NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CAROL BELK, Plaintiff and Appellant, v. ELECTRA CRUISES, INC., Defendant and Appellant.	G041325 (Super. Ct. No. 07CC09356) O P I N I O N

Appeals from a judgment of the Superior Court of Orange County, Ronald L. Bauer, Judge. Affirmed.

Silverstein & Huston, Steven A. Silverstein, Mark W. Huston and Robert I. Cohen for Defendant and Appellant.

Barnes, Crosby, Fitzgerald & Zeman and William M. Crosby for Plaintiff and Appellant.

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Carol Belk (Belk) brought an action against her former employer, Electra Cruises, Inc. (Electra), for breach of contract and wrongful termination. The jury returned a verdict in her favor, awarding her $36,736 for breach of contract, $80,000 for wrongful termination, and $225,000 in punitive damages. The trial court granted Electra's motion for judgment notwithstanding the verdict on the breach of contract cause of action only. It also granted Electra's motion for new trial on the punitive damages, subject to Belk's acceptance of a reduced remittitur of $80,000. Belk accepted the reduced award.

Electra appeals, claiming the trial court erred in failing to grant its motion for judgment notwithstanding the verdict on the wrongful termination cause of action because Belk did not prove she was terminated in violation of a fundamental public policy. It also claims the trial court erred in failing to grant its motion for new trial on punitive damages because, even though reduced, the award is still excessive. Belk also appeals, claiming the original punitive damages award was not excessive and the reduction of the award was erroneous. We affirm.

FACTS

Electra provides charter yachts for events in Newport Harbor. Its sole shareholder is Randy Goodman (Goodman) and its operations manager is Lynda Guinther (Guinther); Goodman and Guinther live together and regard each other as "significant others." Belk was employed by Electra from October 2002 to June 13, 2006, as a sales agent.

Belk began her employment earning $500 per week. After about two months, Belk's sales were strong enough for her to convert to commission only. At that point, her compensation arrangement was $350 when her client booked a charter, then 10 percent of the yacht rate and bar and food sales, and 30 percent of miscellaneous items, such as flowers, photographs, and entertainment. In January 2005, Electra sent a memo to its sales agents stating the agents' commissions for sales would be limited to 90 days after their termination dates. Belk wrote on the memo that she did not agree with the new terms.

Also in January 2005, Electra was notified that Belk's wages were being garnished for the repayment of a student loan she had taken out for her daughter. In June and again in September 2005, Electra received additional wage garnishment notices for Belk relating to a tax delinquency. In October 2005, Belk was preparing for an appointment with her tax advisor and noticed "some discrepancy [i]n the information that I was getting from the tax organizations and what my records were showing." She wrote a memo to Guinther asking for information and received "sticky notes." This was not adequate. Subsequently, Belk got a call from one of the creditors saying it had not received any of her payments. She questioned Guinther, who said she had mailed the checks but the organizations were not posting them. Nevertheless, the calls continued. Belk discussed this problem with Guinther "[m]any, many times."

In May 2006, Belk sent a memo to Guinther referring to the discrepancies in the garnishment payments and asking for cancelled checks and an accounting of payments made. "I still wasn't satisfied and my tax man was not satisfied with . . . what we had gotten previously and . . . we actually needed something more [accurate]." Guinther gave her a list of checks that had been issued and cleared, but the information was still not adequate. On June 2, Belk demanded an accurate accounting. "I said I have to have actual payments that have made it to the institutions so I know exactly what I'm working with, because I had discrepancy information from all of the payments and list of payments that I had received from those institutions. They were showing something different. [¶] I asked her to clarify and justify the information she was giving me. I needed more than just a printout. I needed logical proof that those payments had been made, the checks had cleared, they got to those destinations. And I told her that morning I couldn't leave the office without that." The bookkeeper finally gave Belk a detailed list and a refund check for one check that had never cleared. But Belk was not reimbursed for late fees and interest on payments that had not been sent or had been posted late.

Belk had other problems with Guinther in the months leading up to her termination. Belk complained she had not received her 10 percent commissions during a period when Electra's liquor license had been suspended, although the other agents had received commissions for that period. She discovered her 2004 earnings had not been included in her summary of earnings provided by the Social Security Agency and discussed this with Guinther. In April or May 2006, Belk presented to Guinther a list of unpaid commissions she was due that should have been paid. Guinther "didn't really have a response" as to why the commissions had not been paid, but Belk was paid as requested.

