

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES SHERMAN TATE,  
Appellant,  
vs.  
KATHLEEN GRIFFIN,  
Respondent.

No. 51363

**FILED**

**NOV 30 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment entered after a bench trial submitted on the briefs in a civil tort action awarding compensatory and punitive damages as well as attorney fees and costs. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

The parties are familiar with the facts; therefore, we do not recount them in detail but rather only provide the facts pertinent to our disposition.

This case arises from an altercation between appellant James Tate and respondent Kathleen Griffin that occurred while the parties were customers in a Radio Shack store in Las Vegas, Nevada. Tate struck Griffin and was subsequently convicted of misdemeanor battery for the incident. Following the misdemeanor criminal conviction, Tate's counsel conceded tortious liability for battery in the civil action, and the district court awarded Griffin \$500 for compensatory damages, \$2,000 for punitive damages, \$1,000 for attorney fees, and \$2,275.28 for costs. Tate appeals on two grounds: (1) the district court erred by treating Tate's criminal conviction for misdemeanor battery as conclusive evidence for liability in the civil action, and (2) the district court abused its discretion in awarding

damages without specifically articulating findings of fact as a basis for the award. We conclude that the district court did not err by using Tate's criminal conviction as conclusive evidence for tort liability; however, we reverse and remand the award for damages because the award is not supported by specific findings of fact and conclusions of law.

Tate conceded liability for battery

At a district court hearing, Tate's attorney conceded tort liability for battery because Tate was previously convicted of misdemeanor battery stemming from the same incident. Tate argues on appeal that his attorney improperly conceded liability without his consent. We conclude that Tate's argument is without merit.

Tate is bound by the acts of his attorney regardless of whether Tate approved of his attorney's actions, admissions or omissions. See Gottwals v. Rencher, 60 Nev. 35, 51-52, 98 P.2d 481, 484 (1940). Our litigation system is based on representation, in which each party is deemed bound by the acts of his lawyer-agent. See Moore v. Cherry, 90 Nev. 390, 395, 528 P.2d 1018, 1022 (1974). Tate voluntarily chose his attorney as his representative. He is now bound by and cannot avoid the consequences of the acts, admissions or omissions of this freely selected agent. See id. Therefore, Tate effectively conceded liability for tortious battery.

Conviction of a crime sufficient to impose civil liability

Tate also contends that the district court improperly extrapolated civil liability from his criminal conviction for misdemeanor battery under NRS 41.133. Tate asserts that our decision in Langon v. Matamoros, 121 Nev. 142, 111 P.3d 1077 (2005), limits the application of NRS 41.133 and precludes

misdemeanor convictions from being used as conclusive evidence of facts necessary to impose civil liability. We conclude that Tate has misapplied our holding in Langon.

NRS 41.133 provides: “If an offender has been convicted of the crime which resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all facts necessary to impose civil liability for the injury.” In Langon, we determined that NRS 41.133 does not apply to all criminal convictions; rather, the Legislature intended that the statute only apply to *malum in se* offenses but not to *malum in prohibitum* offenses. 121 Nev. at 145, 111 P.3d at 1078. *Malum in se* offenses are typically those acts that are inherently immoral, whereas *malum in prohibitum* offenses are crimes merely because they are prohibited by statute. See State v. Walker, 195 S.W.3d 293, 298 (Tex. Crim. App. 2006).

We conclude that battery is a *malum in se* offense. Unlike speeding or littering, which are crimes merely because they are prohibited by statute, battery is a crime that requires willful or unlawful use of force or violence against the person of another. See NRS 200.481(1)(a). The willful or unlawful use of force or violence against the person of another is an inherently immoral act regardless of whether the Legislature prohibits the conduct by statute. Because battery is a *malum in se* offense, we conclude that the district court properly applied NRS 41.133 in determining that Tate’s misdemeanor battery conviction may be used as conclusive evidence to impose civil liability.

Damages are not supported by specific findings

Tate also appeals on the ground that the district court erred by awarding compensatory and punitive damages and attorney

fees because the district court failed to articulate specific findings of fact, and substantial evidence did not support the damages.

We recognize that the district court has broad discretion in calculating an award of damages, and the award will not be overturned unless it constitutes an abuse of discretion. Asphalt Prods. v. All Star Ready Mix, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995). However, NRCP 52(a) requires that “[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law.” Accordingly, we will uphold findings of fact and conclusions of law that are supported by substantial evidence unless they are clearly erroneous. Trident Construction v. West Electric, 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989).

#### Compensatory damages

The parties stipulated that the issue of damages for the battery claim would be determined by submitting trial briefs and evidence to the district court. After reviewing the briefs and evidence, the district court awarded Griffin \$500 in compensatory damages without specifically stating any findings of fact or conclusions of law. Tate argues that the district court erred by failing to make any specific findings of fact to support the award for compensatory damages of \$500. We agree.

