

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 8, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP555

Cir. Ct. No. 2012CV337

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MARILYN STARSTEAD,

PLAINTIFF-RESPONDENT,

V.

**STEVEN W. SCHMIDT D/B/A SCHMIDT CONSULTING LLC, SAFE MONEY
SOLUTIONS, LLC AND SCHMIDT WEALTH MANAGEMENT LLC,**

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Douglas County:
KELLY J. THIMM, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 SEIDL, J. Steven Schmidt d/b/a Schmidt Consulting LLC, Safe Money Solutions, LLC, and Schmidt Wealth Management LLC (collectively, Schmidt) appeal a judgment entered after a court trial determined that Schmidt defrauded Marilyn Starstead (Starstead). The judgment awarded Starstead

compensatory damages of \$223,550.75¹ and punitive damages of \$200,000. Schmidt contends the circuit court lacked personal jurisdiction over him, the compensatory damages were excessive, and the court erroneously exercised its discretion in awarding punitive damages. We reject Schmidt's arguments and affirm the judgment.

BACKGROUND

¶2 Starstead, a resident of Superior, Wisconsin, commenced this action against Schmidt, a Minnesota resident, whose businesses are headquartered in Minnesota. Her complaint alleged Schmidt held himself out to the public and to Starstead as an investment advisor and insurance agent and, acting in both capacities, induced Starstead to place her monies "in trust" with Schmidt "for investment and safe keeping." Her complaint further alleged that Schmidt "misappropriated the funds [Starstead] placed in trust with him" and used, transferred, concealed and converted Starstead's monies "to his own use." Starstead alleged damages consisting of "loss of money and investments, incurred federal and state tax liabilities, attorney's fees and accounting costs" and entitlement to "treble damages."² Schmidt's answer generally denied those

¹ The circuit court's judgment of \$223,550.75 consisted of \$222,320.79 in compensatory damages plus \$1,229.96 of prejudgment interest computed from the time interest was first computed during trial to the time judgment was entered.

² Although not specifically cited in her complaint, Starstead's request for "treble damages" was apparently pursuant to WIS. STAT. § 895.043(1)(d) and (3), which together allow the court to award punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the plaintiff's rights.

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

allegations. One of his affirmative defenses alleged the circuit court lacked personal jurisdiction over Schmidt and his businesses.³

¶3 Schmidt filed a motion to dismiss the complaint, contending he had insufficient contacts for Wisconsin courts to obtain personal jurisdiction over him in this action. The circuit court denied the motion, concluding it had personal jurisdiction over Schmidt. The court held that WIS. STAT. § 628.04(1)(c) specifically conferred jurisdiction over Schmidt by virtue of his holding a nonresident insurance license in Wisconsin, which the court found he held during the relevant time period. In addition, the court held that Wisconsin's long-arm statute, WIS. STAT. § 801.05, conferred jurisdiction over Schmidt because of his substantial activities in Wisconsin. Finally, the court held the constitutional requirements for personal jurisdiction were met because Schmidt availed himself of Wisconsin's jurisdiction. Further facts relevant to jurisdiction are provided below.

¶4 Starstead called two expert witnesses at trial, Brandon Johnson and Curtis Teberg, both of whom addressed Schmidt's conduct as an insurance intermediary.⁴ Teberg is a licensed insurance agent in Wisconsin, Minnesota, and several other states and is also a registered securities broker. He testified to his study of hundreds of pages of documents concerning the financial dealings between Schmidt and Starstead. Teberg concluded Schmidt was involved in

³ While Schmidt's appellate brief states the issue is whether the circuit court had "subject matter jurisdiction," his affirmative defense, motion to dismiss, and appellate brief all maintain the circuit court lacked personal jurisdiction over him. Schmidt did not object to subject matter jurisdiction in the circuit court, and we therefore address personal rather than subject matter jurisdiction.

⁴ Because Teberg was unavailable at trial, his testimony was conducted by deposition, and the transcript was admitted into evidence at trial and reviewed by the circuit court.

