2024 Moot Court Problem

TEENPACT JUDICIAL

June 4, 2024

Dear TPJ Student,

I know what you're thinking. Scary, isn't it? Some guy you've never met is reading your mind from hundreds of miles away. You're looking at these homework assignments and you've paged through this really large "Moot Court" problem and you're thinking, "*Oh, dear me. What have I gotten myself into?*" I write to offer words of comfort and encouragement. You are not alone. You're ***never*** going to be alone in this. Isn't that great to hear? As you read these materials, there will be things you don't understand. You're not alone. There will be times where you're wondering how you're going to perform in this "Moot Court Tournament" the TeenPact folks told you about. You're not alone. There will be times when think you have a right idea about what you're reading only to feel uncertain about it later. You're not alone. Not ever.

That's the great thing about TeenPact Judicial. We do hard things and we do them together. You, me, other lawyers, TeenPact Judicial staffers, and TeenPact Judicial alumni who keep coming back to this program because they love the challenge and the fellowship. We're all here for you because we're the team you didn't even know you had. Worried you won't learn this? You will. We won't let you fail. Worried that you won't say the right things in the right way? Don't worry about that. I'll teach you how win every argument. We got you covered here at Liberty University School of Law. We can do this! So, start reading. Just do me that favor. Do the homework, read the Porter problem-twice through, ideally—before you get here. That's all you need to do for now. You don't have to know this legal problem like a lawyer. Just try to get the scent of it. The rest of the team you'll find at Liberty will take you the rest of the way. I can't wait to see the change this week brings in you. It's night to day. It's water to fire. It's student to lawyer. It's amazing to watch each and every year. I've been looking forward to it since our closing ceremonies last year. So, do the work. I'll see you soon!

Sincerely,

Grant Rost
Associate Professor of Law
Liberty University School of Law

2024 TEENPACT JUDICIAL MOOT COURT PROBLEM

Case File Table of Contents

Chapter 1 - Introduction

WELCOME

Welcome to the TeenPact Judicial Program. The TeenPact Judicial Program has been designed to teach students about the judicial branch of American government. The judicial branch is ostensibly one of the three co-equal branches of our federal government, and it is powerful and therefore very important institution. American lawyers and citizens in general rely on courts to give a statute or law "meaning" by applying the statute or law to various factual situations. Thus, it is imperative that we as citizens understand how the judicial branch functions.

FORMAT OF THE PROGRAM

An appeal from a trial court to an appellate court normally involves two components: a written brief and oral argument. As TeenPact Attorneys, you will argue an appellate case before one or more judges during the TPJ moot Court competition. You will participate in at least one oral argument on each side of the case and you will all argue both sides of the case. Once at the program, you will be coached by Liberty University School of Law professors and a TPJ staffer at the class as to how to prepare and argue to an appeals court, such as the Georgia Supreme Court.

THE FACT PATTERN

The "Fact Pattern" is the problem you are to address by oral argument during the program. This packet and the hypothetical factual situation herein contain all of the facts that are important to the legal issues presented. It also contains some facts that are not important. One of the first things you will need to do is decide which of the facts are relevant in light of the law that applies to this case. You may not create any extra facts. However, you may make reasonable inferences from the facts presented. All material that is included in this booklet has been assembled just to facilitate this exercise. For example, many definitions are not complete, and the facts may have been drafted to allow alternative arguments, without regard for jurisdiction or technical accuracy.

We have attempted to create a "record on appeal" (the totality of the materials attorneys must rely on in arguing an appeal) as realistic as is feasible; however, we have made the following adaptations for the sake of brevity and practicality:

(1) Discovery (i.e., the information attorneys exchange prior to trial) is not as extensive as it realistically would be.

(2) Hearing transcripts would be much longer than the one included herein.

(3) The record on appeal (the fact pattern you have in your hand) does not contain the memorandum of law that would have accompanied Defendant's motion for summary judgment or the Plaintiff's response. These motions would be quite long. They would discuss the law and the facts and argue for a specific conclusion. They would cite to evidence, such as the statements of the parties, in order to prove their assertions. For context, a motion for summary judgment is a motion made to dismiss a case. The motion essentially says to a court, "All the facts are clear and all the facts point to only one reasonable conclusion under the applicable law. As a result, there is nothing a jury needs to do in this case." Keep this general summary of the standard in mind as you read so that you can understand why the Defendant filed that motion earlier in this case and why the Plaintiff opposed it. Now, at this stage, you'll see that we're in the Georgia Supreme Court trying to decide if that motion should have been granted by the trial court.

STATUTES (LAWS ENACTED BY THE LEGISLATURE) IN EFFECT IN GEORGIA

You are to assume that the only statutes in effect relevant to this problem are those listed in Chapter 3 Section A.

SOURCES FOR LEGAL RESEARCH - CASES

The cases that you will be using as your source of research and for purposes of citing to the courts as controlling authority are summarized in Chapter 3 of this packet. If you so choose, you may read articles and cases from other jurisdictions to get ideas and arguments, but any other cases may only be used to enhance your understanding of the issues. They may not be cited as controlling or persuasive authority since we want all participants to have the same legal authority with which to work. Moreover, you may not cite to the actual court opinions of the cases listed in Section 3B, but only the summaries of those cases given to you in Section 3B. It is possible to prepare everything you need for your arguments solely with the material contained herein, so don't feel as if you must do outside research. For written or oral argument, you may use and cite to a standard dictionary or legal dictionary if you find the need to define certain terms for the sake of clarity.

Chapter 2 - The Problem

PROCEDURE

On August 17, 2021, Paul Porter went to the Atlanta Medical Clinic for treatment of hay fever. While waiting in an examining room for Dr. Donald Adams to treat him, Porter approached the examining table to sit down. As he stepped close to the table, the side of his foot was punctured by a syringe lying on the floor. He could tell immediately that the syringe had been previously used. The next day, the doctor's office confirmed the needle was used and told Porter that he would need to be tested for HIV and hepatitis once every six months for a year. Although the three tests were negative, Porter was distraught by the experience. He sued Dr. Adams, seeking damages for the clinic's negligence in allowing a used syringe to puncture him.

One of Porter's claims was for emotional distress arising from his anxiety and fear over whether he had contracted HIV and/or hepatitis. Adams sought not only compensatory damages (an amount of money determined by a jury to compensate him for all of his suffering, lost wages, and medical bills), but also punitive damages to punish Dr. Adams and his clinic for allowing the needle-stick to occur.

Dr. Adams filed a motion for partial summary judgment, claiming that he should not be held liable for Porter's mental anguish over whether he would contract HIV or hepatitis. Dr. Adams's motion also sought summary judgment on Porter's claim for punitive damages. (A motion for summary judgment, here, means that the moving party does not believe the other side is entitled judgment and believes the case should not go to trial, but should be decided as a matter of law by the judge. Punitive damages are a kind of damages over and above damages that compensate for harm or a loss that are designed to punish a Defendant for particularly ugly conduct.)

The trial court granted Adams's motion, and Porter appealed. The Georgia Court of Appeals affirmed the trial court's judgment in a 2-1 decision. Porter then petitioned the Georgia Supreme Court for a writ of certiorari, which the Supreme Court granted (thereby agreeing to hear the case). Thus, the case is now pending in the Georgia Supreme Court. You will present arguments in front of the Georgia Supreme Court. During one round of arguments you will represent Porter in his appeal. Porter is the Appellant. In another round of arguments, you will represent the Appellee, Dr. Adams. Depending on time or room availability, you may argue a third round or argue all rounds in teams of two, divided up by issues. Further tournament details will be given when you arrive.

ISSUES ON APPEAL

Porter wants the opportunity to argue to a jury that Dr. Adams is liable to him for Porter's injuries, including his emotional anguish over having to worry as to whether he inadvertently contracted

HIV, AIDS, or hepatitis. HIV (Human Immunodeficiency Virus) is the virus that causes AIDS. AIDS (or Acquired Immunodeficiency Syndrome) is the most advanced stage of HIV infection where the HIV virus has damaged a person's immune system so greatly that it can no long defend again simple pathogens. Even a common cold can be fatal to a person with AIDS. AIDS is always fatal. A person can contract HIV or AIDS from the blood of a person infected with HIV or AIDS. HIV is treatable and rarely fatal, but it is a serious disease that shortens one's lifespan, diminishes quality of life, and requires extensive and expensive medical treatment. A person with HIV is 5 times more likely to be hospitalized due to a Covid-19 infection and suffers a 15-20% higher risk of dying from Covid.

Porter also wants to argue that Dr. Adams's conduct was so reprehensible as to authorize an award of punitive damages against him. Dr. Adams urges that the trial court correctly threw out Porter's claims for emotional distress and punitive damages because Georgia law does not allow the recovery of damages for emotional distress in a case such as this, and punitive damages are not available because his conduct did not rise to the egregious level of conduct required by the statute authorizing the recovery of punitive damages.

Accordingly, the two issues on appeal are:

1. Whether a Plaintiff must prove actual, physical exposure to the HIV virus in order to recover damages for mental distress or whether a patient's subjective belief in a possible exposure is sufficient; and

2. Whether the circumstances by which the Plaintiff was allowed to be stuck by the needle are so egregious as to authorize an award of punitive damages against the doctor under O.C.G.A. § 51-12-5.1 (2000).