Nowhere in the minute order nor the judgment from which this appeal is taken does the district court provide specific findings to support its \$500 compensatory damages award. Additionally, our review of the record indicates that the only material evidence of damages submitted to the district court appears to be a medical bill totaling \$177.05. Without specific findings of fact

from the district court supporting its award, we are unable to perform an adequate appellate review. Therefore, we must conclude that the district court abused its discretion in awarding Griffin \$500 in compensatory damages. However, we do not suggest that \$500 is an inappropriate amount to award for damages in this case if such an award is supported by substantial evidence, the district court can provide specific findings of fact and conclusions of law to support the award, and its findings are not clearly erroneous. Generally, we stress that the district courts, particularly when conducting a bench trial, should adhere to the requirements of NRCP 52(a) and specifically state its findings of fact and conclusions of law in support of an award for damages.

#### Punitive damages

After reviewing the trial briefs and the surveillance tapes, the district court determined that Tate's conduct of striking Griffin was egregious and awarded Griffin \$2,000 in punitive damages. Tate argues that it was error for the district court to award punitive damages without any specific findings of fact or conclusions of law.

An award for punitive damages is proper when there is "clear and convincing evidence that the defendant [is] guilty of oppression, fraud or malice, express or implied." NRS 42.005(1). "[T]he district court has discretion to determine whether the party's conduct merits punitive damages as a matter of law." Winchell v. Schiff, 124 Nev. \_\_\_\_, \_\_\_\_, 193 P.3d 946, 953 (2008). A proper award of compensatory damages is a prerequisite to an award for punitive damages. Sprouse v. Wentz, 105 Nev. 597, 602, 781 P.2d 1136, 1138-

39 (1989); Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 615, 5 P.3d 1043, 1054 (2000).

Because we conclude that the district court abused its discretion in awarding Griffin compensatory damages without providing specific findings of fact and conclusions of law to support the award, we further conclude that the district court's award of \$2,000 for punitive damages cannot be sustained.

#### Attorney fees and costs

Tate contends that the district court also abused its discretion in awarding Griffin \$1,000 for attorney fees and \$2,275.28 for costs. Because we conclude that the district court abused its discretion when it awarded Griffin compensatory and punitive damages, we also conclude that the awards for attorney fees and costs were not warranted.

#### Tate's remaining causes of action

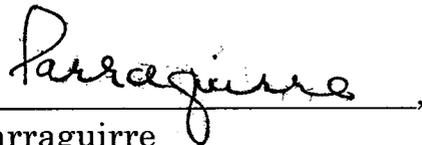
Griffin also asserted several additional causes of action against Tate including: negligence, negligent infliction of emotional distress, intentional infliction of emotional distress, and battery. Tate conceded liability and the district court determined damages for battery only, but the district court has made no findings of fact or conclusions of law pertaining to liability and damages, if any, for the remaining causes of action.

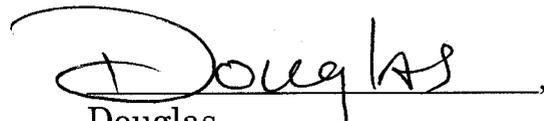
#### Conclusion

We conclude that the district court abused its discretion by awarding Griffin \$500 in compensatory damages without providing specific findings of fact or conclusions of law to support the award. Because we conclude that the district court abused its discretion in awarding Griffin compensatory damages, we further

conclude that the district court's award of \$2,000 for punitive damages cannot be sustained. And, finally, because we conclude that the district court abused its discretion when it awarded Griffin compensatory and punitive damages, we also conclude that the awards for attorney fees and costs were not warranted. Accordingly, we reverse the district court's judgment, and we remand this matter to the district court with instructions to specifically find whether substantial evidence supports an award for damages for the battery claim and to determine liability and damages, if any, for the remaining causes of action.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Jackie Glass, District Judge  
William F. Buchanan, Settlement Judge  
Dan Winder  
Hofland Beasley & Galliher  
Eighth District Court Clerk

PICKERING, J., concurring in part and dissenting in part:

The parties stipulated to liability and to have the district court decide this case based on Tate's judgment of conviction and the other documents they submitted, which included a \$177.05 medical bill. Since "all the evidence is documentary [and] the facts are undisputed" I believe "a remand [is] unnecessary." 9C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2577, at 310 (3d ed. 2008) (footnotes omitted).

To reverse outright, we would have to conclude that the finding that this plaintiff should recover \$500 in compensatory damages for the defendant's admitted battery is "clearly erroneous." NCRP 52(a). But compensatory damages for bodily harm and emotional distress may be awarded in a battery case even without special proof of pecuniary loss. Restatement (Second) of Torts § 905 (1979). The \$500 compensatory damage award, therefore, is unexceptionable, particularly given the \$177.05 medical bill, the stipulation as to liability, and Tate's conviction.

In some cases, lack of specific findings respecting damages can defeat meaningful appellate review, requiring remand for better findings. See Commercial Cabinet Co. v. Wallin, 103 Nev. 238, 240, 737 P.2d 515, 517 (1987). However, in this case, the record is uncomplicated and supports the nominal compensatory damage award. See 9C Wright & Miller, supra, §2579, at 337 (discussing NRCPP 52(a)'s federal counterpart, Fed. R. Civ. P. 52(a), and noting that "[m]any cases have refused to demand more detailed findings on questions of damages when there is an adequate record for the award").

If upheld or reinstated on remand, the compensatory damage award is sufficient to support the related punitive damage and costs

