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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2011-2012

2091121

Victoria Louise Tanner

v.

Chassity Greech Ebbole d/b/a LA Body Art

2100172

Demented Needle, LLC, and Paul Averette, Jr.

v.

Chassity Greech Ebbole d/b/a LA Body Art

Appeals from Mobile Circuit Court
(CV-08-1135)

On Return to Remand

PITTMAN, Judge.

On September 23, 2011, we remanded this case with directions for the trial court to conduct a hearing on the motions for a remittitur filed by Demented Needle, LLC, Paul Averette, Jr., and Victoria Louise Tanner ("the defendants"). [Ms. 2091121, Sept. 23, 2011] ___ So. 3d ___ (Ala. Civ. App. 2011). Specifically, we directed the trial court to determine whether the punitive-damages awards of $200,000 against Demented Needle, LLC, $100,000 against Averette, and $10,000 against Tanner are excessive. We also directed the trial court to make a return to this court following that hearing. In response, the trial court conducted a hearing on October 14, 2011, and entered an order on October 31, 2011, denying the motions for a remittitur filed by all three defendants. A copy of that order was filed with this court on November 8, 2011.

Standard of Review

An appellate court applies a de novo standard of review to a trial court's determinations regarding the constitutionality of punitive-damages awards. Acceptance Ins. Co. v. Brown, 832 So. 2d 1, 24 (Ala. 2001) (citing Cooper

Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 436 (2001)). In reviewing a punitive-damages award, we apply the factors outlined in Green Oil Co. v. Hornsby, 539 So. 2d 218 (Ala. 1989), and Hammond v. City of Gadsden, 493 So. 2d 1374 (Ala. 1986), within the guideposts set out in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), as restated in State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408 (2003).

The Gore guideposts are: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." State Farm, 538 U.S. at 418 (citing Gore, 517 U.S. at 575). The Hammond-Green Oil factors are:

> "'(1) the reprehensibility of [the defendant's] conduct; (2) the relationship of the punitive-damages award to the harm that actually occurred, or is likely to occur, from [the defendant's] conduct; (3) [the defendant's] profit from [his] misconduct; (4) [the defendant's] financial position; (5) the cost to [the plaintiff] of the litigation; (6) whether [the defendant] has been subject to criminal sanctions for similar conduct; and (7) other civil actions [the defendant]

> has been involved in arising out of similar conduct.'"

Ross v. Rosen-Rager, 67 So. 3d 29, 41-42 (Ala. 2010) (quoting Shiv-Ram, Inc. v. McCaleb, 892 So. 2d 299, 317 (Ala. 2003) (paraphrasing the Hammond-Green Oil factors)).

Discussion

Reprehensibility: The First Gore Guidepost and Hammond-Green Oil Factor (1)

"Perhaps the most important indicium of the reasonableness of a punitive-damages award is the degree of reprehensibility of the defendant's conduct." Gore, 517 U.S. at 575. "[Punitive] damages imposed on a defendant should reflect 'the enormity of his offense.'" Id. (quoting Day v. Woodworth, 54 U.S. (13 How.) 363, 371 (1852)). In State Farm, the United States Supreme Court identified five criteria for evaluating the degree of reprehensibility: (a) whether the harm caused was physical as opposed to economic; (b) whether the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; (c) whether the target of the conduct had financial vulnerability; (d) whether the conduct involved repeated actions or was an isolated incident; and (e) whether the harm was the result of

intentional malice, trickery, or deceit, or mere accident. 538 U.S. at 419.

In its order on remand, the trial court found that Averette, the proprietor of Demented Needle, LLC, and Tanner, who worked at the Demented Needle shop, had been business competitors of Chassity Greech Ebbole and had been well aware that Ebbole's reputation and business would probably suffer if potential customers believed that Ebbole were infected with a communicable disease or used unsterile techniques in her tattoo and body-piercing business. The trial court found that Averette and Tanner, without any basis for their claims (a fact they admitted at trial), had maliciously stated to potential customers and others that Ebbole had AIDS, hepatitis, syphilis, or gonorrhea and that she had used "nasty needles." The trial court found that Averette and Tanner had deliberately made those statements with the intent to harm Ebbole's reputation and business and for the purpose of enhancing their own competing business. The trial court further found that, after having received demands from Ebbole's attorney to cease and desist making the slanderous statements, Averette and Tanner had failed to issue any

retractions and Tanner had refused to delete the slanderous material from her Web page. The trial court concluded:

> "Averette and Tanner's conduct in this case was not simply the product of negligence or the lack of information, but rather an intentional and deliberate expression of vitriol for Ms. Ebbole. Averette and Tanner, being engaged in the tattooing and body-piercing industry themselves, were well aware of the 'hazard' their conduct was likely to cause.
>
> "....
>
> "[Ebbole, doing business as LA Body Art,] and Demented Needle, the shop where Averette and Tanner worked, were direct competitors. At one point, before Ebbole was driven to move to a different location, [the shop where she did business as] LA Body Art and Demented Needle were located in the same block on Dauphin Street. The defendants' unfounded criticism of Ebbole's work, allegations that she had multiple communicable diseases, and claims that she used unsterile techniques in her business practice were clearly intended to deter customers from [Ebbole] in hopes of directing them to Demented Needle, Averette, and Tanner.
>
> "....
>
> "[Ebbole, doing business as LA Body Art,] and Demented Needle, LLC, Averette, and Tanner were direct competitors [and] had a hostile relationship, which, when taken together with the nature and manner of the conduct of the defendants in this case, constituted malice."

Because punitive damages are imposed "to further a State's legitimate interests in punishing unlawful conduct and

deterring its repetition," Gore, 517 U.S. at 568, "the federal excessiveness inquiry appropriately begins with an identification of the state interests that a punitive award is designed to serve," id. In the present case, the trial court determined that "these defendants engaged in the exact kind of libel and slander intended to injure the plaintiff's reputation, profession, trade, or business which Alabama jurists have seen fit to deter most forcefully." (Emphasis added.)

Alabama has always singled out the tort of defamation per se for special treatment. Statements that are defamatory per se are deemed to be injurious as a matter of law, and damages are presumed. Johnson v. Robertson, 8 Port. 486 (Ala. 1839). That is so because

> "it is the inevitable tendency of slander, to injure the person slandered, in his reputation, profession, trade or business. It would frequently be difficult to prove any pecuniary injury from slander, and always impossible to establish its full extent."