HYPOTHETICAL FACTS AND THE RECORD ON APPEAL

Included among these papers are Porter's complaint; Adams's answer; Porter's interrogatories to Adams; Adams's answers thereto; summaries of the depositions (sworn statements) of Porter, Lucy Hamelin (Porter's former fiancée), Adams, and Sarah Watson, M.D. (Porter's new physician); Adams's motion for summary judgment and Porter's response thereto; the transcript of the hearing on Adams's motion for summary judgment; the trial court's order granting Adams's motion; the Georgia Court of Appeals' opinion; and the Georgia Supreme Court's Order granting Porter's petition for writ of certiorari. These documents comprise the entire record in the case. As with any other "real-life" appeal, you are strictly forbidden from referring to facts not included within the record.

Chapter 3 - The Law

A. STATUTORY LAW

O.C.G.A. § 9-11-56 Summary Judgment

(a) For Claimant

A party seeking to recover upon a claim may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party

A party against whom a claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon

The judgment sought shall be rendered forthwith if the pleading, depositions, answers to the interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. All facts are construed in the light most favorable to the non-moving party.

(d) Case Not Fully Adjudicated on Motion

A party may move for partial summary judgment as to a part of another party's claim(s) or defense(s).

O.C.G.A. § 51-12-5.1 Punitive Damages

(a) Punitive damages may be awarded in tort actions only where the defendant's actions showed willful misconduct, malice, fraud, oppression, or that entire want of care which would raise the presumption of conscious indifference to the consequences. Punitive damages are not awarded as compensation to the plaintiff, but solely to punish, penalize, or deter a defendant from similar conduct in the future.

(b) The amount of any award under this statute shall not exceed $250,000.

B. APPLICABLE CASES

Wimble v. Waste Disposal, Inc., 208 Ga. App. 179 (1994)

Legg, Judge.

Plaintiffs filed suit to recover damages for mental distress, personal injury and property damages resulting from the defendant's alleged negligence in contaminating Plaintiffs' water supply with toxic chemicals. The jury returned a verdict in favor of Plaintiffs and awarded $10,000 for mental distress, $28,500 for property damage and $2000 for medical expenses. Defendant has appealed the award for mental distress, alleging that such damages have never been allowed under Georgia law.

Plaintiffs resided near the landfill operated by defendant, Waste Disposal, Inc. In June and July of 1992, Plaintiffs first began to notice an unusual odor emanating from their water, produced by the well on their property. When the condition began to worsen, Plaintiffs called the health department and requested a test of their water quality. Results of the health department's testing showed that Plaintiffs' well was contaminated with at least three known carcinogens. Further research and testing established that the source of the contamination was Defendant's landfill. Expert testimony at trial established that the landfill is leaking and has contaminated the ground water within a 1⁄2-1 mile radius of the site. Plaintiffs' home is located within the 1⁄2-1 mile radius. It is undisputed that the Plaintiff ingested contaminated water for an indeterminable amount of time prior to the disclosure of the contamination.

Plaintiffs were tested by their family physician after they discovered the contamination. These tests, repeated every three months for a period of one year, were consistently negative. Plaintiffs' medical expert testified that it is unlikely that Plaintiffs have suffered any lasting injury as a result of their ingestion of the toxins, given that there were never any detectable levels of the chemicals in their bodies. During the course of that year, however, Plaintiffs suffered definable symptoms, which their physician attributed to their anxiety over their exposure to the contaminated water. Plaintiffs suffered difficulty in sleeping, weight loss and loss of appetite, and periodic bouts of depression. Most, but not all of these symptoms have gone away with time. Both plaintiffs testified, however, that their fears for the future adversely affected their marriage to the point that they sought counseling.

The purpose of tort law is to compensate plaintiffs for the damages caused at the hands of the defendant. One type of such damage to a plaintiff is his or her mental distress. As alleged in this action, and as recognized in this jurisdiction, mental distress may take the form of a plaintiff's anxiety and anguish arising from a reasonable apprehension or fear of developing a serious disease sometime in the future, regardless of whether such condition ultimately develops. Damages for mental distress are distinct from damages for or relating to physical pain and suffering resulting from a bodily injury. They are also distinct from damages for loss of enjoyment of life activities directly arising from the physical consequences to plaintiff of defendant's negligence.

