

Third District Court of Appeal

State of Florida

Opinion filed August 26, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D24-2096
Lower Tribunal Nos. 14-23694-CA-01, 19-014336-CA-01

Richard Goldman, et al.,
Appellants,

vs.

Jonathan Lewin,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Spencer Eig, Judge.

Schlesinger Law Group and Michael J. Schlesinger, for appellants.

GrayRobinson, P.A., and Jack R. Reiter and Richard Danese, for appellee.

Before FERNANDEZ, MILLER and LOBREE, JJ.

LOBREE, J.

Richard, Kenneth, and Mitchel Goldman (collectively, “the Goldmans”)

appeal an order granting the motion for leave to amend and add a demand for punitive damages by Jonathan Lewin, individually, and as Successor Trustee of the Aaron Goldman Revocable Trust, and as personal representative of the Estate of Aaron Goldman (“Lewin”). For the reasons discussed below, we affirm in part and reverse in part.

BACKGROUND

This case arises out of a series of lawsuits between the Goldmans and their cousin Lewin regarding their uncle Aaron Goldman’s estate. Aaron prepared estate plans in 1998 and 2005 which both named Lewin as the sole living beneficiary and personal representative of Aaron’s Estate and as trustee of Aaron’s Trust. In 2007, Lewin was appointed as Aaron’s plenary guardian after guardianship proceedings were initiated due to Aaron’s lack of capacity. Aaron eventually passed away on September 3, 2010. His death led to the lawsuits that underlie this claim for punitive damages.

The Goldmans first filed a petition for intestate administration alleging that the 1998 and 2005 wills were invalid due to lack of capacity, and seeking to have Richard appointed as personal representative (the “Probate Action”). The Probate Action was later dismissed with prejudice in June 2011, which this court affirmed. See Goldman v. Lewin, 116 So. 3d 568 (Fla. 3d DCA 2013). Shortly after filing the Probate Action, Richard and Kenneth Goldman

filed a separate action against Lewin seeking to set aside Aaron's trust based on incapacity, undue influence, breach of fiduciary duty, and tortious interference with expectancy of inheritance (the "Trust Action"). Final judgment was eventually entered in favor of Lewin in 2012, and this court affirmed. See id. Richard also filed a petition to extinguish the beneficial interests of Lewin and Pearl Goldman, Lewin's mother, alleging that they acted as co-conspirators to cause Aaron's death by feeding him excessive salt and/or withholding his medication and generally took advantage of Aaron and his assets through intimidation, exploitation, and undue influence ("the Slayer Action"). That matter was dismissed without prejudice in 2011.

Following the initiation of those three actions, Lewin filed this lawsuit against the Goldmans for abuse of process and conspiracy to abuse process and against Richard and Kenneth for malicious prosecution based on the Trust Action. In 2022, Lewin moved to amend his second amended complaint to add a claim for punitive damages against the Goldmans based on intentional misconduct—namely, abuse of process, conspiracy to abuse process, and malicious prosecution. The Goldmans moved in opposition and filed a counter-proffer in support. The matter proceeded to two hearings in September 2023 and October 2024. The trial court then entered an unelaborated written order granting Lewin's motion for leave to amend and

add a claim for punitive damages. This appeal followed.

ANALYSIS

A trial court's decision on a motion for leave to amend to add a claim for punitive damages is reviewed de novo. See Grove Isle Ass'n v. Lindzon, 350 So. 3d 826, 829 (Fla. 3d DCA 2022). The Goldmans contend the trial court erred by failing to make oral or written findings of fact and by granting Lewin's motion.

Under section 768.72(1), Florida Statutes (2024), "no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages." Contrary to the Goldmans' argument, nothing in section 786.72(1) specifically requires the trial court to make affirmative findings regarding what evidence it relied on when granting a motion for leave to amend and add a claim for punitive damages. While this Court has previously concluded that a trial court's failure to make findings "identifying the evidence it considered sufficient to provide a statutory 'reasonable basis' for granting the motion to amend. . . . was a departure from applicable law," Cat Cay Yacht Club, Inc. v. Diaz, 264 So. 3d 1071, 1075 (Fla. 3d DCA 2019), we find that decision has been superseded by the Florida Supreme Court's recent opinion in Perlmutter v. Federal Insurance

Co., 434 So. 3d 681 (Fla. 2026).