Johnson, 8 Port. at 489.

We have found no reported Alabama case that analyzes the Gore guideposts in the context of an award of punitive damages for defamation. However, in a recent case, a Florida

appellate court discussed the degree of reprehensibility that should be assigned to a defendant whose slanderous statements were designed "to destroy [a physician's] career in the community." Lawnwood Med. Ctr., Inc. v. Sadow, 43 So. 3d 710, 731 (Fla. Dist. Ct. App. 2010). The Sadow court explained that Florida law imposes liability for the tort of slander per se and presumes damages from proof of the utterance itself (as Alabama law does). The Sadow court attributed the special treatment accorded to slander per se to the fact that "defamation harms persons and reputation, while [most other torts] affect[] property rights and result[] only in financial loss."[1] Sadow, 43 So. 3d at 728. The Florida court opined

[1]Chief Justice Rehnquist expressed the same idea by quoting William Shakespeare's Othello:

"Iago says to Othello:

> "'Good name in man and woman, dear my lord,
> Is the immediate jewel of their souls.
> Who steals my purse steals trash;
> 'Tis something, nothing;
> 'Twas mine, 'tis his, and has been slave to
> thousands;
> But he that filches from me my good name
> Robs me of that which not enriches him,
> And makes me poor indeed.'

"Act III, scene 3."

Milkovich v. Lorain Journal Co., 497 U.S. 1, 12 (1990).

that, in contrast to the vital personal interest at issue in a defamation case, the economic interests at issue in Gore and State Farm seemed "almost trivial." 43 So. 3d at 730.

In Sadow, the Florida court concluded:

> "Florida's unusually high protection of personal reputation derives from the common consent of humankind and has ancient roots. It is highly valued by civilized people. Our state constitution[2]

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[2]Article I, § 4 of the Florida Constitution provides, in pertinent part: "Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right." Article I, § 4 of the Alabama Constitution contains virtually identical language: "[A]ny person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

Even when the Alabama Legislature enacted the Alabama Tort Reform Act of 1987 in an attempt to limit punitive-damages awards (an enactment that was later held unconstitutional by a divided court in Henderson v. Alabama Power Co., 627 So. 2d 878, 880 (Ala. 1993)), the legislature carved out a special exception for "libel, slander, or defamation." Former § 6-11-21, Ala. Code 1975, limited a punitive-damages award to $250,000 unless "it was based on one or more of the following":

> "(1) A pattern or practice of intentional wrongful conduct, even though the damage or injury was inflicted only on the plaintiff; or,
>
> "(2) Conduct involving actual malice other than fraud or bad faith not a part of a pattern or practice; or
>
> "(3) Libel, slander, or defamation."

> and common law powerfully support it. This is a value as old as the Pentateuch and the Book of Exodus, and its command as clear as the Decalogue: 'Thou shall not bear false witness against thy neighbor.' The personal interest in one's own good name and reputation surpasses economics, business practices or money. It is a fundamental part of personhood, of individual standing and one's sense of worth. In short, the wrongdoing underlying the punitive damages in this case has Florida law's most severe condemnation, its highest blameworthiness, its most deserving culpability. For slander per se, reprehensibility is at its highest."

43 So. 3d at 729 (emphasis added; footnote omitted).

> "'Our assessment of the degree of the reprehensibility of the defendant's conduct is broader in a Hammond/Green Oil review than our assessment in a [Gore] review.' Employees Benefit Ass'n v. Grissett, 732 So. 2d 968, 980 (Ala. 1998). In that regard, we consider '"[t]he duration of the conduct, the degree of the defendant's awareness of any hazard which his conduct has caused or is likely to cause, and any concealment or 'cover up' of that hazard, and the existence and frequency of similar past conduct."' Green Oil, 539 So. 2d at 223 (quoting Aetna Life Ins. Co. v. Lavoie, 505 So. 2d 1050, 1062 (Ala. 1987) (Houston, J., concurring specially))."

Shiv-Ram, Inc. v. McCaleb, 892 So. 2d at 317. In this case, the defendants' reprehensible conduct continued for more than a year. The trial court found that the defendants were fully aware of the hazard that their conduct was likely to cause.

The defendants' conduct in the present case encompassed all three exceptions to the limiting provision in that statute.

The defendants did not even attempt to "cover up" their campaign to destroy Ebbole's reputation or to draw customers away from her shop. To the contrary, the defendants' actions were brazen and were undertaken without apparent regard either to the injury Ebbole would likely suffer or to the legal liability they themselves would likely incur.

As the trial court's order indicates, the defendants' conduct demonstrated an extreme degree of reprehensibility under the first Gore guidepost and Hammond-Green Oil factor (1). In contrast, the Supreme Court determined that the defendants' conduct in Gore and State Farm was substantially less reprehensible. In Gore, the Court held that the defendant's conduct in failing to disclose that the plaintiff's car had been repainted after being damaged before delivery to the dealer, pursuant to a company policy not to disclose repairs that did not exceed three percent of the suggested retail price of a vehicle, was sufficiently blameworthy "to give rise to tort liability," 517 U.S. at 580, but was not attended by any of the circumstances "ordinarily associated with egregiously improper conduct" and was, therefore, "not sufficiently reprehensible to warrant

imposition of a $2 million exemplary damages award," id. In State Farm, the defendant's conduct in failing to settle a meritorious tort claim merely "merit[ed] no praise," according to the Court. 538 U.S. at 419.

Proportionality: The Second Gore Guidepost and Hammond-Green Oil Factor (2)

The proper inquiry for determining whether a disparity between the punitive-damages award and the compensatory-damages award is constitutionally impermissible is "'"whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred."'" Gore, 517 U.S. at 581 (quoting TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443, 460 (1993), quoting in turn Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 21 (1991)) (emphasis omitted). Although the Supreme Court has stated that, "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process," State Farm, 538 U.S. at 425, the Court has consistently declined to set a rigid mathematical limit on punitive-damages awards, see Exxon Shipping Co. v. Baker, 554 U.S. 471, 501 (2008); State Farm,

538 U.S. at 425;[3] Gore, 517 U.S. at 582;[4] TXO, 509 U.S. at 458;[5] Haslip, 499 U.S. at 18. Most telling for present purposes, the Court acknowledged in Gore:

> "Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine."

