittitur. MCR 2.611(E)(1); *Palenkas, supra*, 432 Mich 531. In determining whether remittitur is appropriate, the relevant consideration is whether the jury award was supported by the evidence. *Palenkas, supra*, 432 Mich 531-532. The jury award should not be disturbed if the award falls reasonably within the range of the evidence and within the limits of what reasonable minds would deem just compensation. *Frohman v City of Detroit*, 181 Mich App 400, 415; 450 NW2d 59 (1989).

Here, plaintiff presented compelling testimony regarding the emotional harm she suffered and continues to suffer as a result of defendant's conduct. Plaintiff also presented substantial evidence regarding the extensive treatment she received after the sexual assaults. Based on the evidence presented, we cannot conclude that the trial court abused its discretion in denying defendant's motion for a new trial or for remittitur.

Defendant next argues that the verdict violated several statutory provisions and a court rule. However, the court rule and the majority of the statutes cited by defendant in his appellate brief are not applicable to the instant case.[1] Furthermore, although MCL 600.6305; MSA 27A.6305 and MCL 600.6306; MSA 27A.6306 apply to the instant case, the court complied with the provisions of each statute. MCL 600.6305; MSA 27A.6305 imposes a duty on a trial court to render specific factual findings regarding economic and noneconomic damages, as well as any future damages awarded. Here, it is clear from the trial court's opinion that the amount awarded represented noneconomic damages for the physical and emotional pain suffered by plaintiff. Accordingly, the trial court complied with MCL 600.6305; MSA 27A.6305. The trial court also complied with MCL 600.6306; MSA 27A.6306, which governs the order of judgment.

Defendant next argues that the trial court erred in denying his motion for a directed verdict because plaintiff failed to prove how she was injured or the amount of her damages. We disagree. We review de novo a trial court's decision regarding a motion for a directed verdict. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997).

A directed verdict will be granted only where no factual question exists upon which reasonable minds could differ. *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 524; 529 NW2d 318 (1995). The court must view all of the evidence presented up until the time the motion was made in the light most favorable to the nonmoving party to determine whether a prima facie case was established. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994). All reasonable inferences must be

made in favor of the nonmoving party. *Kubczak v Chemical Bank & Trust Co,* 456 Mich 653, 663; 575 NW2d 745 (1998).

Plaintiff presented substantial testimony regarding the emotional harm she suffered as a result of defendant's abhorrent criminal conduct. Plaintiff testified that she was forced to drop out of school because her emotional stability caused her to fall drastically behind in her studies, that her social life deteriorated when the public became aware of the incident, and that she felt stigmatized and ostracized by her peers and her community. Furthermore, she required extensive outpatient and inpatient treatment at various mental health facilities, and even attempted suicide. Contrary to defendant's argument, the fact that plaintiff did not sustain out-of-pocket medical expenses due to insurance coverage does not mean that she did not incur compensable losses. In light of the substantial evidence of plaintiff's injuries and damages, the trial court did not err in denying defendant's motion for a directed verdict.

Finally, defendant argues that the trial court abused its discretion and violated the Michigan Constitution by entering a $500,000 judgment against an indigent defendant. We disagree. This issue presents a question of constitutional law, which we review de novo. *Kuhn, supra*, 228 Mich App 324.

Defendant argues that, because he is indigent, the $500,000 judgment violated the homestead exemption in the Michigan Constitution, which exempts from forced sale on execution or any other process of the court a homestead in the amount of not less than $3500 and personal property in the amount of not less than $750. Const 1963, art X, § 3. However, defendant's argument must fail because neither defendant's home nor his personal property has been subject to a forced sale to satisfy the civil judgment. The constitutional provision is inapplicable to the instant case. Furthermore, defendant's argument that the judgment violated the constitutional prohibition of cruel and unusual punishment is without merit, as that prohibition was designed to protect those convicted of crimes, and is not applicable to judgments rendered in a civil case. US Const, Am VIII; Const 1963, art 1, § 16; *Butler v City of Detroit*, 149 Mich App 708, 721; 386 NW2d 645 (1986).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell

[1] MCL 600.1483; MSA 27A.1483 governs noneconomic damages in medical malpractice cases. MCL 600.3505; MSA 27A.3505 authorizes the court to dissolve a corporation and appoint a receiver if the corporation is insolvent. MCL 600.6303; MSA 27A.6303 is part of the Tort Reform Act of 1993, but relates to collateral source benefits, which are not at issue in the instant case. Finally, MCR 2.514 governs special verdicts, which were not used in the instant case.