

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KLARA IRENE MIRACLE,

Plaintiff and Respondent,

v.

JULIE MEHRBAN,

Defendant and Appellant.

B231732

(Los Angeles County
Super. Ct. No. SC103532)

APPEAL from a judgment of the Superior Court of Los Angeles County, Linda K. Lefkowitz, Judge. Affirmed.

Law Offices of Morse Mehrban and Morse Mehrban for Defendant and Appellant.

Leonard, Dicker & Schreiber and Kevin S. Dicker for Plaintiff and Respondent.

Julie Mehrban, represented by her husband, Morse Mehrban, filed a nuisance action against Klara Irene Miracle and several other professional dog walkers. The suit against Miracle was dismissed on the eve of trial. Miracle then sued the Mehrbans for malicious prosecution. Following a bench trial the court found against Julie¹ and awarded Miracle compensatory damages of \$8,456.73 and punitive damages of \$30,000. Julie appeals, challenging only the amount of the punitive damages award. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Nuisance Complaint and the Underlying Litigation

Miracle and other dog walkers frequently park their cars near the upper end of Casiano Road in Bel Air to exercise their dogs on a fire access road and a Santa Monica Nature Conservancy trail located nearby. The Mehrbans live at the end of Casiano Road. In her nuisance complaint filed in May 2007 (*Mehrban v. Behr*, L.A.S.C. No. SC093923), Julie, represented by Morse, alleged Miracle and several other dog walkers had permitted their dogs to defecate and urinate on the Mehrbans' property, to run onto the property and to bark loudly disturbing the Mehrbans' quiet enjoyment of their home. The complaint also alleged one of Miracle's dogs had jumped on the Mehrbans' young daughter. Julie sought an injunction prohibiting the dog walkers from parking on Casiano Road and monetary damages.

A number of months prior to the filing of the nuisance complaint, Miracle had found a letter on her parked car written on Morse's office letterhead and purportedly signed by him demanding all dog walking companies cease using Casiano Road and threatening the "high cost of litigation" if they did not do so. The letter also stated "every license plate number on every vehicle parked near the end of Casiano Road will be recorded and forwarded to the police for tracing." Miracle saw similar letters on the windshields of other cars parked at the end of Casiano Road.

¹ We refer to the Mehrbans by their first names for convenience and clarity. (See *Callahan v. Gibson, Dunn & Crutcher* (2011) 194 Cal.App.4th 557, 561, fn. 1.)

During discovery in the nuisance litigation it was revealed the Mehrbans had learned the identities and the addresses of the individuals named in the complaint, including Miracle's, through the use of attorney information request forms filed with the California Department of Motor Vehicles (DMV). The form, intended for the investigation of vehicle accidents, requires an attorney to describe the vehicle-related incident for which the information is sought and to declare under penalty of perjury that the information requested will be used only in relation to that incident and is necessary to represent a client in a criminal or civil action that directly involves the use of the vehicle.² The form submitted to obtain Miracle's residential information stated, "Driver ran over client's dog and continued driving." The forms used for the other individuals named as defendants in Julie's nuisance action also described hit-and-run accidents in which their cars were purportedly involved. All these sworn statements were false.

Julie's deposition was taken in the nuisance action in November 2007. She admitted she had never seen Miracle's dogs defecating on her property and did not know if it was Miracle's dogs who had run into her backyard or jumped on her daughter. In fact, Julie was unable even to identify Miracle. (When asked, Julie said a legal secretary attending the deposition was Miracle.)

Morse withdrew as counsel for his wife late in 2007. He claimed he had first learned of the false DMV forms during his own deposition in the nuisance action and withdrew immediately thereafter. However, Miracle was not dismissed from the litigation until June 30, 2008, shortly before the scheduled July 3, 2008 trial date and

² The DMV form, INF 1161E, may be used to obtain either vehicle/vessel registration or driver license/identification card records, must be completed by a state-bar-licensed attorney and must certify that it is being used solely for the purposes authorized by Vehicle Code section 1808.22, subdivision (d). The knowing use of any false representation to obtain this information is a misdemeanor. (Veh. Code, § 1808.22, subd. (e).) Pursuant to Vehicle Code section 1808.22, subdivision (d)(6), the owner of a vehicle is notified within 10 days that information concerning his or her vehicle has been requested.

more than seven months after Julie's deposition. Other defendants had been dismissed as the case progressed, and the entire action was finally dismissed on August 28, 2008.