“multiple misrepresentations” and “self-dealing,” including Schmidt’s prohibited borrowing of money from Starstead.⁵

¶5 Johnson, an agent for the Minnesota Department of Commerce—Fraud Bureau, testified that he tracked the money Schmidt received from Starstead. This tracking generally revealed that Schmidt took money from his business account and transferred it to his personal account almost immediately upon receiving it from Starstead. Once in his personal account, it was used for personal matters such as at a Cadillac dealer, for cash, and for Christmas expenses. Johnson further testified that Schmidt’s practice of causing Starstead to surrender insurance policies and then obtaining new policies was a criminal misrepresentation, often called “churning.” Finally, Johnson testified about Schmidt’s prior earnings, including the \$549,870.36 Schmidt earned in commissions from Allianz Life Insurance Company between 2007 and 2009.

¶6 In his defense, Schmidt testified he received a series of periodic loans from Starstead totaling \$104,258. He alleged those loans were made by checks from Starstead for \$10,000 on October 29, 2004; \$20,000 on October 15, 2007; \$39,258 on November 19, 2007; and \$35,000 on November 15, 2008. Schmidt testified that all checks were written on Starstead’s Superior, Wisconsin, credit union account. He admitted he used Starstead’s money for personal expenses and to grow his business, Safe Money Solutions, LLC. The purported loans from Starstead were never documented.

¶7 Schmidt also testified regarding his ability to repay Starstead on the purported loans. Specifically, he explained that he accepted a plea deal in a

⁵ On appeal, Schmidt does not dispute the sufficiency of the evidence to support a finding of fraud or misrepresentation. We therefore forgo a detailed recitation of the facts in that regard.

criminal case against him so he could pay “back every penny” to Starstead. As to his ability to repay the claimed loans from Starstead after loss of his professional license, Schmidt testified he had experience in the printing business and intended to start a printing company. He testified he had no problem or concern about raising the money needed to start that business. He further testified that until 2012, his annual income was close to \$300,000. Schmidt testified he had the ability to repay Starstead \$110,000.

¶8 Starstead testified the monies at issue were not a loan but were to be reinvested and were taken by Schmidt through misrepresentation. Starstead’s undisputed compensatory damages totaled \$222,320.79: \$104,258 in principal, plus \$75,032 in tax liabilities and surrender fees, and \$43,030.79 in lost interest.

¶9 Evidence at trial showed that, as a result of Schmidt’s transactions with Starstead, the Wisconsin Commissioner of Insurance (Commissioner) revoked Schmidt’s permanent insurance intermediary agent’s license, awarded Starstead \$168,837.42 in restitution, and assessed forfeiture fees of \$97,080 against Schmidt.⁶ Schmidt also agreed to repay \$110,000 to Starstead as restitution in a Carlton County, Minnesota, District Court criminal action.⁷

¶10 The circuit court found Starstead’s testimony in its entirety to be credible and Schmidt’s testimony not credible “in the least bit.” The court determined that Starstead met her burden of proving, by a preponderance of the evidence, that Schmidt made misrepresentations to Starstead. The court went on to state, “I think there could be [an] argument that it met the burden of proof for a

⁶ See *In re Steven Schmidt*, Wisconsin Commissioner of Insurance case No. 2012-C35008, Final Decision and Order dated July 29, 2013.

⁷ See *State of Minnesota v. Steven William Schmidt*, Carlton County Minnesota District Court case No. 2009-CR-12-2754.

criminal.” The court found that Schmidt groomed Starstead in order to steal money from her; knowingly made false representations to Starstead; and that she relied upon those communications to transfer money to Schmidt. The court further stated:

I still don’t quite understand what he was using the money for. It was clear he was using it for vehicles. He was using it for things to better himself. ... [H]e wasn’t using the money ... to make his business go. ... Personally to buy vehicles. To pay for other things. It just—it makes it more of an egregious conduct in my opinion. For him to have called this a loan or something else is at best laughable, unbelievable. ...

Some other things I found telling through the testimony ... here he is the upstanding member of the community and Ms. Starstead is poor going. She certainly wasn’t elderly but poor widow going on in age somewhat and maybe a little crazy and, you know, believe him not her, and it’s not like he came forward and said immediately, you know, I gave her some loans. He came up with that story later but that wasn’t what originally was stated and it had to be pried out of him and quite frankly it just—it was unbelievable. It just wasn’t true.

The court awarded Starstead compensatory damages of \$223,550.75 and punitive damages of \$200,000. Schmidt now appeals.

