

Client Alert

Punitive Damages Awards May be Set Aside If Not Supported by Clear and Convincing Evidence

North Carolina judges now have more authority to throw out punitive damages awards. The North Carolina Supreme Court recently held in *Scarborough v. Dillard's, Inc.*¹ that a punitive damages award may be set aside if the award is not supported by clear and convincing evidence.

Factual Background

The *Scarborough* case arose out of an action for malicious prosecution instituted by Plaintiff Scarborough after he was indicted, tried, and acquitted of embezzlement from his employer, Dillard's. The evidence at trial showed that two of his customers left the store with shoes they had not purchased. Scarborough claimed that it was a mistake and that his employer's actions in connection with the embezzlement charge were malicious. The jury awarded \$30,000 in compensatory damages and \$77,000 in punitive damages.

Legal Background

Dillard's moved for judgment notwithstanding the verdict. The trial court granted the motion with respect to punitive damages and entered an order setting aside the award.

In a 2-1 ruling, the Court of Appeals reversed the trial court. The Court of Appeals utilized the "scintilla of evidence" standard, pursuant to which a jury's award stands as long as there is "more than a scintilla of evidence" supporting it. In his dissent, Judge Robert Hunter stated that a scintilla of evidence is not sufficient in the punitive damages context since punitive damages are required to be supported by clear and convincing evidence.

Dillard's appealed to the North Carolina Supreme Court.



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¹ *Scarborough v. Dillard's, Inc.*, 2009 N.C. LEXIS 1287 (2009).

The Supreme Court's Ruling

As mentioned above, the general rule is that a motion for judgment notwithstanding the verdict is denied if there is "more than a scintilla of evidence" supporting the jury's conclusion. In *Scarborough*, the court sought to determine how this standard interacts with North Carolina punitive damages law. Specifically, in order to recover punitive damages, the plaintiff "must prove the existence of an aggravating factor by clear and convincing evidence." N.C.G.S. §1D-15(b) (2007). A trial court "in upholding or disturbing" an award of punitive damages must "address with specificity the evidence, or lack thereof, as it bears on the liability for or the amount of punitive damages, in light of the requirements of this Chapter." N.C.G.S. §1D-50 (2007).

Based upon this statutory language, the Supreme Court, in its majority opinion, stated that "[r]eviewing the trial court's ruling under the 'more than a scintilla of evidence' standard does not give proper deference to the statutory mandate that the aggravating factor be proved by clear and convincing evidence." Thus, the majority opinion held that the proper standard of review as to punitive damages is *whether the nonmovant produced clear and convincing evidence of one of the statutory aggravating factors for punitive damages*. This is a significant shift since, prior to the *Scarborough* decision, the trial judge would have been looking for a mere scintilla of evidence to support the jury's award.

The Effect of the Decision

The *Scarborough* decision is likely to have a definite impact in North Carolina trials involving punitive damages. Judges now have more leeway to set aside punitive damages awards based upon a lack of clear and convincing evidence.

For more information, please contact Carl Patterson, Don Tucker, Heather Adams, or any other Smith Anderson attorney.

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