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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SALVADOR RODRIGUEZ,

Plaintiff and Respondent,

v.

CHRISTINE DANIEL, M.D.,

Defendant and Appellant.

B213205

(Los Angeles County  
Super. Ct. No. PC036767)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Melvin D. Sandvig, Judge. Affirmed in part, and reversed in part.

Law Offices of Manuel H. Miller, Manuel H. Miller and Max A. Sauler for  
Defendant and Appellant.

Woodall & Almeida and James C. Almeida for Plaintiff and Respondent.

## **INTRODUCTION**

Defendant Christine Daniel, M.D., appeals from a judgment after a court trial in which plaintiff Salvador Rodriguez (Rodriguez) was awarded both compensatory and punitive damages. Daniel contends on appeal that the award of punitive damages must be reversed because Rodriguez failed to present sufficient evidence of fraud, and because Rodriguez did not present any evidence regarding Daniel's financial condition, net worth, or ability to pay a punitive damage award. While we find that there was sufficient evidence of fraud, we agree that Rodriguez did not present evidence of Daniel's financial condition as required to support the award of punitive damages. We therefore reverse the judgment with regard to the punitive damage award, and otherwise affirm the judgment.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Rodriguez filed a complaint for fraud, breach of contract, negligence, medical negligence, and Unfair Business Practices (Bus. & Prof. Code, § 17200). Relevant here, Rodriguez alleged in his cause of action for fraud that his wife, Emily Rodriguez, now deceased, responded to advertisements by Daniel in which she offered for sale herbal remedies which Daniel represented would cure cancer. Emily, who had metastatic breast cancer, caused Rodriguez to purchase from Daniel these herbal remedies, as well as inpatient treatment at Daniel's medical facility, Sonrise Wellness Center, for an amount totaling almost \$32,000. Rodriguez alleged that Daniel falsely represented that her products would cure Emily's cancer, and knew when she made the representations that they were false. In reliance on Daniel's false representations, Emily purchased Daniel's products, stopped taking other medically prescribed medications, and took only the herbal

remedies supplied by Daniel. Her condition deteriorated, and she died in October 2003.

The matter proceeded to a court trial in May 2008. At the time of trial, Rodriguez dismissed his causes of action for negligence and medical negligence.

### *The Evidence Presented at Trial*

Rodriguez testified that in May 2003 he and Emily saw a program that aired on Trinity Broadcasting Network, a religious channel on television, which featured Daniel talking about her herbal cancer remedies.<sup>1</sup> Rodriguez called and spoke to Daniel, who advised him to purchase her “level 4” remedy, and instructed him to send her over \$10,000 for the first month’s medication. Asked if Daniel told him that “her medicine would cure your wife’s cancer,” Rodriguez responded, “Yes. She told me it would help for the cancer.” After enlisting the assistance of a Spanish language interpreter, Rodriguez testified that during his initial phone call with Daniel, she told him she could “cure” his wife’s cancer. He sent Daniel a cashier’s check for \$10,745, and received from Daniel three bottles labeled “level 4.” Emily began taking the remedy, and then went to Daniel’s office the following week. The following month, Emily was treated at Daniel’s clinic for about one week, for which Rodriguez paid Daniel \$3,350. Daniel provided Rodriguez with a receipt that stated, “one week level 7, cancer recovery treatment.”

Thereafter, Rodriguez purchased additional herbal remedies from Daniel, paying her another \$10,745 by cashier’s check. Emily began feeling much worse, and Rodriguez informed Daniel of that fact. Daniel said Emily should continue

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<sup>1</sup> Rodriguez’s counsel played the 10-minute program in court, and Rodriguez verified it was the program he and his wife had seen.

taking the medication and she would feel better. Rodriguez told Daniel that Emily was having difficulty taking the medication, and that it seemed to make her feel worse. Daniel got angry, and asked Rodriguez, “Do you want her to get cured or not?”

Daniel testified that she had been a medical doctor for 29 years. She did her residency in physical medicine rehabilitation, which she explained dealt with chronic debilitating diseases, pain management, nutritional therapies, and the physical and emotional aspects of illnesses. She practiced emergency medicine for 22 years until she retired in October 2002. She currently operates two clinics, Sonrise Medical Clinic and Sonrise Wellness Center. She stated that she practices “palliative supportive” medicine, meaning end of life care designed to make a patient’s dying more comfortable, rather than curative care. Daniel stated that in offering palliative care, she never told her patients or their families that she was going to cure their cancer. She denied telling Rodriguez that she could cure his wife’s cancer.

