NOTICE
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2026 IL App (5th) 250769-U

NO. 5-25-0769

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

TRACY DEADMOND,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 22-LA-545
	)	
JAMES E. WILDHABER,	)	Honorable
	)	Sarah D. Smith,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HACKETT delivered the judgment of the court.
Justices Barberis and Boie concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's denial of defendant's motion for remittitur where the jury's punitive damages award did not violate defendant's due process rights and where the trial court's finding that the award was not improperly based on passion or prejudice was not against the manifest weight of the evidence.

¶ 2 Following a jury trial, defendant, James E. Wildhaber, was found liable of negligence and willful and wanton conduct against plaintiff, Tracy Deadmond. The jury returned a verdict in plaintiff's favor with compensatory damages of $5.95 million and punitive damages of $29.5 million. On appeal, defendant asks this court to remand for entry of a remittitur where the jury's punitive damages award violated his constitutional due process rights and was improperly based on passion or prejudice. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This case arises out of a motor vehicle accident which took place in Clinton County, Illinois, on February 6, 2022. At around 7:30 p.m. on that date, defendant, who was intoxicated, was driving on the wrong side of the road on U.S. Highway 50 when he struck the passenger side of a Ford Taurus head-on. Inside the Ford, plaintiff's mother was driving, plaintiff's son was in the backseat, and plaintiff was in the front passenger seat. After the collision with defendant's vehicle, the Ford became disabled in the middle of the eastbound lane. While plaintiff's mother and son were able to exit the vehicle, plaintiff remained stuck inside. Approximately one minute after the collision with defendant's vehicle, a second car struck the Ford in a T-bone-type collision. This second vehicle was driven by codefendant Phillip Clutts.

¶ 5 On February 7, 2022, defendant was charged via information with one count of aggravated driving under the influence of alcohol, one count of leaving the scene of a motor vehicle accident involving personal injury, and one count of failure to give information and render aid. Thereafter, defendant pled guilty to all three counts and the trial court sentenced him to four years in the Illinois Department of Corrections (IDOC) on the aggravated DUI charge and one year in the IDOC on the leaving the scene charge.

¶ 6 On April 28, 2022, plaintiff filed a civil complaint alleging one count of negligence against defendant and another count of negligence against codefendant Clutts. On November 16, 2022, plaintiff filed a motion for leave to file an amended complaint adding a punitive damages claim against defendant. On January 5, 2023, the trial court granted plaintiff's motion. That same day, plaintiff filed an amended complaint retaining the original counts of negligence against defendant and Clutts and adding a claim of willful and wanton misconduct against defendant.

¶ 7 On December 10, 2024, plaintiff filed an unopposed motion to bifurcate the punitive damages claim at trial, which the trial court granted on February 20, 2025. On April 3, 2025, the parties stipulated that plaintiff's hitherto incurred medical charges resulting from the accident totaled $700,000.

¶ 8 The compensatory phase of the trial began on May 13, 2025. Plaintiff first played a video deposition of defendant, taken on May 8, 2025, for the court. A transcript of that video was provided to this court, and we will recount its contents here. In the video, defendant recalled that, at around 5:30 p.m. on February 6, 2022, defendant's girlfriend locked him out of the house, and he began drinking vodka and several mixed drinks. Sometime between 6 p.m. and 6:30 p.m., defendant left the house in his vehicle to drive around and calm down. At some point, defendant got onto U.S. Highway 50 and began driving on the wrong side of the roadway. At around 7:30 p.m., he hit a black Kia and struck the passenger side of a Ford Taurus, within which plaintiff was a passenger. Defendant admitted that he failed to reduce his speed to avoid the crash, and that the Ford's driver, plaintiff's mother, did not do anything to contribute to the accident. After the collision, the Ford came to a halt in the middle of the eastbound lane. Defendant's vehicle was also disabled. Defendant went over and checked on plaintiff, who was still inside the Ford, and saw that plaintiff was unconscious. He heard plaintiff making noises and knew that plaintiff was hurt. Defendant then ran and hid in a field, where he called his girlfriend and mother on his cell phone. Police then came and found defendant in the field.

¶ 9 Defendant admitted to telling police officers that the other vehicles had been in the improper lane. However, defendant insisted that he had been sincerely mistaken at the time and had not intended to mislead the officers. Defendant did not recall initially telling the officers that he only had a few beers. Defendant admitted that Clutts was not responsible for the accident but

declined to state that Clutts was similarly not responsible for plaintiff's injuries. Defendant acknowledged that he refused to provide blood and urine samples after the collision because he knew he was intoxicated. Although defendant knew before getting into his vehicle that evening that he was intoxicated, that driving in his condition was illegal, and that he could seriously hurt someone, he decided to drive anyway. Defendant conceded that his conduct disregarded others' safety. Defendant admitted that, nearly six hours after the accident, blood and urine samples showed that he was at twice the legal intoxication limit. Defendant confirmed that, in connection with this accident, he pled guilty to aggravated DUI, leaving the scene of a motor vehicle accident involving personal injury, and failure to give information and render aid charges.

