

SM
FILED
LOGGED

1
ENTERED
RECEIVED

NOV 29 1995

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

6 JASON SCOTT,

8 Plaintiff,

9 v.

10 RICK ROSS, et al.,

11 Defendants.

CASE NO. C94-0079C

ORDER

12 This matter comes before the Court on the following motions:
13 (1) defendant Cult Awareness Network's (hereinafter "CAN") motion
14 for judgment as a matter of law, a new trial, or a new trial
15 conditioned on a remittitur; (2) CAN's and defendant Rick Ross'
16 motions to stay execution of judgment; (3) defendant Rick Ross'
17 motion for a new trial or amendment of judgment; and (4) plaintiff
18 Jason Scott's motion for an award of attorney's fees.

19 I. PROCEDURAL BACKGROUND

20 In January 1994, Mr. Scott filed this action requesting a jury
21 trial on a variety of claims against CAN, Mr. Ross, Mr. Mark
22 Workman, Mr. Charles Simpson and Mr. Clark Rotroff.¹ Each of the
23

24 _____
25 ¹Prior to trial, plaintiff entered into a settlement agreement
with Mr. Rotroff for an undisclosed sum.

26 ORDER -- 1

245

1 claims stemmed from the abduction and involuntary religious
2 deprogramming of Mr. Scott. Prior to trial, the Court narrowed the
3 claims to conspiracy to violate Mr. Scott's civil rights under 42
4 U.S.C. § 1985(3) (hereinafter "§ 1985(3)"), the tort of outrage,
5 and negligence.

6 At the close of trial, the jury returned a verdict against each
7 of the defendants on virtually all the remaining claims.² The
8 jury awarded compensatory damages in the amount of \$875,000.00.
9 Pursuant to the civil rights claim, the jury awarded punitive
10 damages in the amount of \$1,000,000.00 against CAN, \$2,500,000.00
11 against Mr. Ross, and \$250,000.00 each against Mr. Simpson and Mr.
12 Workman.

13 Mr. Ross and CAN now challenge the jury's findings and move the
14 Court for an order staying execution of the judgment.

15 II. STANDARD OF REVIEW: JUDGMENT AS A MATTER OF LAW AND NEW TRIAL

16 On a motion for judgment under Fed. R. Civ. P. 50, the Court
17 must determine "whether the evidence, considered as a whole and
18 viewed in the light most favorable to the nonmoving party,
19 reasonably can support only a verdict for the moving party."

20 Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (emphasis
21 in original). If substantial evidence supports a verdict for the
22 non-moving party, judgment as a matter of law is inappropriate.

23 Id. "Substantial evidence" requires a showing of "such evidence as

24 _____
25 ²In the only exception, the jury found that CAN's actions did
not constitute the tort of outrage.

1 a reasonable mind might accept as adequate to support a
2 conclusion." Los Angeles Land Co. v. Brunswick Corp., 6 F.3rd
3 1422, 1425 (9th Cir. 1993).

4 Under Fed. R. Civ. P. 59, a new trial may be granted "if the
5 verdict is contrary to the clear weight of the evidence, or...to
6 prevent, in the sound discretion of the trial judge, a miscarriage
7 of justice." Murphy v. Long Beach, 914 F.2d 183, 187 (9th Cir.
8 1990) (citations omitted). In making this determination, the Court
9 may simply weigh the evidence and need not view it from the
10 perspective most favorable to the non-moving party. Air-Sea
11 Forwarders, Inc. v. Air Asia Co., 880 F.2d 176, 190 (9th Cir.
12 1989).

13 III. CAN'S TRIAL MOTIONS

14 CAN asserts that the evidence produced at trial does not
15 support the jury's findings that CAN acted negligently or conspired
16 against Mr. Scott under § 1985(3). CAN also challenges the award of
17 punitive damages and the amount assessed against it. The Court
18 shall consider each claim separately.