Under traditional common law rules, a plaintiff had to meet a number of special requirements in order to recover for mental distress. Under the current law in this state, however, in order to recover damages for negligent infliction of mental distress, a plaintiff must simply meet the traditional common law requirements for negligence generally. That is, a plaintiff must show that the defendant's breach of a duty owed to the plaintiff caused foreseeable harm. Where the plaintiff can show that the defendant's breach of duty caused the plaintiff's mental distress, the plaintiff is entitled to recover as for any other type of compensatory damages. While such damages may not be speculative, it is for the jury to evaluate the plaintiff's proof and determine the proper amount necessary to compensate the plaintiff.

We find no error in the award of damages for mental distress in this case. Other jurisdictions have approved such awards in so-called "cancerphobia" cases, where the defendant's conduct has caused the plaintiff to be exposed to a disease- causing agent and the plaintiff reasonably fears the consequences of such exposure. Damages for mental distress in such cases may not be based upon vague or irrational fears. Rather, they must be supported by evidence which establishes that the plaintiff's fear is reasonable under the circumstances and was a foreseeable consequence of the defendant's breach of duty.

We are continually exposed to hazards and potential hazards as a consequence of living in our society. The law cannot provide recovery for every vague fear of possible health consequences. Claims for mental distress must be scrutinized carefully to ensure they are no fraudulent or based on trifling concerns. Nor does the court wish to open the floodgates of litigation by attempting to compensate plaintiffs for every possible exposure to potential harm.

However, there is no allegation or concern that Plaintiffs' claim is unfounded or unreasonable. It is undisputed that Defendant had a duty to insure that its landfill did not contaminate the water supply and that its breach of its duty resulted in contamination of Plaintiffs' well. Plaintiffs actually ingested water contaminated with three different known toxins over an indefinite period of time. It is certainly reasonable that Plaintiffs would fear the potential consequences of such exposure and could reasonably anticipate harm from the toxins they knew to be present.

Further, the evidence established that their anxiety resulted in medically verifiable symptoms. Any recovery, of course, must be limited to the amount of time between the discovery of such exposure and the negative medical diagnosis establishing that the exposure has not resulted in any physical injury. Any mental distress beyond this point would be per se unreasonable. The jury was instructed properly to so limit its award. The judgment is therefore AFFIRMED.

Martin v. Williams, 264 Ga. 822 (1994)

Rozier, Justice.

Kimberly Williams commenced this malpractice action against Dr. Dana R. Martin. Following a trial in the matter, the jury awarded Williams $20,000 general damages and $30,000 punitive damages.

Appellant then filed a motion styled as both a motion for new trial and a motion to set aside the judgment. The trial court denied that motion, and this appeal followed.

In 1983, Dr. Martin agreed, at Williams' request, to use "invisible" or lingual braces applied to the back of her teeth to correct her overbite. The roof of Williams' mouth was first fitted with a removable appliance and periodically adjusted in order to expand the arches gradually. Lingual braces were subsequently affixed to her teeth. Dr. Martin's office records reflect no analysis of Williams' progress. Approximately one year into her treatment, she began suffering severe headaches, painful jaw "popping," and nighttime teeth grinding, which continued during the four years of her treatment by Dr. Martin.

When her teeth began to "slip down" in 1988, Williams sought treatment from a second orthodontist, Dr. Burch Cameron, who testified at trial that lingual braces were inappropriate appliances for her problem, and that to employ inappropriate appliances solely because of a patient's request falls below the minimum standards of professional care owed by doctors. Dr. Cameron completed Williams' treatment in 16 months and resolved her problems with teeth grinding, jaw popping, and headaches.

Appellant contends that the award of punitive damages should be reversed because there was no clear and convincing evidence of willful, wanton, or malicious conduct as required by O.C.G.A. § 51-12-5. We disagree. Punitive damages are awarded to both punish the wrongdoer and to deter similar egregious conduct in the future. The award of punitive damages in this case serves both purposes.

During the entire time he treated Williams and other patients, Dr. Martin was using un-prescribed, addictive drugs. He was observed to stare vacantly at his patient for long periods; displayed dramatic mood swings; perspired profusely when the room was not hot; and made professional decisions that led a colleague to conclude that his practice was "out of control." The emergency suspension of his professional license ultimately forced Dr. Martin to seek treatment for drug abuse. Dr. Martin's extended treatment of Williams while impaired demonstrates such an entire want of care which would raise the presumption of conscious indifference to consequences so as to justify the jury's punitive damages award. The trial court's decision is AFFIRMED.

Brown v. Atlanta Nursing Home, Inc., 232 Ga. App. 511 (1997)

Armga, Chief Judge.

