

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> , CHARLES HUNT, <i>et al.</i>	:	
	:	Case No. 2021-1592
Relators	:	
	:	
v.	:	
	:	
CITY OF EAST CLEVELAND,	:	
	:	
Respondent.	:	
	:	

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MOTION FOR RECONSIDERATION OF MANDAMUS WRIT INCLUDING  
PUNITIVE DAMAGES AGAINST A MUNICIPALITY

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In this Court's Opinion of the instant matter granting a *Writ* to satisfy monetary judgment against it, the Court included \$1 Million of *punitive* damages, \$500,000 as to Charles Hunt and \$500,000 as to the Estate of Marilyn Conard. 2023-Ohio-407 ¶11.

The trial court Judge wrote in his *Nunc Pro Tunc Entry*:

"The Jury finds for the Plaintiffs and awards total damages in the amount of \$8,710,180.00

The total amount of compensatory damages is awarded to Plaintiff Charles Hunt in the amount of \$6,119,738.00 plus punitive damages in the amount of \$500,000.00. The total amount of compensatory damages is award to Plaintiff Merylin Conard Is in the amount of \$1,590,442.00 plus punitive damages in the amount of \$500,000.00

The jury further finds that attorney fees should not be awarded against defendant Todd Carroscia."

Further O.R.C. 2315.21 Punitive or exemplary damages, states that

(C) Subject to division € of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:

(1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) The trier of fact has returned a verdict or has made a determination pursuant to Division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant.

This *Motion* is respectfully made, in light of the above Judgment, for clarification, then, of 1) what total compensatory damages inured specifically to the City Respondent; 2) where in the trial court or the appellate court findings was the City Respondent shown to "demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant..."; and 3) is this Court by this *Opinion*, overturning its legal precedent that punitive damages cannot be assessed against a municipality?

Not to belabor the point; but, in this effort to clarify the Court's ruling we must revisit this Court's prior rulings on punitive damages and municipalities.

Again, in *Whetstone v. Binner*, 2016-Ohio-1006, the Ohio Supreme Court found that:

"{¶ 15} The purpose of punitive damages is twofold — to punish the tortfeasor and to deter similar conduct. *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 651, 635 N.E.2d 331 (1994). "The policy of awarding punitive damages in Ohio is both to punish the offending party and to set him up as an example to others, thereby deterring others from similar behavior." *Cabe v. Lunich*, 70 Ohio st.3d 598, 601-602, 640 N.eE2d 159 (1994). In other words, deterrence is intended to be both specific to a particular tortfeasor and general as an example to others.

{¶ 16} Ohio law is well settled that punitive damages are available for personal injury or property loss caused by malice or ""intentional, reckless, wanton, willful and gross acts."" *Rubeck v. Huffman*, 54 ohio st.2d 20, 23, 374 n.e.2d 411 (1978), quoting *Columbus Fin., Inc. v. Howard*, 42 Ohio st.2d 178, 184, 327 n.e.2d 654 (1975), Quoting the appellants' brief. pursuant to r.c. 2305.21, the right to punitive damages continues when an injured plaintiff has died and the plaintiff's claim is pursued by a representative of his or her *Whetstone, ID*.

This Court has also addressed the issue of whether punitive activities are to be carried by municipalities. In *Spires v. City of Lancaster*, 28 Ohio St. 3d 76 (1986), the Court wrote: Quoting *Ranells v. City of Cleveland*, 41 Ohio St. 2d 1, "The single issue to be decided by this court is whether punitive damages may be awarded against a municipality absent specific statutory authority permitting such an award. For the following reasons, we answer this question in the negative. It went on to quote that "In the absence of a statute specifically authorizing such recovery, punitive damages cannot be assessed against a municipal corporation." The *Ranells* court held that while "Ohio law is well established that a municipal corporation \* \* \* acting in a

governmental capacity is immune from liability for tortious conduct," "\* \* \* when acting in a proprietary capacity, a municipal corporation may \* \* \* be held liable \* \* \* in the same manner as would a private corporation or individual." Id. at 4. However, this court went on to say that while it is appropriate to award compensatory damages for a municipality's tortious conduct, punitive damages are not appropriate against a municipality even where there is evidence of wanton misconduct. In *Ranells*, we reasoned, as have a number of our sister state courts, that permitting punitive damages against a municipal corporation contravenes public policy. See, e.g., *Fisher v. Miami* (Fla. App. 1954), 160 So. 2d 57, affirmed (1965), 172 So. 2d 455; *Chappell v. Springfield* (Mo. 1968), 423 S.W. 2d 810. [2] “