¶ 10 Clutts, testifying for plaintiff, stated that, on the night of the accident, he was driving his truck to a friend's house. The road was dry, and the atmosphere was very dark and cold. As he drove, he came up on a Kia that was parked on the side of the road. The Kia's headlights were shining in Clutts's face, and as a result, Clutts could not see very well. Almost immediately after driving past the Kia, Clutts saw another vehicle in front of him in the middle of the roadway. This vehicle did not have any lights on. Clutts did not have time to hit the brakes on his truck before he crashed into the other vehicle at around 60 miles an hour. Clutts crawled out of his truck's window and lay on the ground. When emergency services arrived, he stood up and told the emergency personnel to take care of plaintiff instead of himself.

¶ 11 After Clutts testified, plaintiff played a video deposition of Illinois State Police Trooper Ryne Brieseacher for the court. A transcript of the video was provided to this court, and we will recount its contents here. In the video, Trooper Brieseacher testified that he was a traffic crash reconstructionist and that he reconstructed the accident at issue in this case. The accident took place on a straight, flat, two-lane road with a speed limit of 55 miles per hour. It was very dark

outside at the time, and there were no streetlamps in the area. The accident between defendant's and plaintiff's vehicles was a head-on collision that took place in the road's eastbound lane, the lane of travel reserved for plaintiff's vehicle. Due to the point of impact, Trooper Brieseacher concluded that defendant was in the wrong lane of traffic. The second crash, between plaintiff's and Clutts's vehicles, was a T-bone-type collision which took place approximately one minute after the first collision. Trooper Brieseacher confirmed that the airbags in plaintiff's car deployed and that plaintiff had his seat belt on at the time of the collisions. Trooper Brieseacher testified that although the legal alcohol limit in Illinois was 0.08%, toxicology testing indicated that defendant had 0.182% present in his blood. Trooper Brieseacher was also able to conclude that, approximately five seconds prior to the crash, defendant's vehicle was travelling at a speed of approximately 63.25 to 68.29 miles per hour. In contrast, plaintiff's vehicle was travelling at a speed of 54.7 to 59.2 miles per hour. Trooper Brieseacher concluded that the primary causes of the collision were defendant's intoxication and improper lane usage.

¶ 12 Plaintiff then played a video deposition of Dr. Valerie Rundle-Gonzalez for the court. A transcript of the video was provided to this court, and we will recount its contents here. Dr. Rundle-Gonzalez testified that she was a neurologist and medical injury patient specialist licensed to practice in Texas and Florida since 2010. She and her husband, Dr. Hector Miranda-Grajales, maintained an Austin, Texas, practice, from which she saw people from all over the United States. Dr. Rundle-Gonzalez saw plaintiff on May 21, 2024. On that date, plaintiff's chief complaints were headaches, dizziness, vertigo, hearing loss, insomnia, fatigue, cognitive difficulties, and mood changes. Plaintiff attributed these ailments to the motor vehicle accident at issue. Testing at Dr. Rundle-Gonzalez's facility revealed that plaintiff had several cognitive and executive function issues which primarily affected his memory, organization, and problem-solving skills. Dr. Rundle-

Gonzalez confirmed that such issues were common in patients with severe brain injuries. Dr. Rundle-Gonzalez concluded that the motor vehicle accident had caused a severe traumatic brain injury that would most likely be permanent. She opined that plaintiff could not take care of himself and would need help performing daily living activities. On cross-examination, Dr. Rundle-Gonzalez admitted that she had only seen plaintiff once for 1½ hours, and that she had never prescribed any medication for him. She also admitted that a previous report from her clinic described plaintiff's traumatic brain injury as moderate rather than severe.

