

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 2, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP1682-FT

Cir. Ct. No. 2005CV681

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

SARAH D., BY HER GUARDIAN AD LITEM, J. DREW RYBERG,

PLAINTIFF-APPELLANT,

STEPHEN E. D. AND JAN L. D.,

PLAINTIFFS,

v.

JACOB A. EISOLD,

DEFENDANT-RESPONDENT,

MARK J. EISOLD AND KATHLEEN S. EISOLD,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Sarah D. appeals an amended judgment awarding her \$5,460 in punitive damages against Jacob Eisold.¹ She contends the circuit court improperly considered the statutory interest rate and the statutory period to collect judgments. We reject that argument and affirm the judgment.

¶2 When Sarah was ten and eleven years old and Eisold was fifteen and sixteen years old, he exposed himself to her on twenty occasions. On one occasion, she touched his penis for approximately three seconds. Eisold went through juvenile court proceedings and was ordered to attend counseling, pay restitution for Sarah's counseling and report his misconduct to his school and athletic director. Sarah and her parents then brought this action seeking compensatory and punitive damages. The court initially awarded \$45,643.97 compensatory damages and \$5,000 punitive damages. In a previous appeal, we remanded the punitive damage claim for further proceedings, directing the court to consider Eisold's earning capacity when evaluating his ability to pay. By stipulation, the matter was submitted to the court based solely upon portions of the record from the first trial. The court awarded Sarah \$5,460.

¶3 The amount of punitive damages is committed to the trial court's discretion. *Wangen v. Ford Motor Co.*, 97 Wis. 2d 260, 301, 294 N.W.2d 437 (1980). When awarding punitive damages, the court must consider the grievousness of Eisold's acts, the degree of malicious intent, the actual and potential damage that might have been caused by his acts, and his ability to pay.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted. We amended the caption to comply with WIS. STAT. RULES 809.19(1)(g) AND 809.81(8) and protect the confidentiality of Sarah D. We remind the parties that a party whose identity is protected should be referred to by their first name and last initial.

See WIS JI—CIVIL 1707.1 (2009). In considering his wealth, the court must determine what sum of punitive damages will be enough to punish him and deter him and others from the same conduct in the future. *See id.*

¶4 Considering these factors, the trial court noted Eisold’s admission to the offenses, his willing participation in psychological treatment and his successful compliance with all aspects of the juvenile court dispositional order. The court also noted Sarah’s good progress in counseling, achievements in school and lack of any manifestations of stress. The court found Eisold’s actions were not malicious.

¶5 Regarding Eisold’s ability to pay, the court noted Eisold completed one year of college by the time of trial and was earning \$7 per hour, working sixty to seventy hours per week at his summer job. His net worth was only between \$2,000 and \$3,000. The court reviewed the stipulated evidence as to possible future earning capacity of a man Eisold’s age, and evaluated the percentage of lifetime income that would be consumed by the \$300,000 punitive damage award requested by Sarah. The court noted Eisold had no means to pay that large amount of punitive damages and the interest on a \$300,000 judgment would be \$36,000 per year. The court concluded an excessive punitive damage award would prevent Eisold from paying college tuition, buying a car, owning a home, or acquiring assets sufficient to permit him to live a normal life. The court found the appropriate measure of punitive damages was the amount Eisold would earn in one summer of hard work.

¶6 Sarah argues the court created a fifth element when it discussed the statutory interest rate and the statutory period for paying a judgment. We disagree. Rather, the court appropriately considered Eisold’s lifetime earning

capacity as it relates to the purpose of punitive damages, deterrence and appropriate punishment. The calculations regarding interest showed the excessiveness of the \$300,000 amount suggested by Sarah. The court properly exercised its discretion by thoughtfully applying each of the factors and setting a reasonable amount that would punish Eisold and deter him and others from this conduct.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

