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DISTRICT II

October 7, 2015

To:

Hon. Thomas J. Gritton
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

Melissa M. Konrad
Clerk of Circuit Court
Winnebago County Courthouse
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Crystalee C. Caley
1017 Deerfield Ave.
Menasha, WI 54952

Peter J. Long, #383030
Thompson Corr. Cntr.
434 State Farm Rd
Deerfield, WI 53531-9562

You are hereby notified that the Court has entered the following opinion and order:

2014AP2873

Peter J. Long v. Crystalee C. Caley (L.C. #2014CV706)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Claiming Crystalee C. Caley defamed him, Peter J. Long sought compensatory and punitive damages. The circuit court awarded him no compensatory damages, \$1 in punitive damages, and \$290.50 in court costs because Caley defaulted. Long appeals pro se from that order and from the order denying his motion for reconsideration. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

An anonymous caller to the Town of Menasha Police Department stated that Long had been on a drinking binge and told the caller that he was en route to Milwaukee to kill a former

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

cellmate and that he planned to cut off the victim's arm and bring it back with him and cook it. The caller indicated a desire to remain anonymous to avoid possible retaliation from Long but provided information that allowed police to later make contact. The caller was Caley.

Police ultimately stopped Long on southbound Highway 41 between Menasha and Milwaukee for a "welfare check." Upon stopping him, sobriety testing was deemed warranted. Long was arrested for eighth-offense operating while intoxicated (OWI). He pled guilty and was sentenced to five years' initial confinement and five years' extended supervision.

Long filed suit against Caley alleging that she defamed him by falsely accusing him of first-degree intentional homicide, mutilation of a corpse, and cannibalism. The defamation, Long argues, was the proximate cause of the "welfare check" stop and thus of his arrest and imprisonment. He alleged damages of \$320,000.² Caley did not file a responsive pleading. The court found her in default.

At the hearing on damages, the circuit court ruled that Long's loss-of-income claim was "total speculation," and that there was "not a chance on this earth" it would grant his loss-of-freedom claim when his eighth-offense OWI is what led to his imprisonment. Because Caley defaulted, however, it granted costs of \$290.50. Long then requested punitive damages. The court ordered \$1. Long's motion for reconsideration was summarily denied. He appeals.

Long contends the circuit court erroneously exercised its discretion in denying him the requested compensatory damages. As a threshold matter, he argues that, as no hearing on

² Long demanded \$160,000 (\$5000 x 32 months) for "loss of freedom" and \$160,000 (\$5000 x 32 months) for "loss of income and other financial losses." The thirty-two months apparently represented the length of time he had been incarcerated when he filed suit.

damages is required when a default judgment is granted under WIS. STAT. § 806.02(2), the court “exercised unauthorized discretion” in not simply signing his proposed order that included an award of \$320,290.50 and instead ordering a hearing on damages. He is mistaken.

A hearing on damages may not be required but neither is it forbidden. “If proof of any fact is necessary for the court to give [a default] judgment, the court shall receive the proof.” WIS. STAT. § 806.02(2); *see also Smith v. Golde*, 224 Wis. 2d 518, 530, 592 N.W.2d 287 (Ct. App. 1999) (upon entry of default judgment under § 806.02(2), circuit court may hold a hearing to determine damages). Proof was needed to substantiate the bald assertions in Long’s complaint.

The fact finder has broad discretion to determine damage awards. *Champion Cos. of Wis., Inc. v. Stafford Dev., LLC*, 2011 WI App 8, ¶11, 331 Wis. 2d 208, 794 N.W.2d 916. The \$320,000 in damages were based on the value Long placed on his loss of freedom, the salary he might draw as an engineer were he to find a position and were he not incarcerated, and his estimated loss of income from his rental properties. He offered no proof whatsoever to back up his assertions. “In Wisconsin a claimant cannot recover for speculative or conjectural damages.” *Sopha v. Owens-Corning Fiberglas Corp.*, 230 Wis. 2d 212, 227, 601 N.W.2d 627 (1999).

When the court disallowed his loss-of-freedom claim, Long demanded \$50,000 in punitives. The court stated:

As far as any punitive damages ... I’m going to order one dollar. The one dollar, quite frankly, is my opinion about what I think about this lawsuit and the advantage that you took of this woman, Mr. Long, because you understood the circumstances and the process involved here.

“It is not [the reviewing court’s] purpose to determine whether damage awards are high or low, nor to substitute [its] judgment for that of the jury or the trial court but rather to determine whether the award is within reasonable limits.” *Olson v. Siordia*, 25 Wis. 2d 274,

286, 130 N.W.2d 827 (1964). This one is. The court ruled that Long failed to prove up his compensatory damages, except for court costs, and explained why it decided that punitives were virtually unwarranted. The decision reflects a proper exercise of discretion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals