

No. 98-2920

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

KEVIN GILMORE,

FILED

PLAINTIFF-APPELLANT,

March 12, 1999

V.

CLERK OF
COURT OF APPEALS
OF WISCONSIN

BRUCE FISCHER,

DEFENDANT-RESPONDENT.

ERRATA SHEET

Marilyn L. Graves
Clerk of Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688

Court of Appeals District II
2727 N. Grandview Blvd.
Waukesha, WI 53188-1672

Court of Appeals District I
633 W. Wisconsin Ave., #1400
Milwaukee, WI 53203-1918

Court of Appeals District IV
119 Martin Luther King Blvd.
Madison, WI 53703

Court of Appeals District III
740 Third Street
Wausau, WI 54403-5784

Hon. George S. Curry
Trial Court Judge
Grant County Courthouse
P.O. Box 149
Lancaster, WI 53813

Jennifer Krapf
Administrative Assistant
119 Martin Luther King Blvd.
Madison, WI 53703

Diane Perkins, Trial Court Clerk
Grant County Courthouse
130 W. Maple St.
Lancaster, WI 53813

Peg Carlson
Chief Staff Attorney
119 Martin Luther King Blvd.
Madison, WI 53703

John P. McNamara
118 W. Cherry Street
Lancaster, WI 53813

James E. Lewis

Kinney & Urban
P.O. Box 528
Lancaster, WI 53813

PLEASE TAKE NOTICE that the attached page 3 is to be substituted for page 3 in the above-captioned opinion which was released on March 4, 1999.

prove a cause of action for intentional infliction of emotional distress. The plaintiffs responded that they were not claiming intentional infliction of emotional distress, rather they were asserting assault claims. The court dismissed the plaintiffs' assault claims, but concluded that it would rule on causes of action for intentional infliction of emotional distress.

The court awarded Beamon compensatory damages of \$99 and Gilmore no compensatory damages. It also awarded Beamon and Gilmore punitive damages of \$200 each. Beamon did not pursue a joint appeal. However, Gilmore appealed the court's dismissal of his assault claim; its failure to award punitive damages for that claim, and the amount of punitive damages awarded for the intentional infliction of emotional distress claim. Fischer did not cross-appeal.

DISCUSSION

Standard of Review.

The determination that a claim should be dismissed based upon insufficient proof is a question of law. *Seraphine v. Hardiman*, 44 Wis.2d 60, 65, 170 N.W.2d 739, 742 (1969). However, the circuit court's award of the amount of damages is a discretionary determination which we will uphold unless the court erroneously exercised its discretion. See *Brain v. Mann*, 129 Wis.2d 447, 455, 385 N.W.2d 227, 231 (1986). When we review a discretionary decision, we examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *State v. Keith*, 216 Wis.2d 61, 69, 573 N.W.2d 888, 892-93 (Ct. App. 1997).