517 U.S. at 582. The case before us appears to be the scenario envisioned by the foregoing language in Gore. The

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[3]In State Farm, the Court determined that a ratio of 145 to 1 for a bad-faith-failure-to-settle claim was unconstitutionally excessive.

[4]In Gore, the Court determined that a ratio of 500 to 1 for a fraudulent-suppression claim was unconstitutionally excessive.

[5]In TXO, the Court determined that a ratio of 526 to 1 was not unconstitutionally excessive. The Court has never overruled or limited TXO, and Justice Kennedy, who authored the majority opinion in State Farm, concurred in part and concurred in the judgment in TXO, focusing on the fact that TXO, the defendant, had "acted with malice," 509 U.S. at 468, had "committed ... the intentional tort of slander of title," id., and had engaged in a pattern and practice of "deliberate, wrongful conduct," id. at 469. Justice Kennedy "confess[ed] to feeling a certain degree of disquiet in affirming th[e] award," id., but concluded that "the record, when viewed as a whole, ma[de] it probable that the jury's verdict was motivated by a legitimate concern for punishing and deterring TXO, rather than by bias, passion, or prejudice." Id.

compensatory-damages awards here are nominal -- $1 against each defendant; a particularly egregious act resulted in only a small amount of economic damage; and the full extent of the reputational harm would be difficult to determine. See Johnson, 8 Port. at 489 (stating that "[i]t would frequently be difficult to prove any pecuniary injury from slander, and always impossible to establish its full extent"). Accord Sadow, 43 So. 3d at 732 (stating that "[i]ndeed [a case involving the malicious slander of a respected physician in an attempt to destroy his career in the community] may be precisely the case the Court had in mind in allowing exceptions to the ratio").

When substantial punitive damages are awarded in a case with only nominal compensatory damages, the ratio will invariably far exceed a single-digit ratio. Although the issue has not been addressed in Alabama, many other courts have struggled with applying the ratio or "proportionality" guidepost of Gore when only nominal compensatory damages have been awarded. See Arnold v. Wilder, 657 F.3d 353, 370 (6th Cir. 2011) (stating that the "'Supreme Court's cases on the ratio component of the excessiveness inquiry -- which involved

substantial compensatory damages awards for economic and measurable noneconomic harm -- are ... of limited relevance' in § 1983 cases where 'the basis for the punitive damages award was the plaintiff's unlawful arrest and the plaintiff's economic injury was so minimal as to be essentially nominal'" (quoting Romanski v. Detroit Entm't, L.L.C., 428 F.3d 629, 645 (6th Cir. 2005))); Mendez v. County of San Bernardino, 540 F.3d 1109, 1121 (9th Cir. 2008) (upholding a 125,000-to-1 ratio in a § 1983 case and concluding that "[r]atios in excess of single digits in § 1983 suits ... will not generally violate due process when the victim suffers no compensable injury"); Abner v. Kansas City Southern R.R., 513 F.3d 154, 164 (5th Cir. 2008) (upholding a punitive-damages award of $125,000 for each plaintiff in a Title VII racial-discrimination case when the jury awarded each plaintiff $1 in nominal damages and stating that, "as we have found in punitive damages cases with accompanying nominal damages, a ratio-based inquiry becomes irrelevant"); Romanski, 428 F.3d at 645 (stating that "[t]his Court and other courts have recognized that where 'injuries are without a ready monetary value,' such as invasions of constitutional rights

unaccompanied by physical injury or other compensable harm, higher ratios between the compensatory or nominal award and the punitive award are to be expected"); Kemp v. American Tel. & Tel. Co., 393 F.3d 1354, 1364 (11th Cir. 2004) (reducing punitive damages of $1 million to $250,000 when plaintiff was awarded $115.05 in compensatory damages and stating that a single-digit multiplier ratio "would utterly fail to" punish and deter the defendant); Williams v. Kaufman County, 352 F.3d 994, 1016 (5th Cir. 2003) (stating that "any punitive damages-to-compensatory damages 'ratio analysis' cannot be applied effectively in cases where only nominal damages have been awarded"); Local Union No. 38, Sheet Metal Workers' Int'l Ass'n v. Pelella, 350 F.3d 73, 88 (2d Cir. 2003) (stating that "the ratios referred to in [State Farm] may not apply with equal force when punitive damages are compared to nominal damages"); DiSorbo v. Hoy, 343 F.3d 172, 187 (2d Cir. 2003) (noting that, when nominal compensatory damages are awarded, "'the use of a multiplier to assess punitive damages is not the best tool ...." (quoting Lee v. Edwards, 101 F.3d 805, 811 (2d Cir. 1996)); Lee, 101 F.3d at 811 (holding that, when compensatory damages are nominal, "a much higher ratio [of

punitive damages to compensatory damages] can be contemplated"); Sherman v. Kasotakis, 314 F. Supp. 2d 843, 871 (N.D. Iowa 2004) (stating that "the ... prudent path [when an award of compensatory damages is nominal] is to apply the Gore guideposts, but [to] place less emphasis on the proportionality requirement"); Howard Univ. v. Wilkins, 22 A.3d 774, 784 (D.C. 2011) (upholding punitive-damages award of $43,677.50 when plaintiff was awarded $1 in compensatory damages and stating that, because "'[p]unitive damages may properly be imposed to further a State's legitimate interest in punishing unlawful conduct and deterring its repetition,' .... there is no need to disturb the jury's punitive damages award under the second Gore guidepost" (quoting Gore, 517 U.S. at 568)); and Sadow, 43 So. 3d at 732 (stating that "[n]othing in [Gore] and State Farm hints how an arithmetical ratio used in cases of purely economic misconduct would function" in a case in which the jury awarded zero compensatory damages and $5 million punitive damages for slander).

We conclude that the facts of this case and the award of nominal compensatory damages to Ebbole cannot be forced into a strict "ratio" analysis without doing violence to Alabama's

legitimate interest in punishing those who commit defamation and deterring the repetition of such behavior. In State Farm, the Court stated the premise for its analysis of the relationship between compensatory damages and punitive damages:

> "It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence."

