



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**SWIFT TRANSPORTATION CO., LLC v. HON.
KRISTA M. CARMAN (rpi Thomas Mountz, et al.),
CV-20-0119-PR**

PARTIES:

Petitioner: Swift Transportation Co. of Arizona

Respondents: Real parties in interest, plaintiffs Thomas Mountz and Paul Champion

Amici curiae: (1) Arizona Association for Justice/Arizona Trial Lawyers Association (AAJ/ATLA);
(2) the Trucking Industry Defense Association

FACTS:

On the night of January 9, 2018, Swift Transportation’s driver, Brian Vanderhoff, was driving an empty tractor trailer back to Phoenix in the rain. The “Jake” brake was engaged and cruise control was set to 62 mph. While passing a vehicle on the right on a downhill sloping curve, the truck hydroplaned and jackknifed near Cordes Junction, partially blocking traffic in the right lane of the highway. Collisions occurred, killing and injuring several travelers in multiple vehicles, including family members of Thomas Mountz and Paul Champion.

Thomas Mountz and Paul Champion sued Swift. In preparing their case, they filed “Plaintiffs’ Motion on *Prima Facie* Case for Punitive Damages.” They argued that they had made the proper showing that entitled them to present the issue of punitive damages to the jury and to pursue financial information through the discovery process from Swift. Swift urged the superior court to deny the motion because, while its driver may have been negligent, it maintained that there was no evidence of an “evil mind” or truly reprehensible, aggravated, or outrageous conduct that would support a request for punitive damages. Swift relied on *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326 (1986); *Rawlings v. Apodaca*, 151 Ariz. 149 (1986); and *White v. Mitchell*, 157 Ariz. 523 (App. 1988). The Arizona Supreme Court in *Linthicum* decided that, before a jury may award punitive damages, the plaintiff must show clear and convincing evidence of an “evil mind.” In *Rawlings*, the Court explained that “evil mind” may be found either where a defendant intended to injure the plaintiff, or where a defendant intended no injury but consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others. In *White*, the Court reiterated that the availability of punitive damages should be restricted to those cases in which the defendant’s wrongful conduct was guided by evil motives, that is, where the defendant’s “evil hand” was guided by an “evil mind.”

The superior court held an evidentiary hearing where several witnesses testified.

Following the hearing, the superior court held in a minute entry dated February 3, 2020, that the plaintiffs had made a *prima facie* showing that “. . . Vanderhoff’s actions consciously disregarded the unjustifiable substantial risk of significant harm to others.” The superior court observed that Vanderhoff testified that he was aware of the following driving risks and hazards,

yet he continued to drive the Swift truck:

- Vanderhoff had been trained that it was dangerous to drive in the rain with the “Jake” brake on, and he should have disengaged it when it began raining.
- Vanderhoff was trained it is dangerous to operate his vehicle with speed control on in the rain and while pulling an empty trailer.
- Vanderhoff was trained that driving with an empty trailer causes the rig to be less stable and more likely to hydroplane.
- Vanderhoff was traveling at 62 mph, the rain was heavy, and it had been raining for some minutes.
- Vanderhoff testified his visibility was impaired, and he was trained to be careful with his speed when traveling downhill and around curves especially when his visibility is impaired.
- Vanderhoff did not slow down when he was going downhill and around a curve in the rain immediately prior to the collision as his speed control was still on and set to 62 mph.
- Vanderhoff chose to pass a vehicle on the right while he was entering the downhill left curve.
- Vanderhoff did not leave his vehicle following the initial collision, did not try to warn other vehicles of the hazard ahead.
- Vanderhoff was on a social phone call with his daughter (Bluetooth) and had been talking with her for at least thirty minutes prior to the collision and was still talking with her when the crash occurred.
- At the crash site, Vanderhoff told investigating officers that he was traveling 45 mph at the time of the crash.

The superior court set out these legal principles in support of its decision to grant the motion:

Assuming an adequate evidentiary predicate, a jury may award punitive damages to punish a defendant for willful or malicious conduct and to deter others from similar behavior. *Desert Palm Surgical Grp., P.L.C. v. Petta*, 236 Ariz. 568, 584, 343 P.3d 438, 454 (Ct. App. 2015). To obtain an award of punitive damages, a plaintiff must prove by clear and convincing evidence that the defendant engaged in "reprehensible conduct combined with an evil mind over and above that required for commission of a tort." [*Id.*], citing *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 332, 723 P.2d 675,681 (1986)[.] "The key is the wrongdoer's intent to injure the plaintiff or his deliberate interference with the rights of others, consciously disregarding the unjustifiably substantial risk of significant harm to

them." *Id.* at 331 , 723 P.2d at 680 (citing *Rawlings v. Apodaca*, 151 Ariz. 149, 160, 726 P.2d 565, 576 (1986)); *Desert Palm Surgical Grp., P.L.C. v. Petta*, 236 Ariz. 568, Ariz.584-585, 343 P.3d 438, 454-55 (Ct. App. 2015). Important factors to consider when deciding whether a defendant acted with an evil mind include (1) the reprehensibility of defendant's conduct and the severity of the harm likely to result, (2) any harm that has occurred, (3) the duration of the misconduct, (4) the defendant's awareness of the harm or risk of harm, and (5) any concealment of it. *Hyatt Regency Phoenix Hotel Co. v. Winston & Strawn*, 184 Ariz. 120, 132, 907 P.2d 506, 518 (Ct. App. 1995). Further, the "question of whether punitive damages are justified should be left to the jury if there is any reasonable evidence which will support them." *Mendoza v. McDonald's Corp.*, 222 Ariz. 139, 158, 213 P.3d 288 307 (Ct. App. 2009).

Swift filed a petition for special action with the court of appeals. The court of appeals in an "Amended Order Accepting Jurisdiction, Denying Relief" held that relief was unwarranted where ". . . the superior court's assessment is supported by the record at this state of the proceedings."

Swift filed this petition for review of that decision.

ISSUE:

"Do *Linthicum* and *Rawlings* require a plaintiff seeking punitive damages to prove both elements: that defendant's evil hand was guided by an evil mind? Or may a plaintiff proceed with a punitive-damages claim without presenting evidence of 'aggravated and outrageous conduct' evidencing an evil hand, as the lower courts allowed?"

Definitions: None.

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