Third District Court of Appeal

State of Florida

Opinion filed October 21, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D26-0024
Lower Tribunal No. 23-25057-CA-01

Limousines of South Florida, Inc., et al.,
Appellants,

vs.

Joseph Levit, et al.,
Appellees.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Lourdes Simon, Judge.

Hamilton, Miller & Birthisel LLP, and William H. Edwards and Michael J. Dono, for appellants.

Vladimir Tsirkin & Associates, P.A., and Vladimir Tsirkin (Hallandale Beach), for appellees.

Before FERNANDEZ, GORDO and REBULL, JJ.

GORDO, J.

ON MOTION FOR REHEARING AND CERTIFICATION OF QUESTIONS OF GREAT PUBLIC IMPORTANCE

We deny the motion for rehearing and certification of questions of great public importance but withdraw our previous opinion and substitute the following opinion in its stead.

I.

Limousines of South Florida appeals a non-final order granting Levit's request to amend the complaint to assert punitive damages. We have jurisdiction. Fla. R. App. P. 9.130(a)(3)(G). Limousines argues that Levit failed to proffer sufficient evidence of intentional misconduct or gross negligence and establish the requisite nexus between the alleged licensing violation and any injury or damage to the claimant that resulted from the routine rear-end collision. We agree and reverse.

Limousines hired Catherine Rodriguez as a passenger shuttle bus driver. Although Rodriguez held a valid Class B commercial driver's license, at issue is whether she had a valid passenger endorsement. While driving an empty shuttle bus several months later, Rodriguez failed to timely brake and made slight contact with the rear of Levit's vehicle. No injuries were reported at the scene.

Levit, together with the three passengers who occupied his vehicle at the time of the accident, filed a 32-count complaint, alleging various forms of negligence. They subsequently moved for leave to amend their complaint to seek punitive damages. Levit filed a proffer arguing that Limousines' decision to hire and permit Rodriguez to drive without the required passenger endorsement created an imminent danger and constituted intentional misconduct or gross negligence. Following a hearing, the trial court granted Levit's motion, finding that permitting Rodriguez to transport passengers without the required endorsement exposed the public to risk and demonstrated a conscious disregard for the safety of others sufficient to support punitive damages.[1]

II.

We review an order granting a motion for leave to amend to assert punitive damages de novo. See McLane Foodservice Inc. v. Wool, 400 So. 3d 757, 761 (Fla. 3d DCA 2024) ("Our de novo review similarly tests the sufficiency of the proffer in the light most favorable to the moving party, without accepting conclusory legal conclusions or labels such as 'gross misconduct' at face value." (citation omitted)).

[1] The trial court found that Levit met the statutory threshold to plead punitive damages based on intentional misconduct "and/or" gross negligence.

Section 768.72, Florida Statutes, requires a "reasonable showing by evidence in the record or proffered by the claimant" that "the defendant was personally guilty of intentional misconduct or gross negligence." § 768.72(1)–(2), Fla. Stat. In Perlmutter v. Fed. Ins. Co., the Florida Supreme Court recently held that the "clear and convincing" standard does not apply when the trial court evaluates the sufficiency of the claimant's evidentiary showing at the pleading stage. 434 So. 3d 681, 688 (Fla. 2026). It further confirmed "the test for deciding evidentiary sufficiency under section 768.72(1) is whether a reasonable person could conclude, based on the claimant's evidence, that the defendant committed 'intentional misconduct' or 'gross negligence,' as defined in section 768.72(2)." Id. (quoting § 768.72(1)–(2), Fla. Stat.).

Punitive damages are available to address "egregious wrongdoing" that "constitutes a public wrong" and are imposed not to compensate the plaintiff, but for punishment and deterrence. Id. at 684 (citation omitted); see Manheimer v. Florida Power & Light Co., 403 So. 3d 257, 260 (Fla. 3d DCA 2023) ("[P]unitive damages are reserved for truly culpable behavior and are intended to 'express society's collective outrage.'" (quoting KIS Grp., LLC v. Moquin, 263 So. 3d 63, 65-66 (Fla. 4th DCA 2019))).

A.

"Intentional misconduct" in the punitive damages context means "that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage." § 768.72(2)(a), Fla. Stat. The statute requires more than a knowing act—the evidence must demonstrate a defendant's specific intent to pursue wrongful conduct despite actual knowledge of the high probability that injury would result. See Vaziri v. Jerkins, 400 So. 3d 634, 638 (Fla. 4th DCA 2025) ("proving intentional misconduct under section 768.72(2)(a) requires evidence of 'specific intent, not general intent, to knowingly engage in wrongful conduct.'" (quoting Fed. Ins. Co. v. Perlmutter, 376 So. 3d 24, 35 (Fla. 4th DCA 2023), quashed on other grounds, 434 So. 3d 681, 688 (Fla. 2026) (holding that the clear and convincing standard does not govern the trial court's evaluation of evidentiary sufficiency at the pleading stage))).