Daniel testified that 95 percent of her patients were unable to pay for their treatment, and she treated them without charge. She testified that the amount she billed the Rodriguezes represented her normal charges for palliative care. She said the basic rate for that treatment was \$285 per day. The herbal remedy she provided to Emily contained green, leafy vegetables, protein powder, and beets. She also gave Emily some prescription medications for pain, to improve her breathing, and to control her nausea so she could tolerate food.

George Dallas McKinney, an ordained bishop, testified that his wife had terminal cancer. She was treated by Daniel for about six months, from December 2002 through May 2003. Daniel charged \$6,000 per week; the treatment given to McKinney’s wife included an herbal concoction, prayer, and the use of infrared

heat lamps. McKinney credited Daniel with prolonging his wife's life. He stated that Daniel never told him that she was going to cure his wife's cancer. Daniel offered three levels of herbal treatment, and because McKinney loved his wife, he chose the highest level, which Daniel said would be the most effective. He understood that the herbal medication would slow the growth of the cancer and eventually help create an environment in her body where healing could take place. He was told the herbs were expensive because they were collected from Africa and places all around the world. He paid Daniel \$24,000 per month, or about \$120,000 in total. After his wife died, he was contacted by someone from a federal agency, who told him that he may have been duped by Daniel regarding the payments he made to her. Daniel disputed that McKinney paid her \$120,000, but she did not say how much he had paid for his wife's treatment.

Traci Wooden testified that she worked as a receptionist, fitness instructor, and basic nutrition counselor in Daniel's Wellness Center. She said the only services she observed being offered to the palliative care patients were herbal supplements and heat lamp treatments. Regarding the receipts Rodriguez had for Daniel's treatment, Wooden stated that the handwriting was hers. Daniel disputed Wooden's authentication of the receipts produced by Rodriguez for Daniel's cancer recovery treatment.

Amalia Rodriguez Cornejo, Rodriguez's sister, testified that she took Emily to Daniel's clinic for treatment for about two weeks beginning in May 2003. Amalia accompanied Emily every time she went to the clinic. At each visit, someone at the clinic would pour something from a refrigerated bottle into a glass for Emily to drink; every time she drank it she became nauseous and ill. Emily was not given any medication to counteract the nausea. She was not given any shots or any breathing treatments. Each afternoon, Emily received a heat lamp

treatment at the clinic. Emily told Amalia that the treatments were to cure her cancer.

Jon Genens, a senior investigator with the Medical Board of California, testified that the Board had received a complaint from a consumer (other than plaintiff) regarding alleged cancer cures being sold by Daniel.<sup>2</sup> As a result of this complaint, the Board initiated an investigation. When the Board began contacting Daniel's patients, they received multiple additional complaints about her purported cancer cures. Genens posed as the son of a cancer sufferer and consulted with Daniel, who told him about her treatment program using herbs from around the world. She said the FDA did not allow her to claim her supplements were a cure for cancer, but said, "That's what we do. I'll let you figure it out." He was left with the impression that she was claiming she could cure cancer with her herbal remedies. Daniel provided him with a product price list. Her prices ranged from \$350 for one bottle to \$12,000 for three bottles, depending on the concentration of medicine; higher concentrations were more expensive but more effective. Daniel directed him to contact a "Dr. Roberts" for additional information.

Dr. Roberts told Genens that Daniel's treatment was 100 percent effective, and that everybody who had received treatment from her was cured of cancer. Dr.

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<sup>2</sup> Prior to Genens' testifying, a Deputy Attorney General with the Health Quality Enforcement Section of the Attorney General's office stated his appearance and informed the court he would be representing Genens. He stated that there was an ongoing federal grand jury investigation regarding Daniel, and asked the court to instruct the attorneys not to inquire into anything having to do with evidence before the grand jury. The Deputy Attorney General also asked for a limiting instruction to the effect that Genens was not permitted to reveal the identity of any consumers who made complaints regarding Daniel, in order to protect their privacy. The court granted the request and instructed counsel not to inquire into those areas.