19 A. NEGLIGENCE

20 CAN claims the evidence on negligence did not support a finding
21 that Ms. Shirley Landa acted as CAN's agent with respect to the
22 events in question. See Nordstrom Credit, Inc. v. Department of
23 Revenue, 120 Wash.2d 935, 940, 845 P.2d 1331 (1993) (agency must be
24 established with respect to the particular transaction out of which
25 the injury arises). CAN asserts that the most the evidence shows

26 ORDER -- 3

1 is that Ms. Landa generally acted as a contact person and volunteer
2 for CAN on other occasions.

3 The Court concludes that the evidence supports the jury's
4 finding on the negligence claim against CAN. CAN's attempt to
5 distance itself from Ms. Landa's actions and Mr. Scott's
6 deprogramming through the use of phrases such as "contact person"
7 and "volunteer" belies the great weight of the evidence. For
8 example, there was an abundant showing that Ms. Landa was an active
9 member of CAN, the contact person for CAN in Washington during the
10 time of the events in question, and under CAN's control and
11 supervision during this time.³ Further, evidence also showed that
12 Ms. Landa acted in accordance with CAN practices by distributing
13 information on cults and referring Mr. Scott's mother, Ms. Kathy
14 Tonkin, to Mr. Ross for deprogramming. This combination of
15 factors, along with the rest of the evidence contained in the
16 record, makes judgment as a matter of law or a new trial on the
17 negligence claim unwarranted.

18 B. CONSPIRACY TO VIOLATE CIVIL RIGHTS

19 CAN asserts that the evidence at trial was also insufficient to
20 support a finding that CAN took part in a conspiracy to deprive Mr.
21 Scott of his civil rights under § 1985(3). As a basis for this
22

23 ³The Court notes that the main support for the CAN's argument
24 that Ms. Landa was acting for another organization comes from Ms.
25 Landa herself. Given the numerous illustrations of Ms. Landa's bias
and hostility, as well as the inconsistencies in her testimony, the
Court finds that the jury was entitled to disregard this testimony.

1 argument, CAN reasserts that the evidence does not support a
2 finding that Ms. Landa acted as CAN's agent. CAN also claims that
3 the record does not show that Ms. Landa, or anyone else at CAN,
4 knowingly participated in the plan to abduct Mr. Scott, deprogram
5 him, and deprive him of the right to interstate travel.

6 Again, the Court concludes that the evidence sufficiently
7 supports the jury's determination that CAN knowingly participated
8 in the decision to abduct Mr. Scott and deprive him of the right to
9 interstate travel. Moreover, the evidence conclusively established
10 that the decision was motivated by a discriminatory animus towards
11 his religious affiliation.⁴ For example, the evidence showed that
12 Ms. Landa referred Ms. Tonkin to Mr. Ross, met with the
13 deprogramming "team" during their initial trip to Washington, and
14 met with her sister and Ms. Tonkin to discuss any legal recourse
15 for removing Mr. Scott from his church.⁵ There was also
16 substantial testimony that the conspiracy included a clear goal to
17 hold Mr. Scott against his will, prevent him from pursuing a
18 mission outside the country, and transport him to across state
19 lines to a retreat for ex-members of religious groups.

20 Accordingly, judgment as a matter of law or a new trial on the
21 civil rights claim against CAN would be inappropriate.

22 ⁴The Court has already rejected CAN's contention regarding Ms.
23 Landa's agency status.

24 ⁵The Court also notes that further evidence in the record
25 linked CAN to the conspiracy in a number of ways unrelated to Ms.
Landa's actions alone.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

C. PUNITIVE DAMAGES

On the award of punitive damages, CAN asserts that: (1) it cannot be held liable for punitive damages stemming from Ms. Landa's conduct; (2) the record does not support a finding of the type of motive necessary for punitive damages; and (3) the amount of the award was unreasonable. CAN also argues that the award was prompted out of the passion of an inflamed jury.

In order to sustain a finding of punitive damages against a principal for the acts of its agent, it must be found that the agent acted in a managerial capacity or that the principal authorized or ratified the acts of the agent. Mitchell v. Keith, 752 F.2d 385, 389-91 (9th Cir. 1985). This authorization or ratification must be made with knowledge that the agent acted out of ill-will, spite, for the purpose of injuring, or with complete indifference to the plaintiff's safety and rights. Id., Jury Instruction No. 29.

