

1994 WL 443679

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United States District Court, N.D. California.

Nina GELFANT, Plaintiff,
v.
Bernard RILEY, et al., Defendants.

No. CV 91-1384 BAC(AWT).
|
July 27, 1994.

ORDER ON MOTION FOR
RELIEF FROM JUDGMENT

TASHIMA, District Judge.

*1 This is plaintiff's motion under [F.R.Civ.P. 60\(b\)](#) for relief from the order of November 10, 1993 (Order), in which Judge Caulfield vacated an award of punitive damages against defendant Riley. Because both the Order and the underlying judgment are on appeal, this court has no jurisdiction to act on a [Rule 60\(b\)](#) motion. However, under well-established Circuit precedent, the court may indicate whether or not would act favorably on such a motion, if the case were remanded to it by the Court of Appeals.

Plaintiff was awarded \$572,309 in compensatory damages against Riley and the City of Oakland. She was also awarded \$250,000 in punitive damages against Riley only. Although plaintiff brought both a claim under [42 U.S.C. § 1983](#) and supplemental state law claims, it is clear from Judge Caulfield's Memorandum Opinion (Opinion), filed May 19, 1993, that all compensatory damages were awarded under state law.¹ Thus, although in its very brief reference to punitive damages, the Opinion, at 19, states: "Officer Bernard Riley acted with reckless and callous disregard and indifference to Ms. Gelfant's constitutional rights, and Ms. Gelfant is entitled to recover punitive damages from him in the amount of \$250,000," the only basis of liability on which to predicate an award of punitive damages is under state law.

Moreover, as the Order recognizes, plaintiff never requested punitive damages with respect to her federal claims. This distinction is important because there is

no requirement under federal law that a plaintiff must show a defendant's financial condition as a prerequisite to the recovery of punitive damages under [§ 1983](#). Thus, the court cannot merely reinstate the award of punitive damages as having been, as plaintiff seems to contend, erroneously vacated under federal law. Under this record, the award of punitive damages cannot stand as having been awarded under federal law.

With respect to California state law requirement, plaintiff concedes that she is required show defendant's financial condition. *Adams v. Murakami*, 54 Cal.3d 105, 110-11 (1991). Thus, she now asks, under [Rule 60\(b\)](#), that the proceedings be reopened for the limited purpose of receiving evidence of defendant's financial condition. While opposing the motion, defendant contends that if the proceedings are reopened on the issue of defendant' net worth, other aspects of the amount of punitive damages should be reopened as well.²

A [Rule 60\(b\)](#) motion made while the case is on appeal is, to some extent, addressed to the discretion of the trial court. Here, because of the unique circumstances involved, the court exercises its discretion to deny the motion. Judge Caulfield, who heard the case as the finder of fact and made very careful and detailed findings, has indicated her intention to resign from the bench, effective at the end of July, 1994. Thus, it is virtually impossible to reopen the case for limited proceedings. Such a limited reopening assumes that the judge presiding over the reopened proceedings is fully familiar with the record. After all, the purpose of the *Murakami* requirement is to make evidence of financial worth available to the trier of fact so that she can tailor the amount of any award of punitive damages appropriately. A judge who did not preside over the bench trial, when all of the evidence relevant to assessing the amount of punitive damages, except financial worth, was received is hardly in a position to preside over a limited reopening of the case and then carefully exercise his discretion to award a proper amount of punitive damages in the light of the full trial record.³

*2 Finally, as the above discussion indicates, the only way to remedy the oversight of plaintiff's counsel in not introducing any evidence of Riley's financial condition would be to grant plaintiff a new trial as to the amount of punitive damages. If, however captioned, this is in substance a motion for a new trial,⁴ then it is untimely.

The rule requires that “A motion for a new trial shall be served not later than 10 days after the entry of the judgment.” [F.R.Civ.P. 59\(b\)](#). That date would have been 10 days after the entry of the Order. For this additional reason, the motion must be denied.

Thus, if it had jurisdiction to hear plaintiff’s [Rule 60\(b\)](#) motion, the court would not act favorably on it. To the extent the court does have jurisdiction over the motion, the motion is DENIED.

IT IS SO ORDERED.

¹ The Opinion, at 14–16, refers only to state law and state law claims, *i.e.*, battery, false imprisonment, assault, emotional distress and rape from misuse of official authority. There is no finding that any federal right of plaintiff was violated. Further, the only basis on which the City of Oakland was held liable was

under state law which, unlike [§ 1983](#), recognizes the *respondeat superior* liability of municipalities.

² These pertain to the due process issues raised by [Pacific Mut. Life Ins. Co. v. Haslip](#), 499 U.S. 1 (1991).

³ It is unclear whether [F.R.Civ.P. 63](#) applies to a case in which the judge has resigned after the entry of judgment. Assuming it does, it is clear that extensive proceedings before the new judge would be required.

⁴ The motion seeks to “reopen proof” to take evidence on punitive damages. This is exactly the kind of limited new trial contemplated by [Rule 59](#). In a bench trial, “the court may open the judgment if one has been entered, take additional testimony, amend findings of fact ... and direct the entry of a new judgment.” [F.R.Civ.P. 59\(a\)](#).

All Citations

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