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Indiana Supreme Court Upholds Punitive Damages Statute

Last week, the Indiana Supreme Court handed down the highly anticipated decision in the case *State v. Doe*. The case was the result of a determination by Marion County Superior Court Judge David J. Dreyer that found important portions of Indiana's Punitive Damages Statute to be unconstitutional under the Indiana Constitution. The court in a short opinion – eight pages of text – reversed Judge Dreyer's ruling and thereby upheld the validity of the Punitive Damages Statute.

As a note for those of our readers who recognize the oddity of the Hoosier Litigation Blog discussing a case with the word "State" in the title. Typically, the designation of one party as "State" in an appellate decision signals that the case was a criminal matter. A good example of this is the other *State v. Doe* on the books from the Indiana Supreme Court, which was a criminal decision from 1881. The modern *State v. Doe* went by a different designation at the trial level.

Before Judge Dreyer, the case was entitled *Doe v. Roman Catholic Archdiocese of Indianapolis*. It was not until after the trial and the trial court's ruling that portions of the Punitive Damages Statute were in violation of the Indiana Constitution that the State of Indiana intervened in the decision. The state was permitted to intervene because, as we will discuss in a moment, it had an

interest in a portion of the punitive damages award. Thus, when the case went up on appeal, it was the State who filed the appeal and the name of the appellate decision became *State v. Doe*.

With that bit of discussion out of the way, let us embark on an examination of the brief decision.

The case stemmed from the perpetration of sexual abuse upon the John Doe Plaintiff by Father Jonathan Lovill Stewart of the Catholic Archdiocese of Indianapolis. At trial, the jury awarded the plaintiff $5,000 in actual damages and $150,000 in punitive damages. The defendant then moved the court, pursuant to the Punitive Damages Statute to reduce that amount in accordance with the statutory cap.

Under Indiana's Punitive Damages Statute, the cap is not a traditional cap wherein it is some specifically fixed number. Rather, the cap is allowed to float and is determined by a relationship to the actual damages awarded. The Statute provides:

> A punitive damage award may not be more than the greater of:
> (1) three (3) times the amount of compensatory damages awarded in the action; or
> (2) fifty thousand dollars ($50,000).

Thus, in order to determine the cap, you must first triple the actual damages award. In this case, that amount was $5,000. Therefore, the tripled amount is $15,000. Since $15,000 is less than $50,000, the cap is $50,000 – as it is the greater of the two amounts.

In order for the punitive damages awarded in the case to have not been reduced under the cap, the actual damages would have had to have been at least $50,000, which tripled is equal to $150,000. Since this was not the case, the defendants filed a motion to reduce the award to the statutory cap. It was in its decision to deny the motion that the trial court determined that portions of the Punitive Damages Statute were unconstitutional. The portions of the Statute that were considered unconstitutional were: (1) the cap; (2) the portion mandating reduction of an award to accord with the cap; and (3) the portion dictating the allocation of punitive damages awards.

We have discussed how the cap works; and the second portion related to mandating the reduction speaks for itself. The third portion – dictating allocation of the award – is the portion that allowed the state to join the case. Under the

Punitive Damages Statute, only 25% of the actual damages award goes to the plaintiff. The other 75% is paid to the State of Indiana to be placed in the violent crime victims compensation fund. Thus, since the state had a direct interest in the funds of the punitive damages award, it could join the case to try to protect its interest. Since the trial court had declared that portion of the Statute unconstitutional, if the state had not joined the case, it would not have been able to lay claim to the three-quarters of the award.

In Indiana, when a statute is declared to be unconstitutional, Indiana Appellate Rule 4(A)(1)(b) mandates that any appeal is taken directly to the Indiana Supreme Court. Thus, the first and only review of the trial court's decision was the Indiana Supreme Court. On such an appeal, the Supreme Court uses a *de novo* standard of review – meaning that the court reviews the decision with fresh eyes and without concern for what the trial judge determined.

Before the Supreme Court was whether the Punitive Damages Statute violated Article I, § 20 and Article III, § 1 of the Indiana Constitution. Unlike the Federal Constitution, which required ten amendments to create the "Bill of Rights," Article I of the Indiana Constitution contains thirty-seven sections constituting Indiana's Bill of Rights. Section 20, the applicable section to this case, states, "In all civil cases, the right of trial by jury shall remain inviolate." Thus, this is the jury trial right in a civil case. Article III, which has only one section anyway, reads:

> The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.

Article III is the separation of powers among the branches of Indiana's state government.

In determining that the Punitive Damages Statute did not violate the right to jury trial under Article I, the court looked to *Johnson v. St. Vincent Hosp., Inc.*, in which the court upheld the use of a statutory cap on medical malpractice damages as not violating the right for a case to be decided by a jury. The court also looked to *Cheatham v. Pohle* to determine that the allocation portion was not unconstitutional. In *Cheatham*, the court upheld the allocation portion of the Statute finding that even though the state took 75% of the award it was not a "taking" such as eminent domain that subjected it to further constitutional requirements. Lastly, the court determined that Article III was not violated by the Statute. The court rejected the argument that the legislature's creation of a

statutory cap impermissibly crossed into the judicial power of the courts.