Roberts urged him to do whatever he could to get the money to pay for the cancer treatment, saying that time was of the essence.

In the course of his investigation, Genens came across a newspaper article regarding a benefit concert to raise money to help pay for Daniel's care of a young cancer patient named Brianica. Daniel was quoted as saying Brianica took "a liquid supplement of 33 different herbs to help her body heal. The plant extracts are considered experimental. The prognosis is pretty good. Excellent for recovery." Brianica was deceased at the time of trial.

Eugenia Vigiletti testified that she saw Daniel on a program on the Christian broadcasting channel in December 2002. Vigiletti understood Daniel to be claiming that she could cure cancer with herbal remedies and prayer, so Vigiletti, who had breast cancer, made an appointment to see Daniel. Daniel told Vigiletti that she had a program to cure cancer, and offered her herbal medicines at two price levels, \$1,000 or \$6,000. Vigiletti said she could only afford to pay \$1,000. Daniel sold Vigiletti three bottles of medicine for \$1,000, and an infrared lamp for \$400. Daniel also told Vigiletti she should go to a hospital for chemotherapy. Daniel disputed that she told Vigiletti the \$1,000 program could cure cancer.

Jeanette Harville testified that she began seeing Daniel in 2003. She was diagnosed with brain cancer in 2006. Harville was referred by the hospital to a specialist at UCLA. She told Daniel of her cancer diagnosis. Daniel did not tell Harville that she had a cancer treatment available or urge her to stay with Daniel to be treated rather than being treated at UCLA.

### *The Judgment*

The court entered judgment in favor of Rodriguez, and awarded him \$24,840 on his causes of action for breach of contract and fraud. The court also granted

Rodriguez's request for injunctive relief (Bus. & Prof. Code, § 17200, et seq.), enjoining Daniel from offering for sale any unapproved drug, or distributing any unbranded or misbranded drug, pursuant to 21 United States Code sections 321, 331, 352, 355, and 360. Finally, the court awarded Rodriguez \$100,000 in punitive damages. The court entered judgment in September 2008, and this timely appeal followed.

## **DISCUSSION**

### **I. Sufficiency of the Evidence of Fraud**

Daniel contends on appeal that the record is devoid of any evidence that she intended to defraud Rodriguez or his wife. Daniel asserts that Rodriguez's own testimony was conflicting as to whether Daniel told him the treatment could cure his wife's cancer, and Daniel denied making this representation. Daniel contends that the evidence established that Daniel "simply attempted to offer aid and comfort to [Rodriguez's] wife and did not intend in any respect to defraud either [Rodriguez] or his wife." We disagree. The record contains substantial evidence demonstrating that Daniel engaged in fraud.

"In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." (Civ. Code, § 3294, subd. (a).) For purposes of section 3294, "[f]raud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)



“Under [the substantial evidence] standard of review, our duty ‘begins and ends’ with assessing whether substantial evidence supports the verdict. [Citation.] ‘[The] reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.’ [Citation.] We review the evidence in the light most favorable to the respondent, resolve all evidentiary conflicts in favor of the prevailing party and indulge all reasonable inferences possible to uphold the jury’s verdict. [Citation.]” (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 908.) “‘It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact.’ [Citation.] . . . [W]e do not evaluate the credibility of the witnesses or otherwise reweigh the evidence. [Citation.] Rather, ‘we defer to the trier of fact on issues of credibility. [Citation.]’” (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514-515.)

Daniel does not adhere to the applicable standard of review, citing only evidence favorable to her and ignoring or misstating the rest. Indeed, her recitation of the facts is so one-sided that we could deem Daniel’s failure to present unfavorable evidence a waiver of this issue on appeal. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) Nonetheless, we briefly address the issue.

Rodriguez definitively stated that Daniel told him that her medicine would cure his wife’s cancer. There was also significant corroborating evidence. McKinney testified that although Daniel never told him that she was going to cure his wife’s cancer, she led him to understand that the herbal medication would slow the growth of the cancer and eventually help create an environment in her body in which healing could take place. He was told the herbs were expensive because they were collected from Africa and places all around the world. Genens, the Medical Board investigator, testified that the Board had received a complaint from

a consumer (other than plaintiff) regarding alleged cancer cures being sold by Daniel. When the Board contacted Daniel's patients, they received multiple additional complaints about her purported cancer cures. Genens posed as the son of a cancer sufferer. Daniel told him that the FDA did not allow her to claim her supplements were a cure for cancer, but said, "That's what we do. I'll let you figure it out." His clear impression was that she was claiming she could cure cancer with her herbal remedies. When Genens spoke to Dr. Roberts, to whom Daniel referred him for further information about her program, Roberts said Daniel's treatment was 100 percent effective, and that everybody who had received treatment from her was cured of cancer. Daniel told Vigiletti that she had a program to cure cancer.