If punitive damages were appropriately assessed, the amount must still comport with standards of due process. In determining whether an award violates due process, the Ninth Circuit has endorsed a three stage process. Morgan v. Woessner, 997 F.2d 1244, 1256 (9th Cir. 1993). First, the Court must determine whether the jury was adequately instructed. Id. Second, the Court must review the award for excessiveness. Id. The third stage is appellate review. Id.

1 CAN does not object to the adequacy of the jury instructions on
2 punitive damages. Rather, CAN asserts that the award is excessive.
3 In reviewing for excess, the Court must look to factors bearing on
4 reasonableness. Id. at 1257. These reasonableness factors
5 include, but are not limited to: (1) whether there is a reasonable
6 relationship between the harm caused and the award; (2) the degree
7 of reprehensibility of the conduct as well as the conduct's
8 duration and frequency; (3) the profitability to the defendant; (4)
9 the financial position of the defendant; (5) all costs of
10 litigation; (6) the imposition of criminal sanctions against the
11 defendant; and (7) the existence of other civil awards versus the
12 defendant for the conduct. Pacific Mut. Life Ins. Co. v. Haslip,
13 499 U.S. 1, 21-22, 111 S.Ct. 1032, 1045 (1991).

14 The Court finds that there is sufficient evidence to support
15 the jury's finding that Ms. Landa's actions were authorized or
16 ratified by CAN. Again, by way of example, CAN admitted to its
17 control and supervision of its contact persons. CAN officials
18 stated that these persons could be removed for violation of policy.
19 However, Ms. Landa was not removed for her actions and remains a
20 CAN contact person.

21 As noted above, testimony also established that Ms. Landa,
22 acting in accordance with CAN's practices, disseminated
23 inflammatory information on cults and referred Ms. Tonkin to a
24 known "involuntary deprogrammer." As the evidence demonstrated, it
25 was within the knowledge of CAN and Ms. Landa that these practices

26 ORDER -- 7

1 would lead to Mr. Scott's abduction in this case. Thus, the Court
2 finds that the evidence also supports the jury's determination that
3 CAN's ratification of Ms. Landa's acts was done with knowledge of
4 their malicious nature as well as the deliberate disregard to Mr.
5 Scott's rights.

6 Finally, the Court concludes that the amount of punitive
7 damages awarded against CAN was reasonable, within the boundaries
8 of due process, and not improperly prompted by passion. CAN's
9 argument against the award relies most heavily on the fact that it
10 is a non-profit corporation and was forced into bankruptcy by this
11 judgment. However, these financial factors are not necessarily
12 determinative and are heavily outweighed by other factors in this
13 case.

14 Initially, the Court notes that the reprehensibility of CAN's
15 conduct goes far to justify the amount of the award. The continued
16 use of euphemisms such as "involuntarily deprogramming" does not
17 alleviate the fact that the actions in furtherance of the
18 conspiracy involved the forceful abduction and retention of an
19 adult against his will. Nor do the references to the goal of
20 "educating" the public answer the virtually undisputed evidence
21 that materials on "cults" will be negative and highly inflammatory
22 by definition. The evidence showed that without regard to this
23 fact, and despite an admitted lack of personal knowledge of Mr.
24 Scott's church or his ability as an adult to rationally choose his
25 own religion, Ms. Landa sent these "cult" materials to Ms. Tonkin.

26 ORDER -- 8

1 Other factors tend to show the reasonableness of the award as
2 well. For instance, the evidence illustrated that the defendants'
3 actions caused Mr. Scott to suffer physically. More importantly,
4 the evidence firmly supports a finding that the entire
5 deprogramming episode shook his emotional stability and rendered
6 his family life non-existent. Finally, it is undisputed that CAN
7 does not face criminal charges or further civil liability for its
8 actions. Thus, having carefully considered these and the rest of
9 the relevant factors, the Court concludes that the amount of the
10 punitive damages assessed against CAN was reasonable and
11 appropriately supported by the evidence.