A violation of a licensing or traffic statue, standing alone, does not satisfy that standard. In Robertson v. Antoine, a forklift driver was driving on the wrong side of the roadway in violation of several statutes when he collided with a motorist—an act the trial court found sufficient to constitute

intentional misconduct. 423 So. 3d 910, 911–16 (Fla. 4th DCA 2025). The Fourth District reversed, holding that although the driver knowingly traveled against traffic, his mistaken belief that doing so was "safer" failed to demonstrate "actual knowledge" that his conduct was wrongful and there was "high probability" injury would result—the conduct was "more properly characterized as ordinary negligence" and did not reflect the specific intent required by the statue. Id. (quoting § 768.72(2)(a), Fla. Stat.). The court specifically noted that "a party's violation of traffic law is, standing alone, an insufficient basis for punitive damages . . . there must be some additional act that shows the [conduct] was reckless or a conscious disregard of or indifference to others" and found that no such "additional act" transformed the driver's decision to travel against the flow of traffic into conduct sufficient to support punitive damages. Id. at 915 n.4 (citation omitted).

Levit's proffer fails at the threshold because it does not identify the intentional course of conduct required by section 768.72(2)(a). Any missing passenger endorsement is a licensing deficiency, not a course of conduct. The conduct resulting in Levit's injury was Rodriguez's operation of the shuttle—specifically her failure to timely brake—and the proffer contains no evidence that Rodriguez intentionally drove in a wrongful manner despite actual knowledge that injury was highly probable. As in Robertson, the

existence of a statutory or licensing violation, even if knowingly disregarded, does not supply the additional conduct necessary to transform ordinary negligence into intentional misconduct. 423 So. 3d at 911–16. Levit thus failed to proffer any conduct by Rodriguez or Limousines constituting the intentional course of conduct required by section 768.72(2)(a).

The licensing deficiency also bears no direct relation to the conduct that caused Levit's alleged injury. A punitive damages claim requires a direct link between the defendant's conduct offered to support punitive damages and the plaintiff's resulting harm. See Hardin v. R.J. Reynolds Tobacco Co., 314 So. 3d 584, 589–91 (Fla. 3d DCA 2020) (holding that a punitive damages claim fails where there is no "direct link between the intentional wrongdoing by the defendant and the specific injuries to the plaintiff"). Here, it is undisputed that there were no passengers in Rodriguez's shuttle, Rodriguez held a valid commercial driver's license and nothing in the proffer suggested that any endorsement deficiency impaired her ability to perceive traffic, brake or otherwise operate the vehicle. Rather, the accident was a minor rear-end collision caused by Rodriguez's failure to brake on time. The alleged endorsement deficiency thus bore no relation to the conduct causing Levit's alleged harm and, absent some additional act connecting that deficiency to knowing wrongdoing, cannot transform an otherwise ordinary negligence

claim into one for intentional misconduct. See State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 422–23 (2003) (finding the trial court erred when it "awarded punitive damages to punish and deter conduct that bore no relation to the [plaintiffs'] harm" and that the "defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages").

B.

"Gross negligence" for purposes of punitive damages means "that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct." § 768.72(2)(b), Fla. Stat. The Florida Supreme Court has held that punitive damages "cannot be assessed for mere negligent conduct but must be based on behavior which indicates a wanton disregard for the rights of others" and that "the required level of negligence for punitive damages is equivalent to the conduct involved in criminal manslaughter." Valladares v. Bank of Am. Corp., 197 So. 3d 1, 11 (Fla. 2016) (citation omitted).

As with intentional misconduct, a licensing or traffic violation does not, standing alone, meet the heightened gross negligence standard. In Mercer v. Saddle Creek Transp., Inc., the Sixth District held that even though a

commercial truck driver appeared to violate a federal regulation prohibiting handheld cell phone use, "the mere use of a cell phone while driving a truck" does not "automatically provide[] a reasonable basis for a plaintiff to seek punitive damages. There must be some additional act that shows the cell phone usage was reckless or a conscious disregard of or indifference to others to show gross negligence under section 768.72(2)(b)." 389 So. 3d 774, 777–78 (Fla. 6th DCA 2024); see Creech v. Santomassino, 395 So. 3d 549, 553–54 (Fla. 4th DCA 2024) (holding that a driver's "brief glance at his cell phone" without any "additional act that shows the cell phone usage was reckless or a conscious disregard of or indifference to others," did not meet the gross negligence standard and amounted to ordinary negligence at most).

