



1988

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Recommended Citation

Bricker, Jules R. (1988) "Recent Developments: *Nast v. Lockett*: Punitive Damages Permitted in Automobile Negligence Case Where Defendant Was Both Intoxicated and Exhibited a Wanton and Reckless Disregard for Human Life," *University of Baltimore Law Forum*: Vol. 19 : No. 1 , Article 16.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol19/iss1/16>

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Nast v. Lockett: PUNITIVE DAMAGES PERMITTED IN AUTOMOBILE NEGLIGENCE CASE WHERE DEFENDANT WAS BOTH INTOXICATED AND EXHIBITED A WANTON AND RECKLESS DISREGARD FOR HUMAN LIFE.

In *Nast v. Lockett*, 312 Md. 343, 539 A.2d 1113 (1988), the Court of Appeals of Maryland held it reversible error to withhold the issue of punitive damages from the jury in a civil automobile accident action where there existed sufficient evidence that an intoxicated driver exhibited a wanton and reckless disregard for human life.

On the evening of February 17, 1984, Edward Nast ("Nast"), Lois Lockett ("Lockett"), and Charles Houck ("Houck") were traveling on York Road, a four-lane thoroughfare in Baltimore County. Nast was proceeding south behind Lockett's vehicle. Houck was traveling north on York Road. Lockett attempted to make a U-turn onto the northbound lane, but was unable to complete the turn without hitting the curb. Lockett then came to a full stop, and backed up in order to complete the turn. Houck continued without braking or deviating from his course, careened off Lockett's car into the southbound lane off York Road, and struck the vehicle driven by Nast. Nast sustained personal injuries and property damage as a result of the collision.

Nast, and his wife, who was a passenger in his car at the time of the accident, entered suit in the Circuit Court for Baltimore City seeking compensatory and punitive damages from Lockett and Houck based on drunken and negligent driving. The judge prevented the issue of punitive damages from deliberation before the jury due to insufficient proof of wanton and willful disregard for human life. The jury awarded the Nasts compensatory damages to be paid by each defendant. The Nasts appealed to the court of special appeals on the issue of punitive damages. The Court of Appeals of Maryland, on their own motion, certified the case to consider the question of whether the lower court erred in withholding from the jury the issue of punitive damages. *Id.* at 348, 539 A.2d at 1115-16.

The question of whether to award punitive damages is considered by the factfinder only if the evidence is sufficient to bring the issue before the finder of fact. The actual award of such damages is then left to the discretion of the factfinder. The court of appeals thus sought to determine whether the trial court was "right," or

"wrong" in withholding the issue of punitive damages from the jury. *Id.* at 349, 539 A.2d at 1116.

The court began its analysis by explaining the criterion for awarding damages in Maryland. Compensatory damages are awarded "[a]s compensation, indemnity, or restitution for harm sustained. . ." *Id.* at 348, 539 A.2d at 1116, (citing *McAlister v. Carl*, 233 Md. 446, 451-57, 197 A.2d 140 (1964)). A finding of negligence and compensable loss are conditions precedent to consideration of the issue of punitive damages. *Id.* 349, 539 A.2d 113, 114-16, (citing *Shell Oil Co. v. Parker*, 265 Md. 631, 644, 291 A.2d 64 (1972)). Punitive damages are thereby awarded not as the measure of actual loss, but "as punishment for outrageous conduct and to deter future transgressions." *Id.* (citing *Black's Law Dictionary* 352 (5th ed. 1979)) (emphasis added).

Initially, the standard regarding entitlement of punitive damages required an element of fraud, malice, evil intent or oppression entering into and forming part of the wrongful act. *Philadelphia, W. & B.R.R. Co. v. Hoeflich*, 62 Md. 300, 307 (1884). This rule, however, was supplanted in *Smith v. Gray Concrete Pipe Co.*, 267 Md. 149, 297 A.2d 721 (1972), wherein the court held that punitive damages in motor vehicle cases should be based on the standard applied in the crime of manslaughter by automobile.

The statute creating the crime of manslaughter by automobile dictates that "[e]very person causing the death of another as a result of driving. . . of an automobile. . . in a grossly negligent manner, shall be guilty of a misdemeanor to be known as 'manslaughter by automobile. . .'" Md. Code Ann, art. 27, §388 (1957, 1987 Repl. Vol.). Decisions interpreting the statute therefore require proof of gross negligence, which has been defined as "a wanton or reckless disregard for human life" in the operation of a motor vehicle, the requisites of which are knowledge of the dangers and risks attendant to such conduct. The court in *Smith* further observed that since the requirement of gross negligence was adequately stringent to impose imprisonment, it was sufficient to form the basis of an award of punitive damages. *Smith* 267 Md. at 168, 297 A.2d at 832.

