

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MICHELLE KOHN,
Appellant/Cross-Appellee,

v.

RYAN DIEDRICH and AIR EXPERTS TODAY, CORP.,
Appellees/Cross-Appellants.

No. 2D2025-2325

September 18, 2026

Appeal from the Circuit Court for Manatee County; Edward Nicholas,
Judge.

Don R. Cahall of The Cahall Law Firm, PLLC, Bradenton, for
Appellant/Cross-Appellee.

Jesse M. Tilden and Michael J. Prohidney of Tilden & Prohidney, PL,
Bradenton, for Appellee/Cross-Appellant Ryan Diedrich.

No appearance for remaining Appellee/Cross-Appellant.

GUARD, Judge.

Michelle Kohn appeals the grant of a new trial on punitive damages. Because we conclude that the trial court applied the wrong standard, we affirm in part,¹ reverse in part, and remand to the trial court to apply the correct standard.

¹ We affirm without comment the portion of the order denying the motion for remittitur.

I.

Kohn and Ryan Diedrich were formerly in a long-term romantic relationship. In July 2021, after Kohn broke up with Diedrich, Diedrich engaged in a series of actions that were extreme and retaliatory. For example, Diedrich created aliases from which he would send threatening emails and leave fake reviews regarding Kohn's real estate business. He also used these aliases to initiate conversations with Kohn pretending to be interested in her business or dating life while merely "catfishing" her. Diedrich also showed up at Kohn's residence, forced his way in, pushed her down, and caused property damage, resulting in burglary, criminal mischief, and battery charges. A protective order followed, prohibiting contact between them, but Diedrich, undeterred, continued communicating with Kohn.

Diedrich then sued Kohn for defamation and tortious interference.² Kohn counterclaimed for defamation, intentional infliction of emotional distress, battery, assault, and intrusion upon seclusion. At trial, the jury rendered a verdict for Kohn on each of her five counts. While it declined to award compensatory damages, it did award punitive damages on each count, totaling \$500,000. The trial court sent two special interrogatories to the jury asking (1) whether they intended to award punitive damages only and (2) how much, in total, the jury intended to award. The jury responded that it intended to award only punitive damages and, in total, award \$500,000.

Diedrich moved for remittitur or, in the alternative, a new trial on punitive damages only. His motion was not a model of precision. In the introductory paragraph, Diedrich sought a new trial and invoked the Florida Rules of Civil Procedure without detailing what rule. In the body

² Prior to trial, Diedrich dismissed his claims.

of the motion, Diedrich's argument focused solely on Florida's remittitur statute, section 768.74, Florida Statutes (2025). At the hearing on the motion, the argument focused, again, only on the remittitur statute. The trial court denied the motion for remittitur but granted a new trial on the issue of punitive damages only. The trial court's order also analyzed only the punitive damage award under the remittitur statute and general punitive damages law, not the common law standard for new trial. Kohn timely appealed the grant of new trial on punitive damages and the limitation of the new trial to the question of punitive damages.

II.

The outcome of this appeal is controlled by our prior decision in *Marinec v. Progressive Select Insurance*, 351 So. 3d 181 (Fla. 2d DCA 2022). In *Marinec*, we dealt with a lawsuit brought by an insured under her uninsured motorist insurance coverage against her insurance company after she suffered injuries in an automobile accident. *Id.* at 182. At trial, a jury awarded her damages including past and future noneconomic damages. *Id.* at 183. Progressive filed a remittitur motion that was procedurally defective. *Id.* The trial court denied that motion without prejudice, even though under this court's prior rulings, that was inappropriate. *Id.* (citing *McMahon v. Carter*, 818 So. 2d 560, 561 (Fla. 2d DCA 2002)). In supplemental briefing, Progressive then sought a new trial based on the common law new trial standard in *Brown v. Estate of Stuckey*, 749 So. 2d 490, 498 (Fla. 1999).³ *Id.* Despite Progressive

³ In *Brown*, the Florida Supreme Court held that a new trial is appropriate if a verdict is contrary to the manifest weight of the evidence or is excessive or inadequate. 749 So. 2d at 498. Under *Brown*, a "verdict is excessive or inadequate when (1) the verdict shocks the judicial conscience or (2) the jury has been unduly influenced by passion or prejudice." *Id.*

invoking the common law standard, the court granted a new trial analyzing the case under the remittitur statute. *Id.* We reversed, concluding that the trial court had analyzed that case under the incorrect standard. *Id.* at 183-84. We remanded that case to the trial court to reconsider under the correct standard because we could not conclude that the trial court would have denied a new trial under the correct standard. *Id.* at 184-85. Given the procedural posture of this case and the trial court's order detailed above, there is no material distinction between this case and *Marinec*.