Further, with respect to whether Carroscia’s actions were sanctioned by the City Respondent, it must be recalled that in its Brief the City stated:

“In a footnote, #1, the court of appeals wrote, “... this court affirmed the trial court’s decision denying appellants’ motion for summary judgment on immunity grounds, concluding that genuine issue of material fact existed concerning whether officer “operated his zone car in a wanton or reckless manner. Id. at 28.”

Hence, the court of appeals expressly sent the case back to the trial court for a determination on whether Carroscia was driving recklessly or wantonly. The court of appeals discussed that determination in its opinion.

¶19 “Appellees’ accident reconstruction expert, Detective Mark Rice with the Columbus Police Department’s Accident Investigation Unit, reconstructed the crash after the accident. He...opined that Officer Carroscia had operated his patrol vehicle with a “perverse disregard for the safety of persons and property in violation of applicable policies and procedures,” It was further noted by the Court of Appeals that:

¶20. East Cleveland's former law director [Almeta Johnson] similarly testified that in her view, Officer Carroscia had not followed the city's policies and procedures and had acted "recklessly" in traveling at that "high rate of speed." In its opinion, the court of appeals wrote:

¶92. "In this case, there is substantial competent, credible evidence in the record upon which the jury could have reasonably found that Officer Carroscia acted wantonly, willfully and recklessly in causing the accident at issue. As detailed above, appellants presented evidence that officer Carroscia (1) was operating his vehicle at a high rate of speed (2) under a suspended license (3) without lights and sirens activated (4) in an area in which there was a gas station open for business and a number of patrons frequenting bars and (5) ran a red light, crashing into Hunt's vehicle. There is also evidence that Officer Carroscia failed to follow applicable policies and procedures designed to protect the safety of the public and police officers. (*"See Anderson.* at ¶37 ("the violation of a statute ordinance, or departmental policy enacted for the safety of the public is not per se willful, wanton, or reckless conduct, but may be relevant to determining the culpability of a course of conduct."))."

In short, after a careful review of all of the Exhibits submitted by Relator, nothing is found other than sets of general verdicts per Civ. R. 49, bereft of which of the 'defendants' is culpable. Nowhere in any of the documents presented by Relator is there any evidence of 'negligence' indicating negligence by the City. All that is contained is that Officer Carroscia abrogated the City's policies and drove in a manner with a "perverse disregard for the safety of persons and property in violation of applicable policies and procedures..." " "

Therefore, while the City receives this Court's *Opinion* with all due regard, as the above matters were not addressed in that ruling, the City requests that they be considered and incorporated in a further review.

This request is being made because, to let this Court's *Opinion* stand as written, would be a great deviation from the concept of "joint and several liability among tortfeasors" when one of the "tortfeasors" cannot be subject to vicarious liability as regards punitive damages. *Id. Spires*.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Respondent's Motion for Reconsideration* was electronically filed with the Court on this February 15, 2023 and that through the Court's electronic notification system a notice of such filing is provided to all registered parties. Further, a copy of the foregoing has been sent by regular U.S. mail to:

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/s/ Willa M. Hemmons  
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Counsel for City of East Cleveland

CV11755540

99467579



CASE NO. CV 11 755540

ASSIGNED JUDGE JOSEPH GIBSON

CHARLES D. HUNT, ET AL.

VS CITY OF EAST CLEVELAND, ET AL.