Daniel testified that the herbal remedy she gave to Emily contained green, leafy vegetables, protein powder, and beets. For this and a few heat lamp treatments, she charged the Rodriguezes \$24,840.<sup>3</sup>

In short, the record contains substantial evidence that Daniel intentionally misrepresented material facts known to her regarding the efficacy and value of her herbal remedy, with the intention of depriving Rodriguez of a considerable sum of money. The evidence of fraud was sufficiently clear and convincing to justify an award of both compensatory and punitive damages. However, as we next discuss, the punitive damages award must be reversed because the evidence of Daniel's financial condition was insufficient.

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<sup>3</sup> Daniel said she also gave Emily some prescription medications for pain, to improve her breathing, and to control her nausea so she could tolerate food, but other witnesses testified Emily received only the herbal remedy and the heat lamp treatments.

## **II. The Evidence of Daniel's Financial Condition Was Insufficient**

Daniel contends that the trial court erred by awarding punitive damages without any evidence on which to base a finding as to Daniel's financial condition. Rodriguez counters that there was evidence regarding the profitability of Daniel's misconduct, i.e., Daniel's ill-gotten gains arising from her sale of the false cancer cure remedy. We conclude that there was not sufficient evidence presented regarding Daniel's financial condition on which to base an award of punitive damages. We therefore reverse the award of punitive damages.

"An award of punitive damages hinges on three factors: the reprehensibility of the defendant's conduct; the reasonableness of the relationship between the award and the plaintiff's harm; and, in view of the defendant's financial condition, the amount necessary to punish him or her and discourage future wrongful conduct. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928 & fn. 13 (*Neal*); *Adams v. Murakami* (1991) 54 Cal.3d 105, 110 (*Adams*).) Only the third prong is at issue here.

"[O]bviously, the function of deterrence . . . will not be served if the wealth of the defendant allows him to absorb the award with little or no discomfort. [Citations.] By the same token, of course, the function of punitive damages is not served by an award which, in light of the defendant's wealth . . . exceeds the level necessary to properly punish and deter.' (*Neal, supra*, 21 Cal.3d at p. 928.) The 'most important question is whether the amount of the punitive damages award will have deterrent effect -- without being excessive. Even if an award is entirely reasonable in light of the other two factors in *Neal, supra*, 21 Cal.3d 910 (nature of the misconduct and amount of compensatory damages), the award can be so disproportionate to the defendant's ability to pay that the award is excessive *for that reason alone*.' (*Adams, supra*, 54 Cal.3d at p. 111.) [¶] The California

Supreme Court has declined to prescribe any particular standard for assessing a defendant's ability to pay punitive damages (*Adams, supra*, 54 Cal.3d at p. 116, fn. 7), but it has held that actual *evidence* of the defendant's financial condition is essential. (*Id.* at p. 119.)” (*Kelly v. Haag* (2006) 145 Cal.App.4th 910, 914-915 (*Kelly*).)

“A reviewing court cannot make a fully informed determination of whether an award of punitive damages is excessive unless the record contains evidence of the defendant's financial condition.” (*Adams, supra*, 54 Cal.3d at p. 110.) It is the plaintiff's burden to establish the defendant's financial condition. (*Id.* at p. 123; *Kelly, supra*, 145 Cal.App.4th at p. 916.) “[T]here should be some evidence of the defendant's actual wealth. Normally, evidence of liabilities should accompany evidence of assets, and evidence of expenses should accompany evidence of income.” (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 680.) An award of punitive damages is reviewed for substantial evidence. (*Id.* at p. 679; *Kelly, supra*, 145 Cal.App.4th at p. 916.)