DISCUSSION

¶11 Schmidt contends the circuit court lacked personal jurisdiction over him. In addition, while Schmidt does not dispute that \$223,550.75 was a correct determination of gross compensatory damages, he argues that award was excessive because it should have been offset by the \$110,000 restitution he agreed to pay Starstead in the criminal case and by the \$168,837.42 he was ordered to pay

Starstead by the Commissioner. Finally, Schmidt claims the court erroneously exercised its discretion by awarding \$200,000 in punitive damages.⁸

I. Personal jurisdiction

¶12 In order for a Wisconsin court to render a judgment against a defendant, the defendant must be subject to the personal jurisdiction of Wisconsin courts. *See* WIS. STAT. §§ 801.04-05. It is undisputed that Schmidt is a Minnesota resident. In determining whether personal jurisdiction may be exercised over a nonresident defendant, we employ a two-step inquiry. ***Kopke v. A. Hartrodt S.R.L.***, 2001 WI 99, ¶8, 245 Wis. 2d 396, 629 N.W.2d 662. The first step is to determine whether the defendant meets the criteria for personal jurisdiction under the Wisconsin long-arm statute, WIS. STAT. § 801.05. ***Kopke***, 245 Wis. 2d 396, ¶8. If the requirements set out in the long-arm statute are satisfied, then we must consider whether the exercise of jurisdiction comports with constitutional due process requirements. *Id.*

¶13 The burden is on the plaintiff to establish personal jurisdiction under WIS. STAT. § 801.05. ***Lincoln v. Seawright***, 104 Wis. 2d 4, 9, 310 N.W.2d 596 (1981). “Factual doubts are to be resolved in favor of the plaintiff.” ***Kopke***, 245 Wis. 2d 396, ¶8 (citation omitted). In addition, the Wisconsin long-arm statute is to be construed liberally in favor of the exercise of personal jurisdiction. ***Clement v. United Cerebral Palsy of S.E. Wis., Inc.***, 87 Wis. 2d 327, 332, 274 N.W.2d 688 (1979).

⁸ We note that Schmidt’s brief violates a host of appellate rules. Among other things, he fails to cite to the record when making factual assertions. *See* WIS. STAT. RULE 809.19(1)(d)-(e). He also fails to include pinpoint citations in many of his legal citations. *See* WIS. STAT. RULE 809.19(1)(e); SCR 80.02(3)(a)-(c). We admonish Schmidt’s counsel that future violations of the Rules of Appellate Procedure may result in sanctions. *See* WIS. STAT. RULE 809.83(2).

¶14 The circuit court must first make jurisdictional findings of fact, *see M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 242, 430 N.W.2d 366 (Ct. App. 1988), which will be upheld on appeal unless they are clearly erroneous, *see Rasmussen v. General Motors Corp.*, 2011 WI 52, ¶14, 335 Wis. 2d 1, 803 N.W.2d 623. “Stated otherwise, findings of fact will not be disturbed on appeal unless they are contrary to the great weight and clear preponderance of the evidence.” *Id.* If the circuit court’s findings of jurisdictional fact are not clearly erroneous, then applying those facts to the legal standard governing personal jurisdiction is a question of law that we review independently. *See Kopke*, 245 Wis. 2d 396, ¶10. While our review is independent, we benefit from the circuit court’s analysis. *See State v. Aufderhaar*, 2005 WI 108, ¶10, 283 Wis. 2d 336, 700 N.W.2d 4.

¶15 We first analyze whether the circuit court had personal jurisdiction over Schmidt under WIS. STAT. § 801.05(2). That subsection provides that Wisconsin courts have special personal jurisdiction “[i]n any action which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.” Starstead contends, and the circuit court held, that Schmidt is subject to the special jurisdiction of Wisconsin courts under § 801.05(2) because he held a nonresident insurance agent’s license. WISCONSIN STAT. § 628.04(1)(c) provides that

the commissioner [of insurance] shall issue a license to act as an agent to any applicant who: ... [i]f a nonresident, executes in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of ... courts of this state on any matter related to the applicant’s insurance activities in this state

