IN THE

SUPREME COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CHRISTINE E. SANTOS, personally and as Guardian Ad Litem for CARLOS E. SANTOS, a Male Minor Child

Plaintiffs/Appellees,

v.

STS ENTERPRISES, INC., and JOSEPH ANTHONY RASA,

Defendants/Appellants.

Supreme Court Appeal No. 03-006-GA

Superior Court Civil Case No. 99-0398CV

OPINION

Cite as: *Santos v. STS Enters., Inc.*, 2005 MP 4

Argued and submitted on February 6, 2004
Saipan, Northern Mariana Islands
Decided on March 8, 2005

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BEFORE: ALEXANDRO C. CASTRO, *Associate Justice*; JOHN A. MANGLONA, *Associate Justice*; PEDRO M. ATALIG[1], *Justice Pro Tempore*

MANGLONA, Associate Justice:

¶1 STS Enterprises, Inc. and Joseph Anthony Rasa appeal from the trial court's final judgment awarding Christine E. Santos, personally and as *guardian ad litem* for Carlos E. Santos, economic damages, non-economic damages, and punitive damages.

¶2 We find no abuse of discretion in the trial court's admission of Rasa's testimony that he tested positive for marijuana the day after the accident and no error in the court's decision allowing the issue of punitive damages to go to the jury. We further find that the amount of punitive damages awarded by the jury was not excessive under the circumstances. Accordingly, the trial court's judgment is AFFIRMED.

I.

¶3 On July 16, 1998, a tour bus owned by STS Enterprises, Inc. ("STS") and driven by Joseph Anthony Rasa ("Rasa") rear-ended a van driven by Christine E. Santos ("Santos"). Santos' son, Carlos, was a passenger in the van.

¶4 On July 9, 1999, Santos personally and as *guardian ad litem* for Carlos E. Santos ("Carlos") filed an action against STS and Rasa, seeking recovery for personal injuries sustained in the motor vehicle accident. The jury trial commenced on July 2, 2002. During trial, STS and Rasa moved for a directed verdict on the issue of allowing punitive damages to go to the jury. The lower court denied the motion, and the punitive damages issue went to the jury.

¶5 At trial, Rasa testified that he was traveling within the speed limit when he glanced at his

[1] In the early morning hours of Wednesday, February 16, 2005, sitting Justice *Pro Tempore*, Pedro M. Atalig, passed away. Justice *Pro Tempore* Atalig sat for the oral arguments and actively participated in each phase of the decision-making process. Importantly, Justice *Pro Tempore* Atalig also attended the last post-hearing conference, held three weeks prior to his untimely death, where the final decisions pertaining to the issues of this case were finalized.

side mirror and then looked back at the road ahead and saw that the traffic light had turned red. He then applied the brakes and skidded into Santos' vehicle, which had stopped for the red light. Rasa did not receive a citation at the accident scene, although the responding police officer noted that he was following too closely to the van. Immediately following the accident, STS provided Rasa with another bus and instructed him to complete his daily route.

¶6 Rasa admitted at trial that prior to the accident he used to smoke marijuana twice a week.[2] He testified, however, that he never smoked marijuana on the job. He also testified that he had not smoked marijuana for over two weeks prior to the accident and was not under the influence of marijuana at the time of the accident.[3]

¶7 The day after the accident, Rasa underwent a drug test. Santos attempted to introduce Rasa's lab report indicating a positive test for THC.[4] Rasa's counsel successfully objected to the admission of this document on foundational and hearsay grounds. Although the trial court judge sustained counsel's objections and ruled the lab report inadmissible, he had previously allowed opposing counsel to elicit testimony from Rasa that the inadmissible document showed he had tested positive for THC.

¶8 Rasa further testified that STS planned on implementing a drug-testing program, but was not actively testing at the time of the accident. In addition, he testified that his supervisors had knowledge of his drug use because he had previously approached the company with requests for assistance with his marijuana addiction. Furthermore, Rasa stated that he had smoked marijuana with

[2] On direct examination, however, when asked how often he smoked marijuana, Rasa initially replied, "Twice a day." When asked again by Plaintiff's counsel, Rasa changed his testimony to twice a week. Appellees' Opening Br. at 14.