Kohn urges us to reverse but not remand, arguing that Diedrich did not seek a new trial under the common law standard. While the motion in this case is regrettably not a paradigm of clarity, we believe that there is enough in the motion to preserve this issue. Diedrich urges us to affirm because, despite the failure to mention *Brown* or its test, the court's conclusions and findings support a new trial under the common law standard. We agree that there is no requirement that certain language or incantation be used in granting a new trial. *See Wackenhut Corp. v. Canty*, 359 So. 2d 430, 435 (Fla. 1978), *superseded by statute on other grounds*, ch. 99-225, § 21, Laws of Fla., *recognized in Perlmutter v. Fed. Ins.*, Fla. L. Weekly S163, 165 (Fla. June 11, 2026) ("Although an order for new trial need not incant language to the effect that the verdict is against the manifest weight of the evidence or was influenced by considerations outside the record, the order must give reasons which will support one of these two conclusions so that it will be susceptible of appellate review."). But the order analyzed the motion for new trial under the remittitur standard and made no mention of Florida Rule of Civil Procedure 1.530. While Diedrich could be right, we believe it is wiser to ask the trial court to analyze whether to grant a new trial under

the common law standard. Thus, we decline to do as either party asks and will instead, like *Marinec*, remand to the trial court to apply the correct standard.

III.

We provide the following additional guidance for the trial court on remand. First, as it evaluates the motion for new trial under the common law standard, we would ask the trial court to consider *Lawnwood Medical Center Inc. v. Sadow*, 43 So. 3d 710 (Fla. 4th DCA 2010). It does not appear that the parties cited to or the trial court reviewed *Sadow* in making its original decision. Second, we have not ruled on whether a new trial, if one is appropriate, should be limited to punitive damages.

For the above reasons, we reverse in part the trial court's order granting a new trial and remand this case to the trial court to reconsider the motion for new trial under the common law standard.

Affirmed in part, reversed in part, and remanded.

LaROSE, J., Concur.

SMITH, J., Concur specially.

SMITH, J., Specially concurring.

I concur with the majority opinion that the trial court erred in failing to consider Mr. Diedrich's motion for new trial filed pursuant to Florida Rule of Civil Procedure 1.530 under the common law standard and agree that remand is required for the trial court to apply the correct standard as articulated in *Brown v. Estate of Stuckey*, 749 So. 2d 490, 495 (Fla. 1999) and *Wackenhut Corp. v. Canty*, 359 So. 2d 430, 435 (Fla. 1978). I decline to join the majority's remand instructions directing the

trial court to generally "consider" *Lawnwood Medical Center, Inc. v. Sadow*, 43 So. 3d 710 (Fla. 4th DCA 2010).

First, I believe *Sadow* has limited application to the case at hand. In *Sadow*, the court did not apply the common law standard under *Brown* and *Wackenhut* because *Sadow* did not "challenge the amount of punitive damages under Florida law—its sole contention [was] that the amount [was] excessive under [the United States Constitution]." *Id.* at 722. Florida common law does not necessarily require a review of the Fourteenth Amendment to the United States Constitution. To the extent that Mr. Diedrich argued that the punitive damage award here was unconstitutional under the United States Constitution, I agree that *Sadow* employs the appropriate legal framework under the three guideposts announced in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996), reaffirmed in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 418-19 (2003), and adopted by *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246, 1264 (Fla. 2006). *Sadow*, 43 So. 3d at 726; *Engle*, 945 So. 2d at 1264 (holding that in considering whether a punitive damage award is unconstitutionally excessive—and thereby violates the Fourteenth Amendment—the trial court should consider the following three guideposts: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." (quoting *Campbell*, 538 U.S. at 418)). I further decline to join in remand instructions that task the trial court with generally considering *Sadow*; this broad instruction could have unintended consequences, such as the consideration of arguments the parties did not raise below or on appeal.

See Bank of New York Mellon Corp. v. Hernandez, 299 So. 3d 461, 465 (Fla. 3d DCA 2020) ("A cardinal principle of judicial restraint is that an appellate court should not sua sponte raise arguments that the parties themselves forewent.").

Opinion subject to revision prior to official publication.