¶ 13 Plaintiff then played a video deposition of Dr. Hector Miranda-Grajales. A transcript of the video was provided to this court, and we will recount its contents here. Dr. Miranda-Grajales testified that he was a brain injury medicine specialist physician. Dr. Miranda-Grajales first saw plaintiff at his clinic on May 20, 2024. Plaintiff's chief complaints at that time were severe headaches, insomnia, dizziness, irritability, depression, fatigue, and problems with his attention, concentration, and memory. Plaintiff also reported pain in his legs, low back, and neck, as well as difficulty with his hearing. After conducting an examination, Dr. Miranda-Grajales diagnosed plaintiff with chronic pain due to trauma, chronic posttraumatic headaches, neck and low back pain, concussion, post-concussion syndrome, dizziness, occipital neuralgia, history of falling, fatigue, attention and concentration deficit, and irritability. Dr. Miranda-Grajales concluded that plaintiff had at least suffered a moderate traumatic brain injury and that plaintiff's ailments were caused by the motor vehicle accident at issue. Dr. Miranda-Grajales testified that plaintiff had trouble with daily living activities, including dressing himself, brushing his teeth, feeding himself, bathing himself, and doing routine housework. Dr. Miranda-Grajales opined that plaintiff could not take care of himself or live independently and would need assistance for the rest of his life. Dr. Miranda-Grajales described plaintiff's situation as "one of the worst outcomes of a brain injury

case [he had] seen, again, of people that [could] walk and talk." Dr. Miranda-Grajales opined that the minimum total cost for plaintiff's future care was over $8.5 million. On cross-examination, Dr. Miranda-Grajales admitted that he had only spent about five hours with plaintiff in total and that he had not seen plaintiff since May of 2024.

¶ 14 Plaintiff testified that he had been living in a nursing home for approximately three or four years and had a hard time hearing, remembering things, reading, and getting around. Plaintiff described his current living situation as "kind of a nightmare." Plaintiff testified that he did not "even feel like [he was] living." He felt like he was trapped and in prison. The facility where he lived was very dirty, the food was "simply survivable," and there was "really no one to talk to." Plaintiff could no longer drive, which made it hard to go places. Before the accident, plaintiff lived by himself, drove himself, skied, boated, tubed, hunted, and played baseball and basketball. Now, plaintiff used a wheelchair a lot of the time but was working on getting better at walking. Plaintiff had aggressive headaches about twice a week, which he did not suffer from prior to the accident. Plaintiff's mother lived close by, but his children lived elsewhere. Plaintiff testified that his family did not come and see him very often because he was angry a lot of the time. Plaintiff acknowledged that, prior to the accident, he was on disability for pancreatitis. Plaintiff also admitted that he smoked about a pack of cigarettes a day.

¶ 15 On cross-examination, plaintiff confirmed that he made his own medical decisions and could live at a different facility. Plaintiff insisted that he could go to the bathroom independently, dress himself, feed himself, bathe himself, and brush his own teeth. However, he testified that he had problems with his eyesight and memory which affected his daily living capabilities. Plaintiff admitted that, about 16 months after the vehicle accident, he walked two blocks from the nursing home facility to his mother's house. There, a shed collapsed on him, he broke his legs, and he had

to be flown in a helicopter to the hospital. Plaintiff also admitted that, prior to the accident, he had chronic kidney disease, lupus, anxiety, depression, and bipolar disorder. Plaintiff had been on disability for more than 10 years and did not remember when he last worked. Plaintiff greatly desired to live on his own again.

¶ 16 Dr. Michael April testified that he was a physician specializing in physical medicine and rehabilitation. Dr. April was licensed to practice in Florida and Maryland, and practiced in Florida, where he oversaw rehabilitation and pain management at two nursing homes. On August 30, 2024, Dr. April saw and evaluated plaintiff at plaintiff's Illinois nursing home for a couple of hours. Dr. April had no doubt that plaintiff had suffered a severe brain injury in the car accident at issue. Plaintiff had also suffered multiple fractures to several bones in his body, traumatic respiratory failure, a lacerated liver, and a collapsed lung. Plaintiff had lost a lot of his visual and hearing abilities because of the crash. Dr. April therefore found it "extremely unlikely" that plaintiff had ever been pain-free since February 2022. Dr. April believed that plaintiff's brain injury would be permanent and that plaintiff would need constant supervision for the rest of his life. Dr. April estimated the minimum total cost of plaintiff's future care would be almost $9 million. On cross-examination, Dr. April confirmed that he was not licensed to practice in Illinois and was referred to this case by Dr. Miranda-Grajales. Dr. April confirmed that he had last seen plaintiff in August of 2024. Dr. April also confirmed that he had been retained and paid by plaintiff's attorneys.

¶ 17 The plaintiff then played a video deposition of Abbie Siegwald. A transcript of the video was provided to this court, and we will recount its contents here. Siegwald testified that she worked as the social service director at plaintiff's nursing care facility, Odin Health and Rehab Center, for approximately 2½ years until August of 2024. She confirmed that plaintiff was admitted to Odin in either late April or early May of 2022 and that she remembered plaintiff and saw him daily

during her time working there. Plaintiff was, to her recollection, one of the youngest residents of the facility. She was aware that plaintiff had a traumatic brain injury. She did not recollect any other residents at Odin at that time with traumatic brain injuries. Siegwald agreed that plaintiff's needs were unmet at Odin and that he needed care that could not be provided there. She testified that, depending on the day, plaintiff had severe difficulty performing his daily living activities while at Odin. She did not believe that plaintiff could take care of himself or live independently.