538 U.S. at 419. Because that premise proves to be false in this case, we hold that the proper inquiry for the relationship between the nominal damages and the punitive damages awarded in this case is found in the Court's acknowledgment in Gore that

> "low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine."

517 U.S. at 582.

The Defendants' Profit from Their Misconduct: Hammond-Green Oil Factor (3)

Regarding this factor, the trial court concluded:

> "[Ebbole, doing business as LA Body Art,] and Demented Needle, the shop where Averette and Tanner worked, were direct competitors. At one point, before Ebbole was driven to move to a different location, [the shop where she did business as] LA Body Art and Demented Needle were located in the same block on Dauphin Street. The defendants' unfounded criticism of Ebbole's work, allegations that she had multiple communicable diseases, and claims that she used unsterile techniques in her business practice were clearly intended to deter customers from [Ebbole] in hopes of directing them to Demented Needle, Averette, and Tanner. Further, Demented Needle profited from using Ebbole's likeness in displaying Demented Needle t-shirts for sale. The evidence related to defendants' profiting from their conduct in this case supports the punitive damages awarded to [Ebbole]."

We agree that this factor supports the punitive-damages award. See Exxon Shipping Co. v. Baker, 554 U.S. 471, 494 (2008) (stating that "[a]ction taken or omitted in order to augment profit represents an enhanced degree of punishable culpability, as of course does willful or malicious action, taken with a purpose to injure," (and quoting 4 Restatement (Second) of Torts § 908, Comment e, p. 466 (1977): "'In determining the amount of punitive damages, ... the trier of fact can properly consider not merely the act itself but all

the circumstances including the motives of the wrongdoer ....'"); Ledbetter v. United Ins. Co. of America, 845 F. Supp. 844, 849 (M.D. Ala. 1994) (holding that, because representatives of United Insurance Company made slanderous remarks about Ledbetter, United's former sales representative, to Ledbetter's previous customers in an effort to discourage those customers from doing business with Ledbetter if he were to work for another insurance company, "it can be inferred that United profited from its action").

The Financial Position of the Defendants: Hammond-Green Oil Factor (4)

In their motions seeking a remittitur, all three defendants submitted evidence in the form of affidavits indicating that the punitive-damages awards would have a devastating effect on their financial positions. Averette's affidavit stated that his personal net worth was $12,247.23 and that the net worth of Demented Needle was "minus $28,745.28." In addition, Demented Needle contended that the trial court was required to remit the $200,000 punitive-damages award against it to no more than the $50,000 statutory cap on punitive damages that can be assessed against a small business, pursuant to Ala. Code 1975, § 6-11-21(b). Tanner's

affidavit stated that she had total assets of $7,500, and total liabilities of $10,900, for a net worth of "minus $3,400."

As to this factor, the trial court's order concluded:

> "The Court finds that these defendants have not provided this Court with credible evidence upon which to fully judge their respective financial conditions. The financial evidence submitted by Averette and Tanner [is] unsupported by documentation such as tax returns, audited financial statements, or the like. Further, Demented Needle has not established its financial condition 'at the time of the occurrences made the basis of this suit' as required by Ala. Code 1975, § 6-11-21(c). Demented Needle, LLC, has not presented evidence that the small business cap provided by § 6-11-21(c) is applicable. See also Ross v. Rosen-Rager, 67 So. 3d 29 (Ala. 2010). The punitive-damages award was not related to Demented Needle, LLC's normal business of tattooing and piercing. See Line v. Ventura, 38 So. 3d 1 (Ala. 2009). The Court, therefore, finds that the financial position of the defendants is not a factor which in this case diminishes the appropriateness of the punitive damages awarded to the plaintiffs."

A. The Financial Condition of Averette and Tanner

"'"Relatively few Alabama cases have considered the reduction of punitive damages against an individual defendant. Most of the reported decisions focus on the financial position of a corporate defendant."'" Robbins v. Sanders, 927 So. 2d 777, 790 (Ala. 2005) (quoting trial court order quoted in

Sheffield v. Andrews, 679 So. 2d 1052, 1055 (Ala. 1996)). In Robbins, and in Williams v. Williams, 786 So. 2d 477 (Ala. 2000), our supreme court ordered a remittitur of all punitive damages assessed against the individual defendants because the evidence established that subtracting the compensatory-damages awards from the defendants' net worth would result in a large negative net worth for each defendant.

In the present case, the trial court concluded that the defendants had failed to provide "credible evidence upon which to fully judge their respective financial conditions." (Emphasis added.) The trial court was entitled to disregard as unworthy of belief the statements in the defendants' affidavits and to conclude that the financial position of Averette and Tanner was "not a factor" that diminished the appropriateness of the punitive-damages awards against them. See Robbins, 927 So. 2d at 790 (stating that, "[e]ven if all of Robbins's testimony concerning his assets is disregarded as unworthy of belief, as the trial judge was entitled to do, and the plaintiffs' evidence and assumptions relating to Robbins's assets accepted, Robbins simply does not have assets to pay the compensatory damages, much less any of the punitive

damages"). Robbins and Williams are distinguishable because the evidence in those cases conclusively demonstrated that subtracting the compensatory-damages awards from the defendants' balance sheets would put the net worth of the defendants in the minus column. In the present case, the trial court found the affidavits of Averette and Tanner to be unworthy of belief, disregarded those affidavits, and had no other evidence before it as to the financial condition of Averette or Tanner.

We agree with the dissent that a punitive-damages award "should sting but should not destroy," a defendant. Orkin Exterminating Co. v. Jeter, 832 So. 2d 25, 42 (Ala. 2001) (citing Green Oil, 539 So. 2d at 222 (quoting Ridout's-Brown Serv., Inc. v. Holloway, 397 So. 2d 125, 127-28 (Ala. 1981))). Yet, after the trial court determined that the defendants' affidavits were unworthy of belief and disregarded them, as it was entitled to do, the trial court had before it no evidence at all as to the impact of the punitive-damages awards on the defendants, much less evidence indicating that the awards would financially destroy the defendants. In concluding that the "amount of the ... awards will financially devastate the

defendants," ___ So. 3d at ___ (Moore, J., dissenting), the dissent has taken as unimpeachably true the very evidence that the trial court was entitled to disregard.