¶16 Schmidt concedes he held a Wisconsin insurance license from 2000 until it was revoked in 2012—that is, at all times he engaged in transactions with Starstead. The record does not disclose that Schmidt executed the form agreement described in WIS. STAT. § 628.04(1)(c) subjecting himself to the jurisdiction of

courts of this state. However, that agreement was required before the Commissioner could have issued Schmidt's agent's license. *See* WIS. STAT. § 628.04(1)(c). In addition, in an action by the Commissioner against Schmidt involving his transactions with Starstead, one of the findings by the Commission, the validity of which Schmidt does not dispute, was: "Steven Schmidt (the Respondent) is, and at all times material, was a duly licensed Wisconsin intermediary agent (license #1027739) subject to the jurisdiction and control of the Commissioner of Insurance" Finally, Schmidt does not contend he never signed and submitted the required jurisdictional agreement. The circuit court impliedly held that Schmidt submitted the required agreement. Starstead's claims clearly arise out of Schmidt's insurance activities in Wisconsin. Under the plain language of WIS. STAT. §§ 801.05(2) and 628.04(1)(c), the circuit court's implied finding that Schmidt consented to personal jurisdiction over him in this action is not clearly erroneous.

¶17 Schmidt argues that his Wisconsin insurance license was "given inactive status for 2007, 2008[,] and 2009" and he received the \$104,258 from Starstead in 2007 and 2008. As a result, he claims the circuit court did not have personal jurisdiction over him. However, that argument is undeveloped. Schmidt fails to explain the relevance of his "inactive status" to his agreement to submit to the jurisdiction of Wisconsin courts. He also cites no legal authority for the notion that even if his license had been inactive, the special jurisdiction statute would be inapplicable. We do not consider this undeveloped argument. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed.").

¶18 Usually, having determined that Schmidt subjected himself to Wisconsin personal jurisdiction under WIS. STAT. §§ 801.05(2) and 628.04(1)(c), we would next determine whether the exercise of jurisdiction over Schmidt

comports with constitutional due process requirements. However, “[t]he Due Process Clause of the Fourteenth Amendment limits the exercise of jurisdiction by a state over a *nonconsenting nonresident*.” *Kopke*, 245 Wis. 2d 396, ¶22 (emphasis added). The Due Process Clause is not implicated here because Schmidt consented to subject himself to Wisconsin personal jurisdiction on matters related to his insurance activities in this state by signing and submitting his jurisdictional agreement to the Commissioner. Therefore, it cannot be said Schmidt is a “nonconsenting” nonresident for due process purposes, and we need not consider any due process claim further.⁹ See *Barrows v. American Family Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (“An appellate court need not address every issue raised by the parties when one issue is dispositive.”). The circuit court properly exercised personal jurisdiction over Schmidt.

II. Compensatory damages

¶19 Schmidt does not dispute that \$223,550.75 is the amount of Starstead’s compensatory damages. Rather, Schmidt argues the circuit court’s award effectively operated to make him pay Starstead’s losses twice. He argues the circuit court was aware that Schmidt was obligated to pay Starstead \$110,000 in restitution as part of his criminal plea agreement and that the Commissioner had awarded Starstead \$168,837.42 in restitution. He argues those awards “fully compensated” Starstead. Schmidt asserts this issue was presented to the circuit court, but the court “simply did nothing,” evincing the court’s bias and prejudice against him. He proclaims that was “[p]erhaps out of an obvious dislike of

⁹ Our determination that the Due Process Clause is not implicated is made solely on the basis that Starstead’s claims resulted from Schmidt’s insurance activities in Wisconsin pursuant to the agreement he signed with the Commissioner, and would not apply to any claim arising from non-insurance activities.

Schmidt that was plainly evident in the Court’s cross-examination of Schmidt and its excessive punitive damage award.” Schmidt’s argument of bias by the circuit court in its ordering of the damages award is completely undeveloped, including lacking in record and legal citations. We will not consider undeveloped arguments. *See Pettit*, 171 Wis. 2d at 646.

¶20 Schmidt apparently contends the circuit court should have offset the awards by the Commissioner and the Minnesota criminal court restitution order against the compensatory damages award in this case. However, Starstead argues that Schmidt’s “duplicate damage” argument was not raised as an affirmative defense in Schmidt’s answer and was never argued before the circuit court. Our independent review of the record discloses that, while Schmidt mentioned the Commissioner’s order and the criminal restitution order, he did not make any argument in the circuit court for any offset. “A fundamental appellate precept is that we ‘will not ... blindsides trial courts with reversals based on theories which did not originate in their forum.’” *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶11, 261 Wis. 2d 769, 661 N.W.2d 476 (quoting *State v. Rogers*, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995)).