[3] Rasa testified that he last smoked marijuana on July 1, 1998.

[4] THC is the abbreviation used for tetrahydrocannabinol, the primary active ingredient present in marijuana.

at least one of his immediate supervisors at STS.[5] STS's handbook contained the company's drug policy, including the right of the company to conduct drug tests. Another STS employee, Dolores T. Sablan, stated that STS had not fully implemented its drug testing policy, in part because the CNMI Division of Public Health had failed to assist STS in the requisite training.

¶9 Rasa also testified that: (1) before hiring him, STS never inquired whether he had been involved in any prior traffic accidents or had received any traffic citations; (2) he had notified STS that the speedometer on his bus was defective and STS had not repaired it; (3) he had received minimal training on how to safely drive and operate his assigned bus; (4) prior to the July 11, 2002 accident, he had been involved in two additional work-related collisions[6] and had received multiple speeding citations; and (5) STS had never taken a disciplinary action or reprimanded him in any way.

¶10 Plaintiffs' expert witness, Dr. Anthony Stearns, testified that Rasa was a chronic marijuana user and stated that THC can remain in the body of a chronic marijuana user for weeks. Dr. Stearns also testified that both Santos and Carlos suffered from whiplash as a direct result of the accident. He stated that Carlos would suffer long-term physical consequences from the neck injury sustained in the accident.

¶11 At the close of evidence, counsel moved for judgment as a matter of law. The trial court denied this motion, and on July 9, 2002, the jury trial concluded. The jury subsequently found Defendants negligent, and on July 11, 2002, the trial court issued a Judgment representing the jury's award of economic damages in the amount of $5,577.17 and non-economic damages in the amount

[5] Rasa testified that he had smoked marijuana with Emilio Manahane, who was one of his supervisors at STS. Rasa's testimony indicates the drug use did not take place during working hours or on STS property.

[6] Prior to July 16, 1998, Rasa's driving record at STS included two accidents and at least one speeding violation. The first accident occurred in front of the Saipan Grand Hotel while allegedly traveling only two miles per hour, and the second accident occurred at the Saipan International Airport while airport police were guiding him. Appellees Opening Br. at 14-15.

of $50,000 to Christine E. Santos; non-economic damages in the amount of $100,000 to Carlos E. Santos; punitive damages against STS in the amount of $200,000; and punitive damages against Rasa in the amount of $25,000.

¶12 On July 25, 2002, Defendants filed a motion for renewed judgment as a matter of law or, alternatively, for a new trial and remittitur pursuant to Rules 50 and 59 of the Commonwealth Rules of Civil Procedure. On December 12, 2002, the trial court issued an *Order Granting In Part And Denying In Part Defendant's Renewed Motion For Judgment As A Matter Of Law Or Alternatively For New Trial Or Remittitur*, which granted judgment as a matter of law in favor of Defendants regarding the bystander theory of negligent infliction of emotional distress. As a result, Defendants' motion for a new trial was conditionally denied subject to Plaintiffs' acceptance of a reduced non-economic damages award for Santos in the amount of $25,000.[7] On January 10, 2003, Defendants filed a timely appeal.

II.

¶13 We have jurisdiction over this appeal pursuant to Article IV, section 3 of the Northern Mariana Islands Constitution and Title 1, section 3102(a) of the Commonwealth Code.

III.

¶14 STS and Rasa raise three issues on appeal. First, they contend it was a reversible error for the trial court to allow Rasa to testify in front of the jury that he had tested positive for THC the day after the accident because the source of this information was a lab report that was ruled inadmissible. Second, they assert that the trial court erred when it allowed the issue of punitive damages to go to the jury because there was insufficient evidence to support the awards and there was no causal connection between Rasa's marijuana use and the accident. Third, they argue the punitive damages

[7] Santos accepted the remittitur. If Santos refused to accept the remittitur, the trial judge would have ordered a new trial limited to the issue of Christine Santos's non-economic damages absent evidence and instruction on the bystander emotional distress claim.

awarded by the jury were excessive.