¶ 18 John McGowan testified that he was an accounting consultant and that plaintiff's attorneys had retained him. Adjusting for medical inflation, McGowan made calculations for plaintiff's future medical needs based on both Dr. Miranda-Grajales's and Dr. April's estimates. Based on Dr. Miranda-Grajales's $8.5 million estimate, McGowan calculated that plaintiff would need between $9.7 million and $12.8 million dollars for his future medical needs. Based on Dr. April's $9 million estimate, McGowan calculated that plaintiff would need between $10.2 million and $15.5 million. McGowan testified that his calculations used conservative numbers.

¶ 19 Plaintiff then played the video deposition of Dr. Andrea George. A transcript of the video was provided to this court, and we will recount its contents here. Dr. George testified that she was an endocrinologist licensed to practice in Illinois and Texas and currently practicing in Austin, Texas. On May 24, 2024, she interpreted some testing on and recommended treatment for plaintiff. Dr. George concluded that plaintiff had low levels of various hormones, including testosterone, prolactin, and growth hormone. Dr. George recommended that plaintiff receive testosterone and growth hormone replacement treatment. Dr. George testified that these treatments would improve plaintiff's muscle weakness, low mood, and fatigue. Dr. George opined that the cause of these hormone issues was the traumatic brain injury plaintiff had suffered in the car accident at issue. On cross-examination, Dr. George admitted that she worked alongside Dr. Miranda-Grajales and

Dr. Rundle-Gonzalez, that she did not prescribe or administer any treatment to plaintiff, and that she had not reconsidered plaintiff's case since May of 2024.[1]

¶ 20 Linda Schweiger testified that she was a registered nurse, certified nurse life care planner, and certified brain injury specialist retained by defendant to determine a life care plan for plaintiff. To generate her opinion in this case, Schweiger reviewed several documents, including medical records, depositions, and reports. Schweiger contended that Dr. April's life care plan for plaintiff had several discrepancies and inaccuracies and was not as thorough as it should have been. Schweiger agreed with the doctors' assessments that plaintiff needed 24/7 care of some sort, but disagreed with their recommendation that plaintiff have a home health aide. Schweiger instead recommended that plaintiff reside in an assisted living or group home, contending that such placement would be better for plaintiff because there would be more reliable supervision. Ultimately, Schweiger testified that she believed that the total cost of plaintiff's future medical care was $3.3 million.

¶ 21 On cross-examination, Schweiger agreed that plaintiff had sustained a serious brain injury in the accident at issue, that plaintiff could not care for himself and would need 24/7 ongoing care for the rest of his life, and that he would need life-long medical follow-ups for his injuries sustained in the crash. Schweiger also admitted that she had never conducted testing on or even met plaintiff. Upon being shown a prior report of hers which listed the future life care cost for plaintiff as $2 million, she corrected her former opinion and testified that the $2 million figure, not the $3.3 million figure, was the correct one, as the earlier $3.3 million figure was a typographical error.

[1]After Dr. George's deposition was played, the plaintiff rested his case. Clutts sought a directed verdict, which the trial court granted.

¶ 22 Dr. Stan Smith testified that he was an economist at his company, Smith Economics, which did economic analysis nationwide. Dr. Smith analyzed Dr. McGowan's economic evaluations of the life care plan costs for plaintiff and opined that Dr. McGowan had used economic growth rates that were overly high, resulting in "an enormously unrealistically huge number." Using what Dr. Smith believed to be more appropriate economic growth rates, he recalculated costs for plaintiff's future medical needs based on both Schweiger's and Dr. April's life care plans. Based on Schweiger's plan, Dr. Smith calculated that plaintiff would need approximately $1.8 million for his future medical needs. Based on Dr. April's plan, Dr. Smith calculated that plaintiff would need approximately $5.3 million. Kevin Puckett testified that he was the president and owner of KP Underwriting, a medical underwriting company that estimated life expectancies and medical cost projections for life care plans, settlements, and workers' compensation companies. Based on what he learned about plaintiff's medical history from defendant's attorneys, Puckett determined that plaintiff's life expectancy would be reduced by approximately seven to nine years. On cross-examination, Puckett confirmed that he never reviewed plaintiff's medical records from before the accident, and that if he had the chance to review plaintiff's medical records from the last two years, it could significantly change his opinion.

