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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2011

2091121

Victoria Louise Tanner

v.

Chassity Greech Ebbole d/b/a LA Body Art

2100172

Demented Needle, LLC, and Paul Averette, Jr.

v.

Chassity Greech Ebbole d/b/a LA Body Art

Appeals from Mobile Circuit Court
(CV-08-1135)

PITTMAN, Judge.

Chassity Greech Ebbole is the proprietor of LA Body Art, a tattoo and body-piercing business that, prior to the events

leading to the underlying action, had been operating at 221 Dauphin Street in Mobile since 1995. Paul Averette, Jr., is the proprietor of Demented Needle, LLC, a competing tattoo and body-piercing business that began operating at 205 Dauphin Street in Mobile in May 2007. In 2008, Ebbole moved her business to another location in Mobile and sued Averette, Reginald Weaver,[1] Demented Needle, LLC, and several fictitiously named defendants. The complaint asserted slander, libel, and invasion-of-privacy claims.

The slander claim was based upon the allegation that the defendants had falsely and maliciously stated, among other things, that Ebbole had hepatitis and other communicable diseases and that she had exposed her customers at LA Body Art to those diseases. The libel claim was based upon the allegation that the defendants had posted in the Demented Needle shop an altered representation of Ebbole's tattoo work, with the statement, "L.A. Body Art - Chassity's work. Don't let this happen to you or anyone you know!" The invasion-of-

[1]Ebbole alleged that Weaver was an owner, operator, or employee of Demented Needle, LLC. Weaver never answered the complaint, and the trial court later entered a default judgment against him.

privacy claim was based upon the allegation that the defendants had appropriated a plaster cast of Ebbole's torso, had adorned it with satanic symbols, and had used it as a mannequin for displaying Demented Needle T-shirts for sale.

In August 2009, Ebbole amended the complaint to add Victoria Louise Tanner as a defendant. Ebbole asserted that Tanner was an employee of Demented Needle and that Tanner had committed libel and had participated in a civil conspiracy. Specifically, Ebbole alleged that Tanner had posted on her "MySpace" Web page false and malicious statements that questioned Ebbole's skill as a tattoo artist and body piercer. Ebbole further alleged that Tanner had conspired with Averette and Demented Needle to deprive Ebbole of business and to cause her mental anguish.

After the trial court entered a default judgment against Weaver, see supra note 1, Ebbole's claims against Averette, Tanner and Demented Needle, LLC ("the defendants"), were tried to a jury. The defendants moved for a judgment as a matter of law ("JML") at the close of the Ebbole's case and at the close of all the evidence. The trial court denied the JML motions. The jury returned a verdict awarding Ebbole zero compensatory

damages from any of the defendants but awarding punitive damages as follows: $200,000 against Demented Needle, LLC; $100,000 against Averette; and $10,000 against Tanner. Over the defendants' objections, the trial court refused to accept the verdict, recharged the jurors, and gave them new verdict forms, instructing them as follows:

> "THE COURT: All right. Ladies and gentlemen, ... [t]he reason I sent you all back is what we got from y'all is technically an improper verdict form....
>
> "....
>
> "To remind you again you see from your form, there are two types of damages, compensatory damages and punitive damages.... Compensatory damages are meant to compensate an injured party. Punitive damages are meant to punish a party committing a wrong and to deter that party from committing similar wrongs and also to deter perhaps other folks from committing similar wrongs in the future.
>
> "All right. In order to award punitive damages there must be ... an award of some amount of compensatory damages. If you find that [Ebbole] has proven each element of the claims for libel and/or slander or the other claims under the law that I've given you but you find that [Ebbole] has not proven any substantial injury caused by the statements complained of or by the other acts complained of, then you may find for [Ebbole] and award nominal compensatory damages to [Ebbole]. Nominal compensatory damages are damages in a very small amount, usually one dollar, and their main purpose is to vindicate [Ebbole] — and her reputation by showing that [Ebbole] prevailed."