The dissent posits that the averments in the affidavits must be taken as true because "Ebbole did not contest th[e] figures [in the affidavits] in any manner or present any evidence to call into question the veracity of the statements upon which they were based" and the record reveals no "basis on which the trial court could have discerned that the defendants' net worths were different than as stated in those affidavits." ___ So. 3d at ___ (Moore, J., dissenting). That position is erroneous as a matter of law. A trial court is not inevitably required to accept testimony that that court determines not to be credible simply because that testimony is uncontradicted. See generally 7 Wigmore on Evidence § 2034 (Chadbourn rev. ed. 1978) ("[T]he mere assertion of any witness need not be believed, even though he is unimpeached in any manner, because to require such belief would be to give a quantitative and impersonal measure to testimony.") Accordingly, in Hall v. Mazzone, 486 So. 2d 408, 411-12 (Ala. 1986), our supreme court held that undisputed testimony may be

disregarded by the trial court if it finds that testimony to be incredible.

The correct rule is that, although a finder of fact may not arbitrarily disregard uncontradicted evidence, the fact-finder may properly reject such evidence if it has reason to deem that evidence unworthy of belief. See Quock Ting v. United States, 140 U.S. 417 (1891). In that case, the Supreme Court stated:

> "Undoubtedly, as a general rule, positive testimony as to a particular fact, uncontradicted by any one, should control the decision of the court; but that rule admits of many exceptions. ... In Kavanagh v. Wilson, 70 N.Y. 177 [(1877)], where the action was by a real-estate broker against the personal representatives of a deceased customer to recover an alleged agreed compensation for effecting a sale, and the only witness as to the contract was the son of the plaintiff, whose own compensation depended upon the plaintiff's success, and the compensation alleged to have been agreed upon was more than double the usual compensation, it was held that the statement of the witness, under those circumstances, was not so entirely free from improbability as to justify a direction of the court to the jury to find a verdict for the plaintiff, although there was no direct contradictory testimony presented. The court said: 'It is undoubtedly a general rule that when a disinterested witness, who is in no way discredited, testifies to a fact within his own knowledge, which is not of itself improbable, or in conflict with other evidence, the witness is to be believed, and the fact is to be taken as legally established, so that it cannot be disregarded by court or jury. But this case is not fairly brought within this rule.

> Here the witness was not wholly disinterested. ...' ... In Koehler v. Adler, 78 N.Y. 287 [(1879)], it was held that a court or jury was not bound to adopt the statements of a witness simply for the reason that no other witness had denied them, and that the character of the witness was not impeached; and that the witness might be contradicted by circumstances as well as by statements of others contrary to his own, or there might be such a degree of improbability in his statements as to deprive them of credit, however positively made."

140 U.S. at 420-21.

In the present case, the trial court had two reasons to disregard the defendants' affidavit testimony: not only were the defendants not disinterested in the result, but also, when given the opportunity to demonstrate how the awards would affect them financially, they submitted only "self-serving cries of poverty" that were unsubstantiated by "CPA audit, ... income tax returns, []or any other records or documentary proof to corroborate th[eir affidavit] testimony." Rety v. Green, 546 So. 2d 410, 421 (Fla. Dist. Ct. App. 1989). "'To preserve [any] right to contend on appeal that an award of punitive damages is excessive [because it will cause financial ruin], it is incumbent on [a] defendant to introduce evidence of [the defendant's] net worth, if evidence has not been introduced by plaintiff, and in the absence of such

evidence an appellate court cannot say that an award of punitive damages is excessive in that it would bankrupt the defendant.'" Id. at 421 n.9 (quoting Papcun v. Piggy Bag Souvenirs, 472 So. 2d 880, 882 (Fla. Dist. Ct. App. 1985)) (emphasis added; citations omitted). Because the trial court found the affidavits of Averette and Tanner to be unworthy of belief and disregarded those affidavits, and because the trial court had no other evidence before it as to the financial condition of Averette or Tanner, there was, in this case, an absence of probative evidence as to the financial impact of the awards on Averette and Tanner. Accordingly, this court has no basis upon which to conclude, contrary to the conclusion of the trial court, that the awards were excessive because they would financially ruin Averette and Tanner.

B. The Financial Condition of Demented Needle, LLC

With respect to the punitive-damages award against Demented Needle, LLC, we cannot reach the same conclusion. That is so because the trial court was presented with other evidence indicating that there was virtually no possibility that Demented Needle was not a "small business" within the meaning of § 6-11-21 at the time of the occurrences made the

basis of Ebbole's complaint. Section 6-11-21 provides, in pertinent part:

> "(b) Except [as to circumstances not pertinent here], in all civil actions where entitlement to punitive damages shall have been established under applicable law against a defendant who is a small business, no award of punitive damages shall exceed fifty thousand dollars ($50,000) or 10 percent of the business' net worth, whichever is greater.
>
> "(c) 'Small business' for purposes of this section means a business having a net worth of two million dollars ($2,000,000) or less at the time of the occurrence made the basis of the suit."

At trial, Averette testified that, after he had graduated from high school, he had joined the Marine Corps. After he had left the service, he said, he had trained for a month to become a tattoo artist, and then he had apprenticed for nine months with other tattoo artists before he had opened his own tattoo parlor. In answer to a question whether he had received "any financial help from his parents to get [his] shop going," or whether he had begun the business "all on [his] own," Averette denied that his parents had helped him financially. Averette testified that he had "started" Demented Needle, LLC, and had opened his shop for business soon after Mardi Gras in 2007. Ebbole testified that the Demented Needle shop had opened in early 2007 and that the

defamatory statements by the defendants had begun soon thereafter.

