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Recent Developments: *Montgomery Ward v. Wilson*: Actual Malice Is Required for Punitive Damage Awards in False Imprisonment and Malicious Prosecution Actions

Margaret Oliver

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***Montgomery Ward
v. Wilson:***

**ACTUAL MALICE
IS REQUIRED
FOR PUNITIVE
DAMAGE AWARDS
IN FALSE
IMPRISONMENT
AND MALICIOUS
PROSECUTION
ACTIONS.**

The Court of Appeals of Maryland held in *Montgomery Ward v. Wilson*, 339 Md. 701, 664 A.2d 916 (1995), that the intentional torts of false imprisonment and malicious prosecution, require actual malice for punitive damage awards. Furthermore, punitive damages for malicious prosecution actions will be allowed only after the defendant's wrongful or improper motive for instigating the prosecution is shown by clear and convincing evidence.

In 1987, a number of customers of the Montgomery Ward store in Temple Hills, Maryland ("Montgomery Ward") noticed unauthorized charges on their monthly statements. Jeffrey Bresnahan ("Bresnahan"), a loss prevention manager with Montgomery Ward, began an investigation which led him to Sandra Fuller ("Fuller"), a cashier who operated the register when the transactions occurred. Fuller told Bresnahan that she recorded the purchases for co-employee, Frances Wilson ("Wilson"), on a charge card number Wilson gave her. Fuller alleged that Wilson told her the number belonged to a relative, but Wilson never produced a charge card. When Bresnahan questioned Wilson, she denied making the unauthorized charges. However, another employee corroborated Fuller's story.

Bresnahan met with his superiors who decided to press charges. He applied for and obtained a warrant for Wilson's

arrest, and two officers arrested her at Montgomery Wards. The charges against Wilson were dismissed, however, because several of the prosecution's witnesses failed to show. Wilson subsequently filed suit against Montgomery Ward and Bresnahan for false imprisonment and malicious prosecution.

In the Circuit Court for Prince George's County, the defendants moved for summary judgment. The circuit court denied the defendants' motions and instructed the jury that it could award punitive damages for malicious prosecution based upon either actual or implied malice. The jury, in a special verdict, found the defendants liable for both false imprisonment and malicious prosecution and awarded Wilson \$15,000 in compensatory damages and \$45,000 in punitive damages. On appeal, the defendants claimed that insufficient evidence of either tort existed for the question to reach the jury. In the alternative, they challenged both the compensatory and punitive damages awards. The Court of Special Appeals of Maryland affirmed the lower court, and the Court of Appeals of Maryland granted the defendants' petition for certiorari.

The court of appeals first examined the sufficiency of the evidence regarding malicious prosecution. *Wilson*, 339 Md. 701 at 714, 664 A.2d at 922. Looking at the defendants' claim that Wilson failed to prove

both lack of probable cause and malice, two necessary elements of malicious prosecution, the court found that the trial court improperly gave the jury a question of law. *Id.* at 716, 664 A.2d at 923. The jury instructions included a general definition of probable cause rather than giving them various factual scenarios from the case and letting them find probable cause based on the facts. *Id.* By failing to object, however, the defendants neglected to preserve this issue for appeal. *Id.* at 717, 664 A.2d at 924.

The court next turned its attention to the element of malice. *Id.* The "malice" required for malicious prosecution consists of a wrongful or improper motive in initiating legal proceedings against the plaintiff." *Id.* at 717, 664 A.2d at 924. Therefore, the court held that the plaintiff must show that the defendant had an improper purpose or motive in prosecuting the defendant, and that mere negligence is not malice. *Id.* at 719, 664 A.2d at 925. The court further held that the jury instructions improperly defined malice as "reckless" and "dangerous" conduct, thus inviting the jury to find the defendants liable for malicious prosecution based upon negligence rather than malice. *Id.* at 720, 664 A.2d at 925. Although the instructions were improper, once again, the defendants failed to object. Thus, the court of appeals affirmed the compensatory damages award under the malicious prosecution count. *Id.*

Responding to the defendants' challenge to the verdict of false imprisonment, the court found that no such action lay against the defendants. *Id.* at 728, 664 A.2d at 929. Reasoning that false imprisonment is an unlawful detention, the court noted that the defendants did not take the plaintiff into custody or induce the police officer to arrest the plaintiff without a valid warrant. *Id.* Furthermore, Wilson never challenged the validity of the warrant or contended that her interrogation was a detention. *Id.* Consequently, the court held that there was insufficient evidence of false imprisonment, and the compensatory and punitive damage awards for false imprisonment were reversed. *Id.*

Addressing the issue of punitive damage awards, the court held that punitive damages are an attempt to punish a defendant whose "conduct . . . is particularly heinous, egregious and reprehensible." *Id.* at 734, 664 A.2d at 932 (citing *Owens-Illinois v. Zenobia*, 325 Md. 420, 454, 601 A.2d 633, 649-50 (1992)). In dictum, the court stated that, had they upheld the compensatory damage award under the false imprisonment action, punitive damages could not be awarded based on implied malice. *Id.* at 730, 664 A.2d at 930. The court then held that both the circuit court and the court of special appeals erred in holding to the contrary. *Id.* at 732, 664 A.2d at 931. Punitive damages under malicious prosecution actions also

require a showing of actual malice. *Id.* at 735, 664 A.2d at 933. Furthermore, the court stated that "in any tort case a plaintiff must establish by clear and convincing evidence the basis for . . . punitive damages." *Id.* at 733, 664 A.2d at 932 (quoting *Owens-Illinois*, 325 Md. at 454, 601 A.2d at 650). Inferring malice from lack of probable cause does not meet the clear and convincing evidence standard required for punitive damages. *Id.* at 735, 664 A.2d at 933. Stating that an inadequate investigation does not necessarily indicate a wrongful motive, the court reversed the punitive damages award under the malicious prosecution count. *Id.*

In *Montgomery Ward v. Wilson*, the Court of Appeals of Maryland clarified punitive damage awards for the intentional torts of false imprisonment and malicious prosecution. In seeking to uphold the purpose of these awards, the court now requires a showing of actual malice to recover punitive damages under malicious prosecution and false imprisonment. Furthermore, the court held that in malicious prosecution actions, actual malice must be shown by clear and convincing evidence. Although it attempted to limit its holding, the court alluded to a showing of actual malice for punitive damages for all intentional torts and opened the door to future holdings requiring actual malice for punitive damage awards. Given the concern over excessive

judgments, this holding restores the integrity of punitive damage awards and provides some protection for merchants mak-

ing good faith investigations of theft.

-Margaret Oliver

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- Education:** *Baltimore City College, 1939;
University of Baltimore School of Law, LLB, 1942.*
- Service:** *U.S. Army, 1942-45; U.S. Army Reserves, 1945-79.*
- Political:** *Councilman, Baltimore City Council, 1955-67;
President, Baltimore City Council, 1967-71;
Mayor, City of Baltimore, 1971-86;
Governor, State of Maryland, 1987-94.*
- Current Activities:** *Lecturer at University of Maryland, College Park and Johns
Hopkins University; Of Counsel with law firm of Gordon,
Feinblatt, Rothman, Hoffberger & Hollander, LLC; working
on fund raising activities with civic and community organiza-
tions.*
- Plans for the Future:** *To continue with present activities and find a hobby (fishing)
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- On Direction of Maryland:** *Maryland is America in miniature . . . maintain economic
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- Advice for Young Lawyers:** *Work hard to be a lawyer and do not "spread yourself thin" on
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