

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-00075

Chelsea Johnson v. Sean Pierce

DECISION ON MOTION TO AMEND

The plaintiff has filed a motion to amend her complaint to add a claim for punitive damages. The plaintiff's initial complaint alleged in six paragraphs that the defendant operated his motor vehicle in a negligent, careless, and reckless manner, crashing into the plaintiff, and causing her severe and permanent injuries. She sought damages for her injuries, and demanded a jury trial.

She now seeks to add a second count to her complaint, asserting that "[t]he acts and neglects of Defendant were outrageously reprehensible and constituted disregard for the life and safety of the Plaintiff," and seeking punitive damages in addition to her general damages.

The defendant opposes the motion to amend and asks the court to dismiss any such claim for punitive damages.

Under V.R.C.P. 15(a), leave to amend "shall be freely given when justice so requires." Unless the other party will be prejudiced, amendments should be allowed liberally. *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4, 184 Vt. 1. The goals of this policy are to ensure that claims are decided based on their merits, to give the parties adequate notice of each other's claims and defenses, and to allow new claims and defenses when they are discovered later in the litigation. *Id.* As the Court noted in *Colby*,

the beauty of our rules of civil procedure is that they strike a fair balance, at the early stages of litigation, between encouraging valid, but as yet underdeveloped, causes of action and discouraging baseless or legally insufficient ones. The complaint is a bare bones statement that merely provides the defendant with notice of the claims against it. Its purpose is to initiate the cause of action, not prove the merits of the plaintiff's case.

Id. ¶ 13 (citation omitted). In rare cases, however, the court may deny motions to amend. *Id.* ¶ 4. "In determining whether to allow a party to amend its complaint, the trial court should consider four factors: 1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party." *Hickory v. Morlang*, 2005 VT 73, ¶ 5, 178 Vt. 604 (citation omitted). The defendant argues that there is no basis for a punitive damages claim in this case, as a matter of law, and that the plaintiff's proposed amendment is therefore futile. In deciding such a motion, the court must apply the standards used for determining a motion to dismiss under V.R.C.P. 12(b)(6). The court must take the factual allegations in the complaint as true, and should deny the requested amendment only if "it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Colby*, 2008 VT 20, ¶ 5.

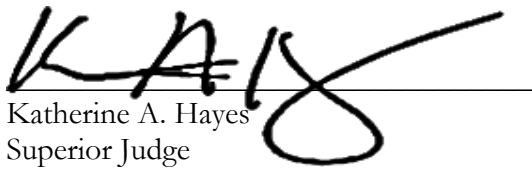
The plaintiff alleges that the facts supporting her punitive damages claim are as follows. She asserts that the defendant did not stop at a stop sign, traveled into an intersection, and crashed into Plaintiff as she was riding an electric bicycle in the right-of-way. She also asserts that the defendant was driving his children to school, and that they were running late. She theorizes that he ran the stop sign and failed to avoid colliding with her because of his hurry to get the children to school on time, and was motivated by a desire to keep his children from being given demerits due to tardiness. She also notes that he was initially charged with some offense related to the accident, but was referred to and successfully completed diversion, so he has no criminal record based on the offense. She also notes that the defendant's statements in his accident report, in his answers to interrogatories, and at his deposition that he did stop at the stop sign, conflict with the investigating police officer's conclusion that he likely did not do so. She asserts that this is a fact that is relevant to her punitive damages claim, and is evidence of malice. The investigating officer's conclusion that it was likely that the defendant did not stop was based on his measurements at the accident scene, and calculations related to those measurements.

A claim for punitive damages may be made when there is evidence that the defendant acted with malice, meaning "where the defendant's wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime." *Bolsta v. Johnson*, 2004 VT 19, ¶ 5, 176 Vt. 602 (citation omitted). "[M]ere negligence or even recklessness are not sufficient to show malice and therefore do not justify the imposition of punitive damages." *Bolsta*, 2004 VT 19, ¶ 5. Notably, despite the fact that the defendant in *Bolsta* was under the influence of alcohol at the time of the accident causing the plaintiff's injuries, had a prior conviction for DUI, and had a suspended license due to that prior conviction, the court held that, "[h]owever wrongful, Johnson's conduct does not evince more than a reckless disregard of the right of others." *Id.* ¶¶ 3, 7. He had pled no contest to a second offense of DUI and a charge of DLS, fourth offense, based on his driving at the time of the accident. The Court held that the trial court's rejection of the plaintiff's motions for punitive damages was proper. They stated that even "[w]illful violation of the law is insufficient evidence of malice, if not accompanied by a showing of bad faith." *Id.* ¶ 7 (citation omitted). To prove malice, there must be "special circumstances, such as personal ill will or bad motive." *Id.* ¶ 9.

The other cases cited by the parties, *DeYoung v. Ruggiero*, 2009 VT 9, 185 Vt. 267, and *Beaudoin v. Feldman*, 2018 VT 83, 208 Vt. 169, confirm the standards outlined in *Bolsta*. In *DeYoung*, the Court confirmed that an attorney who repeatedly stole money from clients, and lied about it, had in fact engaged in the kind of "deliberate and outrageous conduct," motivated by greed in that case, that warranted an award of punitive damages. *DeYoung*, 2009 VT 9, ¶¶ 26–29. This is not such a case. In *Beaudoin*, the Court confirmed that a party to a commercial arrangement who wrongfully took funds that were determined to belong to a business partner, in the belief that he was entitled to those funds, did not engage in the kind of "truly reprehensible" conduct required to support an award of punitive damages. *Beaudoin*, 2018 VT 83, ¶ 18.

Here, the court concludes that even taking the evidence in the light most favorable to the plaintiff, the defendant's conduct simply does not rise to the level that could support an award of punitive damages. He may have acted negligently, or even recklessly, but his conduct does not rise the level of being "reprehensible" and was certainly not motivated by personal ill will. His motivation to get his children to school on time is not the kind of "bad motive" that warrants the imposition of punitive damages.

The plaintiff's motion to amend her complaint is therefore denied.

A handwritten signature in black ink, appearing to read 'K.A.H.', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Katherine A. Hayes
Superior Judge
December 17, 2021