12 IV. MR. ROSS' MOTION FOR A NEW TRIAL

13 Mr. Ross claims that a new trial is warranted due to error in
14 the jury instructions, failure to exclude Mr. Scott's counselor's
15 testimony, and lack of evidence supporting damages. If the Court
16 is unwilling to grant a new trial on the merits, Mr. Ross argues
17 that a new trial should be held on the damages issue alone. Again,
18 the Court shall discuss the specific issues separately.

19 A. JURY INSTRUCTIONS

20 Mr. Ross claims that a new trial is warranted due to error in
21 the Court's instructions to the jury. He asserts that the
22 instructions should have included language that the § 1985(3) claim
23 required an element of "invidiously discriminatory class-based
24 animus." Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S.Ct. 1790,
25 1798 (1971). He also claims that the instructions improperly

1 allowed the jury to consider whether the defendants' actions
2 violated Mr. Scott's First Amendment right of freedom of religion.
3 United Brotherhood of Carpenters & Joiners, Local 610 v. Scott, 463
4 U.S. 825, 830, 103 S.Ct. 3352, 3357 (1983).

5 Mr. Ross' reliance on the language in Breckenridge is
6 misplaced. Although class-based discriminatory animus is
7 undoubtedly required, the Supreme Court has not given the term
8 "invidiously discriminatory class-based animus" the type of
9 talismanic effect suggested by Mr. Ross. In the present case, the
10 Court finds that Jury Instruction 21 contained the proper § 1985(3)
11 discriminatory standard based upon Mr. Scott's religious
12 affiliation. Specifically, the instruction stated that "there must
13 be some intentional purpose to discriminate against plaintiff's
14 religion as the basis for the conspirators' action. The
15 conspiracy, in other words, must have been aimed at depriving
16 plaintiff because of his religion, members of plaintiff's religion,
17 or other similar religions equal enjoyment of the rights secured by
18 law to all persons." Jury Instruction 21; Cf. Sever v. Alaska Pulp
19 Corp., 978 F.2d 1529, 1536 (9th Cir. 1992) (stating that the classes
20 protected under § 1985 include those who have been singled out by
21 the Court's as "suspect" or "quasi-suspect").

22 Similarly, the Court finds that Mr. Ross' objection that the
23 instructions improperly allowed the jury to consider Mr. Scott's
24 freedom of religion does not justify a new trial. As stated above,
25 Jury Instruction 21 identified the type of discriminatory animus

26 ORDER -- 10

1 required under the law. Indeed, such instruction was necessary to
2 ensure that the jury did not consider whether the conspiracy was
3 aimed at Mr. Scott personally or simply at depriving him of the
4 right to interstate travel. This instruction was immediately
5 followed with instructions stating Mr. Scott's assertion on the
6 right to interstate travel, clearly designating this assertion as
7 an element of the conspiracy claim, and stating that Mr. Scott
8 needed to prove all elements of the § 1985(3) claim by a
9 preponderance of the evidence.'

10 The Court also concludes that the decision to instruct the jury
11 on the claims of negligence against the individuals does not
12 warrant a new trial. The need for instructions on the individual
13 negligence claims was clear to the parties prior to trial. The
14 Court had previously held that the complaint sufficiently stated a
15 claim of negligence against the individual defendants. As such,
16 the Court finds that instructing the jury and allowing Mr. Scott's
17 counsel to submit supplemental instructions did not unfairly
18 surprise or prejudice any of the defendants. In this regard, it is
19 worth noting that Mr. Ross did not object to the content of the
20 negligence instructions on individuals.

21
22
23

With regard to the amount of proof on these elements, the
24 Court again notes that there was ample evidence supporting the
25 finding that Mr. Ross acted with the purpose to deprive Mr. Scott
of the right to interstate travel due to discriminatory feelings
towards his religious affiliation.

26 ORDER -- 11

1 Accordingly, the Court orders Mr. Scott's counsel to submit
2 documentation of this settlement amount.

3 As to punitive damages, Mr. Ross also argues that the award was
4 excessive. Specifically, Mr. Ross asserts that the damages bear no
5 relation to the harm suffered or to the amount necessary to deter
6 his future conduct. The Court disagrees.