2. The Malicious Prosecution Action

Miracle sued Julie and Morse for malicious prosecution on June 12, 2009. Both defendants were represented by Morse. In a bench trial in October 2010 the court heard testimony from seven witnesses, admitted a number of documents into evidence and took judicial notice of material from the file in the nuisance action, *Mehrban v. Behr*. After posttrial briefing and closing argument, the court ruled in favor of Miracle and against Julie on the single cause of action for malicious prosecution, but found Morse not liable, crediting his testimony that he had withdrawn from the underlying litigation as soon as he learned of the false DMV forms.

Initially, the court found the underlying nuisance action had terminated in Miracle's favor—the dismissal on the eve of trial reflected Julie's realization she could not prevail. In addition, the court concluded Julie had initiated the action without probable cause and with malice: Julie's testimony was credible only to the extent that there were individuals who parked cars on Casiano Road to walk their dogs on the nearby trails and some of those dogs may have engaged in nuisance-type activities. However, as Julie essentially conceded during her deposition in the underlying action, she was unable to attribute any specific activity to Miracle's dogs. Insofar as Julie attempted to contradict those admissions during her testimony in the malicious prosecution action, the court found she was not believable.

The court further concluded Julie was responsible in some manner for the false DMV forms and did not believe her testimony that she had been unaware of the use of those forms or that someone else in her husband's office, where Julie worked as a paralegal, must have prepared them. "In fact, Ms. Mehrban simply obtained four license plate numbers, then improperly obtained the names of the owners of the cars, and sued all four owners indiscriminately." The court also found "the use of perjured information that was carried forward by Ms. Mehrban with a willful and conscious disregard of

Ms. Miracle's rights" justified imposition of punitive damages under Civil Code section 3294.

The court awarded Miracle compensatory damages of \$8,456.73, the attorney fees she had been charged by her defense counsel. Fees charged by counsel retained by Miracle's insurance company after her original lawyers had tendered the defense were not recovered. The court then permitted additional discovery and received evidence, briefs and further argument on the amount of punitive damages.

3. Evidence and Argument Regarding Punitive Damages

Julie submitted a declaration regarding her net worth, asserting her liabilities exceeded her assets by nearly \$80,000. She stated she had slightly more than \$2,200 in her personal checking and personal savings accounts and \$100 in a business checking account. She estimated her jewelry was worth only between \$500 and \$1,000 and her clothing and other personal items no more than \$1,000. Her monthly income was listed as \$3,000 (received for her work as a paralegal at her husband's law firm); her monthly living expenses approximately \$2,000. She declared she owed \$21,676 for website development, marketing and other business-related expenses, \$3,500 or more in credit card bills, and \$59,350 in the form of 50 monthly payments for her current automobile lease (a 2011 Mercedes GL550 SUV).³ Julie also testified she and Morse had signed a prenuptial agreement before their marriage in 2003 that provided each spouse would retain as his or her separate property all assets, interest and income acquired prior to and during the marriage.

At her deposition on January 20, 2011, portions of which were submitted to the court with Miracle's brief regarding financial issues, Julie identified credit card bills in her name totaling more than \$105,000 for calendar year 2010, which, for the most part, had been paid in full. Julie acknowledged that Morse paid a substantial portion of these

³ The lease is dated November 20, 2010—during the interval between the trials on liability and punitive damages and two weeks before Julie filed her declaration of net worth.

bills, at least in part in lieu of salary for her work as a paralegal in his office. Morse also made the Mercedes lease payments.⁴ Julie testified she and Morse purchased the Casiano Road home around the time of their marriage (according to a deposition exhibit for \$779,000) and, although she may have been on the title at one point, the property was subsequently transferred to a family limited partnership in which she holds no interest. Julie did not produce any documents relating to these real property transactions in response to Miracle's demand, asserting she had been unable to locate any.