¶ 23 At the close of the compensatory phase of the trial, the trial court read several instructions to the jury, including that the "verdict must not be based on speculation, prejudice, or sympathy." The jury returned a verdict in plaintiff's favor with compensatory damages of $5.95 million. The jury also found that defendant's conduct had been willful and wanton, requiring punitive damages. The trial then proceeded to the punitive damages phase.

¶ 24 Plaintiff then played a video deposition of defendant for the court. A transcript of the video was provided to this court, and we will recount its contents here. Defendant confirmed that he

received his first DUI in November of 2007, when he was a minor with a suspended license. After that incident, defendant received some supervision and treatment, but a little less than four years later, in October of 2011, he received another DUI. After this incident, he received probation and alcohol treatment, completed some community service, and paid some fines. Thus, at the time of the vehicular accident at issue, defendant already had two DUIs. He received a DUI in the current case and pled guilty. His driver's license was also revoked. Defendant admitted that, in July of 2023, a little more than a year after the accident at issue, he received a driving with a revoked license charge while speeding 25 miles over the speed limit. A month after that, in August of 2023, he received his fourth DUI, an aggravated driving under the influence charge, to which he pled guilty.

¶ 25 Defendant admitted that he was going 68 miles an hour on the wrong side of the road and was intoxicated over twice the legal limit on the night of the vehicular accident in question. After the crash, he fled and ran because he knew he had been driving drunk. Defendant acknowledged initially blaming the other vehicles for the crash but insisted that he did not intend to deceive and had truly been mistaken about the circumstances at the time. Defendant acknowledged that he knew plaintiff had been seriously hurt and that he never reached out to apologize for his actions. Defendant admitted liquidating his assets and selling his house after the lawsuit at issue had been filed but testified that he did so because he knew he would be leaving soon for prison and wanted to get his affairs in order. Defendant denied hiding any assets because of this lawsuit and testified that he had not been able to work since he had gone to prison. Although he had between $10,000 to $15,000 in his checking account only a year prior, defendant testified that there "was probably nothing in" his account now because, despite being in prison, he had used up the money to pay credit card and medical bills. Although defendant intended to resume working as an ironworker

upon his release from prison, he anticipated having some difficulty getting hired because of his criminal history. Defendant confirmed that he had two children under the age of 10 and that he expected to care for and be financially responsible for them after his release from prison.

¶ 26 Defendant testified that he was sorry for any harm he had caused in the accident. Through treatment, defendant realized that he was an alcoholic. Defendant knew of his problems with alcohol prior to the accident. In the past, defendant had taken court-ordered classes and completed court-ordered treatment for his prior DUIs, gone to Alcoholics Anonymous (AA) meetings "religiously," and sought counseling and medicine for his condition.

¶ 27 During closing arguments, in response to plaintiff's counsel's request for $50 million in punitive damages, defense counsel argued that it would not "take anywhere close to $50 million to punish" defendant since he was "coming out of prison with no money and no job." Defense counsel reiterated that defendant had "nothing right now" and opined that "an award of $50,000 *** [was] going to make [defendant] sting for quite some time." In rebuttal, plaintiff's counsel stated that if $50,000 was "anywhere near" the jury's punitive damages verdict, it would be "an insult." The trial court instructed the jury that all the instructions it had read aloud after the compensatory phase of the trial still applied. The trial court also read the following instructions specifically regarding the jury's consideration of punitive damages:

> "If you believe that justice and the public good require it, you may award an amount of money which will punish [defendant] and discourage him and others from similar conduct. In arriving at your decision as to the amount of punitive damages, you should consider the following three questions. The first question is the most important to determine the amount of punitive damages.
>
> One, how reprehensible was [defendant's] conduct? On this subject, you should consider the following: [t]he facts and circumstances of the defendant's conduct, the vulnerability of the plaintiff, the duration of the misconduct, the frequency of the defendant's misconduct, whether the harm was physical as opposed to economic, and whether the defendant tried to conceal the misconduct; two, what actual and potential harm did defendant's conduct cause to the plaintiff in this case; and three, what amount of money

is necessary to punish the defendant and discourage the defendant and others from future wrongful conduct.

The amount of punitive damages must be reasonable and in proportion to the actual and potential harm suffered by the plaintiff."

¶ 28 At the close of the punitive damages phase of the trial, the jury awarded plaintiff a punitive damage award of $29.5 million. Based on the jury's verdicts, the trial court then entered judgment in favor of plaintiff and against defendant in the amount of $35.45 million.

¶ 29 On June 16, 2025, defendant filed a motion for remittitur, arguing that the jury had overlooked critical evidence on defendant's financial status, resulting in a "brutally excessive" punitive damages award improperly based on passion. On July 2, 2025, plaintiff filed a response to defendant's motion for remittitur, arguing that, as the jury's punitive damages award was proper, remittitur by the trial court would be unwarranted. On August 20, 2025, defendant filed a reply in support of his motion for remittitur, additionally arguing that the jury's punitive damages award violated his due process rights under the fourteenth amendment of the United States Constitution. On August 21, 2025, the trial court took the matter under advisement.