The trial court was not warranted in determining that, because Demented Needle, LLC, had failed to present "tax returns, audited financial statements, or the like," Demented Needle was outside the parameters of § 6-11-21(c) -- that is, that it had a net worth of more than $2 million when Ebbole was defamed. Our de novo review convinces us that the trial court should also have considered the trial testimony indicating that, at the time of the events underlying the lawsuit, Demented Needle, LLC, was a relatively brand-new business operated by an entrepreneur of limited finances and that it did not, in all probability, have a net worth of more than $2 million. Cf. Daniels v. East Alabama Paving, Inc., 740 So. 2d 1033, 1040 (Ala. 1999) (quoting the trial court's statement that, "'[s]ince there was nothing submitted [at the Hammond-Green Oil hearing] or to indicate that the verdicts and judgments would have a devastating effect upon the defendant's financial position,'" the trial court would not consider that factor (emphasis added)).

The trial court also erroneously relied on Line v. Ventura, 38 So. 3d 1 (Ala. 2009), to conclude that "[t]he punitive-damages award was not related to Demented Needle's normal business of tattooing and piercing." In Line, an attorney established a conservatorship of funds belonging to a child, with the child's mother as conservator. To comply with the surety company's requirement that there be dual control of all expenditures on behalf of the ward, the attorney signed the bond as "joint-control agent" for the surety company. Thereafter, the attorney routinely signed blank checks for the mother, who subsequently dissipated the conservatorship assets. The child and the surety company sued the attorney, alleging a breach of his fiduciary duty as joint-control agent, and a substantial punitive-damages award was entered against him. On appeal, the attorney argued that the claims against him were governed by the Alabama Legal Services Liability Act ("ALSLA"), Ala. Code 1975, § 6-5-570 et seq., and that the award should be limited by § 6-11-21(b) because, he said, his law practice was a small business. Our supreme court rejected those arguments, holding (a) that the claims against the attorney were not governed by the ALSLA

because he had not provided legal services to the child or to the surety company and (b) that, even if the attorney's law practice were a small business, the punitive-damages award arose out of actions that were "not related to the operation of [the attorney's] practice of law." 38 So. 3d at 15 n.10. We take the latter statement to mean that because a layman could have functioned as a joint-control agent on the conservator's bond, the attorney was not acting in his capacity as a lawyer when he cosigned the bond. Here, the punitive-damages award was related to Demented Needle's business of tattooing and piercing because, as the trial court found, the defamatory statements attributed to Demented Needle, LLC, were intended to "deter customers from [Ebbole, doing business as LA Body Art,] in hopes of directing them to Demented Needle."

We conclude that Hammond-Green Oil factor (4) does not weigh against the punitive-damages awards against Averette and Tanner but that the punitive-damages award against Demented Needle, LLC, is excessive to the extent it is greater than the $50,000 statutory cap set forth in § 6-11-21(b).

The Cost to the Plaintiff of the Litigation: Hammond-Green Oil Factor (5)

This factor requires us to determine whether the punitive-damages awards are adequate to reward Ebbole's counsel for assuming the risk of bringing the action and to encourage other potential plaintiffs to bring wrongdoers to trial. Green Oil, 539 So. 2d at 223. On this issue, the trial court concluded (and we agree) that

> "[Ebbole's] counsel in this case prepared for and tried a case which took nearly four days to complete. This case was initially filed in 2008 and did not go to trial until mid-2010. Given the complexity of this case, this is not a factor that diminishes the appropriateness of the punitive damages awarded to the plaintiffs, but rather supports the punitive damages awarded to the plaintiffs."

Sanctions for Comparable Conduct: The Third Gore Guidepost and Hammond-Green Oil Factors (6) and (7)

The third Gore guidepost is the disparity between the punitive-damages award and the "civil penalties authorized or imposed in comparable cases." Gore, 517 U.S. at 575. Hammond-Green Oil factor (6) is whether the defendants have been "'subject to criminal sanctions for similar conduct.'" Ross, 67 So. 3d at 42. Hammond-Green Oil factor 7 is whether the defendants have been involved in "'other civil actions ...

arising out of similar conduct.'" Id. There is no evidence either that the defendants were subject to civil or criminal sanctions for their conduct or that they had been involved in other civil actions arising out of similar conduct. Therefore, this guidepost and these factors do not require a remittitur.

Conclusion

After considering the Gore guideposts and the Hammond-Green Oil factors, we conclude that none of them weighs in favor of a conclusion that the punitive-damages awards against Averette and Tanner are constitutionally excessive. We therefore affirm the trial court's judgment as to Averette and Tanner. We affirm the judgment as to Demented Needle, LLC, on the condition that Ebbole file with this court, within 28 days, an acceptance of a remittitur of the punitive damages assessed against Demented Needle from $200,000 to $50,000, the statutory cap on the amount of punitive damages that can be assessed against a small business pursuant to § 6-11-21(b); otherwise, the judgment against Demented Needle, LLC, will be reversed and the case remanded for a new trial as to the

claims asserted against that defendant. See Ala. Code 1975, § 12-22-71.

2091121 -- AFFIRMED.

2100172 -- AFFIRMED AS TO AVERETTE; AFFIRMED CONDITIONALLY AS TO DEMENTED NEEDLE, LLC.

Thompson, P.J., concurs.

Bryan and Thomas, JJ., concur in the result, without writings.

Moore, J., dissents, with writing.

MOORE, Judge, dissenting.

Although I agree that the actions of Paul Averette, Jr., Victoria Louise Tanner, and Demented Needle, LLC ("the defendants"), were reprehensible and warrant punitive damages, I also conclude that the amount of the punitive damages awarded far exceeds any actual damage caused to Chassity Greech Ebbole and that those awards will financially devastate the defendants, a result not intended by punitive-damages awards. I, therefore, dissent.

First, I acknowledge that the law presumes damages in case of defamation per se. However, in this case, the jury originally assessed $0 in compensatory damages and, only upon reassessment, awarded Ebbole $1 in compensatory damages as to each defendant in order to sustain its punitive-damages awards. The jury obviously determined that Ebbole did not suffer, or at least that she did not prove that she had suffered, any actual monetary damage as a result of the defamatory statements made by the defendants. Consequently, the award of punitive damages -- $200,000 against Demented Needle, $100,000 against Averette, and $10,000 against Tanner -- is far out of proportion to "'"the harm that actually has

occurred."'" BMW of North America, Inc. v. Gore, 517 U.S. 559, 581 (1996) (quoting TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443, 460 (1993), quoting in turn Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 21 (1991)). Nevertheless, I agree with the reasoning of the main opinion that the mere lack of proportionality between the actual harm committed and the punitive damages awarded does not necessarily require a remittitur in defamation cases because of their unique nature.