Miracle argued to the court that the prenuptial agreement was a sham and unenforceable as a fraudulent transfer and insisted the Mehrbans essentially ignored it in reality, with Morse's income being used to pay the bulk of all family expenses, including both joint expenses and Julie's personal expenses. Morse, on the other hand, argued his payments on Julie's behalf were gifts and not appropriately considered when evaluating her income or net worth for purposes of an award of punitive damages.

4. The Court's Punitive Damages Ruling

Following counsel's presentations at a hearing on January 28, 2012, the court imposed punitive damages of \$30,000 against Julie. Although the court did not expressly rule the premarital agreement was unenforceable, as Miracle had requested, in its Statement of Decision, filed February 1, 2012, the court explained, "It is clear that to the extent [Morse] has 'gifted' his spouse, these 'gifts' are so continuous, and so supportive of her generally, that this court does not find the claim of separateness credible for purposes of assessing the reasonableness of punitive damages in this case. This is a defendant who consistently throughout the marriage has had an expectation of support by her spouse, an expectation which has consistently been honored. Her claim that she supports herself with \$28,000 per year is wholly lacking in credibility." The court concluded that \$30,000 in punitive damages was a sum "wholly reasonable when

⁴ Julie testified Morse paid her credit card bills "approximately half the time," although she was unable to explain how she paid the remaining card balances with her limited income.

measured against the compensatory damages and reasonably related to her actual income and ability to pay.”

The February 1, 2011 minute order directed Miracle to prepare the judgment. Julie filed a notice of appeal on March 15, 2011. The final judgment in favor of Miracle as to Julie and in favor of Morse was filed April 26, 2011 (apparently after an additional hearing on cost issues).⁵ Pursuant to California Rules of Court, rule 8.104(d), we treat Julie’s premature notice of appeal “as filed immediately after entry of judgment.”

DISCUSSION

1. *Standard of Review*

Generally, punitive damages awards are reviewed under the deferential substantial evidence standard of review “in which all presumptions favor the trial court’s findings and we view the record in the light most favorable to the judgment.” (*Kelly v. Haag* (2006) 145 Cal.App.4th 910, 916; accord, *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 535.) We are also “guided by the ‘historically honored standard of reversing as excessive only those judgments which the entire record, when viewed most favorably to the judgment, indicates were rendered as the result of passion and prejudice.’” (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 927 (*Neal*).) Stated somewhat differently, “[a]n appellate court may reverse an award of punitive damages only if the award appears excessive as a matter of law or is so grossly disproportionate to the ability to pay as to raise a presumption that it was the result of passion or prejudice.” (*Behr*, at p. 535.)

2. *The Award of Punitive Damages Is Supported by the Record*

Julie does not challenge the trial court’s finding that Miracle was entitled to an award of punitive damages or argue the evidence was insufficient to establish the requisite oppression, fraud or malice. And, although the due process clause of the Fourteenth Amendment to the United States Constitution places constraints on state court

⁵ Morse apparently filed a separate judgment covering only Miracle’s claim against him on April 1, 2011. Neither party provided this court with a copy of either the April 1 or April 26, 2011 judgment.

awards of punitive damages (see, e.g., *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 712; *State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, 416-418 [123 S. Ct. 1513, 155 L. Ed. 2d 585]),⁶ Julie does not contend those limits were exceeded in this case. Rather, she argues only that the \$30,000 punitive damages award is disproportionate to her ability to pay as measured by the evidence of her financial condition introduced in the trial court, specifically the fact that at the time of trial her liabilities exceeded her assets by almost \$80,000 and her annual income was approximately \$36,000.

In *Adams v. Murakami* (1991) 54 Cal.3d 105 (*Adams*), the case upon which Julie principally relies, the California Supreme Court explained, “[b]ecause the quintessence of punitive damages is to deter future misconduct by the defendant, the key question before the reviewing court is whether the amount of damages ‘exceeds the level necessary to properly punish and deter.’” (*Id.* at p. 110, quoting *Neal, supra*, 21 Cal.3d at p. 928.) That question, the Court reasoned, cannot be answered in the abstract: “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

⁶

In *State Farm Mut. Automobile Ins. Co. v. Campbell, supra*, 538 U.S. at page 418, the United States Supreme Court articulated “three guideposts” for courts reviewing whether an award of punitive damages satisfies constitutional limits: “(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.”