¶ 30 On August 25, 2025, the trial court issued a written order denying defendant's posttrial motion for remittitur. In its order, the trial court denied that the jury's award violated defendant's due process rights, asserting that defendant's behavior reflected "extraordinary reprehensibility," which strongly supported "a significant punitive award." The trial court also noted that the jury's punitive award was within a single-digit ratio of the compensatory award, "which [was] generally presumed constitutionally sound." Finally, the trial court commented that the "jury's award was based on the evidence and [did] not shock the judicial conscience," that it "was neither the product of passion nor prejudice," and that it constituted "a measured response to [d]efendant's reckless disregard for human life." Defendant appeals.

¶ 31 II. ANALYSIS

¶ 32 On appeal, defendant asks this court to remand the case to the trial court for entry of a remittitur where the jury's punitive damages award violated his due process rights and was improperly based on passion or prejudice. We review a trial court's denial of a motion for remittitur for an abuse of discretion. *Mogensen v. SCF Lewis & Clark Fleeting LLC*, 2025 IL App (5th) 230501, ¶ 76. An abuse of discretion occurs where the trial court's ruling was arbitrary, ignored recognized principles of law, or if no reasonable person would take the position adopted by the trial court. *Estate of Oglesby v. Berg*, 408 Ill. App. 3d 655, 661 (2011).

¶ 33 A. Due Process Argument

¶ 34 Defendant first argues that the trial court abused its discretion in denying his motion for remittitur where the jury's punitive damages award violated his due process rights. We review *de novo* whether a jury's punitive damages award is constitutional. *Turner v. Firstar Bank, N.A.*, 363 Ill. App. 3d 1150, 1162 (2006). The due process clause of the fourteenth amendment of the United States Constitution prohibits the imposition of "grossly excessive or arbitrary" punishments on a tortfeasor. *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 416 (2003). To the extent an award is "grossly excessive," it furthers no legitimate purpose and constitutes an arbitrary deprivation of property. *Id.* at 417. Legitimate purposes of punitive damages include the goals of punishment and deterrence. See *International Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 490 (2006). In *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75 (1996), the Supreme Court listed three guideposts to assist courts in determining whether punitive damages awards against defendants were grossly excessive: (1) the degree of reprehensibility of the defendant's actions, (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award, and (3) the

difference between the punitive damages award and the civil penalties authorized or imposed in comparable cases. A reviewing court should not disturb an award of punitive damages as unconstitutionally excessive unless it determines that the award falls outside these guideposts. See *Doe v. Parrillo*, 2021 IL 126577, ¶ 59.

¶ 35 1. *Reprehensibility*

¶ 36 The Supreme Court has opined that "the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Gore*, 517 U.S. at 575. In determining the reprehensibility of the defendant's conduct, courts are required to consider whether (1) the harm caused was physical rather than economic; (2) the conduct demonstrated an indifference to or a reckless disregard of the health or safety of others; (3) the conduct's target was financially vulnerable; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident. See *Holland v. Schwan's Home Service, Inc.*, 2013 IL App (5th) 110560, ¶ 258.

¶ 37 In this case, the harm done to plaintiff was clearly physical. Dr. Rundle-Gonzalez, Dr. Miranda-Grajales, and Dr. April all testified that plaintiff had sustained at least a moderate traumatic brain injury that would most likely be permanent. Schweiger, defendant's expert, also agreed that plaintiff had sustained a serious brain injury. All three doctors confirmed that, because of his injury, plaintiff had several physical, cognitive, and executive function issues preventing him from being able to care for himself or live independently. Siegwald also believed that plaintiff was unable to care for himself or live independently, as, based on her observations, plaintiff often had severe difficulty performing daily living activities. Schweiger also agreed that the plaintiff could not care for himself or live independently. Plaintiff testified that, whereas before the accident, he played sports and engaged in outdoor hobbies, he now used a wheelchair and was

working to improve his walking skills. Plaintiff testified to suffering from eyesight, hearing, and memory problems, and having aggressive headaches twice a week, all of which he had not suffered from before the accident.

¶ 38 Defendant's conduct also clearly demonstrated an indifference to or a reckless disregard for the health and safety of others. Defendant admitted that, before driving on the night of the accident, he knew he was intoxicated and could seriously hurt someone but chose to drive anyway. Defendant acknowledged driving 68 miles an hour on the wrong side of the road. Defendant conceded that his conduct disregarded others' safety. Defendant confirmed that after the accident, and after seeing that plaintiff was hurt, he ran away and hid in a field, where police eventually found him. Plaintiff was also clearly financially vulnerable at the time of the accident. Plaintiff acknowledged that he had been on disability for more than 10 years prior to the accident and that he did not remember when he last worked.