The standard of gross negligence is therefore met if the driver exhibited an extraordinary or outrageous lack of concern for the safety of others. The court determined that "[i]t is not reckless driving that allows punitive damages; it is the reckless disregard for human life." The determination thereof must be made "in light of evidence

adduced at the trial tending to show that Lockett and Houck had consumed alcoholic beverages shortly before their fortuitous meeting on York Road, and evidence regarding their condition as a result of their drinking." *Id.* at 352, 539 A.2d at 1117-18.

In Maryland, it is a misdemeanor to drive any vehicle while intoxicated, or under the influence of alcohol. Md. Transp. Code Ann. §21-902 (1977, 1982 Repl. Vol.). The amount of alcohol in the blood of the drinking driver is admissible in both civil and criminal trials in order to show the degree of impairment of the driver. Unlike criminal causes, however, the percentage of alcohol in the blood does not give rise to any presumptions in civil actions. The plaintiffs in civil cases therefore have the burden of persuasion as to the degree of the defendant's impairment. *Nast*, 312 Md. 353, 539 A.2d at 1119, (citing *Major v. State*, 31 Md. App. 590, 595, 358 A.2d 609 (1976)).

The court then evaluated the facts and circumstances surrounding Lockett and Houck's levels of inebriation after the accident. Initially, it was determined that Lockett had been drinking from approximately 6:45 p.m. to 8:15 p.m. on the evening of the accident. A blood specimen was taken from Ms. Lockett in conjunction with routine hospital procedure. Although the specimen was not taken for the purpose of determining blood alcohol content, an expert testified that a person with Lockett's ethyl alcohol content probably had a blood alcohol level "approximately in the range of .11 to .12 percent [by weight]." *Id.* There was no testimony in addition to the blood test as to Lockett's demeanor, appearance, or conduct, which might have provided any indicia of drunkenness. *Id.* at 356, 539 A.2d at 1120. The court determined that while the evidence was sufficient to determine that Lockett was "under the influence," the evidence was not sufficient to prove that she was "intoxicated." *Id.* (Note: This decision was rendered before the July 1, 1988 legislative enactment lowering the blood alcohol level of intoxication from .13 to .10.)

As opposed to the facts and circumstances regarding Lockett, the court did not have the benefit of a sample of Houck's blood or breath. Houck, who refused tests necessary to determine blood alcohol content, denied consumption of alcohol on the night of the accident. His testimony, however, was discounted by statements of the investigating police officer, a paramedic, the medical doctor who treated him at the hospital, and a nurse, each of whom testified that Houck smelled

of alcohol. The aforementioned witnesses characterized Houck as uncooperative, combative, hostile, and belligerent. Another paramedic stated that Houck "appeared to be intoxicated — he smelled of alcohol, had bloodshot eyes, all he could do was moan, 'he could not converse.'" *Id.* In short, it was the considered opinion of those in contact with Houck after the accident that Houck consumed alcohol to the extent that his normal coordination, faculties, and physical and mental abilities were substantially and materially impaired. *Id.*

The trial judge, in consideration of the foregoing evidence, submitted the case to the jury on the question of the "proximate cause of this accident..." and "the compensatory damage aspects," but had "a serious problem sending it on punitive damages." The trial judge determined that, as a matter of law, neither Lockett, nor Houck exhibited such a wanton and reckless disregard for human life as would permit him to submit the question of punitive damages to the jury. *Id.* at 359, 539 A.2d at 1121.

The court of appeals, then considered the requisite conditions for the imposition of punitive damages:"

We think that in civil automobile accident cases involving a drinking driver whether the driver had a wanton or reckless disregard for human life, in the operation of an automobile, is to be tested by a sliding scale. As the degree of impairment by the voluntary consumption of alcohol increases, the need for other aggravating circumstances lessens, and *visa versa*.