In Mirlalda v. Mitchell, a commercial driver was alleged to be grossly negligent in failing to secure a pipe to his concrete-pump trailer because he had "an expired license when the accident occurred," "a history of driver's license suspensions" and "a similar accident two days earlier." 429 So. 3d 1113, 1116 (Fla. 6th DCA 2026). The Sixth District nevertheless concluded that those circumstances, considered "individually or collectively" failed to show that the driver's conduct "was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life or safety of the

people exposed to such conduct." Id. at 1120. Individually, the court held that the above evidence was irrelevant to gross negligence—although operating a vehicle with an expired license "was unlawful," and a statutory traffic infraction, "the expiration of his license alone is not evidence of his inability to operate" the vehicle and "malfeasance alone," "unrelated" to harmful conduct "does not support a finding of gross negligence." Id. at 1119. The court held that any history of suspensions was not probative because they were not issued for "moving violations or reckless driving" but for administrative issues, and that the alleged prior accident was similarly irrelevant "without more" demonstrating that he "acted in a grossly negligent way." Id. at 1119–20.

These cases make clear that a statutory or licensing violation, standing alone, does not support punitive damages—the proffer must contain some "additional act" demonstrating recklessness or a conscious disregard for the safety of others. See id.; Mercer, 389 So. 3d at 777–78; Robertson, 423 So. 3d at 911-15.

The trial court relied on Rodriguez's and Limousine's alleged knowledge of the licensing deficiency, reasoning that they nevertheless "allowed or permitted this conduct, thereby exposing passengers and the public to risk." But the trial court's reasoning conflates the alleged existence

of a licensing deficiency with the conduct required by section 768.72(2)(b). Any missing passenger endorsement is a licensing deficiency, not conduct that was "so reckless or wanting in care" as to constitute a "conscious disregard or indifference to" the life, safety or rights of others. § 768.72(2)(b), Fla. Stat. Rather, the relevant conduct was Rodriguez's operation of the shuttle, and the proffer must demonstrate that her operation of the vehicle rose to that heightened level of culpability. It did not.

More specifically, the trial court reasoned that Limousines permitted Rodriguez to drive despite the alleged licensing deficiency and that doing so "in the course of transporting members of the public, constitutes a reasonable evidentiary basis for a finding of conscious disregard for the safety of others." But the premise underlying the trial court's conclusion is simply unsupported by the proffer. Levit's proffer specifically did not include any showing whatsoever that Rodriguez was carrying passengers at the time of the accident. A punitive damage determination cannot rest on a hypothetical worst-case scenario rather than the conduct that actually caused the harm. State Farm Mut. Auto. Ins. Co., 538 U.S. at 423 ("Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis[.]").

The accident was a routine rear-end collision apparently caused by Rodriguez's failure to timely brake. These circumstances would not lead a "reasonable person to conclude" that Rodriguez or Limousines engaged in conduct "so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct." § 768.72(2)(b), Fla. Stat.; see Perlmutter, 434 So. 3d at 688 (Fla. 2026). At most, any conduct amounted to ordinary negligence and fell well short of the manslaughter equivalent standard required for punitive damages. See Valladares, 197 So. 3d at 11.

We find the alleged licensing deficiency also lacks the requisite nexus to Levit's gross negligence claim. Any missing passenger endorsement bore no direct relation to Rodriguez's failure to timely brake or the resulting collision. See Ebsary Found. Co. v. Servinsky, 378 So. 3d 625, 626 (Fla. 4th DCA 2023) (finding that a proffer is insufficient when the "proffered evidence is not directly related" to the alleged gross negligence). Nor did Levit proffer any additional conduct connecting the licensing deficiency to the heightened culpability required for gross negligence. See Mirlalda, 429 So. 3d at 1119–20.

In sum, Levit failed to proffer evidence demonstrating the specific intent required for intentional misconduct or the conscious disregard necessary for

gross negligence. It is paramount that trial courts understand their proper gatekeeping role when reviewing proffers to determine whether they meet the statutory requirements for punitive damages. "Because punitive damages are meant to be reserved for the most egregious of cases and have substantial impacts to the parties, section 768.72 requires the trial court to act as a gatekeeper and preclude a claim for punitive damages where there is no reasonable evidentiary basis for recovery." See Manheimer, 403 So. 3d at 261 (citation modified). It is well recognized that "the granting of a motion for leave to amend a complaint to add a punitive damages claim can be a 'game changer' in litigation." TRG Desert Inn Venture, Ltd. v. Berezovsky, 194 So. 3d 516, 520 n.5 (Fla. 3d DCA 2016). "Allowing a plaintiff to proceed with a punitive damages claim subjects the defendant to financial discovery that would otherwise be off limits, and potentially subjects the defendant to uninsured losses." Id. (citation omitted). For that reason, punitive damages "are reserved for truly culpable conduct . . . so outrageous in character, and so extreme in degree that the facts of the case to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" McLane Foodservice Inc., 400 So. 3d at 762 (citation omitted). No such facts exist here.

Reversed and remanded for further proceedings consistent with this opinion.