Here, the only evidence regarding Daniel's financial condition was that she received \$24,840 from Rodriguez, \$120,000 from McKinney, \$1,400 from Vigiletti, and that she charged either \$1,000 or \$6,000 per month for her herbal remedy. Daniel said that 95 percent of her patients could not afford to pay for their care and she treated them at no charge. The basic charge for the treatment she provided was \$285 per day. This evidence is plainly insufficient to demonstrate Daniel's overall financial condition. The evidence elicited at trial provided only a limited picture of her assets, and revealed almost nothing about her liabilities.

Rodriguez relies on *Cummings Medical Corp. v. Occupational Medical Corp.* (1992) 10 Cal.App.4th 1291, for the proposition that an award of punitive damages may be upheld in the absence of evidence of the defendant's net worth, if

the punitive damage award is based on the profitability of the defendant's misconduct, as to which sufficient evidence was received. In *Cummings*, the evidence offered at a default prove-up hearing indicated that the seller of a medical center had reaped a profit of \$1.6 million from defrauding the purchaser. However, the trial court awarded the purchaser only \$1 million in compensatory damages, because the purchaser's cross-complaint sought only that amount in compensatory damages. The trial court also awarded the purchaser \$1 million in punitive damages.

On appeal, even though the purchaser had presented no evidence of the seller's net worth, the appellate court upheld the award of punitive damages after reducing the amount to \$600,000 (representing the remaining illegal profit obtained by the seller in addition to the \$1 million compensatory damages actually awarded below). In so doing, the court found that "it is proper and fitting to 'punish' a defendant by stripping the defendant of wealth gained through defrauding the plaintiff. A punitive damages award specifically tailored to this objective can never be 'excessive.'" (*Id.* at p. 1300.)

Rodriguez argues that under *Cummings*, his failure to produce evidence of Daniel's financial condition is not fatal to the punitive damage award, because we may consider the \$120,000 McKinney paid to Daniel as evidence of the wealth Daniel gained through her fraudulent scheme. But *Cummings* tailored the punitive damage award to the amount of wealth gained through defrauding *the plaintiff*, not a third party. Also, the damage award in *Cummings*, including punitive damages, did not exceed the total amount of compensatory damages proved at the default prove-up hearing. Here, of course, Rodriguez is seeking a total damage award, including punitive damages, that *would* exceed the amount of compensatory

damages he proved. We therefore conclude that *Cummings* does not support affirming Rodriguez's punitive damage award.

Because our reversal is based solely on insufficiency of the evidence, we conclude that we must strike the punitive damages award from the judgment, and that no retrial of the punitive damages issue is warranted. “When the plaintiff has had full and fair opportunity to present the case, and the evidence is insufficient as a matter of law to support plaintiff's cause of action, a judgment for defendant is required and no new trial is ordinarily allowed, save for newly discovered evidence . . . . Certainly, where the plaintiff's evidence is insufficient as a matter of law to support a judgment for plaintiff, a reversal with directions to enter judgment for the defendant is proper. . . . [¶] . . . [A] reversal of a judgment for the plaintiff based on insufficiency of the evidence should place the parties, at most, in the position they were in after all the evidence was in and both sides had rested.’ (*McCoy v. Hearst Corp.* (1991) 227 Cal.App.3d 1657, 1661; accord, *Bank of America v. Superior Court* (1990) 220 Cal.App.3d 613, 626-627.) In another context, our Supreme Court explained in *Silberg v. Anderson* (1990) 50 Cal.3d 205, 214, that ‘[f]or our justice system to function, it is necessary that litigants assume responsibility for the complete litigation of their cause during the proceedings.’” (*Kelly, supra*, 145 Cal.App.4th at p. 919.)

Rodriguez had a full and fair opportunity to present his case for punitive damages. “Under Civil Code section 3295, subdivision (c), a plaintiff seeking punitive damages may move for a pretrial discovery order pertaining to the defendant's financial condition. Further, even without such an order the plaintiff may subpoena documents or witnesses to be available at trial to establish the defendant's financial condition. ([*Silberg v. Anderson, supra*, 50 Cal.3d at p.

214].)” (*Kelly, supra*, 145 Cal.App.4th at p. 919.) Rodriguez apparently did not utilize these procedures.

### **DISPOSITION**

The judgment is reversed insofar as the punitive damages award is concerned. In all other respects, the judgment is affirmed. Each party is to bear his or her own costs on appeal.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.