

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN B. MICHLIN and LASERLAND,

Plaintiffs-Appellants,

v

PATRICIA BLOVET,

Defendant-Appellee.

UNPUBLISHED

April 27, 2001

No. 210861

Oakland Circuit Court

LC No. 97-536699-NO

AFTER REMAND

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Plaintiffs Steven B. Michlin and Laserland appeal as of right a default judgment for zero damages against defendant Patricia Blovet in this defamation action. While retaining jurisdiction, we remanded this case to the trial court so it could clarify why it denied plaintiffs damages. We now must determine whether the trial court's decision to deny damages was error requiring reversal in light of its written explanation of its earlier decision. We reverse and remand.

I. Facts And Procedure

We set forth the facts of this case in our opinion before remand, *Michlin v Blovet*, unpublished opinion per curium of the Court of Appeals, issued June 13, 2000 (Docket No. 210861):

Blovet reported to police that Michlin, her employer, had touched her in an inappropriate, sexual manner. The prosecutor charged Michlin with fourth-degree criminal sexual conduct and he pleaded nolo contendere to that charge. Blovet then filed a sexual harassment suit against Michlin. When the parties settled the sexual harassment suit, they entered into a consent judgment for \$5,500 to be held in escrow pending the outcome of this defamation action against Blovet.

Plaintiffs, in this defamation action, claimed that Blovet fabricated her allegations regarding Michlin's sexual contact and sexual harassment. Plaintiffs specifically alleged that Blovet maliciously "communicated to third parties false statements that Plaintiff Michlin had, in essence, stalked Defendant, intimidated her, created a hostile environment, [and] engaged in a campaign of sexual

harassment of her” Michlin claimed damages for mental distress, humiliation, degradation and interference with his family relationships. Laserland sought damages for business it allegedly lost.

After Blovet failed to answer plaintiffs’ complaint, the trial court entered a default and denied the motion to set aside the default. Plaintiffs moved for a default judgment and, on January 21, 1998, the trial court held a hearing on that motion. Although Blovet was present at the hearing and, after a fashion, participated in it, she was not represented by counsel. Michlin testified that Blovet’s accusations caused him to suffer humiliation, degradation and emotional distress, and that the accusations also interfered with his family relationships.

According to Michlin, he spent over \$50,000 defending the criminal and civil cases. Michlin presented copies of canceled checks, which he alleged represented costs expended since the cases began. He itemized the costs, placing them in the following categories: \$1,800 in psychological counseling; \$1,122 in unspecified fees for the criminal case; \$476 in copying fees; \$42,395 in attorney fees for his defense in the criminal and civil cases; and \$1,200 “expenses for meetings in restaurants.” Michlin claimed that he spent in excess of \$100 for private investigation and expert evaluations of some of Blovet’s evidence in the prior cases. Michlin also sought \$100 a day for the 600 days he claimed that he was emotionally distressed because of Blovet’s alleged lies. Laserland claimed that it suffered \$200,000 in damages because, Michlin explained, Laserland’s gross income decreased from \$800,000 a year to about \$600,000 a year after Blovet accused him of sexual improprieties. At the conclusion of the hearing, the trial court took the matter under advisement.

On February 24, 1998, the trial court entered a default judgment, which stated in pertinent part:

Plaintiffs are entitled to damages in the amount of -\$0- for the reason that Plaintiff, STEVEN B. MICHLIN, did not prove that he suffered any damages where he pled nolo contendere to Criminal Sexual Conduct charges in a related case where Defendant BLOVET was the complainant, and where he entered into a Consent Judgment for \$5500 in a related case brought by Defendant BLOVET.^[1]

On remand, the trial court issued a written explanation of its decision to award zero damages. The trial court first clarified that it only considered the issue of damages, recognizing that the default judgment resolved the issue of liability. The trial court also explained that it did not conclude that the settlement or nolo contendere plea prohibited Michlin from seeking damages. Instead, the trial court indicated that it found the settlement “relevant” and that it “took

¹ Footnotes omitted.

the plea into consideration.” However, the trial court did not explain specifically how the settlement was relevant nor what effect the plea had on the trial court’s finding of zero damages. Finally, the trial court said, without further explanation, that it believed Michlin’s testimony lacked credibility and that his evidence regarding damages was weak.

II. Standard of Review

This Court reviews a trial court’s award of damages for clear error.² We will only reverse the trial court’s award in this case when “a review of the whole record leaves the Court with a definite and firm conviction that a mistake has been made.”³

III. Damages

When the trial court entered the default against Blovet, it completely resolved the issue of liability in this case.⁴ As the trial court acknowledged on remand, it had no choice but to conclude that Blovet was liable to plaintiffs.⁵ In other words, the only issue remaining for the trial court to consider was the *amount* of plaintiffs’ damages, not whether they were entitled to damages.⁶

To sustain their burden, plaintiffs had to prove with reasonable certainty that they had suffered damages.⁷ It should go without saying that the trial court had to consider the evidence of damages that they presented.⁸ We are inclined to agree with the trial court’s conclusion that plaintiffs’ evidence that they sustained damages from emotional distress and lost profits was weak because it depended on Michlin’s dubious credibility. Yet, we cannot ignore the objective evidence of the damages plaintiffs sustained as a direct result of the charges and the lawsuit Blovet filed. For instance, Michlin presented copies of canceled checks for attorney fees, copying costs, counseling, “expenses for meeting in restaurants,” and unspecified fees from the criminal case. These expenses totaled more than \$50,000, including \$42,395 in attorney fees.

To be clear, the trial court did not have to accept Michlin’s representations that *all* these expenses should be reflected in an award for damages because the question of the amount of damages was still open for the trial court to decide. There are any number of factors, such as the reasonableness of the attorney fees and other expenses, that could influence the amount of the award and make it far less than the amount plaintiffs requested. However, if the trial court found factors that justified awarding absolutely no damages, it did not articulate them on the record and they are not plain to us. Thus, although reluctant to reach this conclusion, we are left with a

² *Meek v Dep’t of Transportation*, 240 Mich App 105, 121; 610 NW2d 250 (2000).

³ *Peterson v Dep’t of Transportation*, 154 Mich App 790, 799-800; 399 NW2d 414 (1986).

⁴ *Wood v DAIIE*, 413 Mich 573, 578; 321 NW2d 653 (1982).

⁵ *Id.*

⁶ *Id.*

⁷ *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997).

⁸ See, generally, *Dragoo v Dragoo*, 223 Mich App 415, 426, n 2; 566 NW2d 642 (1997).

definite and firm conviction that the trial court erred when refused to award Michlin any damages whatsoever.

We can understand why the trial court, perhaps, felt sympathy for Blovet. She lost her chance to defend herself because she could not afford to an attorney and, as a lay person, she did not know how to answer the complaint. Even still, the trial court may have legitimately doubted that plaintiffs could ever prove their claims against her based on its understanding of the evidence in the harassment case. These concerns were irrelevant, however, because the default judgment resolved the issue of liability. This need for an experienced legal advocate became only stronger during the evidentiary hearing on the damages question because Blovet did not know enough about the rules of evidence to object to plaintiffs' counsel patently leading examination of Michlin. Nevertheless, while the trial court would have had good reason to be reluctant to award damages to Michlin, the reasons it expressed on the record to justify the award were not adequate to sustain its decision not to award any damages.

Reversed and remanded for proceedings consistent with this opinion. On remand, the trial court must conduct an evidentiary hearing and weigh all of the evidence to determine Michlin's damages. We express no opinion on the proper amount of damages. We do not retain jurisdiction.

/s/ Harold Hood

/s/ William C. Whitbeck