This medical malpractice claim by Natalie Brown, the executor of Christine Riley's estate, sought damages for injuries stemming from bedsores Ms. Riley allegedly suffered while a patient at Defendant's nursing home. The trial court directed a verdict in Defendant's favor on the issue of punitive damages. After a jury returned a $165,000 verdict of compensatory damages for the estate, the court granted the nursing home a judgment notwithstanding the verdict on the issue of negligence. Riley's executor, Ms. Brown, appeals on behalf of the estate. In reviewing a judgment notwithstanding the verdict, an appellate court must review the evidence in the light most favorable to the party who secured the jury verdict.

In April 1992, Riley spent a month in Defendant's "skilled nursing facility" after she suffered a stroke. One day after she left the nursing home, according to Brown and to a home health care nurse who examined her, she exhibited "blood blisters" on the heels of her feet. Although the home health care nurse described these blisters as "intact" and stated they could have formed in a 24-hour period, Brown testified these sores were "open" and "bloody." Riley's expert witness, a nurse skilled in caring for and preventing pressure sores, stated that in her opinion these sores formed while Riley was at Defendant's nursing home. Some of the sores apparently healed, and Riley later developed other ulcerated sores on her left foot and lower left leg. In December 1992, a physician concluded that because of poor blood circulation in Riley's left leg, the ulcers, including a large ulcer on her left heel, were unlikely to heal; therefore, he amputated her left leg below the knee.

Riley's nursing expert testified as to measures which "could be taken to prevent [a patient] from developing pressure sores," including the use of a special mattress, elevation of the patient's feet, and turning the patient every two hours. She also stated the "general practice" is to inspect a patient's skin during each shift. Because Riley's medical records did not reflect that these measures had been consistently followed, the expert concluded that Defendant breached the standard of care in its duty to prevent and treat Riley's pressure sores.

We first address the trial court's direction of judgment for Defendant as to its liability to Riley. A grant of judgment notwithstanding the verdict is allowed only where there is no conflict as to any material issue and the evidence introduced, including all reasonable deductions from that evidence, is such that only one reasonable conclusion may be drawn as to the proper judgment.

To support a claim for medical malpractice, Brown was required to show: 1) the nursing home breached a duty to Riley by failing to exercise the proper degree of skill and care and 2) the breach proximately caused injury to Riley.

The evidence, however slim, did create a jury question as to whether Defendant's professional negligence caused the pressure sores on Riley's left and right heels. Although Defendant's nurses presented circumstantial evidence that they followed the routine measures needed to prevent these pressure sores, their evidence also indicates that no pressure sores were documented when Riley was discharged from the hospital. We conclude that the evidence allowed the jury to find that Riley developed pressure sores in the nursing home, and that the expert testimony allowed the jury to find the nursing home negligently failed to prevent the sores from forming on her heel.

Based on the evidence presented, the jury could also infer that Riley's ultimate injury, the amputation of her leg, resulted from Defendant's negligence, and that this complication was a foreseeable result of its negligence. Thus, the trial court's grant of the judgment notwithstanding the verdict was improper.

However, the trial court properly granted the nursing home's motion for a directed verdict on the issue of punitive damages. Under O.C.G.A. § 51-12-5.1, punitive damages may be awarded only when the defendant's actions "showed willful misconduct, malice, fraud, oppression, or that entire want of care which would raise the presumption of conscious indifference to the consequences." The evidence Brown presented, while enough to allow the jury to find that Defendant provided negligent care, was far from showing the entire want of care showing a conscious indifference, which is here required to support a verdict for punitive damages.

The trial courts judgment is AFFIRMED in part, REVERSED in part, and REMANDED with instructions that the jury verdict be reinstated.

Cochran v. Lowe's Home Ctr., Inc., 267 Ga. 50 (1997)

May, Justice.

Plaintiff/Appellant Carrie Jan Cochran was in a Lowe's Home Center store when a load of boxed ceiling fans fell on top of her, without warning. The fans had been stacked warehouse-style on top of shelves on the aisle where Cochran was shopping. According to Cochran, she was "pummeled" by 300 to 400 pounds of ceiling fans when a forklift operator pushed over the unstable stack while working on an adjacent aisle. Cochran's injuries were severe.

According to Cochran, the evidence shows that there had been warnings from employees that such stacks were too high and were unstable, and there had been staff meetings at Lowe's concerning the over-stacking of boxes which were easily toppled and how high such stacks should be to prevent them from falling, but no action was taken and no policy was established as to how high such boxes should be stacked.

Lowe's had no policy concerning use of forklifts when customers were present, or if there was a policy, it was not enforced. A certified safety engineer stated that Lowe's disregarded basic safety principles and stacked boxes in a manner in violation of National Standards of Material Handling and that the area where Cochran was shopping was highly dangerous and a "deadly situation" for anyone walking there.