After being reinstructed, the jury returned a verdict awarding compensatory damages of $1 against each of the defendants and leaving in place the original punitive-damages awards. The trial court accepted the jury's second verdict and entered a judgment accordingly. The defendants filed renewed motions for a JML or, alternatively, for a new trial or for a remittitur; only Tanner requested a hearing on her postjudgment motion.

After their postjudgment motions were denied, Tanner, Averette, and Demented Needle appealed. The supreme court transferred the appeal taken by Averette and Demented Needle to this court, pursuant to Ala. Code 1975, § 12-2-7(6), and it was consolidated with Tanner's appeal, which was taken directly to this court.

Standard of Review

Our supreme court has outlined the following standard of review for a ruling on a JML motion:

> "'"When reviewing a ruling on a motion for a JML, this Court uses the same standard the trial court used initially in deciding whether to grant or deny the motion for a JML. Palm Harbor Homes, Inc. v. Crawford, 689 So. 2d 3 (Ala. 1997). Regarding questions of fact, the ultimate question is whether the nonmovant has presented sufficient evidence to

> allow the case to be submitted to the jury for a factual resolution. Carter v. Henderson, 598 So. 2d 1350 (Ala. 1992). The nonmovant must have presented substantial evidence in order to withstand a motion for a JML. See § 12-21-12, Ala. Code 1975; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). A reviewing court must determine whether the party who bears the burden of proof has produced substantial evidence creating a factual dispute requiring resolution by the jury. Carter, 598 So. 2d at 1353. In reviewing a ruling on a motion for a JML, this Court views the evidence in the light most favorable to the nonmovant and entertains such reasonable inferences as the jury would have been free to draw. Id. Regarding a question of law, however, this Court indulges no presumption of correctness as to the trial court's ruling. Ricwil, Inc. v. S.L. Pappas & Co., 599 So. 2d 1126 (Ala. 1992)."'"

Norfolk Southern Ry. Co. v. Johnson, [Ms. 1090011, March 11, 2011] ___ So. 3d ___, ___ (Ala. 2011) (quoting CSX Transp., Inc. v. Miller, 46 So. 3d 434, 450-51 (Ala. 2010), quoting in turn Waddell & Reed, Inc. v. United Investors Life Ins. Co., 875 So. 2d 1143, 1152 (Ala. 2003)).

The first two issues to be considered involve arguments raised only by Averette and Demented Needle; the third issue involves an argument raised only by Tanner; and the fourth issue involves arguments raised by all three appellants.

I. Refusal to Accept the First Verdict

Averette and Demented Needle argue that the trial court erred in refusing to accept the jury's first verdict, which assessed zero compensatory damages against the defendants. Averette and Demented Needle contend that Ebbole presented no evidence indicating either that her business had suffered an economic loss or that she had personally suffered any emotional distress as a result of the defendants' conduct. Accordingly, they say, the first verdict reflected the jurors' finding that Ebbole simply suffered no compensable injury, and the second verdict, they suggest, is attributable to a desire, after the trial court's instruction regarding nominal damages, to award $1 and to leave the courtroom and is not supported by the evidence presented. That argument is neither borne out by the record nor supported by Alabama law.

Ebbole submitted her federal income-tax returns for the years 2004 through 2008. Her average income for the years 2004 through 2007 was $30,122, with no income for a single year falling below $28,000. In 2008, however, Ebbole's income dropped to $20,009 -- approximately one-third less than the average of the previous four years. Ebbole testified that she

had suffered from nausea and depression and had consulted a psychiatrist as a result of the defendants' conduct.

