

JOSHUA SMITH

v.

PAUL D. TRACY

Submitted on Briefs January 31, 2013

Decided February 5, 2013

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Paul D. Tracy appeals from a judgment entered in the Superior Court (Franklin County, *Murphy, J.*) awarding Joshua Smith \$3 million in compensatory damages on Smith's claims of assault and battery, intentional infliction of emotional distress, and invasion of privacy, and \$7 million in punitive damages. Tracy argues that the damages the court awarded were speculative, and that the punitive damages were excessive and should not have been awarded because there was no evidence of his financial status and he had already been punished criminally for the same conduct.

Contrary to Tracy's contentions, there was competent support in the record for the court's award of compensatory damages. *See Estate of Hoch v. Stifel*, 2011 ME 24, ¶ 43, 16 A.3d 137 (noting review of compensatory damages is "highly deferential"). Moreover, the punitive damages awarded were not so excessive as to constitute an abuse of discretion. *See id.* ¶ 54 (setting forth relevant analysis). While a defendant's financial situation is a potential mitigating factor in calculating punitive damages, a plaintiff is not required to present evidence of the defendant's finances. *Id.* ¶¶ 53, 55, 61. Finally, the fact that a defendant has been punished criminally is also a potential mitigating factor, but is not determinative. *Hanover Ins. Co. v. Hayward*, 464 A.2d 156, 159 (Me. 1983) ("[T]he fact finder

may consider whether criminal liability has been imposed *as one factor* in determining whether an award of punitive damages would serve a meaningful deterrent function.” (emphasis added)).

We find no merit in Tracy’s remaining arguments, and therefore do not discuss them further.

The entry is:

Judgment affirmed.

On the briefs:

Paul Tracy, appellant pro se

David M. Sanders, Esq., Livermore Falls, for appellee Joshua Smith