Electra had an "understanding" that agents would split the commissions if more than one worked on an account. In May 2006, Belk and Guinther disagreed about whether Belk was entitled to a split commission on a charter where Belk had made the first contact but another agent booked it. On May 13, Belk wrote a memo to Guinther asking her to split the commission; she received no response and was never paid the split. By May, Guinther was not speaking with Belk. "[I]f I said anything to her, she just kind of nodded and that was about it. And that's when I wasn't getting any response from the memos I was sending her and just basically no response at all."

Belk had two planned days off during the first week of June: Wednesday, June 7, and Thursday, June 8. After work on Tuesday, June 6, she underwent scheduled medical procedures with a dermatologist. She hoped to return to work on Friday "because . . . they give you some medicine that helps curtail the bruising and the bleeding and things like that." But the following day, Belk realized she would not be able to go to work on Friday. She called Electra's office and spoke to another agent, Maureen Castanha, because Guinther was not in. She told Castanha "I was definitely not capable of coming into work and I was probably going to be out through . . . Saturday; that I had appointments arranged already on Sunday . . . ; I would call her first thing in the morning on Sunday and let her know; could she please relay the message to everyone in the office, including . . . Guinther; and she informed me that she would do that." On Sunday, June 11, Belk's condition had not improved, so she called Castanha at her home about 8:15 a.m. She asked Castanha if she could handle her two appointments that day, which Castanha agreed to do. Belk called Castanha again on Sunday afternoon, and Castanha told her the clients had been taken care of. Belk told Castanha she would not be in on Monday. "She told me that she's communicating everything to management and the other agents in the office so that they're well aware."

On Monday, June 12, Belk attended a planned meeting with the doctor who was treating her daughter for extreme weight loss. Her daughter had been in an outpatient clinic for a week, but her problem had not been resolved; her doctors concluded she would have to be admitted to a special facility. Belk was very upset about her daughter's health. On Tuesday, June 13, she called the office shortly after 9:00 a.m. Guinther was not available, but Heather, Guinther's daughter, was there and available to speak to her. Belk told Heather "I just got information that [my daughter] is going to have to go into a hospital, she'll have to be admitted, I have to see what I need to do in order to find a hospital for her." Belk asked Heather to look at the files for her clients with upcoming appointments, which Heather agreed to do. "Don't worry about it, Carol. Just take care of Hope. You know, I'll take care of everything else." At 8:00 p.m. that night, Belk received a hand-delivered letter advising her she was terminated from her employment at Electra because she had failed to report to work on her next scheduled workday, Friday, June 9, and had failed to contact her supervisor.

Castanha testified she received calls from Belk on Wednesday, June 7, and Sunday, June 11, but she testified she did not tell either Guinther or Goodman where Belk was; she could not recall whether she told Belk she would relay the messages about her absence to Guinther. Heather denied receiving Belk's call on Tuesday, June 13. Belk's telephone records showed calls were made to Electra's office on the dates to which Belk testified.

Guinther denied being told about the reasons for Belk's absence. Guinther testified she called Belk once on Friday and left her a message; she did not try to call her again. On Monday, she and Goodman "talked about . . . [Belk's] sales sliding and not showing up," and Goodman decided to fire her.

Goodman testified Belk's sales "dropped off to nothing for the last two and a half weeks she was there." Goodman "knew she was quitting" because "she basically stopped selling charters" the last ten days of May. Goodman also heard Belk tell a fellow agent to "take this call. I'm not going to be here" during the first few days in June. He interpreted that statement to mean she was planning to quit. And he knew she had received an inheritance. "And, basically, I figured it out. If she wanted to quit, the best time she could quit would be the first week of June so she would get her commissions through the first week of September, our busiest time of the year." Goodman never asked Belk about her intentions or called her when she was absent. "Because I believed she had quit, and I was fine with it. I didn't have a problem with it. For the last two and a half weeks, she was just taking up space. I needed to find a new girl." Goodman acknowledged that Belk showed a significant amount of sales activity the week ending May 19, 2006. But he did not look at the commission sheets prepared by Guinther; he reviewed the "booking board." When asked if he though it was important to look at all the facts and the evidence when forming opinions on which he based his decision to terminate employees, Goodman answered, "I discuss the facts with Lynda [Guinther]."