And, this was not the first incident where customers were injured from falling merchandise at Lowe's southeastern stores. Under a limited discovery order, Plaintiff uncovered thirteen incidents in which customers were injured from falling merchandise in Lowe's stores in four states in the year and a half before Cochran was injured. In fact, four other customers were injured at this store in eighteen months preceding Cochran's injuries. Two of these injuries occurred the same month as Cochran's injuries; one customer was struck in the head by a box that fell off a shelf, and another was struck by a box that fell when an employee was "upstocking."

The trial court granted summary judgment to Lowe's on Plaintiff's claim for punitive damages. On appeal, she contends that the trial court should not have granted the motion for summary judgment. She argued that Lowe's knowledge of the dangerous conditions and of previous injuries to customers—combined with its failure to prevent similar occurrences—created an issue of fact for the jury as to whether such conduct amounted to willful or wanton misconduct or that entire want of care that raises the presumption of conscious indifference to the consequences under O.C.G.A. § 51-12-5.1. We agree. The trial court erred in granting summary judgment to the Defendant under these circumstances.

On motion for summary judgment, the evidence is construed in favor of the respondent, in this case, Cochran, and she is entitled to the benefit and every reasonable inference of fact which arises from the evidence.

To support an award of punitive damages, the evidence must show that the defendant showed such willful misconduct, or that entire want of care which would raise the presumption of conscious indifference to consequences, under O.C.G.A. § 51-12-5.1. Mere negligence will not support an award of punitive damages. Something more than the mere commission of a tort is always required before a court can punitive damages on a defendant.

Lowe's contends the thirteen reported incidents of stacked merchandise falling on its customers and the two reported incidents where customers were injured by falling boxes during the same month and in that same store where Cochran was injured "have no relation to each other and do not evidence a specific safety issue."

The alleged injuries in this case were specifically caused by boxes falling from shelves which were stacked too high and were therefore unstable and likely to fall. Plaintiff Cochran alleges and shows

by these other incidents a particular hazard created by a habitual practice of stacking merchandise in a manner which the proprietor knew to be dangerous, and knew to have caused injuries to customers in a particular manner and for a particular reason that may render these incidents substantially similar.

The evidence, construed in favor of Respondent Cochran on Lowe's motion for summary judgment, shows that Lowe's had specific warning that boxes containing heavy merchandise were being stacked too high on shelves above customers; that such high stacks were unstable and had, in several recent cases, actually toppled over on customers; and this precise danger had been brought to Lowe's attention and had been discussed at safety meetings. Despite this, nothing had been done to prevent the injury which eventually occurred to the Plaintiff.

It cannot be said, therefore, that there is no genuine issue of material fact and that Lowe's is entitled to judgment as a matter of law on the question whether it exhibited that entire want of care which raises a presumption of a conscious indifference to consequences. See O.C.G.A. § 51-12-5.1. This is a matter for the jury. The trial court erred by taking this issue from the jury.

The trial court's judgement is REVERSED.

Roberts v. Forte Hotels, Inc., 268 Ga. 540 (2000)

Timmons, Justice.

Janice Roberts appeals the trial court's order granting Forte Hotels, Inc.'s motion for partial summary judgment on the issue of punitive damages. For the reasons that follow, we affirm the judgment of the trial court.

This case arose when Janice Roberts was attacked by two unknown assailants at the hotel. Around 10:30 p.m. on the night in question, Roberts and a friend parked their car and walked toward the lobby of the hotel. As Roberts was about to open the front door, two men attacked them, throwing Roberts to the ground. The assailants tore her clothing and took her purse. Roberts suffered a wrenched shoulder and lower back, sprained hip, muscle strain and bruises. In addition to being physically injured, Roberts was terrified by the attack and had to seek psychiatric help.

Forte filed a motion for partial summary judgment on the issue of punitive damages. The court granted the motion, and this appeal followed.

Roberts claims that the trial court erred in granting Forte partial summary judgment on the issue of punitive damages because Forte failed to provide dusk- to-dawn security every day, even though it

was on notice of several previous attacks in and around the hotel. The similar incidents occurring on the hotel premises were: three robberies of hotel auditors in the hotel lobby in August 1987, December 11, 1992, and April 2, 1993; the armed robbery of a hotel guest in the parking lot; and fifteen incidents of robberies and damage to cars in and around the hotel. Although Forte employed dusk-to-dawn security on weekends, it did not have a guard on the premises seven days a week.

O.C.G.A. § 51-12-5.1 (2000) provides: "Punitive damages may be awarded in tort actions only where the defendant's actions showed willful misconduct, malice, fraud, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences."