¶21 In addition, on appeal, Schmidt has entirely failed to develop an offset argument. He has not presented any direct argument for offset or cited any case or statute supporting his argument. We therefore decline to address Schmidt’s offset claim. *See Pettit*, 171 Wis. 2d at 646. Nevertheless, we note that in its decision, the circuit court stated it was aware of the criminal restitution award and the Commissioner’s order, but it found there was no showing Schmidt had paid anything as a result of those actions, such that the compensatory damages awarded in this case would result in unjust enrichment. Furthermore, there is no evidence in the record demonstrating that the prior orders, coupled with the court’s compensatory damages award, would result in a duplication of damages.

III. Punitive damages

¶22 The circuit court awarded \$200,000 in punitive damages. Schmidt contends the punitive damages award was “unrealistic” and an erroneous exercise of the circuit court’s discretion.¹⁰ Whether punitive damages are available is a question of law reviewed de novo. *Tucker v. Marcus*, 142 Wis. 2d 425, 432, 418 N.W.2d 818 (1988). The size of a punitive damages award is also subject to de novo review to ensure it accords with the constitutional limits of due process. *Trinity Ev. Luth. Ch. & Sch.-Freistadt v. Tower Ins. Co.*, 2003 WI 46, ¶¶5, 47-49, 261 Wis. 2d 333, 661 N.W.2d 789. Punitive damages are not intended to compensate the plaintiff; they are awarded to punish the wrongdoer and to deter the wrongdoer and others from similar conduct. *Id.*, ¶50. A punitive damages award is excessive and violates due process “if it is more than necessary to serve the purposes of punitive damages or” if it “inflicts a penalty or burden on the defendant disproportionate to the wrongdoing.” *Id.*

¶23 Starstead requested an award of \$220,000 as punitive damages. Schmidt claims the circuit court ultimately awarded \$200,000 in punitive damages because it was biased against him:

The Trial Court in its extensive and antagonistic cross[-] examination of Schmidt exhibited a patent bias toward Schmidt. That bias was also apparent in the Trial Court[’]s questioning of Starstead, which repeatedly drew out answers that the Court desired to have on the record.

The cumulative bias of the Trial Judge resulted in a punitive damage award which was unrealistic in its scope and its origin.

¹⁰ Schmidt uses the phrase “abuse of discretion” in his brief. We have used the phrase “erroneous exercise of discretion” in place of “abuse of discretion” since 1992. See *City of Brookfield v. Milwaukee Metro. Sewerage Dist.*, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

Again, Schmidt's argument of bias by the circuit court is completely undeveloped, lacking record and legal citations. We therefore again decline to address Schmidt's claim of judicial bias. *See Pettit*, 171 Wis. 2d at 646.

¶24 Independent of his bias argument, Schmidt claims the punitive damages award was excessive and an erroneous exercise of discretion. When determining whether a punitive damages award is excessive, Wisconsin courts consider six factors:

1. The grievousness of the acts;
2. The degree of malicious intent;
3. Whether the award bears a reasonable relationship to the award of compensatory damages;
4. The potential damage that might have been caused by the acts;
5. The ratio of the award to civil or criminal penalties that could be imposed for comparable misconduct; and
6. The wealth of the wrongdoer.

Trinity Ev., 261 Wis. 2d 333, ¶53.

¶25 In discussing the first two factors, grievousness and malicious intent, the circuit court stated:

As far as punitive damages ... there are a number of elements that the Court has to consider. ... whether it was deliberate, whether the disregard was of Ms. Starstead's property rights. If it was aggravated. Those are circumstances I have to consider when determining whether or not to award punitive damages. And ... quite frankly in all the years I've been a prosecutor and now as a judge, I have rarely seen such aggravated conduct. ... This was grooming behavior by Mr. Schmidt on Ms. Starstead ... to get her confidence

Again, he could have taken money from other clients that had more money but he took it from her because she was unsophisticated. She was totally trusting

She was counting on that money for her retirement. ... [A]nd then when he's caught, he doesn't come forward with the truth. He talks about there being some type of loan which is complete hog wash. ... I just can't find that it would be anything but some of the most aggravated, deliberate, and a total disregard for Ms. Starstead's rights to her property.

