COURT OF APPEALS
DECISION
DATED AND FILED

April 16, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1328 **Cir. Ct. No. 2004CV160**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

SHIRLEY THOMPSON, GREGORY LIN AND ELGA LIN,

PLAINTIFFS-RESPONDENTS,

V.

STEPHEN SCHULTE AND LINDA SCHULTE,

DEFENDANTS-APPELLANTS.

APPEAL from judgments and an order of the circuit court for Wood County: GREGORY J. POTTER, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Stephen Schulte and Linda Schulte appeal judgments awarding compensatory and punitive damages to Shirley Thompson, Gregory Lin, and Elga Lin. They also appeal an order denying their motions after

verdict which were entered after the judgments. We affirm the judgments and order.

¶2 Thompson invested $100,000 with the Schultes and so did the Lins, with both investments to be paid back within one year. Thompson and the Lins commenced this proceeding with a complaint alleging that the Schultes fraudulently induced the investments and repaid only a portion to Thompson and nothing to the Lins. The matter went to trial and a jury awarded Thompson $158,534.89 in compensatory damages, and $200,000 in punitive damages. The Lins received an identical award. The trial court upheld the awards in an order denying the Schultes' motions after verdict and for a new trial.

¶3 The Schultes raise six issues in their brief-in-chief. We deal with each in turn.

¶4 **The jury awarded excessive punitive damages**. The Schultes present their argument without citation to facts of record, or legal authority except for cases that state the basic standard of review. We therefore decline to review the issue. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (stating that this court will not address issues on appeal that are inadequately briefed).

¶5 **The trial court improperly added defendant parties without serving them**. On the first day of trial, the court added as parties four trusts and a limited liability corporation. None had been served with a summons and complaint. The Schultes argue error, but show no authorization to represent the interest of these entities in the appeal, and do not contend that their own interests were prejudicially affected by the court's order. A person may appeal a judgment or order only if aggrieved by it. *See* ***Weina v. Atlantic Mut. Ins. Co.***, 177 Wis. 2d

341, 345, 501 N.W.2d 465 (Ct. App. 1993). The Schultes lack standing in the matter.

¶6 **The trial court erred by denying the Schultes the opportunity to present a corporate shield defense**. In its decision on post-verdict motions, the trial court noted that the Schultes never moved for permission to raise the defense. The court further noted that since the Schultes never raised the issue, the court never ruled on it and thus never denied the Schultes the opportunity to present this defense. The Schultes fail to identify anything in the record contradicting the court's recollection, and we therefore have no basis to conclude otherwise. The Schultes challenge a ruling that the court simply never made.

¶7 The Schultes contend alternatively that the court erred by failing to include a corporate shield question on the verdict. The respondents point out that the Schultes never requested one. In reply, the Schultes note that the jury instruction/verdict conference was not transcribed, so this court cannot determine whether they requested a verdict question or not. However, even if we assume that the Schultes requested the verdict question, and the court denied that request, the Schultes have waived review of that decision. An objection to a proposed verdict must be stated "with particularity on the record," and failure to object on the record waives any error in a verdict. WIS. STAT. § 805.13(3) (2007-08).[1] It was therefore the Schultes' obligation to make a record in the matter, and they did not. When the trial court asked them right before closing arguments if the instructions and verdict questions were acceptable to them, both Stephen Schulte

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

and Linda Schulte answered affirmatively. The issue is therefore waived. ***Gosse v. Navistar Int'l Transp. Corp.***, 2000 WI App 8, ¶19, 232 Wis. 2d 163, 605 N.W.2d 896 (Ct. App. 1999).

¶8 **The trial court should have allowed Stephen Schulte to continue testifying at the end of his adverse examination**. At the end of Stephen's adverse testimony, the court informed the jury, as a point of information, that Stephen did not have a right to offer direct testimony at that point, but could call himself as a witness later. The Schultes contend that the court's decision barring immediate direct testimony prejudiced him, because when he did call himself as a witness the next day he could not remember some of the points he wanted to make in response to the adverse examination. However, once again the Schultes challenge a ruling the court never made, because Stephen never asked the court for the opportunity to continue testifying. If he had, the court could have ruled on the matter and given its reasons. As it is, this court has nothing to review and, even if we consider the court's explanation to the jury to be a ruling, the failure to object to it constitutes waiver on appeal. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 ("It is a fundamental principle of appellate review that issues must be preserved at the circuit court."). In any event, we have no basis to conclude that the Schultes were harmed by Stephen's delayed testimony. Their argument consists solely of conclusory assertions that it was necessary for him to immediately clarify and explain certain points, but they never identify what those points were.

¶9 **The trial court erred by refusing to allow the Schultes to call one of the attorneys for the respondents as a witness**. Stephen explained that he wanted to call the attorney to testify to their settlement negotiations concerning the respondents' claims. He contended that the attorney's testimony would provide

proof as to his intent, or state of mind, when he contracted with the respondents several years earlier. He stated that he had no other reason to call the witness. The trial court denied Stephen's request, declaring evidence of settlement negotiations inadmissible. The Schultes fail to demonstrate that the court's ruling was an erroneous exercise of discretion. They have not established that evidence of negotiations, when a lawsuit was threatened, would have had any measurable probative value in determining Stephen's state of mind years earlier.

¶10 **The trial court erred by submitting verdict questions that did not separate the Schultes**. As noted above, when given the opportunity, the Schultes indicated that the verdict questions were acceptable. They failed to place any objection to the questions on the record. The issue is, as indicated, waived for that reason.

¶11 For the first time in their reply brief, the Schultes argue that, in the post-verdict decision upholding the punitive damages awards, the trial court erroneously relied on evidence that the Schultes' assets included a claim to $609,000 in funds held by a California court. "It is a well-established rule that we do not consider arguments raised for the first time in a reply brief." ***Bilda v. County of Milwaukee***, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661. In any event, the Schultes base their claim of error on the assertion that evidence of the $609,000 claim was never presented to the jury, and that assertion is not true. The evidence was presented to the jury in the form of court records from California admitted as an exhibit during Stephen's adverse examination. Stephen also admitted the claim in testimony accompanying the admission of the court records. As to whether the claim was properly considered as an asset, the Schultes did not object to its consideration during the trial or in the post-verdict proceeding, and have waived that argument. *See* ***Huebner***, 235 Wis. 2d 486, ¶10.

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.