I do believe, however, that the punitive damages in this case should be remitted. In addition to the lack of any actual damage suffered by Ebbole, the record reflects that the punitive-damages awards would financially devastate the defendants.

As noted by the main opinion, in support of their motions seeking a remittitur, the defendants submitted evidence in the form of affidavits setting out their net worths. ___ So. 3d at ___. Averette's affidavit stated that his personal net worth was $12,247.23, and Tanner's affidavit stated that she had total assets of $7,500 and total liabilities of $10,900, for a net worth of "minus $3,400." Averette also testified

that Demented Needle's net worth was "minus $28,745.28." Ebbole did not contest those figures in any manner or present any evidence to call into question the veracity of the statements upon which they were based. The record contains no evidence indicating that the figures are implausible, and the circumstances suggest they are entirely probable. The testimony establishing the net worths of the defendants was contained in affidavits and could not have been deemed unreliable or untrustworthy based on the demeanor of the witnesses.

I agree with the main opinion that a trial court does not have to accept testimony simply because it is not contradicted. As the authorities cited by the main opinion state, a trial court, as a fact-finder, may lawfully disregard uncontradicted testimony when it has a valid lawful or factual reason for doing so. In this case, the trial court disregarded those affidavits because

> "these defendants have not provided this Court with credible evidence upon which to fully judge their respective financial conditions. The financial evidence submitted by Averette and Tanner [is] unsupported by documentation such as tax returns, audited financial statements, or the like."

In Rety v. Green, 546 So. 2d 410, 421 (Fla. Dist. Ct. App. 1989), upon which the main opinion relies, ___ So. 3d at ___, the court stated:

> "The defendant Green, whom the jury found was unworthy of belief in this affair, testified concerning his alleged indebtedness and that his corporation was bankrupt; he proffered, however, no CPA audit, no income tax returns, nor any other records or documentary proof to corroborate this testimony. Plainly, the jury was not required to accept Green's self-serving cries of poverty, especially when other evidence from a former employee of Green's showed that the corporate defendant's gross sales in 1984 were from $60-$70 million...."

546 So. 2d at 421 (emphasis added). Rety stands only for the proposition that self-serving testimony of the defendant as to his or her net worth can be properly disregarded by a fact-finder when that testimony contradicts other evidence or can be considered implausible in light of the available evidence. Rety does not stand for the proposition that uncontradicted testimony as to net worth may be disregarded merely due to the failure of an affiant to attach financial documents confirming his or her testimony.

When an affiant testifies as to his or her personal knowledge of facts, Alabama law generally does not require that witness to attach documents that further prove the same information in order for the affidavit testimony to be given

probative value. See Johnson v. Layton, 72 So. 3d 1195 (Ala. 2011) (holding that physician testifying as to personal knowledge of medical treatment was not required to attach medical chart to affidavit in order to verify the affidavit testimony). Obviously, the probative value of that testimony diminishes, and may even disappear, if it is contrary to other evidence, internally inconsistent, or implausible in light of common experience or the circumstances of the case; however, nothing in the record undermines in any manner the credibility of the defendants' statements as to their net worths.

The main opinion nevertheless holds that the trial court could have properly disregarded the affidavits because they contained self-serving statements from interested parties. ___ So. 3d at ___. Putting aside the fact that the trial court did not rely upon that ground in finding the affidavit testimony incredible, I cannot agree with the main opinion's post hoc reasoning that a trial court should be empowered to simply disregard testimony from a defendant as to his or her net worth solely because that evidence advances the defendant's interest in having a punitive-damages award remitted. If that was the case, a fact-finder in every instance could disregard any positive testimony given by a

party, who is always self-interested, even if that testimony is not challenged in any way and appears consistent with all the other evidence. No fact could ever be established by the testimony of a party, which concept the law long abandoned. See Schoenvogel ex rel. Schoenvogel v. Venator Group Retail, Inc., 895 So. 2d 225, 238 (Ala. 2004) (citing Herbert E. Tucker, Colorado Dead Man's Statute: Time for Repeal or Reform?, 29 Colo. Law. 45, 45 (January 2000) (tracing the movement away from the common-law rule that rendered parties incompetent to testify in their own cases)). When the record contains no legitimate reason for questioning the credibility of a party's statements, a decision to disregard those statements based solely on the fact that they assist the party in proving his or her case is necessarily arbitrary and contrary to the law. See generally Quock Ting v. United States, 140 U.S. 417 (1891) (holding that a finder of fact may not arbitrarily disregard uncontradicted evidence).

The record lacks any basis on which the trial court could have discerned that the defendants' net worths were different than as stated in those affidavits. Thus, the information provided in the affidavits was the only evidence before the trial court relevant to the defendants' net worths and

pertinent to the trial court's inquiry into the impact of the punitive-damages awards on them. As a result, this case is distinguishable from Robbins v. Sanders, 927 So. 2d 777 (Ala. 2005), on which the main opinion relies. ___ So. 3d at ___. In Robbins, it is clear that the evidence was disputed as to Robbins's assets and his net worth. See 927 So. 2d at 789 ("The parties argue different analyses of the documentary and testimonial evidence ..., but, even accepting the maximum asset valuations contended for by the plaintiffs, and the minimum valuations they assert for Robbins's liabilities, it is clear that the compensatory damages assessed against Robbins dwarf the most generous calculation of his assets."); see also 927 So. 2d at 790 ("Even if all of Robbins's testimony concerning his assets is disregarded ... and the plaintiffs' evidence and assumptions relating to Robbins's assets accepted, Robbins simply does not have assets to pay the compensatory damages, much less the punitive damages.").