¶ 39 Next, the court is to consider whether defendant's conduct involved repeated actions or was an isolated incident. While defendant's conduct here constituted a single incident of harm to plaintiff, defendant's actions on previous occasions amply warned him of the danger his intoxicated behavior posed to himself and others. However, as his conduct here did not involve repeated actions against plaintiff, this factor does not contribute to the greater body of reprehensibility outlined herein.

¶ 40 Finally, although the harm caused was ultimately the result of an accident, defendant's actions in the commission of his conduct arguably included elements of intentional malice and deceit. Defendant admitted that he drove on the night of the accident despite knowing that he was intoxicated and could seriously hurt someone. Defendant acknowledged running away and hiding in a field after seeing that plaintiff was hurt and in need of aid.

¶ 41 2. *Disparity Between the Award and Harm to Plaintiff*

¶ 42 The Supreme Court has also commented that "[t]he second and perhaps most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff." *Gore*, 517 U.S. at 580. The Court explained that "[i]n most cases, the ratio will be within a constitutionally acceptable range, and remittitur will not be justified on this basis." *Id.* at 583. Specifically, single-digit ratios between punitive and compensatory damages are more likely to comport with due process, especially "when the defendant's conduct is particularly egregious and the plaintiff's harm arose from a physical assault or injury." *Parrillo*, 2021 IL 126577, ¶ 55; also see *Campbell*, 538 U.S. at 425. However, as defendant points out, the Court has stated that when compensatory damages are substantial, as in this case, a lesser ratio "can reach the outermost limit of the due process guarantee." *Campbell*, 538 U.S. at 425.

¶ 43 In this case, the jury awarded the plaintiff $29.5 million in punitive damages and $5.95 million in compensatory damages, representing a single-digit ratio of roughly 5 to 1. Defendant argues that, despite this, the award furthers no legitimate purpose, constitutes an arbitrary deprivation of property, and violates his due process rights because, at the time of trial, defendant was incarcerated, unemployed, and without assets. Given the circumstances of this case and the fact that several courts, including this one, have affirmed higher ratios than the 5 to 1 ratio at issue here, we do not find that the award in this case failed to comport with due process on these grounds. See *Holland*, 2013 IL App (5th) 110560, ¶ 260 (affirming an approximately 5.5 to 1 ratio as "well within the permissible range" to further the interest in deterrence); *Lowe Excavating Co.*, 225 Ill. 2d at 490 (approving a "reasonable and constitutional" punitive damages award with "a double-digit ratio of approximately 11 to 1"); *Parrillo*, 2021 IL 126577, ¶ 55 (affirming an 8 to 1 ratio).

¶ 44 3. *Difference Between the Award and Penalties in Comparable Cases*

¶ 45 Finally, the Supreme Court asks reviewing courts to compare "the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct" as "a third indicium of excessiveness." *Gore*, 517 U.S. at 583. Defendant argues that the jury's punitive damages award is 1,180 times the $25,000 maximum criminal fine for his aggravated DUI conviction, making the award plainly excessive. See 730 ILCS 5/5-4.5-50(b) (West 2024). Plaintiff, citing *Holland*, 2013 IL App (5th) 110560, ¶ 262, argues that, where the first two guideposts favor the punitive damages award, the impact of this third guidepost is diminished. Plaintiff also points to the Supreme Court's observation in *Campbell*, 538 U.S. at 428, that although the "existence of a criminal penalty does have bearing on the seriousness with which a State views the wrongful action," "[w]hen used to determine the dollar amount of the [punitive damages] award," comparison to criminal penalties "has less utility." After considering the facts of this case, we agree with plaintiff that consideration of the difference between the punitive damages award and the maximum possible criminal penalty for defendant's misconduct is minimally helpful. As the trial court rightly noted in its order denying defendant's motion for remittitur:

> "While DUI causing great bodily harm is a Class 2 felony punishable by 3-7 years' imprisonment and fines up to $25,000, punitive damages serve a distinct civil purpose of punishment and deterrence. The disparity between statutory fines and the civil award does not render the verdict unconstitutional. The purposes of the two sanctions are not identical. The purpose of the criminal sanctions are to protect the public at large, whereas punitive damages are designed to punish the particular wrongdoer for the harm caused by their actions and deter further such conduct."

