

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF PINE

TENTH JUDICIAL DISTRICT

MICHAEL LANE HOLT,

File No. C4-03-764

Plaintiff,

**ORDER AND
MEMORANDUM**

v.

ROSALYN EILEEN ROBERTSON,
AND ELIZABETH ANN ROBERTSON,

Defendants.

The above-captioned matter came on for hearing before the Honorable James T. Reuter, Judge of District Court, at the Pine County Courthouse, Pine City, Minnesota, on the 3rd day of November, 2003, upon Plaintiff's motion to amend the complaint to assert a claim for punitive damages.

Attorney Harry A. Sieben, Jr., Minneapolis, Minnesota, appeared on behalf of the Plaintiff.

Attorney Patrick M. Biren, Minneapolis, Minnesota, appeared on behalf of Defendants.

The Court, being fully advised in the premises, and upon the arguments of counsel and all of the files, proceedings and records herein, hereby makes the following:

ORDER

1. Plaintiff's motion to amend the complaint to assert a claim for punitive damages is hereby DENIED.
2. The attached Memorandum is hereby made a part of this Order.

BY THE COURT:

Dated this

6th day of *JANUARY* 2004

[Signature]
James T. Reuter
Judge of District Court

Filed *1-6-04*
Court Administration
District Court
Pine County, MN
By *[Signature]*
Court Administrator/Deputy

MEMORANDUM

This matter arises out of a motor vehicle accident which occurred on November 19, 2002, at approximately 6:00 a.m., in the City of Hinckley, Minnesota, located in Pine County. On said date, Plaintiff Michael Holt (hereinafter "Plaintiff") was driving a vehicle was struck by a vehicle owned by Defendant Elizabeth Ann Robertson and driven by her sister, Defendant Rosalyn Eileen Robertson (hereinafter "Defendant"). Plaintiff subsequently commenced suit against Defendants for injuries he sustained in the accident.

The matter is instantly before the Court upon Plaintiff's motion to amend the complaint to assert a claim for punitive damages, pursuant to Minn.R.Civ.P. 15.01, which governs amendment of pleadings, and Minn.Stat. §549.191, which governs claims for punitive damages.

Minn.Stat. §549.191 in pertinent part provides:

Upon commencement of a civil action, the complaint must not seek punitive damages. After filing the suit a party may make a motion to amend the pleadings to claim punitive damages. The motion must allege the applicable legal basis under section 549.20 or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds *prima facie* evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive damages.

A motion to amend the complaint to add a claim for punitive damages can only be granted if the plaintiff establishes a *prima facie* case that plaintiff is entitled to punitive damages. See *Id.* "Minnesota Courts have determined that "[p]rima facie evidence is that evidence which, if unrebutted, would support a judgment in that party's favor." *Ulrich v. City of Crosby*, 848 F.Supp. 861, 867 (D.Minn. 1994) (quoting *Swanlund v. Shimano Indus. Corp.*, 459 N.W.2d 151, 154 (Minn.Ct.App. 1990)). The *Ulrich* court also recognized that plaintiffs are not required at this stage

to prove an entitlement to punitive damages, but only a right to allege punitive damages. Id. (citations omitted).

Punitive damages are allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show a willful indifference to the rights or safety of others. Minn.Stat. §549.20, subd. 1 (1988). The legislative intent expressed in that statute is to limit the frequency and amount of punitive damage awards. Minnesota-Iowa Television Co. v. Watonwan T.V. Improvement Association, 294 N.W.2d 297, 311 (Minn. 1980). Punitive damages are an extraordinary remedy to be allowed with caution and within narrow limits. Lewis v. Equitable Life Assurance Society of the United States, 389 N.W.2d 876, 892 (Minn. 1986). When a party seeks punitive damages, the trial court must first determine whether the evidence is sufficient to submit the issue to the jury. See Morris v. Littler, 399 N.W.2d 673, 676-77 (Minn.Ct.App. 1987).

Plaintiff submits to the Court that he is entitled to amend the complaint to add a claim for punitive damages based upon evidence that Defendant was driving a motor vehicle while impaired and without a driver's license, in violation of Minnesota law.

Although Minn.Stat. §549.20 does not expressly provide for recovery of punitive damages in automobile accident cases, case law interpreting that statute has permitted recovery of punitive damages from drunk drivers when the facts are "egregious." See Anderson v. Amundson, 354 N.W.2d 895 (Minn.Ct.App. 1984) (where defendant driver had been drinking all afternoon and evening, had a blood alcohol level of .24, drove erratically across the center median and right curb several times before losing control of truck and striking plaintiff's car); Hawkinson v. Geyer, 352 N.W.2d 784 (Minn.Ct.App. 1984) (where unlicensed driver had been drinking for nearly twelve

hours, had a blood alcohol level of .28, sped down a residential street onto a sidewalk and through plaintiff's front yard and window).

However, under current statutory and case law, a driver's level of blood alcohol concentration alone is insufficient evidence of willful indifference to the rights and safety of others to justify submitting the issue of punitive damages to a jury. See Nhep v. Roisen, 446 N.W.2d 425 (Minn.Ct.App. 1989) (Driver whose car was rear-ended was not entitled to submission of punitive damages issue, although rear-ending driver had been drinking prior to accident, had blood alcohol level of .20 after accident, and might have fallen asleep at wheel of her car, where there was no evidence of high speed, erratic driving, or other egregious conduct prior to the accident).

In the present case, Plaintiff submits the following facts in support of his motion: (1) Defendant did not have a driver's license; (2) Defendant had a blood alcohol concentration of .24; (3) Defendant admitted that she felt that the alcohol she consumed affected her ability to drive; and (4) Defendant did not have a valid driver's license. Plaintiff has demonstrated that these allegations are supported by fact. However, what Plaintiff has not shown is the element of willful indifference or deliberate disregard.

The evidence indicates that both Defendants left their mother's home at approximately 1:30 a.m. on November 19, 2002 to go to a party at a friend's house. They intended to stay at the party all night and all morning. It is unclear whether Defendant Rosalyn Robertson intended to consume alcohol at the time they left for the party. Both Defendants did consume alcohol, and fell asleep or passed out at their friend's residence. The facts become fuzzy at this point.

There is no evidence of erratic driving behavior on the part of Defendant, or that she had been drinking for 12 hours with the knowledge that she would be driving thereafter, or other

circumstances which the courts have deemed to be "egregious" in other cases. There are no facts from which the Court could reasonable conclude that Defendant acted with deliberate disregard for the rights or safety of the Plaintiff, as required by Minn.Stat. §549.20. Thus, to find that a claim for punitive damages under the facts presented here would be an unprecedented extension of the law.

While the Court recognizes that Minn.Stat. §169A.76 authorizes the Court in a civil action involving a motor vehicle accident to consider an award of punitive damages if there is evidence that the accident was caused by a driver with an alcohol concentration of 0.10 or more or was under the influence of alcohol, this statute does not supercede Minn.Stat. §549.20 or abolish its proof requirements. It simply permits the Court to consider the evidence in its §549.20 analysis, which this Court has done.

Based on the foregoing, Plaintiff's motion to amend the complaint to assert a claim for punitive damages must be denied.

J.T.R.