Moreover, even if Ebbole had presented no evidence of special damages, such as lost income, her general damages would be presumed because the defendants' words were slanderous per se. "[W]hen the plaintiff has proven slander per se, the law presumes injury to reputation and mental suffering." Liberty Nat'l Life Ins. Co. v. Daugherty, 840 So. 2d 152, 162 (Ala. 2002). "Once a communication is found to be slanderous per se, a plaintiff may recover nominal or compensatory damages without proof of actual harm to his reputation or proof of any other harm." Delta Health Group, Inc. v. Stafford, 887 So. 2d 887, 897 (Ala. 2004).

> "'When words are slanderous in themselves, the right to damages follows as a consequence from speaking in a slanderous way, because it is the incalculable tendency of slander to injure the person slandered, in his reputation, profession, trade, or business. It would frequently be difficult to prove any pecuniary injury from slander, and always impossible to establish its full extent. ... Therefore, when words are actionable in themselves, the law implies damages.' Johnson v. Robertson, 8 Port. [(Ala.) 486,] 489 [(1839)]."

Webb v. Gray, 181 Ala. 408, 413, 62 So. 194, 196 (1913) (quoted in Johnson Publ'g Co. v. Davis, 271 Ala. 474, 488, 124

So. 2d 441, 451 (1960)). See also Restatement (Second) of Torts § 572 (1977) (stating that "[o]ne who publishes a slander that imputes to another an existing venereal disease or other loathsome and communicable disease is subject to liability without proof of special harm"); and § 573 (stating that "[o]ne who publishes a slander that ascribes to another conduct, characteristics or a condition that would adversely affect his fitness for the proper conduct of his lawful business, trade or profession ... is subject to liability without proof of special harm").

II. Good Count/Bad Count

Ebbole's complaint stated claims against Averette and Demented Needle in three counts, namely: slander, libel, and invasion of privacy. In their JML motions, Averette and Demented Needle challenged the sufficiency of the evidence to support each count. The trial court denied the JML motions, and the jury rendered a general verdict. Averette and Demented Needle argue that the trial court's judgment must be reversed on the basis of the good-count/bad-count rule discussed in Aspinwall v. Gowens, 405 So. 2d 134 (Ala. 1981). In Aspinwall, the supreme court explained:

> "[I]f a complaint has more than one count and the defendant believes that the evidence is not sufficient to support one or more of those counts, he must challenge this by motion for directed verdict [now a motion for a JML, see Rule 50, Ala. R. Civ. P.], specifying the count which is not supported by evidence and detailing with specificity the grounds upon which the particular count is not supported by the evidence. If this is not done and all counts go to the jury and a general verdict is returned, the court will presume that the verdict was returned on a valid count."

405 So. 2d at 138 (on application for rehearing). A good-count/bad-count situation is not presented here because, as discussed below, the evidence in support of each count was sufficient.

A. The Slander Count

Averette and Demented Needle argue that all the allegedly slanderous statements concerning Ebbole were made either by Weaver or by Tanner. Demented Needle contends that statements by Weaver and Tanner cannot be imputed to it because, it asserts, although Weaver and Tanner worked, at different times, as tattoo artists at the Demented Needle shop, they were independent contractors, rather than employees or agents of Demented Needle. Accordingly, Averette and Demented Needle insist that they were entitled to a JML on the slander count.

That argument is due to be rejected because the premise that they rely upon -- that all the allegedly slanderous statements concerning Ebbole were made either by Weaver or by Tanner -- is factually incorrect. Ebbole presented evidence indicating that many of the slanderous statements were made by Averette himself, and Averette and Demented Needle do not contest either that Averette is an agent or employee of Demented Needle or that Averette's statements can be attributed to Demented Needle.

David Schneider testified that in April 2008 he went to the location where LA Body Art had been, saw that the shop was closed, and walked down the street to the Demented Needle shop, where he asked a man (whom he identified at trial as Averette) if he knew where Ebbole was. Averette answered that Ebbole "had AIDS and ... was dead." According to Schneider, Averette then stated that Ebbole had had hepatitis and had "probably infected a lot of people that she's given tattoos to" and that, "every time she tattooed somebody, she had blood all over her."