In Perlmutter, the Florida Supreme Court concluded that “the test for deciding evidentiary sufficiency under section 768.72(1) is whether a reasonable person could conclude, based on the claimant’s evidence, that the defendant committed ‘intentional misconduct’ or ‘gross negligence,’ as defined in section 768.72(2).” Id. at 688. It clarified that a “trial court should consider only the evidence identified or proffered by the claimant” and “should not entertain an evidentiary counter-submission from the opponent.” Id. This clarification renders the need for a trial court to make findings of fact when granting a motion for leave to amend superfluous. In fact, the Florida Supreme Court specifically noted that “[t]he trial court does not act as a fact-finder in a proceeding under section 768.72(1). It must not weigh the claimant’s evidence, meaning that its role is not to decide the truth of the matter.” Id. at 689. In conducting its review, the trial court must simply consider the claimant’s evidence “in the light most favorable to the plaintiff” and determine whether it shows a reasonable evidentiary basis to support the allegations in the proposed amended complaint. Id. (quoting Hosp. Specialists, P.A. v. Deen, 373 So. 3d 1283, 1287 (Fla. 5th DCA 2023)). Thus, requiring a trial court to provide findings of what evidence it relied on when reaching its determination on a motion for leave to amend and add a

claim for punitive damages would be unnecessarily duplicative as Perlmutter makes it clear the trial court should only consider the evidence proffered by the claimant.

Applying this standard, and considering only the evidence submitted by Lewin, we conclude that the trial court did not err in allowing Lewin to bring punitive damages claims against Richard and Mitchel Goldman. Lewin proffered evidence that Richard and Mitchel verified the pleading and allegations in the Probate Action without evidence or personal knowledge. Against Richard, Lewin also proffered evidence that Richard verified the pleading and allegations in the Trust Action without evidence or personal knowledge to support the allegations and induced his siblings into signing onto the Probate Action despite his lack of knowledge, and that Richard brought the Slayer Action raising accusations of a conspiracy between Lewin and his mother to murder Aaron without evidence or personal knowledge despite being under penalty of perjury. Against Mitchel, Lewin further proffered evidence that Mitchel admitted knowing he was not named in either of Aaron's wills as a beneficiary and that Aaron had capacity when executing the wills, which conflicts with the allegations of the Probate Action that Mitchel certified were correct. This evidence, viewed in the light most favorable to Lewin, could reasonably support a finding that Richard and

Mitchel committed intentional misconduct¹ as defined in section 768.72(2). See § 768.72(2)(a), Fla. Stat. (“‘Intentional misconduct’ means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.”).

However, we conclude that the trial court erred in allowing a punitive damages claim against Kenneth. While Lewin proffered evidence that Kenneth brought the Probate and Trust Actions without evidence or personal knowledge to support the allegations, this conduct alone does not meet the statutory definition of intentional misconduct. Louis v. Costco Wholesale Corp., 719 So. 2d 1226, 1228 (Fla. 4th DCA 1998) (“While an absence of probable cause can result in a finding of legal malice, legal malice, based solely on the absence of probable cause, is insufficient to support an award of punitive damages.”). Lewin therefore did not proffer sufficient evidence to show Kenneth “had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to [Lewin] would result.” § 768.72(2).

¹ It is undisputed that Lewin’s claims for punitive damages for abuse of process, aiding and abetting abuse of process, and malicious prosecution against the Goldmans are based on intentional misconduct.

CONCLUSION

We affirm in part and reverse in part the trial court's order granting Lewin's motion for leave to amend the complaint to plead punitive damages. We affirm the order as to Richard and Mitchel Goldman because Lewin presented sufficient evidence to establish a reasonable basis for recovery of punitive damages against them based on intentional misconduct. We reverse the order as to Kenneth Goldman because Lewin did not present sufficient evidence to establish a reasonable basis to conclude he was guilty of intentional misconduct warranting punitive damages.

Affirmed in part, reversed in part and remanded for further proceedings.