

STATE OF MICHIGAN
COURT OF APPEALS

KATHY PINSON and DONALD PINSON,

Plaintiffs-Appellees,

v

RANDY CIGAN,

Defendant-Appellant.

UNPUBLISHED

May 8, 1998

No. 184923

Wayne Circuit Court

LC No. 93-306655 NZ

Before: Neff, P.J., and White and D. A. Teeple,* JJ.

MEMORANDUM.

In this personal injury action arising from a battery, defendant appeals as of right from the entry of a judgment in favor of plaintiffs awarding \$20,000 in actual damages and \$20,000 in exemplary damages. We affirm.

Defendant argues that he is entitled to a new trial on the issue of damages because an erroneous jury instruction resulted in the jury doubly compensating plaintiff for her mental distress damages. Defendant has not preserved this issue for appellate review by advancing a timely objection to the instructions given. *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). Our review of the record does not persuade us that manifest injustice occurred in this case. *Id.* Because the jury was instructed in this case that exemplary damages compensated feelings of humiliation, outrage and indignity resulting from voluntary acts of a malicious or willful and wanton character which demonstrate a reckless disregard of plaintiff's rights, the jury, if it deliberated as instructed, did not consider the same mental distress components when determining actual and exemplary damages. *White v City of Vassar*, 157 Mich App 282, 292; 403 NW2d 124 (1987).

Defendant also argues that he is entitled to a remittitur. This issue is likewise unpreserved for appellate review. *McFadden v Tate*, 350 Mich 84, 91; 85 NW2d 181 (1957). In any event, the argument lacks merit in light of our resolution of defendant's first appellate issue.

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Janet T. Neff

/s/ Helene N. White

/s/ Donald A. Teeple