The decision means that the victim of sexual abuse will recover a whopping total of $17,500 of damages. That is before considering legal fees. There are many aspects of this decision that I think merit discussion. The first is a portion of the Statute that was not at issue in the case, but has a tremendous impact. That is the portion that states:

> A jury in a case subject to this chapter may not be advised of:
> (1) the limitation on the amount of a punitive damage award under section 4 of this chapter; or
> (2) the requirement under section 6 of this chapter concerning allocation of money received in payment of a punitive damage award.

I think it is this portion of the Statute that led to such a ludicrous result in this particular case. It can be little questioned that the jury was under the impression that it was awarding the injured plaintiff $155,000 for the harm that was suffered. I cannot imagine that the jury that made the award would have been content in their verdict had they know that, in reality, the victim was only to recover $17,500.

Certainly, there are concerns for the defendant in instructing the jury of the cap and the allocation of such funds – chiefly that they will convolute punitive and actual damages and simply blend the two in an impermissible manner without distinction. It seems readily apparent to me that juries already do that. As is, the "concerns" of defendants have been allowed to trump the realities of plaintiffs. To that end, it would appear that there is a balance that must necessarily be struck that has been missed by the current iteration of the Statute. So long as juries are allowed to believe that punitive damages are some separate avenue of recovery for the plaintiff that comes with the added message, "we are very angry at the defendant for what he has done," they will blend the two concepts and create ludicrous results such as this case.

Another aspect for consideration is that the cap limit runs far shy of the limitations found under federal case law. In federal cases interpreting punitive damage awards as excessive in violation of a defendant's due process rights, the Supreme Court of the United States has expressed a general concept that only in rare circumstances should a punitive damages award exceed a ratio of single-digits compared to the actual damages award. In the *State v. Doe* decision, the Indiana Supreme Court interpreted the federal rule as speaking to a ratio of 9:1. If this is so, then the upper bound of the federal due process ratio is three times that of the Indiana ratio.

A further portion of the decision that is very informative is the citation to *Johnson*. In January of this year, the case *Plank v. Community Hospitals of Indiana, Inc.*, made its way to the Indiana Supreme Court. Many had expected that this would be the case that tested the *Johnson* decision and provided the opportunity to challenge the medical malpractice cap as had found success in other states. However, instead of providing the forum for the challenge to Indiana's medical malpractice cap, the case was decided on procedural grounds and never reached the constitutional issue. Thus, *Johnson* was never put to the test. This decision provides, what I think to be a clear signal, that the current composition of the Indiana Supreme Court is not receptive to a challenge to the medical malpractice cap.

Lastly, I think this decision gives further insight into Justice Mark S. Massa's approach to issues that challenge language of statutes. In a previous post, we discussed the case *Robertson v. B.O.* in which Justice Massa authored the majority opinion. A comparison of the *State v. Doe* case and *Robertson v. B.O.* is very informative to the approach of Justice Massa. It is easy to dismiss the *State v. Doe* decision as the product of a conservative court and an opinion by a conservative justice. Such a conclusion would be undeservedly flippant. In *Robertson v. B.O.*, the same court – with the exception of Justice Rush who had not yet joined the bench – and the same author found that the state run Patient's Compensation Fund could not contest liability in a medical malpractice case where a negligent doctor admitted liability as part of a settlement.

I believe that the inescapable conclusion and insight to be drawn from comparing these two cases is that this court and Justice Massa in particular are highly deferential toward the legislature. In short, the court, where possible, yields to the decisions of the General Assembly. To me, the value of this insight is as a reminder that as long as the composition of the court remains as such, it is not an environment to challenge Indiana statutes. Further, to do so now in all but the most clear-cut cases may result in case law that will further inhibit litigation even with a more favorable composition.

Join us again next time for further discussion of developments in the law.

Sources

- *State v. Doe*, ___ N.E.2d ___, 49S00-1201-CT-14, 2013 WL 1975865 (Ind. May 14, 2013).

- Indiana's Punitive Damages Statute – codified at Ind. Code chapter 34-51-3.
- *State v. Doe*, 79 Ind. 9 (1881).

- *Johnson v. St. Vincent Hosp., Inc.*, 273 Ind. 374, 404 N.E.2d 585 (1980).

- *Cheatham v. Pohle*, 789 N.E.2d 467, 473 (Ind. 2003).

- *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 1524, 155 L. Ed. 2d 585 (2003) (Declining a bright-line ratio for punitive damages award but recognizing: "Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.").

- *Plank v. Cmty. Hospitals of Indiana, Inc.*, 981 N.E.2d 49 (Ind. 2013).

- Dave Stafford, *Medical Malpractice Caps Challenged in Indiana, Fall Elsewhere*, The Indiana Lawyer (Aug. 29, 2012) available at http://www.theindianalawyer.com/medical-malpractice-caps-challenged-in-indiana--fall-elsewhere/PARAMS/article/29548.