Of the three guideposts, “the most important is the degree of reprehensibility of the defendant’s conduct.” (*Roby v. McKesson Corp., supra*, 47 Cal.4th at p. 713.) Here, in addition to the fact Julie had initiated and maintained the nuisance action without probable cause, the trial court found particularly troubling Julie’s involvement with the false DMV form because she was on notice of the perjured nature of the document no later than when her husband withdrew from the case (even assuming she was not its author), as well as because Julie herself had recently completed law school and passed the bar and should be familiar with the ethical (and legal) responsibilities of attorneys and their support staff.

condition.” (*Adams*, at p. 110.) Even if, as here, a punitive damages award is entirely reasonable in light of the nature of the defendant’s misconduct and the 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*.” (*Id.* at p. 111.) Thus, the Court held, evidence of the defendant’s financial condition is a prerequisite to a punitive damages award; and the burden of producing that evidence is properly placed on the plaintiff. (*Id.* at p. 119.)⁷

Contrary to Julie’s argument, however, a defendant’s net worth, although a common measure, is not the only meaningful evidence of a defendant’s financial condition or the exclusive means by which the ability to pay a punitive damages award may be determined. Indeed, the Supreme Court in *Adams*, *supra*, 54 Cal.3d 105, “decline[d] . . . to prescribe any rigid standard for measuring a defendant’s ability to pay.” (*Id.* at p. 116, fn. 7 [“[w]e cannot conclude on the record before us that any particular measure of ability to pay is superior to all others or that a single standard is appropriate in all cases”]; accord, *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 74 [“there is no legal requirement that punitive damages must be measured against a defendant’s net worth”]; *Green v. Laibco, LLC* (2011) 192 Cal.App.4th 441, 452 [quoting *Adams*]; see *Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 621, 624-625 [evidence that defendant was “a wealthy man, with prospects to gain more wealth in the future”]; *Zaxis Wireless Communications, Inc. v. Motor Sound Corp.* (2001) 89 Cal.App.4th 577, 582-583 [“[n]et worth is too easily subject to manipulation to be the sole standard for measuring a defendant’s ability to pay”]; *Lara v. Cadag* (1993) 13 Cal.App.4th 1061, 1065, fn. 3 [net worth is “subject to easy manipulation”].) In the

⁷ The Supreme Court imposed this burden on the plaintiff based on Evidence Code section 500, which generally places the burden of proving a fact necessary to establish a claim for relief on the party asserting the claim, as well as on considerations of fundamental fairness. (*Adams*, *supra*, 54 Cal.3d at pp. 119-123 [explaining, in part, “[a] defendant should not be required to justify the amount of the award he or she is seeking to avoid”].)

end, “[w]hat is required is evidence of the defendant’s ability to pay the damage award.” (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 680.)

The record in this case is replete with information regarding Julie’s financial condition and her ability to pay a punitive damages award. Julie herself presented data purporting to establish her net worth, as well as her current income. Miracle, in turn, introduced evidence challenging the validity of the Mehrbans’ premarital agreement and the purported separateness of Morse’s income and assets and demonstrating that, as a practical matter, Julie’s actual wealth and ability to pay, whether for personal expenses or a damages award, far exceeded her claims of limited income and negative net worth. The trial court, considering this evidence and once again discounting Julie’s credibility, concluded an award of \$30,000 constituted appropriate punishment and deterrence without threatening to cripple or destroy her. (See *Adams, supra*, 54 Cal.3d at p. 112 [“[T]he purpose of punitive damages is not served by financially destroying a defendant. The purpose is to deter, not to destroy.”].)

We, of course, do not second-guess the court’s credibility determinations or reweigh the evidence. (See *Washington Mutual Bank v. Blechman* (2007) 157 Cal.App.4th 662, 670.) As accepted by the court, the financial information presented was more than sufficient to establish Julie’s ability to pay the \$30,000 punitive damages award.

DISPOSITION

The judgment is affirmed. Miracle is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.