

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 10th day of May, 2018.

Present: All the Justices

Beverly A. Mack, Appellant,

against Record No. 170878
Circuit Court No. CL15002606-00

Garrick L. Blount, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Hampton.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is reversible error in the judgment of the Circuit Court of the City of Hampton.

On December 10, 2015, Garrick L. Blount (“Blount”) filed a complaint against Beverly A. Mack (“Mack”) alleging that, while Blount was walking his dog, Mack approached him, yelled for him to leave her property and repeatedly struck him. According to Blount, the incident resulted in an injury to his hand in the form of a small scratch. Blount sought \$200,000 in compensatory damages, \$350,000 in punitive damages, and injunctive relief prohibiting Mack from having any contact with Blount, his family or his dog. Blount also sought an award of costs and reasonable attorneys’ fees.

At the subsequent jury trial, no evidence was presented with regard to Blount’s costs or attorneys’ fees. After all of the evidence had been presented, the jury was instructed on the matter of compensatory damages. The instruction for compensatory damages stated:

If from the evidence and the other instructions of the court you find your verdict in favor of the plaintiff, you shall award him compensatory damages, which are the measures of the loss or injury sustained, and may embrace shame, mortification, humiliation, indignity to the feelings and the like, and they require no proof. You are not confined to the actual pecuniary damages or loss in terms of money sustained by the plaintiff, but you may take into consideration the motive of the defendant, if any is shown, the

insulting character of the assault and/or battery, if such is shown, and all circumstances of aggravation attending the act, if any. Such damages, if any have been shown, are in their nature actual or compensatory as much as those given for any bodily harm, pain, suffering, loss of earnings and expense incurred.

Additionally, the jury was presented with a verdict form. On the verdict form, the jurors were instructed that if they found for Blount on the battery claim, they were to write the amount of compensatory damages that should be awarded. The verdict form included similar language for Blount's assault claim. In the event that the jury found in favor of Blount on either or both claims, the jurors were instructed to determine whether Blount was entitled to an award of punitive damages and, if so, what amount.

During deliberations, the jury sent a question to the trial court which stated: "Can we place legal fees as the \$ amount for compensatory damages or does it have to be an exact dollar amount?" While discussing the matter with the parties, the trial court noted that there had been no evidence presented regarding legal fees. With the agreement of the parties, the trial court then responded to the jury: "I cannot answer this question for you. You must follow the instructions, including the verdict form, in arriving at your verdict."

When the jury subsequently returned its verdict, the trial court informed the parties that the jury found for Blount on the battery count. However, in the area for the amount of compensatory damages, the jury wrote "legal fees not to be [sic] exceed \$35,000 plus \$1.00."¹ In response, Mack moved for a mistrial. The trial court denied the motion because the jury was still present and the matter could be addressed.

The trial court then asked the parties how the jury should be instructed. Blount argued that the jury should simply be instructed to just put a number in the space for compensatory damages. Mack disagreed, arguing that the jury had to be specifically instructed that they cannot award legal fees and objected to the jury being told to simply put a number behind the dollar sign. The trial court then indicated that it was going to bring the jury out to have them "fix" the verdict, but did not otherwise indicate to the parties what course of action it was going to take. The trial court then inquired as to whether it should send the same verdict form back with the

¹ The jury also awarded Blount \$1 in compensatory damages on his assault claim and \$1 in punitive damages.

jury or give them a blank one. The parties agreed that the jury should be provided with a blank form. After the jury was brought back into the courtroom, the trial court stated:

I need to get you to go back and consider the second page of the finding or verdict form that we sent you. It's a long verdict but here's what happened, the question is, if you find your verdict in favor of Plaintiff Blount on his battery claim, what amount of compensatory damages should be awarded to the plaintiff and then there's a dollar sign and line. You need to fill in that line.

Your initial response was legal fees not to exceed . . . \$35,000 plus \$1.00, but you have to come up with a numeral to enter into that line if you can agree unanimously. I'm going to send you back to the jury room for you to reconsider that and what I would instruct you to do is just sign that page.

The jury subsequently returned with a verdict of \$35,001 on Blount's battery claim. When Blount moved to have a judgment entered on the verdict; Mack did not object. The trial court entered an order awarding Blount \$35,003. Mack signed the order as "seen and objected to."

On appeal, Mack argues that the trial court abused its discretion in refusing to instruct the jury that it could not award legal fees. According to Mack, the jury's initial question to the trial court combined with its initial verdict indicates that it was confused as to whether legal fees could be awarded. Mack asserts that, by failing to properly instruct the jury, the trial court essentially "invited" the jury to combine its award for legal fees with its award for compensatory damages.

