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Big Love

Two multimillion verdicts upheld by the Court of Appeals give heart balm law opponents hope of a Supreme Court hearing

By: Heath Hamacher June 11, 2014

There's an unwritten rule in boxing that should apply to lawsuits, especially those dealing with spurned spouses: Defend yourself at all times.

In separate rulings, the North Carolina Court of Appeals recently upheld two multimillion dollar verdicts in heart-balm cases involving defendants who didn't mount much of a defense.

In Wake County, Carol Puryear received a $30 million judgment while a Guilford County woman, Cynthia Shackelford, was granted $9 million for alienation of affection and criminal conversation.

Both defendants are now represented on appeal by Greensboro family law attorney Carolyn Woodruff, who on June 5 petitioned the Supreme Court, arguing that the punitive damages are excessive and that the torts are unconstitutional violations of due process and free speech.

Woodruff declined to comment further.

Attorney Gena Morris with Horack Talley in Charlotte had no role in these cases, but does specialize in this area of law. She believes heart-balms are antiquated atrocities and questions the accuracy of calculated damages here, citing too many possible variances.

"It's plain and simple junk," Morris said. "It's voodoo. I have no earthly idea what numbers you add up and what years you multiply them by to get to $30 million."

'Out of this misery'

Morris said there were defenses available at the trial court level that, because of a lack of representation, were not preserved for appeal. Within the words of these opinions, she believes, are undertones that the court of appeals is waiting for its hands to one day be untied by a case with good facts and preserved defenses. Maybe by "inflating the (judgment) beyond the absurd," judges hoped to gain the attention of someone empowered to make a change.

"Perhaps they are hoping the Supreme Court will put us all out of this misery since the legislature steadfastly refuses to do it," she said.

In 1984, the Court of Appeals tried to abolish heart balms in Cannon v. Miller, stating it had "ample precedent" in its jurisdiction to do so. In its opinion, the court wrote, "It is well settled that absent a legislative declaration, the courts possess the authority to alter judicially created common law rules when such action is deemed necessary in light of experience and reason."

But that ruling was soon overturned by the Supreme Court, which said the Court of Appeals "has acted under a misapprehension of its authority to overrule decisions of the Supreme Court of North Carolina and its responsibility to follow those decisions."

Two recent cases that had promise of spurring legislation were defended by Winston-Salem attorneys John F.

Morrow Sr. and John C. Vermitsky of Morrow, Porter, Vermitsky & Fowler. The decision in 2011's Filipowski v. Oliver was highly anticipated but ended in an anticlimactic settlement. In Hubble v. Horn, a Forsythe County jury ordered defendant Larry Horn to pay more than $100,000 for sleeping with a man's wife. Morrow and Vermitsky appealed, and hopes fizzled when the court ruled the motion interlocutory.

"Everybody can talk all day long about why haven't we done away with it; it's politics, of course," Morrow said. "We had some pretty significant briefs challenging the constitutionality of it but without getting into that, it does boil

down to due process and freedoms we have in this country."

Morrows said the same issues are constantly put in front of the courts for review and that it's likely a matter of time before the antiquated laws — common-law remnants — are done away with.

Greg Hatcher of Hatcher Law Group in Charlotte has been practicing law for more than 20 years and is a family law board certified specialist. He has prosecuted and defended these torts and says that as a young lawyer, he thought it was a crazy law.

Now he feels like the law can help with the more egregious acts that don't necessarily involve just a pocketed wedding ring and an unsuspecting lover.

"This is usually someone's assistant or best friend and they know what's going on," Hatcher said. "Is that behavior we want in our community? I'm not a moralist and I'm not here to say what's right or wrong … but I believe these are laws that are on our books and they can help, when appropriate. If it helps keep a family together — if there's one less heartache — so be it."

Opting out not an option

Puryear married her husband, Donald, in 1994. Their troubles begin in 2007, Carol said, when Donald's old flame, Beverly Devin (now Beverly Puryear), showed up at his father's funeral and slipped Donald her phone number. The two soon rekindled their romance and within four months, the Puryears separated.

In January 2009, just days before their divorce was final, Carol filed suit. Devin, represented by Raleigh attorney Jerry Leonard, answered and included counterclaims and a motion to dismiss.

That's pretty much where her compliance ended.

By year's end, the court had ordered Devin to pay Puryear just over $1,600 in attorney's fees and Leonard had requested to withdraw as her counsel, saying he'd only spoken with his client once in two months and heard from one of her family members that Devin indicated "… she was not going to participate in the defense of this action and the prosecution of her counter claims."

By June 2010 Leonard was officially off the case and the court found Devin in contempt, awarding Puryear another $1,900 in attorney's fees. In January 2011 the court entered an order to appear and show cause why Devin shouldn't be held in criminal contempt.

Devin did not appear but apparently mailed a check to the clerk of court with no accompanying correspondence. On Feb. 17 another Raleigh attorney, Mary Gurganus, filed a notice of limited appearance as Devin's counsel of record.

During the March 14 bench trial, Devin apparently showed up at the courthouse but left after she said Gurganus, acting "informally" as her attorney, said that she could waive her appearance.

Devin also said she was under pressure from Donald Puryear not to defend the action.

The court was not pleased and ruled in her absence.

"I'm offended that … she was in this courthouse … feet from that door and chose not to come and sit in that seat, and say absolutely nothing," its opinion states.

A dollar won't do it

In Guilford County, Cynthia Shackleford claimed the heart of her problem was Anne Lundquist, whom she said began an affair as early as 2004 with her then-husband of 32 years.

When the complaint was filed in 2007, Lundquist lived in New York. According to records, she did not retain counsel or answer the complaint, but did file what the Guilford County Clerk of Superior Court deemed to be a late motion for extension of time to respond.

Lundquist mailed multiple letters to the clerk seeking legal advice and stating that any delay in her previous motion was "foreseen and excusable." One letter, filed Feb. 11, 2008, asked the clerk to "provide some simple direction as to how I can correct this situation without my having to spend money that I don't have to hire an attorney to do this for me?"

After being notified in November 2009 that the matter had been placed on a clean-up calendar for December, Lundquist responded – three months later – inquiring about the status of the matter.

Court records show she mailed an "emergency motion for continuance," filed March 1, 2010 and a request to rule on her earlier motion to dismiss but made no attempt to calendar that motion for a hearing.

On March 19, 2010, the trial court entered an amended order denying the motion, citing several failures to appear. The case had actually been tried by a jury four days earlier.

Lundquist finally retained counsel and requested the judgment be vacated or reduced to $1. That motion was denied.

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