

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

XENA BENEDETTO and **CRISTIAN BENEDETTO**,
Appellants/Cross-Appellees,

v.

EXP REALTY, LLC, ALEXANDER HAMILTON HAIGH, SETH OWENS,
KEVIN CUATT, and HEIDI CUATT,
Appellees/Cross-Appellants.

Nos. 4D2024-2388 and 4D2025-0265

[September 30, 2026]

Consolidated appeals and cross-appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Elizabeth Metzger, Judge; L.T. Case No. 432021CA000550CAAXMX.

Lawrence U. Taube of the Law Offices of Lawrence U. Taube, West Palm Beach, for appellants/cross-appellees.

William R. Ponsoldt, Jr. of Wright, Ponsoldt & Lozeau Trial Attorneys, L.L.P., Stuart, for appellees/cross-appellants Kevin Cuatt and Heidi Cuatt.

No appearance for appellees EXP Realty, LLC, Alexander Hamilton Haigh, and Seth Owens.

LOTT, J.

These consolidated appeals arise from a seemingly routine residential real estate deal that ended up a nightmare. After the contract between the buyers, Xena and Cristian Benedetto, and the sellers, Kevin and Heidi Cuatt, fell apart, Xena Benedetto recorded a “Memorandum of Contract,” creating a cloud on the Cuatts’ title and preventing the Cuatts from selling the home for two years. The parties sued each other. The circuit court entered summary judgment for the Cuatts on the Benedettos’ claims. The Cuatts’ claims against the Benedettos proceeded to trial. The jury awarded the Cuatts about \$362,000.

On the Benedettos’ direct appeal, we affirm all issues raised without further discussion. On the Cuatts’ cross-appeal, we write only to address the circuit court’s order denying their motion for leave to amend the

complaint to seek punitive damages against the Benedettos. As to that order, we affirm the denial as to Cristian Benedetto but reverse as to Xena Benedetto.

We review de novo an order granting or denying leave to amend to plead punitive damages. *Creech v. Santomassino*, 395 So. 3d 549, 552 (Fla. 4th DCA 2024). Section 768.72(1), Florida Statutes (2024), requires punitive damages claims be supported by a “reasonable showing by evidence in the record or proffered by the claimant” that “provide[s] a reasonable basis for recovery of such damages.” Absent such initial showing, a punitive damages claim is not permitted. Our Supreme Court recently settled the proper test for deciding evidentiary sufficiency of a requested punitive damages claim: “whether a reasonable person could conclude, based on the claimant’s evidence, that the defendant committed ‘intentional misconduct’ or ‘gross negligence.’” *Perlmutter v. Fed. Ins. Co.*, 434 So. 3d 681, 688 (Fla. 2026). Section 768.72(2) defines intentional misconduct and gross negligence:

(a) “Intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) “Gross negligence” means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

§ 768.72(2), Fla. Stat. (2024).

At the pleading stage, the trial court does not weigh competing evidence, nor does it “decide the truth of the matter”—the court “should consider only the evidence identified or proffered by the claimant” and “should not entertain an evidentiary counter-submission from the opponent.” *Perlmutter*, 434 So. 3d at 688–89. The court’s role is limited to “consider[ing] the record evidence and the proffered evidence in the light most favorable to the plaintiff,” and “to determin[ing] whether the claimant can show reasonable evidentiary support for those allegations.” *Id.* at 689.

Here, the Cuatts moved to amend their complaint to plead punitive damages against both Cristian and Xena Benedetto. The trial court denied the Cuatts’ motion, finding no reasonable evidentiary basis for amendment. We disagree, in part.

The Cuatts' proffer was sufficient as to Xena Benedetto. The Cuatts' proffer attributed to Xena the preparation and recording of a memorandum assembled from selected portions of the parties' contract, while omitting the contract's no-recording provision and closing date, adding a legal description and restrictive language, and later sending the memorandum directly to the closing agent for the Cuatts' subsequent sale. The proffer further indicated that the memorandum was used to prevent that sale from closing. Viewed in the light most favorable to the Cuatts, the proffer permits a reasonable inference that Xena knew the conduct was wrongful, was highly likely to interfere with the Cuatts' sale, and would damage the Cuatts, and nevertheless intentionally pursued that course of conduct. That is "intentional misconduct." § 768.72(2)(a), Fla. Stat. (2024) ("Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage."); see also *Perlmutter*, 434 So. 3d at 689 ("[T]he trial court must consider the record evidence and the proffered evidence in the light most favorable to the plaintiff." (citation and internal quotation marks omitted)). The Cuatts therefore made the reasonable evidentiary showing required to plead punitive damages against Xena Benedetto. (We, of course, express no view on whether the Cuatts ultimately can prove entitlement to punitive damages at trial.)

But we agree that the proffer was insufficient as to Cristian Benedetto. Unlike the evidence concerning Xena, the proffer did not identify comparable evidence that Cristian had created the memorandum, knew of the omitted contractual provisions or added restrictions, directed its recording or transmission, or otherwise acted with actual knowledge that the conduct was wrongful or would likely cause damage. Nor did the proffer identify conduct by Cristian so reckless or wanting in care as to constitute a conscious disregard or indifference to the Cuatts' rights. See § 768.72(2)(b), Fla. Stat. (2024) (defining "gross negligence"). The trial court therefore did not err in denying the Cuatts' motion to plead punitive damages against Cristian Benedetto.

Accordingly, we summarily affirm the judgments challenged in the Benedettos' direct appeal without further discussion. On the Cuatts' cross-appeal, we reverse the order denying leave to amend as to Xena Benedetto, affirm the order as to Cristian Benedetto, and remand for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

GERBER, C.J., and WEISS, MARLON J., Associate Judge, concur.

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Not final until disposition of timely-filed motion for rehearing.