7 The Court concludes not only that there is a sufficient
8 relationship between the harm and Mr. Ross' conduct, but that the
9 remaining reasonableness factors also weigh heavily towards
10 upholding the jury's punitive damages award. As noted above, the
11 evidence supported the large award of compensatory damages.
12 Moreover, Mr. Ross' use of terminology cannot avoid the
13 uncontradicted evidence that he actively participated in the plan
14 to abduct Mr. Scott, restrain him with handcuffs and duct tape, and
15 hold him involuntarily while demeaning his religious beliefs.'

16 A large award of punitive damages is also necessary under the
17 recidivism and mitigation aspects of the factors cited in Haslip.
18 Specifically, the Court notes that Mr. Ross himself testified that
19 he had acted similarly in the past and would continue to conduct
20 "deprogrammings" in the future. Further, Mr. Ross faces no future
21 criminal or civil liability for his conduct.

22
23
24 With regard to Mr. Ross' role in this affair, the Court notes
25 that there is no credible support for the contention that he was
26 merely another participant in a plan wholly developed and
controlled by Ms. Tonkin.

ORDER -- 13

1 Finally, the Court notes each of the defendants' seeming
2 incapability of appreciating the maliciousness of their conduct
3 towards Mr. Scott. Rather, throughout the entire course of this
4 litigation they have attempted to portray themselves as victims of
5 Mr. Scott's counsel's alleged agenda. Thus, the large award given
6 by the jury against both CAN and Mr. Ross seems reasonably
7 necessary to enforce the jury's determination on the oppressiveness
8 of the defendants' actions and deter similar conduct in the future.
9 Accordingly, the Court finds that both the compensatory and
10 punitive damages awards were reasonable and well founded in the
11 evidence.

12 V. MOTION TO STAY JUDGMENT

13 Both CAN and Mr. Ross moved the Court for an order staying the
14 exercise of the judgment in this matter until after the decision on
15 the Rule 50 and Rule 59 motions. These motions are moot.

16 VI. MOTION FOR ATTORNEY'S FEES

17 Mr. Scott requests attorney's fees in the amount of
18 \$225,915.00. This request is made pursuant to 42 U.S.C. § 1988
19 which provides that a Court may award attorney's fees to a
20 prevailing party in a § 1985 claim. 42 U.S.C. § 1988(b).

21 In response to the request for fees, defendants CAN and Mr.
22 Ross notified the Court that they have declared bankruptcy since
23 the entry of judgment. As such, they correctly contend that any
24 decision on the award of attorney's fees against them is
25 automatically stayed under bankruptcy law. 11 U.S.C. § 362(a). In

26 ORDER -- 14

1 order to ensure the ability to make adequate factual findings on
2 the fees and prevent potential prejudice arising from any award
3 against defendants Mr. Workman and Mr. Simpson, this Court shall
4 stay consideration of the attorney's fees issue until the
5 discontinuation of or relief from the automatic stay in CAN's and
6 Mr. Ross' bankruptcy proceedings.

7 VII. CONCLUSION

8 In summation, the Court hereby ORDERS as follows:

9 1) CAN's Motion for a Judgement as a Matter of Law or a New
10 Trial is DENIED;

11 2) Mr. Ross' Motion for a New Trial or for Reduction in Damages
12 is DENIED in part, and GRANTED in part. Attorneys for Mr. Scott
13 are ORDERED to submit verification of the amount of the settlement
14 with Mr. Clark Rotroff. The award of compensatory damages shall be
15 offset in the amount of this settlement;

16 3) CAN's and Mr. Ross' Motion for Stay of Judgment is MOOT;

17 4) Mr. Scott's Motion for Attorney's Fees is STAYED from
18 consideration in this Court pending the discontinuation of or
19 relief from the automatic stay in the CAN and Rick Ross bankruptcy
20 proceedings.

21 SO ORDERED this 29 day of November, 1995.

22
23 
24 The Honorable John Q. Coughenour
25 United States District Judge
26

ORDER -- 15