Danny Pike testified that in early 2008 he came to Mobile looking for a job as a tattoo artist and intended to

contact Ebbole. Pike walked into the Demented Needle shop by mistake and asked for Ebbole. There, a man (whom Pike identified at trial as Averette) responded that Pike "was in the wrong shop, that [Ebbole] was down the street," but that Pike "didn't need to work for her anyway, that everybody in Mobile knew that she had hepatitis."

Patricia Ann Williams, who had had several tattoos done by Ebbole, testified that she went to the LA Body Art shop to get another tattoo by Ebbole. When Williams saw that Ebbole's shop was not open for business, she entered the Demented Needle shop and asked if Ebbole had moved. A man (whom Williams identified at trial as Averette) told Williams that she did "not want to mess with" Ebbole because Ebbole used "nasty needles" and had "syphilis and gonorrhea and AIDS."

At trial, Ebbole presented evidence indicating that she was not suffering from AIDS, hepatitis, or any other communicable disease. The trial court correctly determined that the evidence of slander was sufficient to submit that count to the jury.

B. The Libel Count

Ebbole presented evidence indicating that Averette had displayed in the Demented Needle shop a poster of a portrait tattoo done by Ebbole. On the poster, the picture of the portrait tattoo was accompanied by the following words: "L.A. Body Art - Chassity's work. Don't let this happen to you or anyone you know!" Averette acknowledged that he had received a letter from Ebbole's counsel, stating, in pertinent part:

> "This letter is to place you on notice that my client has learned of certain slanderous statements made by you and/or your employees. It has come to Ms. Ebbole's attention that derogatory statements have been made about the professional quality of LA Body Art's work and her health in particular. She has been advised that statements have been made by you or your employees that she has hepatitis and that prospective clients of LA Body Art would be exposed to this disease if they go to LA Body Art for their tattoos. These statements are untrue and false. Demand is hereby made pursuant to Alabama Code § 6-5-186 for full and fair retraction of such charges and matters. In addition, we demand on behalf of Ms. Ebbole that such statements immediately cease and desist. If a full and fair retraction is not made within five days as required by laws of the State of Alabama, Ms. Ebbole will pursue her available legal alternatives."

Ebbole testified that she had done a portrait tattoo similar to the one pictured on the poster, but, she said, the shading

of the portrait tattoo on the poster appeared to have been altered.

Averette and Demented Needle contend that Ebbole failed to prove that the poster was libelous because, they say, (1) Ebbole admitted that she had done the tattoo and (2) the words accompanying the tattoo are constitutionally protected commercial speech. We disagree. First, we note that Ebbole acknowledged merely that she had done a tattoo similar to the one pictured on the poster, explaining that the shading on the tattoo pictured on the poster appeared to have been altered. Second, aside from the conclusory statement that the words on the poster constitute constitutionally protected speech, Averette and Demented Needle make no argument and cite no authority in support of their commercial-speech assertion.

> "Rule 28(a)(10) [, Ala. R. App. P.] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived. Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 923 (Ala. 2002); Arrington v. Mathis, 929 So. 2d 468, 470 n. 2 (Ala. Civ. App. 2005); Hamm v. State, 913 So. 2d 460, 486 (Ala. Crim. App. 2002). 'This is so, because "'it is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority

> or argument.'"' Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007) (quoting Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003), quoting in turn Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994))."

White Sands Group, L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008).

The trial court correctly concluded that a jury issue was presented with respect to whether the material on the poster was libelous.