¶ 46 Additionally to be considered are the legitimate purposes of punitive damage awards, including deterrence. At trial, the jury heard evidence that the conduct at issue was the third instance of defendant's pattern of intoxicated driving, and that prior deterrence measures had failed

to rehabilitate defendant. Defendant confirmed that he received his first DUI in 2007, as a minor. Despite supervision and treatment, he received his second DUI in 2011. After this incident, he received probation and alcohol treatment, completed community service, and paid fines. However, in 2022, in the vehicular accident at issue, defendant received his third DUI, an aggravated DUI. His driver's license was also revoked. Despite this, in 2023, defendant was cited for driving 25 miles over the speed limit on a revoked license. One month after that, defendant received his fourth DUI, again, an aggravated DUI.

¶ 47 Upon *de novo* review, we do not find that the jury's punitive damages award falls outside of the *Gore* guideposts. We also find that, considering defendant's repeated history of intoxicated driving, and prior failures of courts to deter defendant through less significant means, the jury's punitive damages award appropriately serves the legitimate purpose of deterrence. We do not find that the award was grossly excessive or arbitrary and therefore cannot find that the award violated defendant's due process rights.

¶ 48 B. Passion or Prejudice Argument

¶ 49 Next, defendant argues that the trial court abused its discretion in denying his motion for remittitur where the jury's punitive damages award was improperly based on passion or prejudice. We review the trial court's finding that the award was not the improper result of passion or prejudice on a manifest weight of the evidence standard. See *Deal v. Byford*, 127 Ill. 2d 192, 204 (1989); also see *McQueen v. Green*, 2022 IL 126666, ¶ 58; *Parrillo*, 2021 IL 126577, ¶ 38; and *Franz v. Calaco Development Corp.*, 352 Ill. App. 3d 1129, 1145 (2004). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 50 "Important considerations in reviewing a punitive damages award include 'the nature and enormity of the wrong, the financial status of the defendant, and the potential liability of the defendant.' " *Ford v. Herman*, 316 Ill. App. 3d 726, 734 (2000) (quoting *Deal*, 127 Ill. 2d at 204). However, those factors are not exhaustive; the ultimate determination of each case should be governed by the circumstances of that case. *Deal*, 127 Ill. 2d at 204.

¶ 51 Here, defendant argues that the jury clearly overlooked critical evidence on his financial status due to its passion or prejudice, resulting in an excessive punitive damages award. Defendant points to the circumstances in *Ford*, where the defendant failed to present evidence at trial regarding his financial status, and the jury awarded the plaintiffs $6 million in punitive damages. See *Ford*, 316 Ill. App. 3d at 729. On appeal, this court affirmed the jury's award, commenting that if the defendant "knew that he would have financial difficulties in paying a punitive damages award, then he should have so informed the jury." *Id.* at 734-35. Defendant here seems to believe that this statement indicates that, had the defendant in *Ford* presented evidence on his financial status at trial, this court would have overturned the jury's punitive damages award on appeal. However, defendant overlooks another statement this court made in *Ford*: that "[f]inancial status is but one factor for the jury to consider." *Id.* at 734. In fact, in *Ford*, this court ultimately concluded that "given the outrageousness of [the defendant's] behavior, the fact that the award clearly serves the punishment and deterrence purposes of a punitive damages award, and the lack of proof that the award was the result of passion, partiality, or corruption," the jury's award was "not excessive." *Id.* at 735.

¶ 52 In the case at hand, the record reveals that the jury heard significant evidence concerning defendant's financial status, including that defendant had not been able to work since he had gone to prison; that his checking account was empty at the time of trial; that he intended to resume

working upon his release from prison; that he anticipated having some difficulty getting hired; and that he had two children under the age of 10. Additionally, before deliberations on punitive damages took place, the trial court instructed the jury that the "verdict must not be based on speculation, prejudice, or sympathy." Absent evidence to the contrary, the jury is presumed to have followed the trial court's instructions. However, other than his own dissatisfaction with and inability to pay the award, defendant offers no evidence that the jury's decision overlooked the financial evidence presented or was based on passion or prejudice.

¶ 53 As a result, we conclude similarly as this court did in *Ford*. Given the reprehensibility of defendant's conduct, the ineffectiveness of prior deterrence measures, the clear function of the punitive award in punishing and deterring defendant, and the lack of proof provided by defendant, we do not find the trial court's conclusion, that the award was not the improper result of passion or prejudice, to be against the manifest weight of the evidence. We therefore do not find that the trial court abused its discretion in denying defendant's motion for remittitur.

¶ 54 III. CONCLUSION

¶ 55 We affirm the trial court's denial of defendant's motion for remittitur where the jury's punitive damages award did not violate defendant's constitutional rights and where the trial court's finding that the award was not improperly based on passion or prejudice was not against the manifest weight of the evidence.

¶ 56 Affirmed.