A. Rasa's Testimony

¶15 We review trial court decisions excluding or admitting evidence for abuse of discretion. *Norita v. Norita*, 4 N.M.I. 381, 383 (1996). The decision to admit or exclude evidence is within the sound discretion of the trial court. An appellant has the burden of showing that the trial court clearly abused its discretion. *Pellegrino v. Commonwealth*, 1999 MP 10 ¶10 (*citing Pangelinan v. Unknown Heirs of Mangarero*, 1 N.M.I. 387, 393 (1990)).

¶16 Santos attempted to admit into evidence the lab report obtained by Rasa from Diagnostic Laboratory Services, Inc., which indicated a positive test result for THC. The trial court refused to admit this document into evidence based on hearsay and relevancy grounds and because Rasa had previously testified that he tested positive for THC the day after the accident.[8] STS and Rasa contend

[8] The relevant trial testimony follows:

Mr. Borja:	Your Honor, I'd like to have marked as Plaintiff's Exhibit 10 a document entitled Laboratory Report, Diagnostic Laboratory Services, Inc…. Patient Information has Joseph A. Rasa and I ask the witness to please look at the document. Have you seen that document before, Mr. Rasa?
Rasa:	Ah yes.
Mr. Borja:	Is it fair to say that that's the result of your drug test the next day?
Mr. Cushnie:	Objection, Your Honor! There is no basis for this question to be answered by this witness. He has no knowledge, and I'll take him on *voir doir* with respect to this matter, as to the foundation for this piece of paper, Plaintiff's 10? Nor is there any authentication of the contents. Obviously the focus….
The Court:	The objection is for lack of foundation?
Mr. Cushnie:	Yes, Your Honor, as well as authentication.
Mr. Borja:	Your Honor, May I?
The Court:	Yes.
Mr. Borja:	He has already testified that he went to the hospital the next day to get a drug test. I have now shown him a document and he says that that's the result of that drug test. He received it.
Mr. Cushnie:	He doesn't know whether this is the test.
The Court:	But we have his testimony.
Mr. Borja:	Yes.
The Court:	As to the results of the test?
Mr. Borja:	Yes, Your Honor.
The Court:	What…How?
Mr. Borja:	But I…this is his document, he asked for it.
The Court:	I mean why is the document even necessary?
Mr. Borja:	Well, I just wanted to include it.
The Court:	I think the testimony….
Mr. Borja:	So that the jury can look at it.
The Court:	Cause [sic] it does…it is ah…I do have some hearsay problems with the document, but he can testify as to the results, which he did. He testified the results were positive for THC, so I don't…I don't see any relevancy in pursuing this.

that admitting Rasa's testimony that he tested positive for THC the day after the accident, which was based on the inadmissible lab report, was a reversible error because, based on this testimony, the jury was given the impression that he was under the influence of THC at the time of the accident.

¶17 Further, STS and Rasa contend that Rasa's trial testimony should not have been admitted because neither proper foundation nor authentication was provided for the document which was the source of his testimony. They assert testimony based on this inadmissible document should not have been allowed because it was hearsay. Rasa had no personal knowledge verifying that the document he had received from the lab reported his sample results, whether the sample was properly preserved until the analysis was done, or even if the sample results were reliable and subject to the proper chain of custody.

¶18 STS and Rasa fail to provide the Court with a sufficient record to justify a determination that the trial court erred.[9] Although the record includes the portion of the transcript specific to the objections counsel made relating to the admission of the lab report itself, it does not include the relevant portions of the transcript regarding the objections made in relation to Rasa's actual testimony that he tested positive for marijuana the day after the accident. As a result, we have no way of determining if a timely and sustained objection was made in an effort to preclude Rasa's testimony on that point or whether the trial court's admission of the testimony was an abuse of discretion.

