VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 31st day of March, 2016.

Crystal Jones, Appellant,

against Record No. 150789
Circuit Court No. CL09-1188

William R. Slate, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Roanoke.

Upon consideration of the record and appellant's brief,[1] the Court is of the opinion that the judgment should be affirmed.

Crystal Jones filed a complaint against William Slate in the Circuit Court of the City of Roanoke ("trial court"), seeking $300,000 in compensatory damages and $100,000 in punitive damages for injuries she sustained in a motor vehicle accident. According to the complaint, Jones was a passenger in a vehicle operated by Slate, who was drinking alcohol and driving erratically. Slate's vehicle collided with a van in front of his vehicle, causing his vehicle to flip over, leave the road, and hit a tree. Slate fled the scene, and Jones was seriously injured. Jones alleged that Slate was negligent and/or grossly negligent in the operation of his vehicle, and that she sustained serious injuries as a direct and proximate result of Slate's negligence. Her complaint did not specify whether she was seeking punitive damages under a common law theory or pursuant to a statute.

The parties agreed to a bench trial, which was held on January 27, 2015. Jones has submitted a written statement of facts in lieu of a transcript on appeal. According to the written statement of facts, Jones testified that she was a passenger in Slate's vehicle on July 7, 2007, and that they were driving west on I-64 in Goochland County. Jones testified that, while driving,

[1] Appellee did not file a brief, and appellant waived oral argument in this case.

Slate consumed beer and vodka straight from the bottle. Jones, who had not consumed any alcohol and was not aware of the presence of alcohol in the vehicle until they were in route, asked Slate to let her drive. Slate, however, continued to drive. Jones testified that Slate was driving erratically and at a high rate of speed. While driving in this manner, he ran into the rear of a van in front of them, causing their vehicle to overturn and leave the highway. Slate ran from the accident scene. Jones was seriously injured, and suffered a fracture to her ankle that required surgical repair. Jones submitted evidence of medical expenses totaling $182,325.37.

Slate testified at trial that the accident was solely his fault. He admitted consuming some beer, but he denied he was intoxicated.

Upon consideration of the evidence, the trial judge ruled that Jones was entitled to recover $300,000 in compensatory damages. However, the court denied recovery for punitive damages, "observing that while dangerous driving had been shown, there was insufficient proof to establish that Slate had driven with a willful and wanton disregard for the safety of others." A final order was entered on February 25, 2015, granting judgment for Jones against Slate for $300,000, with interest and costs, but dismissing the claim for punitive damages. Jones then appealed the dismissal of her claim for punitive damages. We awarded her an appeal on the following assignment of error:

1. The trial court erred in its finding that because there was insufficient proof that Slate had driven with a willful, wanton disregard for the safety of others, the plaintiff was not entitled to an award of punitive damages.

The trial court determined that the evidence was insufficient to prove willful and wanton conduct, and therefore did not award Jones punitive damages. We review the sufficiency of evidence on appeal by "examin[ing] the evidence in the light most favorable to . . . the prevailing party at trial, and the trial court's judgment will not be disturbed unless it is plainly wrong or without evidence to support it." Nolte v. MT Tech. Enters., LLC, 284 Va. 80, 90, 726 S.E.2d 339, 345 (2012) (internal quotation marks omitted); see also Code § 8.01-680.

In Ayala v. Aggressive Towing & Transp., Inc., we noted that, although providing a record based upon a written statement of facts in lieu of a transcript is permissible under the Rules, "it often creates difficulty for the Court and the litigants on appeal." 276 Va. 169, 173, 661 S.E.2d 480, 482 (2008). The written statement of facts in this case is extremely brief and

limits the Court's ability to evaluate the sufficiency of the evidence to establish willful and wanton conduct by Slate.[2]

It is well-established that a claim for punitive damages at common law in a personal injury action must be supported by factual allegations sufficient to establish that the defendant's conduct was willful or wanton. Woods v. Mendez, 265 Va. 68, 76, 574 S.E.2d 263, 268 (2003) (internal citations omitted). We have held that willful and wanton negligence "is action undertaken in conscious disregard of another's rights, or with reckless indifference to consequences with the defendant aware, from his knowledge of existing circumstances and conditions, that his conduct probably would cause injury to another." Id. at 77, 574 S.E.2d at 268. Each case raising an issue concerning the sufficiency of a claim of willful and wanton negligence must be evaluated on its own facts. Id.

Due to the extremely limited factual record before us, we do not have proof of intoxication. The written statement of facts states that Jones testified, "Slate consumed beer and vodka straight from the bottle." There is no evidence anywhere in the written statement of facts regarding the quantity of alcohol consumed by Slate. Slate admitted that he consumed "some beer," but denied that he was intoxicated. There are also very few details in the written statement of facts regarding the circumstances of the accident.

The trial court, sitting as fact finder in this bench trial, held that "dangerous driving had been shown," and that Jones was entitled to recover compensatory damages. However, the trial court also held that the evidence was insufficient to prove that Slate had driven with willful and wanton disregard for the safety of others. Based upon the record before us on appeal, we cannot hold that the trial court's determination on this question of sufficiency of the evidence was plainly wrong. Accordingly, we will affirm the judgment of the trial court. The appellant shall pay to the appellee two hundred and fifty dollars damages.

---

[2] In Jones' complaint and in her brief to this Court, she fails to cite Code § 8.01-44.5, which provides a statutory mechanism under which persons injured by intoxicated drivers may seek punitive damages. Because Jones did not cite this statute or set forth how the evidence presented at trial proves the necessary elements of this statute, it appears that Jones is not seeking punitive damages pursuant to this statute, but rather is seeking punitive damages under a common law theory.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Clerk