Belk testified 2006 was on track to be her best year in sales. She denied trying to transfer a lead to another agent, and she had no intention of quitting.

Richard Tew testified he was an employee of Electra for 14 years, starting in 1993. He was one of the first employees of Electra, and he was hired as "first mate slash bartender." During the course of his employment, he obtained a captain's license and became ordained, so he functioned as the bar manager, performed onboard weddings as the captain, and became the company security officer. In February 2007, Goodman left a message on Tew's answering machine saying, "'I'm done with you. Pick up your check tomorrow. Have a nice life.'" Tew was surprised by the call because he valued his employment at Electra and Goodman had never indicated there were any problems with his performance. Tew never received an explanation for his termination.

Beverly Crowe testified she worked at Electra from September 2006 to May 2008 as a sales agent. She liked her work and was told she was "the top agent." On May 7, 2008, she got a telephone call from Goodman, who said "'I'm not going to be needing you anymore. You don't have to come in tomorrow.'" Goodman never gave her a reason for her termination, and he had never counseled her about problems with her job performance.

The jury returned a special verdict finding that Belk and Electra entered into an oral agreement for the payment of commissions, that the memorandum of January 2005 did not modify the agreement, and that Electra breached the agreement. It awarded Belk $36,736 for unpaid commissions. The jury also found that Electra terminated Belk's employment and was motivated to do so by her "having protested nonpayment of compensation due and/or her having questioned accountings in payment of wages." It awarded Belk $70,000 for past and future loss of earnings and $10,000 for mental and emotional distress. Finally, the jury found by clear and convincing evidence "that a managing agent of [Electra] acted with malice or oppression toward [Belk] in regard to her termination of employment."

In the punitive damages phase of the trial, Goodman testified that Electra grossed $8,753,173.95 in 2007, and its gross profit for that year was $5,474,821. Goodman testified in his opinion, the business was worth more than $10,000,000. The jury was instructed that the purpose of punitive damages was to "punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future." The jury was told to consider the following factors in determining the amount of punitive damages: (1) the reprehensibility of Electra's conduct; (2) the relationship between the amount and the harm Electra knew was likely to occur to Belk because of its conduct; and (3) the amount necessary to punish Electra and discourage future wrongful conduct. In determining reprehensibility, the jury was told to consider "[w]hether the conduct caused physical harm; whether [Electra] disregarded the health or safety of others; whether Carol Belk was financially weak or vulnerable and [Electra] knew she was financially weak or vulnerable and took advantage of her; whether the conduct of [Electra] involved a pattern or practice; and whether the defendant acted with trickery or deceit." Finally, the jury was told it could not use punitive damages to punish Electra for "the impact of its alleged misconduct on persons other than [Belk]," nor could it make a punitive damages award "above an amount that is otherwise appropriate merely because the defendant has substantial financial resources." The jury awarded punitive damages against Electra in the amount of $225,000.

Electra filed a motion for new trial and a motion for judgment notwithstanding the verdict. The trial court granted the judgment notwithstanding the verdict on the recovery for commissions payable more than 90 days following termination and denied it on the wrongful termination cause of action. It granted a new trial on the issue of the amount of punitive damages "subject to denial of that motion if the plaintiff within 30 days indicates its acceptance of a remittitur to an award of $80,000." Belk subsequently accepted the reduced remittitur, and the motion for new trial was therefore denied.

DISCUSSION

Wrongful Termination

Electra contends the trial court should have granted its motion for judgment notwithstanding the verdict on the wrongful termination cause of action. It argues Belk failed to prove she was terminated in violation of public policy and the trial court erroneously instructed the jury on the issue.

Although an employer has the right to terminate an at-will employee for an arbitrary or irrational reason, "there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy." (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1094.) The common law recognizes the right of an at-will employee to bring an action in tort against her employer for termination of employment that violates a fundamental public policy. (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 178.) To maintain a wrongful termination action, however, the employee must have been wronged in a way that affects more than her immediate interest. "Determining whether a claim involves a matter of public policy as opposed to an ordinary dispute between the employer and employee depends on whether the matter affects society at large, whether the policy is sufficiently clear, and whether it is fundamental, substantial, and well established at the time of the termination. [Citation.]" (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 708.)

