

CASE NOS. 1131285, 1131380 & 113181

IN THE SUPREME COURT OF ALABAMA

NINETEENTH STREET ENTERPRISES, et al.,

Appellants,

v.

SHARON ROBERTSON, as mother of TIMOTHY ANDREW, et al.,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

REPLY BRIEF
(AND RESPONSE TO MOTION TO PARTIALLY STRIKE)
OF *AMICUS CURIAE*
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RESPONSE TO APPELLEES'
MOTION TO PARTIALLY STRIKE

Appellees' motion to partially strike ADLA's *amicus curiae* brief incorrectly suggests that we colored outside the lines by noting the additional question of "who pays" as a part of the compensatory/punitive damages analysis. Appellees' contention, if correct, would also preclude the *amicus* brief of the Alabama Association for Justice which consists of a ten-page argument that the Court should not have raised its three questions at all.

Of course, neither *amicus* has overstepped its bounds in addressing these issues, and Appellees are mistaken in suggesting that the *amici* were strictly limited to the questions listed by the Court (and "no others").

The purpose of an *amicus* brief is to aid the Court in rendering a decision that makes good law, even if it means calling to the Court's attention (and particularly so) other considerations. ADLA takes this responsibility seriously in every *amicus* brief it files. *Amicus* briefs are inherently accorded whatever weight and attention the Court deems appropriate, and they are fair game for comment by the interested parties. But they are not the same as a party brief, and it is not a valid objection that one party

does not find a certain *amicus* argument particularly helpful, which is of course up to the Court.

REPLY ARGUMENT¹

Appellees' motion does, however, call needed attention to the concern in ADLA's brief that guilt by association is unsound as a basis for punitive damages. The question of "who pays" is a major factor in evaluating what *amount* of civil punishment is appropriate (if any) given a defendant's financial position. No legitimate state interest is served by adopting a substitutionary approach, i.e., justifying a larger award based on another's wealth, much less allowing the judgment to be enforced against another without a showing of complicity or imputed liability. Society's goal is to punish one for its own misconduct, not that of another.

There can be no doubt that the standard measure for fair punishment under Due Process is only such amount as is necessary to accomplish society's goal. State Farm Mut. Ins. Co. v. Campbell, 538 U.S. 408, 419 (2003). The fact that a defendant has a business connection, which may even

¹ This reply brief is permissible under Rule 29(e) and the Court's order dated October 1, 2015.

aid in collecting a compensatory award, cannot justify imputing a punitive damages judgment. If the wealth of the defendant is no justification for an otherwise excessive award, id., then even less so is the wealth of another.

The rule proposed by Appellees is contrary to the vast consensus of American courts and scholars, who say that attribution of punitive damages to a third party must be limited to torts *actually committed*, authorized or ratified by a managerial agent, or to torts committed by an unfit employee who was recklessly employed or retained. This view has been distilled into a uniform statement, for example under Restatement (Second) of Torts § 909 (1977). See also Restatement (Second) of Agency § 217 (1958); Model Penal Code § 2.07(1) (1985).

In other words there must be a culpable nexus with the defendant's conduct for the third-party to be held liable for punitive damages. Absent this, no legitimate state interest is served by citing a third-party's wealth as justification for a larger amount of punitive damages.

CONCLUSION

As for the remaining issues, ADLA relies on the cases and authorities cited in its initial brief.

Respectfully submitted,

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