C. The Invasion-of-Privacy Count

Ebbole alleged that Averette and Demented Needle had invaded her privacy by appropriating a white plaster body cast of her torso, adorning it with satanic symbols, and using it as a mannequin on which to display Demented Needle T-shirts for sale. The evidence established that a local artist had made the body cast and had given it to Averette. Averette adorned the body cast with black roses and drawings of pentagrams, attached black wings and "devil's horns" to it, and displayed Demented Needle T-shirts on it. Although the mannequin did not have a face, or any other features identifying it as a representation of Ebbole, the evidence established that Averette routinely told customers and other

individuals who entered the Demented Needle shop that the mannequin was a body cast of Ebbole. Averette even went so far as to tell Danny Pike, when Pike inquired as to Ebbole's whereabouts, that if he "really wanted to talk to [Ebbole, he] could go stand up front and talk to [Ebbole] there ... that [Ebbole] was sitting at the front of the shop." When Pike responded that there was no one there, just a mannequin, Averette said, "that's a cast of her body that we use to set spells on her."

> "Alabama has long recognized that a wrongful intrusion into one's private activities constitutes the tort of invasion of privacy. See I.C.U. Investigations, Inc. v. Jones, 780 So. 2d [685] at 688 [(Ala. 2000)]; Johnston v. Fuller, 706 So. 2d 700, 701 (Ala. 1997); Smith v. Doss, 251 Ala. 250, 37 So. 2d 118 (1948). '"This Court defines the tort of invasion of privacy as the intentional wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities."' Rosen v. Montgomery Surgical Ctr., 825 So. 2d 735, 737 (Ala. 2001)(quoting Carter v. Innisfree Hotel, Inc., 661 So. 2d 1174, 1178 (Ala. 1995)).
>
> > "'It is generally accepted that invasion of privacy consists of four limited and distinct wrongs: (1) intruding into the plaintiff's physical solitude or seclusion; (2) giving publicity to private information about the plaintiff that violates ordinary decency; (3) putting the plaintiff in a

> false, but not necessarily defamatory, position in the public eye; or (4) appropriating some element of the plaintiff's personality for a commercial use. Norris v. Moskin Stores, Inc., 272 Ala. 174, 132 So. 2d 321 (1961).'
>
> "Johnston, 706 So. 2d at 701."

Butler v. Town of Argo, 871 So. 2d 1, 12 (Ala. 2003). Ebbole sought recovery under the third and fourth species of wrong encompassed within the tort of invasion of privacy: putting the plaintiff in a false light and appropriating some element of the plaintiff's personality for a commercial use. Averette and Demented Needle argue that Ebbole failed to establish either a false-light or a commercial-appropriation invasion-of-privacy claim because, they say, Ebbole did not prove the following facts: (1) that Averette and Demented Needle had wrongfully obtained the body cast from the artist who made it and (2) that the body cast was recognizable as a likeness of Ebbole. We agree that Ebbole failed to prove either of those facts, but we conclude that neither fact was essential to establish her invasion-of-privacy claim.

With respect to the first fact, Averette and Demented Needle point out that, during the trial of this case, Ebbole

had a lawsuit pending against the artist who made the body cast to determine the true ownership of the cast. Averette and Demented Needle maintain that, until that lawsuit was resolved, it was impossible to determine whether they had wrongfully obtained the cast. Unlike the tort of conversion, however, which requires proof of "'(1) a wrongful taking; (2) an illegal assertion of ownership; (3) an illegal use or misuse of another's property; or (4) a wrongful detention or interference with another's property,'" Penttala v. David Hobbs BMW, 698 So. 2d 137, 139 (Ala. Civ. App. 1997) (quoting Drennen Land & Timber Co. v. Privett, 643 So. 2d 1347, 1349 (Ala. 1994)), the tort of invasion of privacy does not require proof of a wrongful taking of property or of an illegal assertion of ownership. It is sufficient to show an appropriation of some element of the plaintiff's personality for a commercial use. Butler v. Town of Argo, 871 So. 2d at 12.

With respect to the second fact, it was undisputed that no one could tell, just by looking at the body cast, that it was a representation of Ebbole's torso. Nevertheless, it was also undisputed that Averette told anyone who inquired, and

even volunteered the information to those who had not inquired, that the mannequin was Ebbole's body cast. Under the circumstances, Ebbole presented sufficient evidence to allow the invasion-of-privacy claim to be submitted to the jury for a factual resolution.