In *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, a sales representative brought an action against his former employer for wrongful termination in violation of public policy, alleging the employer discharged him to avoid paying him accrued commissions and vacation pay. The appellate court reversed the trial court's order sustaining the employer's demurrer and dismissing the case, finding "the prompt payment of wages due an employee is a fundamental public policy of this state." (*Id.* at p. 1147.) Citing Labor Code section 216, subdivision (a), the court stated that an employer's refusal to pay wages due and payable after demand is punishable as a misdemeanor. "'Public policy has long favored the "full and prompt payment of wages due an employee." . . . "[W]ages are not ordinary debts . . . . [B]ecause of the economic position of the average worker and, in particular, his family, *it is essential to the public welfare that he receive his pay" promptly.'* (Italics added; citations omitted.) Thus, the prompt payment of wages serves '*society's* interests . . . through a more stable job market, in which its most important policies are safeguarded.' [Citation.]" (*Ibid.*)

In *Phillips v. Gemini Moving Specialists* (1998) 63 Cal.App.4th 563, the plaintiff agreed that he owed his employer $35 but did not agree to have it deducted from his paycheck. Notwithstanding, the employer deducted the debt. The plaintiff complained; two weeks later, he was terminated from his employment. The appellate court found the plaintiff had stated a cause of action for wrongful termination in violation of public policy. It stated the Labor Code "demonstrate[s] the Legislature's belief that an employee's wages are highly important" and an employer could not set off debts owing it by an employee against wages. (*Id.* at p. 571.) The court found there is "a fundamental public policy against an employer's retaliation for its employee having asserted a right to be free from the employer's withholding of pay." (*Ibid.*)

Belk's complaints about Electra's failures to process her wage garnishments, give her proper accountings for her commissions due, and pay her the commissions due implicate the well-established public policy in favor of prompt payment of wages. The deductions from her pay for garnishment orders was authorized, but to the extent these deductions were not properly processed so that she did not receive credit for them, her pay was effectively reduced. Likewise, Electra's failure to pay her the full commissions to which she was entitled amounted to a reduction in pay. If Electra terminated Belk for complaining about its failures to pay her properly, it would constitute a violation of a fundamental public policy.

Electra next argues there was insufficient evidence to support the jury's finding that Belk's termination was motivated by her complaints about commissions or garnishments. It argues the real reason she was terminated is her failure to show up at work. We will not reverse the trial court's denial of a motion notwithstanding the verdict if there is substantial evidence to support the verdict, reviewing the record in the light most favorable to the judgment and making all reasonable inferences in favor of the prevailing party. (*Wolf v. Walt Disney Pictures and Television* (2008) 162 Cal.App.4th 1107, 1138.)

Viewing the record in this light, we find ample evidence from which the jury could conclude that Belk was terminated because she complained about wage issues. Belk was outspoken and persistent about the wage garnishment problems and Electra's failure to pay her commissions properly or promptly. She was not shy about voicing her disagreement with the modified commission payment policy. As Belk herself testified, "I became a thorn in Lynda's side." The garnishment problems, in particular, escalated in the weeks leading up to her termination, culminating in Belk's refusal to leave the office without an accurate accounting of her garnishment payments.

Furthermore, there was evidence from which the jury could conclude that Electra's stated reason for Belk's termination – that she failed to show up for work – was pretextual. Belk's telephone records showed she had called Electra's office on Wednesday, June 7, Sunday, June 11, and Tuesday, June 13. By Guinther's own admission, Electra was a small office. It is hard to imagine that the information about Belk's absence was not shared among the employees. Electra did not produce telephone records to support Guinther's testimony that she had tried to get in touch with Belk when she failed to show up for work. Goodman claimed Belk's sales had fallen off and she had transferred a lead to another sales agent, so he assumed she was planning to quit. He consulted with Guinther about Belk, and then decided to fire her. But Belk testified, and Electra's records showed, that Belk had a significant amount of sales activity in the first 19 days of May 2006. The jury could infer that Guinther and Goodman used Belk's absence as an excuse to get rid of an employee who was "a thorn in Lynda's side." (See *Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530 U.S. 133, 143-144.)