Under this Code section, it remains the rule that something more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage. There is general agreement that, because it lacks this element, mere negligence is not enough. And even gross negligence is inadequate to support a punitive damage award.

A former manager at the hotel testified at her deposition that she hired security for weekends only because that was when the majority of the problems occurred. She also stated that, in an effort to increase guests' safety, hedges were cut down around the building, floodlights were added to the parking lot, and a night manager was scheduled to be on duty during the week.

In light of this, we do not find sufficient evidence that Forte's conduct showed the requisite degree of willful misconduct, malice, wantonness, oppression or otherwise evinced an entire want of care sufficient to authorize the imposition of punitive damages. Accordingly, the trial court did not err in granting Forte's motion for partial summary judgment on this issue.

The trial courts judgement is AFFIRMED

Fowler v. Smith, 272 Ga. 841 (1999)

Wassel, Chief Justice.

Dewey Fowler was a truck driver for Lumpkin Motor Lines, Inc. While driving on Interstate 285, Fowler stopped his tractor-trailer because the lane in which he was traveling was blocked by a car that had lost a wheel. Later, Frederick Smith drove his car into the back of Fowler's stopped truck. Smith died from injuries suffered in the collision.

Smith's parents sued Fowler and Lumpkin Motor Lines, asserting numerousclaims of negligence. The parties filed opposing motions for summary judgment. Both motions were granted in part and

denied in part by the trial court. Fowler and Lumpkin Motor Lines appeal.

Fowler and Lumpkin Motor Lines argue that the trial court erred in failing to grant their motion for summary judgment as to the Smiths' claim for punitive damages. The argument is without merit. The standard of review for awarding summary judgment is de novo. This Court must determine whether there is material issue of fact or whether the movant is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56 (1993).

In Georgia, acts or omissions constituting mere negligence or gross negligence will not support an award of punitive damages. Punitive damages may be awarded, however, where it is proven that the defendant's act or omissions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care that would raise the presumption of conscious indifference to the consequences. O.C.G.A. § 51-12-5.1.

In the current case there exists some evidence that Fowler may have violated federal safety law by being stopped in the interstate's center lane for approximately 35 minutes before the collision without placing triangular warning devices on the highway. There is also evidence that Fowler did not turn on his tractor-trailer lights after it became dark, and his main truck lights were not on at the time of the collision. Moreover, there exists evidence that prior to the collision, the flow of traffic did not prevent another truck that had stopped in front of Fowler from driving away without incident, whereas Fowler stayed with the driver of the disabled car, and did not move his own truck until after the collision.

The cardinal rule of summary judgment is that the court can neither resolve facts nor reconcile the issues, but can only determine if there is an issue. The party opposing the motion is to be given the benefit of all reasonable doubts and all favorable inferences that may be drawn from the evidence. Construing the evidence in the light most favorable to the Smiths, we find that genuine issues of material fact exist as to whether Fowler's conduct demonstrated that entire want of care which would raise the presumption of conscious indifference to the consequences. Thus, the trial court did not err in denying the motion for summary judgment on the issue of punitive damages.

The trial courts judgement is AFFIRMED.

Lee v. State Farm, 272 Ga. 583 (2000)
Hintze, Justice.

We granted certiorari to the Court of Appeals in Lee v. State Farm Mut. Automobile Ins. Co., 238 Ga. App. 767 (517 S.E.2d 328) (1999), to consider its determination that the mother, who was physically injured in the same automobile collision which took the life of her young daughter, could

not recover for emotional distress from witnessing her daughter's injuries and death. We reverse, because under the circumstances in this case, the mother is allowed to pursue a claim for the negligent infliction of emotional distress from witnessing the mortal injury to her child.

The relevant facts are as follows: Bridget Lee and her daughter sustained significant physical injuries in an automobile collision caused by an unknown hit-and-run driver. Lee witnessed her daughter's suffering, which ended with her daughter's death an hour later. State Farm Mutual Automobile Insurance Company and Allstate Insurance Company, Lee and her husbands uninsured motorist carriers, paid the policy limits for the claim of the daughter's wrongful death. Lee filed suit to recover for her own physical injuries and for the emotional distress that she experienced from witnessing her daughter's suffering and death. The trial court entered summary judgment in favor of the defendants on Lee's claim for emotional
istress.