III. Malice

The trial court determined, without objection, that Ebbole was a public figure and that, to prevail on her defamation claims, she had to prove by clear and convincing evidence that the defendants published statements about her with actual malice -- that is, with knowledge that the statements were false or with reckless disregard as to whether the statements were true or false. See New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). Tanner argues that the evidence of actual malice was insufficient to support the judgment against her on the libel count.

The libel count against Tanner was based on evidence indicating that, on July 29, 2009, Tanner had posted on her "My Space" Web page statements that questioned Ebbole's skill as a tattoo artist and body piercer. Specifically, in

referring to a video that showed Ebbole demonstrating how to perform a "dermal implant" body piercing, Tanner stated:

> "You have taken what I love and sh-t all over it ... allegedly.
> Current mood: disgusted
> Category: blogging
>
> "I came across this video during my recent health inspection of all [things]. I was certified to do microdermal anchoring in October of 2008....[Ebbole's method] is disrespectful to what I do and what I love ... allegedly. I ask you, people of the interweb ... what should I do about it?
> FYI: [Ebbole's method] is NOT the method I use or would suggest to be used for any implant procedure."

In response to Tanner's statements, a number of comments were posted on Tanner's "My Space" Web page, some in defense of Ebbole and some very critical of Ebbole. Representative comments of the latter type included the following:

> "First of all, I'm not surprised by anything sh---y that comes from Chassity. I have personally witnessed her obliterate a tattoo on a 17-year-old for whom she allowed the boyfriend to sign the waiver. Is there no way to get her license revoked?
>
> "OMG. I watched this same video and was horrified by what [Ebbole] was doing. I myself want[ed] a few of the dermal piercings, but when I saw this I was totally turned off!!!
>
> "[Ebbole is] a piece of sh-- ... Let people go to her and get her nasty-ass HIV hands all over them.
>
> "I'll be happy to kill [Ebbole]."

On August 20, 2009, Ebbole's attorney sent Tanner a letter that stated, in pertinent part:

> "You have recently embedded video footage of Chassity [Ebbole] on your web page and posted slanderous comments which include derogatory comments about her professional abilities as a piercer. These statements amount to slander per se. Your unauthorized use of this video by embedding it on your web page along with accompanying false, derogatory, and untrue comments violate Alabama Code Article 11, Section 6-5-186 et seq.
>
> "You should be aware that these published statements by you have caused substantial damage to the character and reputation of my client. Demand is hereby made pursuant to Alabama Code Section 6-5-186 that you immediately remove the embedded video of Chassity and the accompanying slanderous comments within five (5) days from the date of this formal notice to you.
>
> "Further demand is made upon you to make a public retraction of these statements within five (5) days in all media and on all web sites where they have been published by you. This retraction must acknowledge [that] the statements posted on the web site are false and be in a form satisfactory to my client."

It is undisputed that, after Tanner received the demand letter from counsel, she did not issue a retraction and did not delete any of the comments posted on her Web page.

Tanner argues that she merely expressed an opinion on her Web page -- that Ebbole had used the wrong method for a

"dermal implant" body piercing. She insists that it is impossible for an opinion to be "false" so as to constitute a statement made with actual malice. Although that argument is superficially appealing, Tanner directs this court to no authority in support of it. Because she presents no authority in support of her argument, in violation of Rule 28(a)(10), Ala. R. App. P., we will not consider the issue further. Asam v. Devereaux, 686 So. 2d 1222, 1224 (Ala. Civ. App. 1996) (stating that "[t]his court will address only those issues properly presented and for which supporting authority has been cited").