In contrast, Blount insists that there was no need for an instruction on legal fees because the jury had been properly instructed on compensatory damages. Blount points to the fact that neither the jury instruction on compensatory damages nor the verdict form mentioned legal fees. Therefore, according to Blount, Mack's argument that the jury's award included legal fees is speculative.²

² Blount further argues that Mack failed to preserve this issue for appeal because she failed to object to the amount of the verdict or to his motion for entry of a judgment on the verdict. However, such formal objections are unnecessary to preserve a specific objection that is timely raised, thereby affording the trial court the opportunity to rule intelligently on the matter. *See Weidman v. Babcock*, 241 Va. 40, 44, 400 S.E.2d 164, 167 (1991); Code § 8.01-384(A). Here, on at least two occasions, Mack specifically requested that the trial court instruct the jury

“A trial court’s decision whether to grant or refuse a proposed jury instruction is generally subject to appellate review for abuse of discretion.” *Howsare v. Commonwealth*, 293 Va. 439, 443, 799 S.E.2d 512, 514 (2017). In reviewing a trial court’s refusal to give a jury instruction, the Court views the evidence in the light most favorable to the proponent of the instruction, regardless of which party prevailed below. *Blondel v. Hays*, 241 Va. 467, 469, 403 S.E.2d 340, 341 (1991).

“The office of [a jury] instruction ‘is to fully and fairly inform the jury as to the law of the case applicable to the particular facts, and not to confuse them.’” *Gaalaas v. Morrison*, 233 Va. 148, 156, 353 S.E.2d 898, 902 (1987) (quoting *Southers v. Price*, 211 Va. 469, 473, 178 S.E.2d 685, 688 (1971)). Moreover,

it is the *duty* of trial courts “to see that the jury is not discharged upon the return of an illegal verdict. In such event *they should be properly instructed*, and not discharged (except for some good reason) until they have found and returned a legal verdict upon which the appropriate judgment can be based.”

Cape Charles Flying Serv., Inc. v. Nottingham, 187 Va. 444, 453, 47 S.E.2d 540, 544 (1948) (quoting *Williams v. Commonwealth*, 153 Va. 987, 994, 151 S.E. 151, 153 (1930)) (emphasis added).

Here, the inclusion of an award of legal fees in the initial verdict form in conjunction with the jury’s question about legal fees indicated that the jury was confused as to whether it could award legal fees as compensatory damages. It was therefore incumbent on the trial court to ensure that the jury was properly instructed to avoid a similar result when it sent the jury back to deliberate its award. *See id.* at 453, 47 S.E.2d at 544. Accordingly, it was error for the trial court to refuse to properly instruct the jury when it was aware of the jury’s confusion and Mack had specifically requested an instruction addressing the matter.

In her prayer for relief, Mack specifically sought to have the Court reduce the award of compensatory damages for the battery claim from \$35,001 to \$1. She further requested that the Court affirm the jury’s award with regard to the assault claim and the punitive damages. In the alternative, Mack requested a retrial limited to the issues of liability and damages on the battery

on the issue of legal fees. Accordingly, the issue of whether the trial court abused its discretion in refusing to instruct the jury on the issue of legal fees is preserved.

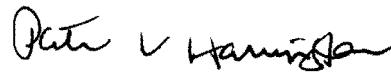
claim. Although there is evidence that the jury intended to award Blount only \$1 in compensatory damages for his battery claim, the Court cannot say for certain that this is the amount that would have been awarded if the jury had been properly instructed about the applicable principles of law.

Under normal circumstances, the Court would set aside the verdict and remand the case for retrial. *See Williams*, 153 Va. at 995, 151 S.E. at 154 (reversing the judgment and remanding based on a defective jury verdict). However, at oral argument, Blount was specifically asked whether he would rather have a judgment in the amount of \$1 entered in his favor on the battery claim or have the case remanded for retrial. In response Blount stated that, if given the choice, he would take a judgment in the amount of \$1, which he viewed as a “victory.” Oral Argument Audio at 21:19 to 22:10. As both parties have affirmatively indicated that they would prefer entry of final judgment rather than having this matter remanded for retrial, the judgment of the trial court awarding Blount \$35,003 is reversed, the jury’s award of \$35,001 on Blount’s battery claim is reduced to \$1 and final judgment in the amount of \$3 is entered for Blount, with court costs as previously ordered by the trial court.³

This order shall be certified to the Circuit Court of the City of Hampton.

A Copy,

Teste:



Clerk

³ In *Zedd v. Jenkins*, 194 Va. 704, 74 S.E.2d 791 (1953), the Court addressed a similar situation involving a defective jury award. There, as here, the Court entered final judgment at the parties’ request rather than remanding the matter for a retrial that neither party desired. *Id.* at 708, 74 S.E.2d at 794.