Jury Instructions

Electra contends the jury instruction on wrongful termination was erroneous as a matter of law because it did not correctly articulate a fundamental public policy. The trial court denied the motion for judgment notwithstanding the verdict on that ground because the parties had stipulated to the statement of public policy in the instruction.

The instruction given to the jury read: "As a further claim, the Plaintiff contends here, ladies and gentlemen, that she was discharged from employment for reasons that violate a public policy. To establish this claim, the plaintiff must prove the following elements of such a claim: [¶] [T]hat plaintiff was employed by the defendant; . . . that the defendant discharged the plaintiff; [and that] the plaintiff's complaints about not being given proper accounting for commissions or complaints about voluntary wage assignments from her paychecks were motivating reasons for her discharge; and, finally, that the discharge caused her harm."

The jury instruction was based on CACI no. 2430, which the parties jointly submitted. As originally submitted, the instruction referred to a claim by Belk that she was discharged for taking leave qualified under the Family Leave Act; that language was later deleted by the trial court because the claim was withdrawn at the demurrer stage of the case. Electra argues, without intelligible record support, that the trial court unilaterally changed the language in the instruction from "complaints about not being paid wages" to "complaints about not being given proper accounting for commissions." Electra then argues that because the trial court modified the instruction, its stipulation should no longer be in effect and it can challenge the instruction on appeal.

Electra fails to support its argument by citations to the record. The record shows the instruction was given without objection. In any event, the trial court found, and we have affirmed *ante*, that the instruction as given correctly stated a fundamental public policy.

Punitive Damages

Electra first contends there is insufficient evidence of malice and oppression to support an award of punitive damages. We disagree.

The jury was correctly instructed that it could find malice if it found that Electra "acted with intent to cause injury or that [its] conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another, . . . and deliberately failed to avoid those consequences"; it could find oppression if Electra's "conduct was despicable and subjected Carol Belk to cruel and unjust hardship in knowing disregard of her rights." The evidence supports findings that Belk called the office and was assured by both Castahna and Heather that everything would be taken care of, that Castahna and Heather told Guinther about the calls, that Guinther disregarded that knowledge and saw an opportunity to use Belk's absence as an excuse to get rid of her, and that Guinther and Goodman collaborated to fire her. These factual findings support a finding of despicable conduct done with a willful and knowing disregard of Belk's rights.

Both Electra and Belk complain about the amount of punitive damages by challenging the trial court's ruling on the new trial motion. Electra contends the court should have granted the motion for new trial unconditionally because the reduced amount of $80,000 is still excessive. Belk argues the evidence supports the original award of $225,000 and it was error to reduce the award.

Electra's claim that the reduced award of $80,000 is still excessive implicates federal due process standards. "The due process clause of the Fourteenth Amendment to the United States Constitution places constraints on state court awards of punitive damages. [Citations.] We recently explained the basis of these constraints: 'The imposition of "grossly excessive or arbitrary" awards is constitutionally prohibited, for due process entitles a tortfeasor to "'fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.'" [Citation.]' [Citation.]" (*Roby v. McKesson Corporation* (2009) 47 Cal.4th 686, 712.)

The United States Supreme Court has articulated three "guideposts" as an aid to appellate courts reviewing a claim of constitutionally excessive punitive damages: "(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 Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 418.) The reviewing court is charged with performing an independent assessment of the constitutionality of the award. (*Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1172.)

Among the three guideposts, the degree of reprehensibility is the most important. (*Simon v. San Paolo U.S. Holding Co., Inc., supra*, 35 Cal.4th at p. 1180.) The United States Supreme Court has provided guidance. "We have instructed courts to determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident." (*State Farm Mut. Auto. Ins. Co. v. Campbell, supra,* 538 U.S. at p. 419.)

Our independent review of the record reveals that Electra's conduct was reprehensible to some degree. It was deceitful in stating its reasons for terminating Belk and terminated her in willful disregard of her legitimate reasons for being absent from work. Belk was the sole support of herself and her chronically ill adult daughter and was rendered financially vulnerable by the sudden termination of employment. Also, there was evidence that Electra had a pattern of mistreating its employees by firing them without cause.