¶19 Rule 30(c)(1) of the Commonwealth Rules of Appellate Procedure provides:

> (c) Additional Items Which Shall Be Included In The Excepts of Record In Appropriate Circumstances.
>
> (1) Transcript: When an appeal is based upon a challenge to *the admission or exclusion of evidence* or any other ruling or order, but not

[9] STS and Rasa fail to provide adequate excerpts of record. Perhaps most egregious is the omission of the final complaint and answer as required by Com. R. App. P. 30(b)(3). In addition, they fail to include the final pre-trial order, jury instructions or verdict sheet.

> otherwise, a copy of the relevant pages of the transcript at which the evidence, offer of proof, ruling, or order and any necessary objection are recorded should be included.

Com. R. App. P. 30(c)(1) (emphasis added). Clearly this issue challenges the trial court's ruling on the admission of evidence and the relevant portions of the transcript should have been included in the excerpts of record.

¶20 Although the excerpts of record do not contain Rasa's specific testimony that the lab test he personally received in the mail reported a positive test for THC, the record does show that the trial court later stated:

> I do have some hearsay problems with the document, *but he can testify as to the results, which he did.*[10] *He testified the results were positive for THC,* so I don't -- I don't see any relevancy in pursuing this.

Appellant's E.R. at 23, lns. 14-18 (emphasis added). Importantly, the record does not provide reference to any objection made by STS or Rasa during the prior testimony. Therefore the record does not support a finding that the trial court erred or that Rasa and STS preserved the issue for appeal through a timely and sustained objection.[11]

¶21 As to the effect that this testimony had on the jury, we find that sufficient evidence exists independent of Rasa's trial testimony specific to the positive drug test, such as Dr. Stearns' expert

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[10] Generally, a witness may testify about any matter to which he has personal knowledge. *See* Com. R. Evid. 602. Based on this comment by the trial court judge, Rasa was apparently allowed to testify that he had received a piece of paper in the mail from the Diagnostic Laboratory Services, Inc. and about the contents of the letter. This testimony, however, did not validate the test results. The jury decided the weight that was to be given to that testimony and opposing counsel was free to challenge the test's procedural validity and the integrity of the test results.

[11] Commonwealth Rule of Evidence 103(a)(1) provides:

> (a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
>
> (1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; . . .

opinion that Rasa was a chronic marijuana user.[12] First, during trial Rasa admitted to regular use of marijuana. Second, he admitted that he had a drug problem and had repeatedly sought assistance from STS concerning his drug addiction. Third, he testified that he had smoked marijuana within the last two weeks prior to the accident. Finally, he stated that on several occasions he had smoked marijuana with one of his direct supervisors after work and that all of his supervisors were aware of his drug addiction. Therefore, we find that Rasa's testimony served as merely one of several factors that the jury considered in deciding to award punitive damages.

B. Whether the Superior Court Erred in Allowing the Issue of Punitive Damages to Go to the Jury.

¶22 "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." *Pangelinan v. Itaman*, 4 N.M.I. 114, 119 n.27 (1994) (*quoting* RESTATEMENT (SECOND) OF TORTS § 908 (1979).[13] In addition, under certain circumstances, punitive damages may be awarded against an employer because of an act of an employee.[14]

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[12] Dr. Stearns also testified that he had reviewed the diagnostic lab test report regarding Rasa's urine drug screen and that it reported a positive result for THC. Appellees' E.R. at p. 11, lns.12-14, p. 13, lns. 15-24. Thus, the record shows that the jury heard this fact from a source other than Rasa's own testimony.

[13] RESTATEMENT (SECOND) OF TORTS § 908 states:

> (1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.
>
> (2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

RESTATEMENT (SECOND) OF TORTS § 908 (1979).

