

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERRY KLEIN AND RITA KLEIN,
Appellants/Cross-Respondents,

vs.

ALAN RAPOPORT; ALAN AND
SHELLEY RAPOPORT FAMILY TRUST
DATED OCTOBER 15, 1999; ALAN
RAPOPORT AS TRUSTEE AND
SHELLEY RAPOPORT AS TRUSTEE
AND 2 RUE ALLARD, A LIMITED
LIABILITY COMPANY,
Respondents/Cross-Appellants.

No. 47167

FILED

SEP 04 2009

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER GRANTING REHEARING, VACATING PREVIOUS ORDER IN
PART, AND REVERSING AND REMANDING

On May 5, 2009, this court entered an order affirming in part and reversing in part the order of the district court and remanding for proceedings consistent with our order. Respondents/cross-appellants thereafter filed a petition for rehearing of that order issued in a torts, contracts, and partnership action. We have considered Rapoport's rehearing arguments and conclude that rehearing is warranted. Accordingly, rehearing is granted. NRAP 40(c).

Under NRAP 40(c)(2)(A), this court will grant a rehearing petition in a civil matter if the appellant shows that a material fact or material question of law was overlooked or misapprehended. For the reasons discussed below, we have determined that rehearing of this matter is warranted. Accordingly, we grant the petition for rehearing and vacate the May 5, 2009, order in part. In particular, we vacate that portion of our order reducing the punitive damages award for intentional infliction of emotional distress (IIED) to \$300,000 in accord with the

punitive damages cap set forth in NRS 42.005(1), and remand for a new trial as to this issue to permit the jury to determine the appropriate punitive damages award.

The district court struck the compensatory award for IIED, finding insufficient evidence to support the economic award of \$100,000 and concluding the noneconomic damages of \$100,000 were contained in the noneconomic awards for the other causes of action. The district court then struck the \$1,250,000 punitive damages award because no compensatory award remained. On appeal, the Kleins argued the district court improperly reduced the jury award for IIED.

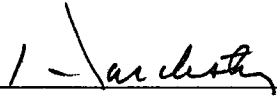
This court reversed the district court's judgment, striking the compensatory damages award to the extent that an award of \$1,200 for economic damages was appropriate. Klein v. Rapoport, Docket No. 47167 (Order Affirming in Part, Reversing in Part, and Remanding, May 5, 2009). This court concluded that the noneconomic damages awarded for IIED were duplicative of the noneconomic damages awarded for the other causes of action. Having reversed the district court's decision regarding the economic award and concluded that a compensatory damages award of \$1,200 was warranted, the court concluded that punitive damages were appropriate. This court applied the punitive damages cap, NRS 42.005(1), and reduced the punitive damages award to \$300,000.

Rapoport now argues that this court overlooked, misapplied or failed to consider whether the reinstated punitive damages were constitutionally permissible, and thus, the court should grant rehearing and reduce the punitive damages award for IIED.

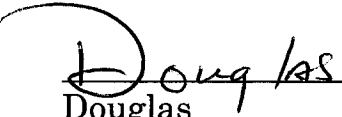
The district court's order striking the punitive damages because no compensatory award remained is reversed. As explained in the

May 5, 2009 order, punitive damages are appropriate since there was a compensatory award for IIED. However, this court only reinstated a portion of the compensatory award for IIED, which forms the basis for the punitive damages. Based on the reduction of the underlying award for IIED, we conclude that the issue of punitive damages should be remanded for a new trial. Rapoport argues this court should reduce the punitive damages award for IIED; however, we decline to do so as “[w]e may not invade the province of the fact-finder by arbitrarily substituting a monetary judgment in a specific sum felt to be more suitable.” Stackiewicz v. Nissan Motor Corp., 100 Nev. 443, 455, 686 P.2d 925, 932 (1984). Given the reduction in compensatory damages, we cannot be sure what the jury would have awarded in punitive damages. Therefore, we conclude that this issue should be returned for determination by the jury.

We therefore vacate the portion of the May 5, 2009 order which reinstated the punitive damages, reverse the district court’s order striking the punitive damages, and remand for a new trial to allow the jury to determine the award for punitive damages for IIED.


_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Douglas W. Herndon, District Judge
David J. Winterton & Associates, Ltd.
Lewis & Roca, LLP/Las Vegas
Eighth District Court Clerk