The trial court was apparently of the view that malice could be inferred from Tanner's failure, after receiving a demand letter from Ebbole's counsel, to retract her statements or to delete the third-party comments that were posted on her Web page. That view has some support. See Restatement (Second) of Torts § 580A cmt. d (1977) ("Under certain circumstances evidence [of a failure to retract] might be relevant in showing recklessness at the time the statement was published."); but cf. New York Times Co. v. Sullivan, 376 U.S. at 286-87 (not deciding whether failure to retract may ever

constitute adequate evidence of malice for constitutional purposes). Because the "'determination of malice in defamation cases is particularly within the province of the jury,'" Delta Health Group, Inc. v. Stafford, 887 So. 2d at 898 (quoting Cousins v. T.G.& Y. Stores Co., 514 So. 2d 904, 906 (Ala. 1987)), and because Tanner has presented us with no reason or authority upon which to reverse the trial court's ruling as to this issue, we will not consider it further.

IV. Punitive Damages

Averette, Demented Needle, and Tanner argue that the punitive-damages awards are excessive in light of the guideposts set out by the Supreme Court of the United States in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), and the factors recognized by the Supreme Court of Alabama in Green Oil Co. v. Hornsby, 539 So. 2d 218 (Ala. 1989), and Hammond v. City of Gadsden, 493 So. 2d 1374 (Ala. 1986). In their motion for a remittitur, Averette and Demented Needle did not specifically request a hearing on punitive damages. Instead, they submitted affidavits concerning their financial positions and argued that the punitive damages should be remitted. Averette submitted an affidavit stating that his

personal net worth was $12,247.23 and that the net worth of Demented Needle was "minus $28,745.28." In addition, Demented Needle contended that the trial court was required to remit the $200,000 punitive-damages award against it to no more than the $50,000 statutory cap on punitive damages assessed against a small business, pursuant to Ala. Code 1975, § 6-11-21(b). The trial court denied the motion for a remittitur filed by Averette and Demented Needle without explanation.

Tanner's motion for a remittitur specifically requested a hearing on punitive damages. Tanner's brief in support of that motion requested that the trial court "either conduct a hearing or receive additional evidence, or both, concerning the amount of punitive damages," pursuant to Ala. Code 1975, § 6-11-23(b). That statute provides, in pertinent part:

> "(b) In all cases wherein a verdict for punitive damages is awarded, the trial court shall, upon motion of any party, either conduct hearings or receive additional evidence, or both, concerning the amount of punitive damages."

(Emphasis added.) Tanner submitted an affidavit stating that she had total assets of $7,500, and total liabilities of $10,900, for a net worth of "minus $3,400." The trial court

denied Tanner's motion for a remittitur without a hearing and without explanation.

The trial court did not err in failing to hold a hearing when none was requested by Averette and Demented Needle. See Waldrip Wrecker Serv., Inc. v. Wallace, 758 So. 2d 1110, 1116 (Ala. Civ. App. 1999), and the trial court did not exceed its discretion in receiving additional evidence in the form of affidavits concerning the issue of punitive damages. See § 6-11-23(b). Nevertheless, because Tanner requested a hearing, which is required under Rule 59(g), Ala. R. Civ. P.; because the trial court failed to state its reasons for deciding not to interfere with the jury's verdict as to punitive damages; and because we are unable to discern the basis upon which the trial court denied the motions for a remittitur filed by all three defendants, we remand the cause with instructions for the trial court to conduct a hearing, and to make findings of fact and conclusions of law, on the question whether the punitive-damages awards were excessive. See Guaranty Pest Control, Inc. v. Bush, 851 So. 2d 548 (Ala. Civ. App. 2002); see also Southeast Environmental Infrastructure, L.L.C. v. Rivers, 12 So. 3d 32, 48-50 (Ala. 2008) (opinion on original

submission). We direct the trial court to make a return within 42 days.

2091121 -- REMANDED WITH DIRECTIONS.

2100172 -- REMANDED WITH DIRECTIONS.

Thompson, P.J., and Bryan, Thomas, and Moore, JJ., concur.