[14] RESTATEMENT (SECOND) OF TORTS § 909 provides:

> Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if,
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> (a) the principal or a managerial agent authorized the doing and the matter of the act, or
>
> (b) the agent was unfit and the principal or managerial agent was reckless in employing or retaining him, or
>
> (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or

¶23 STS and Rasa argue that the trial court erred in allowing the issue of punitive damages to go to the jury because there was insufficient evidence to support punitive damages and there was no causal connection between the conduct alleged to warrant punitive damages and the accident itself. These arguments fail.

¶24 We find that the record provides more than sufficient evidence to support the trial court's decision to allow the jury to consider the issue of punitive damages. The record shows that STS' conduct was outrageous and showed a reckless indifference to the rights of others. Examples of conduct that support the punitive damages awards include STS's (1) failure to follow its own

(d) the principal or a managerial agent of the principal ratified or approved the act.
RESTATEMENT (SECOND) OF TORTS § 909 (1979).

employee handbook[15] regarding the training,[16] testing,[17] and treatment[18]of its employees and supervisors concerning substance abuse, (2) failure to properly train Rasa in the safe operation of a 32,500 pound commercial tour bus, (3) failure to properly investigate Rasa's driving history prior to employing him as a commercial tour bus operator or to prevent him from operating a commercial tour bus or drug testing him after two previous work related accidents and a speeding citation, (4) failure to prevent Rasa from operating a commercial tour bus after his direct supervisors were made

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[15] STS provides an employee handbook to all of its employees upon hire. This handbook includes a section specific to substance abuse. The stated purpose of STS's substance abuse policy is as follows:

> Purpose: The Company *recognizes that it is important to protect the health and safety of its employees, customers, and the general public, and to improve the physical fitness and ability of its employees to perform their job*. Accordingly, the unlawful manufacture, distribution, dispensing, possession or use of alcohol or drugs (controlled substances as defined by federal law) is prohibited on the Company's premises, in Company vehicles, and during working time. Furthermore, the Company prohibits employees from reporting to work or working under the influence of alcohol or drugs.

Appellees' E.R. at 1-2. The language of this provision clearly indicates that STS was aware substance abuse posed a health and safety threat to individual employees, co-workers, and the community as a whole. Failure to implement these policies while fully aware of the potential consequences of not doing so is outrageous and demonstrates a reckless indifference to the rights of others.

[16] The employee handbook contains a section specific to substance abuse education and training. It reads:

> Education and Employee Assistance: The Company has implemented and will maintain a substance abuse prevention program aimed at educating employees on the harmful effects of drugs and alcohol and stressing the provisions of this policy. In addition, supervisors will receive training to assist them in identifying and addressing substance abuse by employees.

Appellees' E.R. at 2. The record before this Court indicates that STS had not implemented a substance abuse prevention program prior to the time of the accident. Further, the record indicates that supervisors did not receive adequate training in identifying and addressing substance abuse by employees. In fact, trial testimony showed that at least one STS supervisor actively participated in the consumption of illegal substances, smoking marijuana with Rasa after working hours.

[17] On paper, STS employed an aggressive drug testing policy which included mandatory drug screen testing for all job applicants, where there is a reasonable cause to believe or reasonable suspicion to conclude that substance abuse is taking place, employees involved in an accident which involves a fatality or bodily injury, and random testing for all drivers and employees in safety sensitive positions. In reality, however, STS repeatedly failed to implement its own policies.

[18] STS represented to its employees that it would assist them with any substance abuse problem. The handbook reads:

> The Company has also established and will maintain an employee assistance program to help employees with substance abuse problems. An employee with a substance abuse problem who desires to overcome such difficulty, and who voluntarily seeks help from management prior to being required to undergo alcohol and/or drug testing will be referred to the employee assistance program for help in overcoming the problem….

Appellees' E.R. at 2. After multiple requests, Rasa received no such assistance and was allowed to continue working as a tour bus operator. In fact, no such program existed prior to the accident.

aware of his continuing abuse of marijuana, and (5) providing Rasa with another tour bus and instructing him to continue his daily route immediately following an accident involving bodily injury.