<input type="checkbox"/> 02 REASSIGNED <input type="checkbox"/> 03 REINSTATED (C/A) <input type="checkbox"/> 04 REINSTATED <input type="checkbox"/> 20 MAGISTRATE <input type="checkbox"/> 40 ARBITRATION <input type="checkbox"/> 65 STAY <input type="checkbox"/> 69 SUBMITTED	D I S P O S I T I O N	<input checked="" type="checkbox"/> 81 JURY TRIAL <input type="checkbox"/> 82 ARBITRATION DECREE <input type="checkbox"/> 83 COURT TRIAL <input type="checkbox"/> 85 PRETRIAL <input type="checkbox"/> 86 FOREIGN JUDGMENT <input type="checkbox"/> 87 DIS. W/O PREJ <input type="checkbox"/> 88 BANKRUPTCY/APEAL STAY	<input type="checkbox"/> 89 DIS. W/PREJ <input type="checkbox"/> 91 COGNOVITS <input type="checkbox"/> 92 DEFAULT <input type="checkbox"/> 93 TRANS TO COURT <input type="checkbox"/> 95 TRANS TO JUDGE <input type="checkbox"/> 96 OTHER
NO. JURORS _____ START DATE ____/____/____ END DATE ____/____/____		COURT REPORTER _____ START DATE ____/____/____ END DATE ____/____/____	<input type="checkbox"/> PARTIAL <input checked="" type="checkbox"/> FINAL <input type="checkbox"/> POST CARD
DATE <u>6/26/17</u> (NUNC PRO TUNC ENTRY AS OF & FOR <u>04/27/2017</u> )			CLERK OF COURTS
The Jury finds for the Plaintiffs and awards total damages in the amount of \$8,710,180.00. The total amount of compensatory damages is awarded to Plaintiff Charles Hunt in the amount of \$6,119,738.00 plus punitive damages in the amount of \$500,000.00. The total amount of compensatory damages is awarded to Plaintiff Merylin Conard is in the amount of \$1,590,442.00 plus punitive damages in the amount of \$500,000.00. The jury futher finds that attorney fees should not be awarded against defendant Todd Carroscia.			
 JUDGE			

CIVIL CASE STATUS FORM

JOURNAL

CPC 43-2

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# Section 2315.21 | Punitive or exemplary damages.

[Ohio Revised Code](#)

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[Title 23 Courts-Common Pleas](#)

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[Chapter 2315 Trial Procedure](#)



***Effective:***

*April 15, 2021*

***Latest Legislation:***

*House Bill 352 - 133rd General Assembly*

***PDF:***

*[Download Authenticated PDF](#)*

(A) As used in this section:

(1) "Tort action" means a civil action for damages for injury or loss to person or property.

(a) "Tort action" includes all of the following:

(i) A product liability claim for damages for injury or loss to person or property that is subject to sections [2307.71](#) to [2307.80](#) of the Revised Code;

(ii) A civil action based on an unlawful discriminatory practice relating to employment brought under section [4112.052](#) of the Revised Code;

(iii) A civil action brought under section [4112.14](#) of the Revised Code.

(b) "Tort action" does not include a civil action for damages for a breach of contract or another agreement between persons.

(2) "Trier of fact" means the jury or, in a nonjury action, the court.

(3) "Home" has the same meaning as in section [3721.10](#) of the Revised Code.

(4) "Employer" includes, but is not limited to, a parent, subsidiary, affiliate, division, or department of the employer. If the employer is an individual, the individual shall be considered an employer under this section only if the subject of the tort action is related to the individual's capacity as an employer.



(5) "Small employer" means an employer who employs not more than one hundred persons on a full-time permanent basis, or, if the employer is classified as being in the manufacturing sector by the North American industrial classification system, "small employer" means an employer who employs not more than five hundred persons on a full-time permanent basis.

(B)(1) In a tort action that is tried to a jury and in which a plaintiff makes a claim for compensatory damages and a claim for punitive or exemplary damages, upon the motion of any party, the trial of the tort action shall be bifurcated as follows:

(a) The initial stage of the trial shall relate only to the presentation of evidence, and a determination by the jury, with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant. During this stage, no party to the tort action shall present, and the court shall not permit a party to present, evidence that relates solely to the issue of whether the plaintiff is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(b) If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury shall be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(2) In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.

(3) In a tort action that is tried to a court and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall make its determination with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant and, if that determination is in favor of the plaintiff, shall make findings of fact that specify the total compensatory damages recoverable by the plaintiff from the defendant.

(C) Subject to division (E) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:

(1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant.

(D)(1) In a tort action, the trier of fact shall determine the liability of any defendant for punitive or exemplary damages and the amount of those damages.

(2) Except as provided in division (D)(6) of this section, all of the following apply regarding any award of punitive or exemplary damages in a tort action:

(a) The court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to division (B)(2) or (3) of this section.