And there does need to be punitive damages to punish the defendant and to deter future conduct

While the circuit court did not use the terms “grievousness” or “malicious intent,” it is apparent that is what the court meant when it used the words “aggravated,” “deliberate,” and “a total disregard for Ms. Starstead’s rights to her property.” Under WIS. STAT. § 895.043(3), a “plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted ... in an intentional disregard of the rights of the plaintiff.” Intentional acts in disregard of the plaintiff’s rights have been defined as those where a person

acts with a purpose to disregard the plaintiff’s rights, or is aware that his or her acts are substantially certain to result in the plaintiff’s rights being disregarded. This will require that an act or course of conduct be deliberate. Additionally, the act or conduct must actually disregard the rights of the plaintiff, whether it be a right to safety, health or life, a property right, or some other right. Finally, the act or conduct must be sufficiently aggravated to warrant punishment by punitive damages.

Strenke v. Hogner, 2005 WI 25, ¶38, 279 Wis. 2d 52, 694 N.W.2d 296. That is essentially what the circuit court found here with regard to Schmidt’s acts toward Starstead.

¶26 Schmidt argues his actions could not be considered grievous, malicious, or with an intentional disregard of Starstead’s rights because “[t]here was evidence that Starstead and her family knew that Schmidt borrowed money

from Starstead and intended, at all times, to pay the money back.” This response ignores the circuit court’s finding that: “For him to have called this a loan or something else is at best laughable, unbelievable” and “complete hog wash.” Specifically, the court found Schmidt groomed Starstead and made false representations to her in order to acquire her money. That finding was based on the court’s determination that Starstead’s testimony was credible, and Schmidt’s testimony was not credible. We defer to the circuit court’s findings as to the historical facts and the credibility of the witnesses. *Bray v. Gateway Ins. Co.*, 2010 WI App 22, ¶11 n.2, 323 Wis. 2d 421, 779 N.W.2d 695. Furthermore, Schmidt took no responsibility for his actions. As the court noted, “when [Schmidt was] caught, he [did not] come forward with the truth.”

¶27 Schmidt’s final claim concerning grievousness and malicious intent is that he was not known to be someone who routinely defrauded unsuspecting clients. However, Schmidt neither develops any argument that a prior reputation of not “routinely” defrauding people is a factor to be considered by the court, nor does he cite any legal authority supporting that notion. We will not consider that undeveloped argument. *See Pettit*, 171 Wis. 2d at 646. The circuit court’s finding of grievousness and malicious intent is supported by the evidence.

¶28 The third factor in reviewing a punitive damages award is whether the award bears a reasonable relationship to the award of compensatory damages. The amount of recoverable punitive damages is limited by WIS. STAT. § 895.043(6) to twice the amount of the compensatory damages recovered by the plaintiff or \$200,000, whichever is greater. That is clearly a legislative determination of what is a “reasonable relationship” of a punitive damages award to the compensatory damages. Here, the circuit court complied with the statutory limit.

¶29 The fourth factor, the potential damages that might have been caused by Schmidt's acts, was shown by the compensatory damages awarded by the circuit court, the amount of which Schmidt does not challenge. In fact, the damages were not just "potential" damages that "might have been caused," but undisputed damages actually caused by Schmidt's acts.

¶30 The fifth factor is the ratio of the award to civil or criminal penalties that could be imposed for comparable misconduct. Schmidt does not argue this factor favors him. We will not abandon our neutrality to develop this argument. See *Pettit*, 171 Wis. 2d at 647.

¶31 The final consideration is the defendant's wealth. Schmidt argues the punitive damages award is excessive because he has no source of income since he lost his license. However, the evidence on Schmidt's wealth was more than sufficient to support the punitive damages amount. Schmidt testified that, until 2012, his annual income was close to \$300,000. Schmidt's prior earnings included the \$549,870.36 Schmidt earned in commissions from Allianz Life Insurance Company between 2007 and 2009. Schmidt also confidently told the court of new job prospects and intentions to repay Starstead. He explained that he accepted a plea deal in his criminal case so he could pay "back every penny" to Starstead. Schmidt testified he has a history in the printing business and intends to start a printing company. He testified he had no problem or concern about raising the start-up money for that business. In short, we conclude the circuit court properly awarded punitive damages.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