¶25 Together these factors provide sufficient evidence to satisfy the requirements of the RESTATEMENT and to support punitive damages against both Rasa and STS for outrageous conduct conducted with reckless indifference to the rights of others.[19] Rasa, who was obviously aware that he had a significant drug problem, did not enter substance abuse treatment on his own volition, but continued to operate a commercial tour bus putting himself, his passengers, other drivers, and anyone else traveling the island's roads in danger. STS, for its part, put the safety of the people at risk by hiring Rasa[20] and maintaining his employment while being aware of his drug addiction and by not implementing or enforcing the very policies put in place to prevent incidents such as the one before us.

¶26 Next, we find that the record provides sufficient evidence to support the jury's finding that a causal connection existed between Rasa's marijuana addiction and the accident. Dr. Stearns' trial testimony established that Rasa was a chronic user of marijuana during the time period in which the accident occurred. In addition, Dr. Stearns testified that the common effects of chronic and heavy marijuana use include negative effects on a person's ability to concentrate, calculate, remember, and to make prudent judgments. Furthermore, he testified that THC is slowly released from an

[19] A jury may consider the circumstances surrounding the conduct and infer that Rasa's conduct was recklessly indifferent to the rights of others. *See D'Hedouville v. Pioneer Hotel Co*., 552 F.2d 886, 894 (9th Cir. 1977).

[20] Based on the record, it is likely that we could also affirm the lower court's ruling under the theory of negligent hiring or negligent entrustment. *See Parker v. Fox Vacuum, Inc*., 732 S.W. 2d 722, 723 (Tex. Civ. App. 1977)(awarding punitive damages against an employer under the theories of negligent hiring and negligent entrustment for injuries sustained in an intersection accident when the employer hired an employee who had a history of DUI convictions and had failed to properly ascertain his driving experience or properly train him even though the jury failed to find that any of the employer's acts of negligence was a proximate cause of the accident.).

individual's fat deposits into his system over time and can be present in an individual's blood stream long after it is last ingested. The evidence of Rasa's driving characteristics as reflected in the record concerning the accident was consistent with the negative effects of chronic and heavy marijuana use. The jury could reasonably conclude that the accident was caused by actions consistent with a person who was unable to operate heavy machinery properly and safely because of chronic and heavy use of marijuana.[21]

¶27 In addition, we agree with the trial court's ruling that the claim that punitive damages may only be awarded where there is a decisive link between the marijuana use and the tortuous conduct that gives rise to punitive damages is without basis. A jury may consider the circumstances surrounding the conduct and infer that Rasa's conduct was recklessly indifferent to the rights of others. *See D'Hedouville v. Pioneer Hotel Co.*, 552 F.2d 886, 894 (9th Cir. 1977).

C. Whether the Punitive Damages Awards Were Excessive.

¶28 STS and Rasa contend that the jury awards of punitive damages in the amounts of $25,000 against Rasa[22] and $200,000 against STS were excessive and violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.[23] We disagree and find that the culpability

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[21] The record shows that immediately preceding the accident Rasa was following too closely, skidded for about 150 feet up to the point of impact, was inattentive in looking back to check his passengers for too long a period of time knowing that he was following too closely, was traveling at a rate of speed that made it impossible to safely stop, and drove a bus knowing it did not have seat belts or a working speedometer. Appellees' E.R. p. 19, ln. 1-16; p. 20, ln. 5-25; p. 21, ln. 18-25; p. 21, ln. 1-16.

[22] Although STS undoubtedly preserved this issue for appeal, it is not clear whether Rasa did so. At trial, counsel for STS moved to preclude the jury from considering punitive damages. Counsel for STS was not representing Rasa. The following pertinent exchanged occurred:

Court: And your motion on punitive damages is with respect to STS, of course?
Cushnie: With respect to STS, Your Honor, that's all I can speak for at the present time.

Appellant's E.R. at 42-43.