The ratio between the compensatory and punitive damages is the second constitutional guidepost. "Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than [higher] awards . . . . [¶] Nonetheless, because there are no rigid benchmarks that a punitive damages award may not surpass, ratios greater than those we have previously upheld may comport with due process where 'a particularly egregious act has resulted in only a small amount of economic damages.' [Citation.] The converse is also true, however. When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee. The precise award in any case, of course, must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff." (*State Farm Mut. Auto. Ins. Co. v. Campbell, supra,* 538 U.S. at p. 425.)

Belk's final compensatory award consisted of $70,000 in economic damages and $10,000 for emotional distress. Because emotional distress damages "may be based in part on indignation at the defendant's act," courts are wary of large compensatory awards that may contain this punitive element and thus duplicate the punitive damage award. (*Simon v. San Paolo U.S. Holding Co., Inc.*, *supra*, 35 Cal.4th at p. 1189.) Here, however, the compensatory award is relatively modest, and the emotional distress component is a small part of it. The punitive damages award is the same amount as the total compensatory award.

The third guidepost, a comparison between the punitive damage award and comparable civil penalties, has little or no application to our analysis. Belk prevailed on a common law cause of action, not one for a violation of statutory duties. Thus, the punitive damage award "do[es] not lend [itself] to a comparison with statutory penalties." (*Simon v. San Paolo U.S. Holding Co., Inc.*, *supra*, 35 Cal.4th at pp. 1183-1184.)

The punitive damages award here does not approach the limits of federal due process. Electra's conduct, while not egregious, was reprehensible. The compensatory damages award was modest and directly related to the harm actually suffered by Belk. And the punitive damages are in a one-to-one ratio with the compensatory damages. We are satisfied this is not an arbitrary award requiring our intervention. (See *Simon v. San Paolo U.S. Holding Co., Inc.*, *supra*, 35 Cal.4th at p. 1188.)

Belk contends the trial court erred in reducing the punitive damages award by granting a new trial conditioned on her acceptance of the reduced remittitur. We disagree.

"As a general rule, when a motion for new trial is granted on the ground of excessive damages, or where the trial court requires a reduction in the amount of damages as a condition of denying the motion, the order will not be reversed unless it plainly appears the court has abused its discretion, '"and the cases teach that when there is a material conflict of evidence regarding the extent of damage the imputation of such abuse is repelled, the same as if the ground of the order were insufficiency of the evidence to justify the verdict." [Citations.] The reason for this is that the trial court, in ruling on the motion, sits not in an appellate capacity but as an independent trier of fact. Thus, . . . section 662.5 of the Code of Civil Procedure, dealing with orders for a new trial conditioned on additur or remittitur, indicates that such orders shall be made unless the affected party consents to the addition or reduction "of so much [of the verdict] as the court in its *independent judgment determines from the evidence to be fair and reasonable*."' (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 933.) 'While the reviewing court must consider only those reasons for granting the motion stated by the trial court in its order, within those confines the question on appeal from an order conditionally granting a new trial on the basis of excessiveness of damages is simply "whether a verdict for an amount considerably less than that awarded [by the jury] would have had reasonable and substantial support in the evidence." [Citation.]' (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 379.)" (*Del'Oca v. Bank of New York Trust Co., N.A.* (2008) 159 Cal.App.4th 531, 547.)

The trial court found that the original award of $225,000 in punitive damages was excessive. Its order listed the following grounds: Electra did not cause or threaten physical harm to Belk; the evidence "that the defendant had perhaps treated other former employees in an abrupt and harsh manner cannot be used to measure compensation in this case"; the amount of punitive damages should be based on the defendant's net worth, not revenues; and "[n]othing in this case justifies an award of punitive damages of nearly three times the award of compensatory damages. A ratio of one-to-one is appropriate."

The trial court's first reason alone supports its decision to reduce the award. Electra's tortious conduct did not physically harm Belk, nor did it demonstrate a reckless disregard for the health of others. Under the Supreme Court's standard of deferential review, we cannot say the trial court, as an independent trier of fact who observed the demeanor of the witnesses, rendered an arbitrary or irrational decision in reducing the punitive damages award. (*Jones v. Citrus Motors Ontario, Inc.* (1973) 8 Cal.3d 706, 710.) Accordingly, we affirm the reduced award.

DISPOSITION

The judgment is affirmed. Belk is entitled to costs on appeal.

SILLS, P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.