Accepting Averette's net worth as $12,247.23, Tanner's net worth as "minus $3,400," and Demented Needle's net worth as "minus $28,745.28,"[6] I conclude that the punitive-damages

[6]To further clarify, I do not conclude that the affidavit statements as to the net worths of the defendants is

awards of $100,000 against Averette, $10,000 against Tanner, and $200,000 against Demented Needle should be remitted. In Robbins, supra, our supreme court addressed Robbins's argument that any award of punitive damages against him would be excessive because such an award would financially devastate him. The supreme court stated:

> "In Central Alabama Electric Cooperative v. Tapley, 546 So. 2d 371, 377 (Ala. 1989), we stated: 'In the rarest cases, involving the most egregious conduct, juries should be entitled to punish defendants so severely as to destroy them; justice demands that. But in the typical punitive damages case, the award should punish without destroying. That, in a nutshell, is the way punitive damages and the civil justice system coexist.' (Footnote omitted.) Tapley, however, antedates the more definitive pronouncements by the United States Supreme Court concerning considerations that must attend an assessment of the possible excessiveness of punitive damages, beginning with BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). Additionally, this Court, developing its own jurisprudence and attempting to understand and apply the United States Supreme Court's more recent opinions on point, has spoken more definitively on the subject. As the trial court accurately noted in Sheffield v. Andrews, 679 So. 2d 1052, 1055 (Ala. 1996), '"[r]elatively few Alabama cases have considered the reduction of punitive damages against an individual defendant. Most of the

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"unimpeachably true." ___ So. 3d at ___. The truth of those statements were not unimpeachable, they merely were not impeached. As such, I accept them as accurate for purposes of this court's de novo review of the trial court's judgment denying the motions for remittitur.

reported decisions focus on the financial position of a corporate defendant."' In BMW of North America, Inc. v. Gore, 701 So. 2d 507 (Ala. 1997), on remand from the United States Supreme Court, we 'suggested' that following our remand the trial court 'might consider whether a punitive damages award that exceeds 10% of the defendant's net worth crosses the line from punishment to destruction, particularly where the defendant's conduct is not highly reprehensible.' 701 So. 2d at 514. In Hillcrest Center, Inc. v. Rone, 711 So. 2d 901 (Ala. 1997), we ordered further reduction of a punitive-damages award that represented approximately 60% of the combined net worth of the individual defendant and the corporate defendants. 'While not reaching an amount that would destroy the defendants, the punitive damages award does, under these circumstances, exceed what is necessary to "punish."' 711 So. 2d at 909. In Patel v. Patel, 708 So. 2d 159 (Ala. 1998), we affirmed a punitive-damages award that constituted approximately 7.5% of the individual defendant's net worth, being of the opinion that 'payment of this award will certainly sting, but ... it will not cripple the defendant financially.' 708 So. 2d at 163.

"In Williams v. Williams, 786 So. 2d 477 (Ala. 2000), this Court upheld a $200,000 compensatory-damages award against the athletic director of Alabama State University ('ASU') in an action against him by an individual whom the defendant had persuaded to leave the position of head basketball coach at a Georgia university to serve as head basketball coach at ASU, by fraudulently representing that the individual was guaranteed more than a one-year term as head basketball coach. This misrepresentation was made despite the athletic director's knowledge that the individual was not guaranteed more than a one-year term and despite instructions to the athletic director by the president of ASU to retract the portion of the job offer dealing with employment in excess of a year. We concluded that the evidence supported the jury's apparent finding of promissory

> fraud. 786 So. 2d at 480. The athletic director was shown to have a net worth of $59,903 so that '[s]ubtraction of the $200,000 compensatory-damages award would bring his net worth to a negative $140,000.' 786 So. 2d at 483. Despite finding substantial evidence of reprehensibility on the part of the defendant, this Court concluded that '[b]y showing that he will have a negative net worth of $140,000 after paying the compensatory-damages award we are affirming, the defendant athletic director has shown that any award of punitive damages would be excessive.' 786 So. 2d at 483 (emphasis in original). Consequently, we ordered 'a remittitur of all punitive damages; otherwise, the judgment will be reversed and the case remanded for a new trial.' 786 So. 2d at 485.
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> "More recently, in Orkin Exterminating Co. v. Jeter, 832 So. 2d 25 (Ala. 2001), we held that a punitive-damages award of approximately 10% of the corporate defendant's net worth, 'from misconduct during a single transaction not involving loss of life or limb,' 832 So. 2d at 42, weighed in favor of finding the award excessive.
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> "As recounted in Robbins [v. Sanders, 890 So. 2d 998 (Ala. 2004)], Robbins's wrongful conduct was extremely reprehensible and extended over a long period. Even though his wrongful conduct directed toward the Baileys during their lifetimes cannot be directly considered in assessing the reprehensibility of his conduct toward their subsequently established estates, that earlier conduct is relevant in demonstrating an unbroken pattern of intentional wrongful conduct. We recognize that the United States Supreme Court has stated that the degree of reprehensibility is 'the most important indicium of the reasonableness of a punitive damages award' and that it was important in that regard whether the harm resulted from intentional malice, trickery, or deceit, as opposed to mere accident. Gore, 517 U.S. at 575, 116 S.Ct. 1589; State Farm Mutual Auto. Ins.

> Co. v. Campbell, 538 U.S. 408, 419, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003).
>
> "Although, as noted, we expressed the opinion in Tapley that '[i]n the rarest cases involving the most egregious conduct, juries should be entitled to punish defendants so severely as to destroy them,' 546 So. 2d at 377, we have never approved the application of that concept in an actual case and, in Williams, supra, despite the existence of reprehensible conduct, we concluded that a negative net worth resulting from the size of the compensatory-damages award necessitated the remittitur of all punitive damages. Payment in full of the compensatory damages in this case will destroy Robbins financially and, as we stated in Williams, 786 So. 2d at 482, quoting Green Oil Co. v. Hornsby, 539 So. 2d at 222, punitive damages 'must not exceed an amount that would accomplish society's goals of punishment and deterrence.'
>
> "Accordingly, as we did in Williams, we hold that because Robbins has shown that he will have a large negative net worth after payment of a substantial, but nonetheless incomplete, portion of the compensatory damages, he has shown that any award of punitive damages is excessive, and we are obliged to order a remittitur of all punitive damages; otherwise, the judgment will be reversed and the case remanded for a new trial."

Robbins, 927 So. 2d at 790-91.

Because the punitive damages awarded against the defendants exceed the amount necessary to accomplish society's goals of punishment and deterrence -- indeed, affirmance of those amounts will financially devastate the defendants -- I

conclude that the trial court erred in denying the motions for remittitur.