[23] The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor. The reason is that "elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also the severity of the penalty that a State may impose." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416-17, 123 S. Ct. 1513, 1519-29, 155 L. Ed. 2d 585, 600 (2003) (internal citations omitted). "To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property." 538 U.S. at 417,

of STS and Rasa, even after the application of compensatory damages, warrants the imposition of the punitive damages awards.

¶29 We review a trial court's award of punitive damages for abuse of discretion. *Pangelinan v. Itaman*, 4 N.M.I. 114, 117 (1994). The purposes of punitive damages are to punish the person doing the wrongful act and to discourage him and others from similar conduct in the future. RESTATEMENT (SECOND) OF TORTS § 908 (1) (1979); *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155, 168 (1994), *appeal dismissed*, 76 F.3d 299 (9th Cir. 1996). "It should be presumed that a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419, 123 S. Ct. 1513, 1521, 155 L. Ed. 2d 585, 602 (2003). In determining the amount of punitive damages, the trier of fact may consider the nature of the act, the extent of the harm caused, the defendant's wealth, and all the circumstances including the motives of the wrongdoer, the relations between the parties and the provocation or want of provocation for the act. The extent of harm to the plaintiff may even include the trouble and expense incurred by legal proceedings. RESTATEMENT (SECOND) OF TORTS § 908 & cmt. e (1979); *Santos*, 4 N.M.I. at 169.

¶30 In *BMW of N. Am. Inc.*, the Supreme Court provided guidance to appellate courts reviewing punitive damages and has instructed such courts to apply three guideposts in their review. Courts reviewing punitive damages must consider (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

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123 S. Ct. at 1520, 155 L. Ed. 2d at 600 (*citing Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 42, 111 S. Ct. 1032, 1056, 113 L. Ed. 2d. 1, 35 (1991) (O'Conner, J., dissenting)).

and the civil penalties authorized or imposed in comparable cases.[24] *BMW of N. Am. Inc. v. Gore*, 517 U.S. 575, 575, 116 S. Ct. 1589, 1598-99, 134 L. Ed. 2d 809, 826 (1996). "[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct."[25] *Id.* at 575, 116 S. Ct. at 1599, 134 L. Ed. 2d at 826. "The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect." *State Farm Mut. Auto. Ins. Co.*, 538 U.S. at 419, 123 S. Ct. at 1521, 155 L. Ed. 2d at 602.

¶31 Based on the application of the three guideposts to the specific facts of this case, we find that the punitive damages awards were not grossly excessive, did not represent an arbitrary deprivation of property, and furthered the legitimate purpose of deterrence and retribution.

¶32 Under the first guidepost, we find both Rasa and STS's conduct reprehensible. Rasa, who continued to operate a commercial tour bus while laboring under the physical and psychological burdens of a drug addiction, was involved in a serious motor vehicle accident that caused significant physical and economic harm to Santos and Carlos. By continuing to operate in his condition and not entering substance abuse treatment on his own volition, he demonstrated a reckless disregard for the safety of others. STS's conduct was just as reprehensible, if not more so. STS blatantly ignored its own company policies, which were specifically designed to protect the safety of its employees, passengers and the community as a whole. STS employed Rasa as a commercial driver without a proper background check, without providing proper training, and without screening him for the

[24] Appellate courts review de novo a trial court's application of the three guideposts to a jury's award. *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 435, 121 S. Ct. 1678, 1685, 149 L. Ed. 2d 674, 686 (2001).

[25] When determining the degree of reprehensibility of a defendant, the court must consider whether: the harm caused was physical as opposed to economic; the tortuous conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and if the harm was the result of intentional malice, trickery, or deceit, or mere accident. *BMW. of N. Am, Inc. v. Gore*, 517 U.S. 559, 576-77, 116 S. Ct. 1589, 1599-1600, 134 L. Ed. 2d 809, 827-28 (1996).

presence of drugs. STS refused to remove Rasa from his position as a driver even after repeated requests for assistance with his substance abuse. STS employed management personnel who not only ignored Rasa's requests for assistance, but also participated in his use of drugs. Finally, after the accident specific to this litigation, STS failed to immediately test Rasa for drugs, and, instead, provided him with another tour bus and instructed him to continue his daily route. All these factors taken together clearly demonstrate a callous and reckless disregard for the safety of others and contributed to Rasa's ultimate physical and mental condition, which the jury found to be a direct contributing factor to the accident in question. We therefore find the conduct of both STS and Rasa reprehensible.