Id. at 362, 539 A.2d at 1122. The court opined that the act of outrageous driving, as well as the act of driving after the point of voluntary intoxication, permitted the inference that the driver did not care whether he killed or injured others. The court clarified that "[w]hat must not be forgotten is that the discretion to award punitive damages becomes available only when the combination of relevant facts demonstrates by a preponderance of the evidence that the driver had a wanton or reckless disregard for human life." *Id.* at 363, 539 A.2d at 1123. Thus, individuals who drive negligently, but not outrageously, and who have not consumed alcohol beyond the point of intoxication are not subject to punitive damages. *Id.*

The court concluded that regarding Lockett's case, the judge did not err in withholding the issue of punitive damages from the jury since, as a matter of law, the facts were not sufficient to indicate that she was legally intoxicated. The court of

appeals did hold, however, that a finding by the jury that Houck was intoxicated would have been sufficient to infer that he exhibited a wanton or reckless disregard for human life, thus justifying an award of punitive damages. The facts and circumstances surrounding Houck's behavior were sufficient to indicate outrageous conduct. The lower court erred, therefore, in keeping from the jury the issue of punitive damages. *Id.*

The holding in *Lockett v. Nast* reinforces legislation responding to the public sentiment for more stringent penalties against those who operate motor vehicles while intoxicated. Thus, punitive awards will be made available to an increasing number of drunk driving victims. The court warned, however, that "[t]he step we take today — recognizing that one who drinks to the point of becoming intoxicated and then undertakes the operation of a motor vehicle may be found to have had a wanton disregard for human life — is not an invitation to claim punitive damages in any case where negligence and drinking can be shown." *Id.* at 370, 539 A.2d at 1127 (emphasis added).

—Jules R. Bricker

Legal Aid Bureau v. Bishop's Garth Assocs. Ltd. Partnership: JUDICIARY'S ABILITY TO AWARD ATTORNEY'S FEES LIMITED

In *Legal Aid Bureau v. Bishop's Garth Assocs.* 75 Md. App. 214, 540 A.2d 1175 (1988) the Court of Special Appeals of Maryland held that the Circuit Court for Carroll County abused its discretion by imposing attorney's fees against the Legal Aid Bureau under Md. Rule 1-341. The court reasoned that Legal Aid produced factual issues for the consideration of the fact-finder and that the judge was clearly erroneous in finding that Legal Aid was motivated by "bad faith" and a "lack of substantial justification." As a result, the decision by the Circuit Court for Carroll County was reversed.

The case revolved around a landlord-tenant suit brought in the District Court for Carroll County. In 1981, Josephine Brunner and Salvatore Torres leased an apartment at a housing project known as Bishop's Garth. Three years later, Bishop's Garth sought restitution of the premises by bringing an action against Brunner and Torres, claiming breach of their lease. Through their counsel, the Legal Aid Bureau, the tenants requested a jury trial. The jury found in favor of the landlord.

When the defendants' appeal was dismissed for procedural reasons, Bishop's Garth filed for and was granted attorney's fees under Md. Rule 1-341.

In its opinion, the court of special appeals drew particular attention to a meeting between a Legal Aid attorney and the managing general partner of Bishop's Garth. The Legal Aid lawyer requested photostats of other tenants' complaints against Brunner and Torres, along with pictures showing Brunner and Torres's children damaging the housing project's property. When denied this information, the Legal Aid attorney allegedly announced, "I'm sure you know that we can stretch this thing out... Based on that fact, don't you think it might be to your advantage to come to some agreement with Mrs. Brunner and — save yourself some money?" *Id.* at 219, 540 A.2d at 1177. In a footnote, the court referred to The Maryland Lawyers Rules of Professional Conduct and the ABA Code of Professional Conduct. They then commented that there was no doubt that the lawyer's "somewhat tactless remarks" inspired the plaintiff's request for punitive measures pursuant to Md. Rule 1-341. *Id.* at 219, 540 A.2d at 1178.

Maryland Rule 1-341, which corresponds with Fed. R. Civ. P. 11, declares

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

Rule 1-341's "bad faith" requirement encompasses the notion that before sanctions can be applied, one must act "for purposes of delay." *Blanton v. Equitable Bank*, 61 Md. App. 158, 163, 485 A.2d 694 (1985).

The court of special appeals was disturbed by the trial judge's finding that the tenants' indulgence in a jury trial and subsequent appeal was not in good faith and bereft of substantial justification. The trial judge expounded that the request for a jury trial was motivated by a desire for delay in order to unduly coerce Bishop's Garth to dismiss the action. Md. Rule 1-341, however, is inapplicable to justifiable delays, especially if the behavior causing the delay concerns the assertion of a fundamental right. *Legal Aid*, 540 A.2d at