HOFFMAN v. CITY OF CHICAGO

United States Court of Appeals for the Seventh Circuit
January 20, 1984
No. 83-2203

Reporter: 1984 U.S. App. LEXIS 26239
HINDA HOFFMAN, Plaintiff-Appellee, vs. CITY OF CHICAGO, Defendant-Appellant.

Prior History: [*1] Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 82 C 4984

Paul E. Plunkett, *Judge.*

Opinion

Before Hon. WILLIAM J. BAUER, Circuit Judge

Hon. HARLINGTON WOOD, JR., Circuit Judge

Hon. EDWARD R. NEAHER, Senior District Judge *

ORDER

This case was consolidated with three other cases and decided in our original panel opinion, Mary Beth G. v. City of Chicago, Nos. 82-1894, 82-1920, 82-2605, 83-1618, and 83-2203 (7th Cir. Nov. 29, 1983). After careful consideration of petitioner Hoffman's petition for rehearing with suggestion for rehearing en banc, the panel agrees that the original jury award should be affirmed and consequently we modify the slip opinion as follows:

1. Replace Part III of the slip opinion (Jury Awards) on pages 20-22 with the following new Part III:

The City argues that the jury awards in each of the cases before us are excessive and that we should order remittiturs. The awards for plaintiffs-appellees Mary Beth G. and Sharon N. were $25,000 each, while plaintiff-appellee [*2] Mary Ann Tikalsky received $30,000. The remaining plaintiff-appellee, Hinda Hoffman, received an award of $60,000. In determining whether an award is excessive, we are to accord substantial deference to the decision of the jury and will not disturb an award unless we are convinced that it is "monstrously excessive" or "so large as to shock the conscience of the court." Huff v. White Motor Corp., 609 F.2d 286, 296 (7th Cir. 1979); Galard v. Johnson, 504 F.2d 1198, 1199 (7th Cir. 1974).

After having carefully appraised the evidence bearing on damages, we believe that the evidence submitted by each of the plaintiffs-appellees is sufficient to support the awards. The testimony offered by each woman regarding emotional and mental distress resulting from the searches was adequately corroborated by persons who knew the women best. The testimony revealed, inter alia, instances of shock, panic, depression, shame, rage, humiliation, and nightmares, with lasting effects on each woman's life. Under these circumstances, we are not in a position to second guess the juries' findings on the actual measurement of damages. Whitley v. Seibel, 676 F.2d 245 (7th Cir. 1982). [*3]

We recognize that while three of the awards are generally consistent with one another, the award of $60,000 to plaintiff-appellee Hinda Hoffman is at least twice as great as the others. In the past, we have sometimes reduced damage awards when they have been out of line with a clear trend of awards at lesser amounts. See, e.g., Phillips v. Hunter Trails Community Association, 685 F.2d 184 (7th Cir. 1982) (housing discrimination award of $25,000 made by trial judge reduced to $10,000 in part because original award was more than twice as much as received by any other victim of housing discrimination for intangible injuries in litigation over a 14 year period). Here, the award is greater than most other awards given by juries for damages in similar strip search cases involving the City of Chicago so as to be out of step with nascent trends, although at least one award has gone nearly as high. [11] One explanation for the higher award may be that plaintiff-appellee Hoffman alleged aggravating circumstances associated with the strip search that the jury was free to find as having been proximately caused by the

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* The Honorable Edward R. Neaher, Senior District Judge for the Eastern District of New York, is sitting by designation.

[11] Compare Susan B. v. City of Chicago, 83 C 228 (N.D. Ill. Nov. 16, 1983) ($15,000 verdict); Stella S. v. City of Chicago, 82 C 1912 (N.D. Ill. Dec. 23, 1983) ($15,000 verdict) with Levka v. City of Chicago, 83 C 2283 (N.D. Ill. Nov. 21, 1983) ($50,000 verdict). See also Sala v. County of Suffolk, 75 C 486 (E.D.N.Y. Judgment Order of Feb. 1981) ($25,000 settlement); Saunders v. City of Orlando, 78-6682 (9th Jud. Cir., Orange Cty., Fla., Oct. 1980) ($50,000 jury award for strip search and false arrest); Harrison v. County of El Paso, EP 82 CA 57 (El Paso, Texas 1983) ($112,500 settlement).

policy of the City and therefore compensable against it. Plaintiff-appellee [*4] Hoffman testified that two male police officers were within view when she was strip searched, and that a group of prostitutes jeered at her as the search was conducted. A jury could reasonably infer that the magnitude of plaintiff-appellee Hoffman's intangible injuries were significantly affected by these circumstances. Still, at least one of the other plaintiffs-appellees also believed that she was being viewed by male police personnel while she was being searched, Brief of Plaintiff-Appellee Mary Beth G. at 4, and the manifestations of plaintiff-appellee Hoffman's psychic and emotional injuries do not appear to us to be significantly different from those of the other plaintiff-appellees; the record reveals that each woman described the emotional and psychic effect of the search in similar language, each woman still thinks about the strip search, and each woman's attitudes and relationships with others have been colored by the experience. In addition, some elements of plaintiff-appellee Hoffman's claimed damages appear at least tenuous when measured against the usual damage standard of causation and foreseeability. For example, her own evidence discloses that part of her distress [*5] resulted from her dissatisfaction with the way her brother, an attorney, responded to her situation and handled her traffic violation case; despite her insistence that her brother tell the traffic judge about her strip search, her brother thought it best not to mention the incident. Even her breakup with her boyfriend six months after the strip search was attributed to the search, although her boyfriend testified that it was hard for him to say exactly what caused the breakup.

Despite this not uncommon attempt to load every injury possible onto the back of the wrong in an effort to increase [*6] the damage award, there nonetheless remains in this case, considering the nature of the constitutional wrong suffered, sufficient evidence of humiliation and mental distress to support the jury's damage award. Whatever misgivings we may have about the size of the award to plaintiff-appellee Hoffman must give way to our recognition of the function of the jury as the primary finder of fact.The jury is the collective conscience of the community, and its assessment of damages must be given particular weight when intangible injuries are involved. Although a jury's perceptions may vary from our own, we will not disturb its assessment of compensatory damages "unless in our judgment it can aptly be described as "grossly exceassive" or "monstrous' or with similar prejorative adjectival terms." Huff, 609 F.2d at 297. Thus, although the amount awarded to plaintiff-appellee Hoffman is significantly greater than the amount awarded to the other plaintiffs-appellees, it is not so "grossly excessive" under these particular circumstances as to require a reduction. Accordingly, we affirm the amount of the verdicts in each of these cases.

2. Replace the first two sentences of Part [*7] V (Summary) on page 35 of the slip opinion (beginning "The judgments and damage awards . . ." and ending ". . . to reduce the award to $35,000.") with the following:

The judgments and damage awards against the City in Nos. 82-1894 (Mary Beth G.), 82-1920 (Sharon N.), 82-2605 (Tikalsky), and 83-2203 (Hoffman) are affirmed.

3. Insert in the first sentence on page two of the slip opinion after ". . . strip searched" and before "in lockups maintained . . ." the following phrase: "by matrons".

4. Insert in the second sentence on page five of the slip opinion after ". . . facilities of the Chicago Police Department" and before "to:" the following phrase: "and searched by female police personnel".

In light of the panel's modification of the original opinion that reinstates the original damage award that petitioner Hoffman sought through her petition for rehearing with suggestion for rehearing en banc, we need not grant petitioner's request for rehearing by the panel. Since no judge in active service has requested a vote on the petition for rehearing en banc, the petition is hereby denied.