¶33 Under the second guidepost, we find that the disparity between the actual or potential harm suffered by the plaintiffs and the punitive damages awards is not so great as to warrant reversal of the awards. The disparity between the punitive damages awards and the compensatory damages awards is 1 to 5 in Rasa's case ($25,000 punitive to $125,000 compensatory) and approximately 1.5 to 1 for STS ($200,000 punitive to $125,000 compensatory). The United States Supreme Court has not established a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable ratio specific to punitive damages awards. Instead, it focused on a general concern for the reasonableness of the award. *BMW of N. Am., Inc.*, 517 U.S. at 582-583, 116 S. Ct. at 1602-1603, 134 L. Ed. 2d at 831. Considering the egregious conduct demonstrated by both STS and Rasa and the physical harm suffered by Santos and Carlos, we find the punitive damages awards were reasonable and within the acceptable range established for such awards.

¶34 We need not focus on guidepost three because there are no applicable civil penalties with which to compare the punitive damages awards. Neither Rasa nor STS received any citation or fine concerning the accident. The responding officer at the accident scene did not issue Rasa a citation.

¶35 Taking the three guidepost factors into consideration, and weighing factor one most heavily, we find the punitive damages awards to be within the constitutional boundaries set forth by the United States Supreme Court.

IV.

¶36 In conclusion, we hold that the record does not support a finding that the trial court erred in admitting Rasa's testimony that he tested positive for THC the day after the accident. We find that sufficient evidence exists to support the award of punitive damages, independent of Rasa's testimony, such as Dr. Stearns' expert testimony that Rasa was a chronic marijuana user. In addition, we hold that the trial court correctly allowed the issue of punitive damages to go before the jury because the record provides sufficient evidence to support a jury finding that both Rasa and STS committed outrageous conduct with reckless indifference to the rights and safety of others. Furthermore, we hold that the record contains sufficient evidence to support a jury finding that Rasa's chronic marijuana use was the proximate cause of the accident. We also find that the jury was free to infer that Rasa and STS demonstrated a reckless indifference to the safety of others from the surrounding circumstances and the evidence presented at trial. Finally, we hold that the punitive damages awards endure the constitutional scrutiny because they were not grossly excessive and legitimately serve the purpose of punishment and deterrence. Therefore, we AFFIRM the decision of the trial court.

SO ORDERED THIS 8 TH DAY OF MARCH 2005.

/s/_____
ALEXANDRO C. CASTRO
Associate Justice

/s/_____
JOHN A. MANGLONA
Associate Justice

/s/_____
PEDRO M. ATALIG[26]
Justice *Pro Tempore*

[26] As mentioned in fn.1 above, Justice *Pro Tempore* Atalig died February 16, 2005.

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CHRISTINE E. SANTOS, personally and as Guardian Ad Litem for CARLOS E. SANTOS, A Male Minor Child,

Plaintiffs-Appellees,

v.

STS ENTERPRISES, INC., and JOSEPH ANTHONY RASA,

Defendants-Appellants.

SUPREME COURT APPEAL NO. 03-0006-GA
SUPERIOR COURT CIVIL CASE NO. 99-0398CV

ERRATA

¶1 On March 8, 2005, this Court issued its Opinion in the above captioned appeal. It incorrectly listed the citation as *Santos v. STS Enterprises, Inc.*, 2005 MP 3.

¶2 The correct citation is *Santos v. STS Enterprises, Inc.*. 2005 MP 4.

SO ORDERED this 10th day of March 2005.

JOHN A. MANGLONA, Associate Justice