I. Georgia's Impact Rule

Georgia's impact rule is succinctly stated in Ryckeley v. Callaway: "In a claim concerning negligent conduct, a recovery for emotional distress is allowed only where there is some impact on the plaintiff, and that impact must be a physical injury. The doctrine has a long history with its origins in Chapman v. Western Union Tel. Co., 88 Ga. 763 (1892), a case involving a plaintiff's unsuccessful attempt to recover damages from a telegraph company for mental pain and suffering resulting from the company's alleged failure to timely deliver a message to the plaintiff informing him of his brother's desperate illness. The Chapman court observed:

"So far as mental suffering originating in physical injury is concerned, it is rightly treated as undistinguishable from the physical pain. On ultimate analysis, all consciousness of pain is a mental experience, and it is only by reference back to its source that one kind is distinguished as mental and another as physical. So in cases of physical injury, the mental suffering is taken into view. But according to good authorities, where the mental suffering is distinct, separate, or corollary to the physical injury, it cannot be considered."

Georgia's impact rule became prey to criticism soon after its inception, and through the years, the Chapman case was distinguished and limited to exclude recovery only in actions of negligence by a defendant from which the plaintiff suffered neither monetary loss nor actual physical injury. [Citations of cases omitted here.] In Littleton v. State Farm (1990), this Court sought to clarify the Georgia rule regarding impact by pronouncing that the impact which will support a claim for damages for emotional distress must result in a physical injury.

Thus, the current Georgia impact rule has four elements: (1) a physical impact to the plaintiff; (2) the physical impact causes physical injury to the plaintiff; (3) the physical injury to the plaintiff causes the plaintiff's mental suffering or emotional distress; and (4) the mental suffering or emotional distress must be objectively reasonable, and foreseeable by defendant's breach of duty. It is plain that the third element is lacking in the case at bar. And the failure to meet any one of these requirements has proved fatal to recovery even in cases like the present in which the circumstances portend a claim of emotional distress.

II. The Impact Rule -- Policy, Limitations, Benefits.

There are three policy reasons traditionally given for having the impact rule and denying recovery for emotional distress unrelated to physical injuries. First, there is the fear, that absent impact, there will be a flood of litigation of claims for emotional distress. Second, is the concern for fraudulent claims. Third, there is the perception that, absent impact, there would be difficulty in proving the causal connection between the defendant's negligent conduct and claimed damages of emotional distress. [Citations omitted.]

III. Georgia's Impact Rule -- Application in this Case.

The circumstances of this case clearly invite this Court to reject the impact approach. However, as has been discussed, the impact rule, even with its shortcomings, is not without benefit. And certainly, it would be imprudent to abandon over a hundred years of Georgia precedent. What is more, we decline to adopt any rule which might, in effect, create a separate tort allowing recovery of damages for the negligent infliction of emotional distress.

But this Court recognizes that the policy concerns behind our traditional impact rule are not extant in this case, and there is no meritorious reason in an appropriate and compelling situation to refuse to extend recovery for emotional distress to an incident in which the distress is the result of physical injury negligently inflicted on another. The circumstance of this case is such an appropriate and compelling situation. When, as here, a parent and child sustain a direct physical impact and physical injuries through the negligence of another, and the child dies as the result of such negligence, the parent may attempt to recover for serious emotional distress from witnessing the child's suffering and death without regard to whether the emotional trauma arises out of the physical injury to the parent. This is in accord with the precepts of the impact approach and appropriately restricts recovery to those directly affected by the defendant's negligent act or omission. Of course, the parent will be allowed to seek damages for the parent's own physical injuries and any mental suffering or emotional distress arising from those injuries. It will be for the finder of fact to determine whether the parent suffered emotional distress from witnessing the child's suffering and death apart from the grief whichwould naturally arise from a parent's loss of a child.

Accordingly, we reverse the judgment of the Court of Appeals and remand this case for its consideration in light of this opinion.

Johnson v. American National Red Cross, 187 Ohio 342 (2003)

Chatman, Justice, for the majority

We granted certiorari to the Court of Appeals in Johnson v. American Nat. Red Cross, 253 Ohio App. 587 (2002), to consider whether it erred in applying Russaw v. Martin, 221 Ohio App. 683 (1996), to bar negligence claims against the defendant American National Red Cross a.k.a American Red Cross ("Red Cross"). The suit arose from the Red Cross's acceptance of blood from a donor who had lived in a region in Africa where a rare and undetectable strain of human immunodeficiency virus ("HIV") was known to exist and the subsequent transfusion of such blood. For the reasons which follow, we affirm the judgment of the Court of Appeals upholding the grant of summary judgment to the Red Cross on the negligence claims.

The following facts giving rise to this suit are detailed in the opinion of the Court of Appeals. Prior to her death at age 75, Bernice Mantooth suffered from multiple serious medical conditions including emphysema, anemia, angina, breast cancer, heart disease, lung cancer, asthmatic bronchitis, diabetes, kidney failure, and pneumonia. On August 29, 1998, Mantooth went to the Cartersville Medical Center ("CMC") emergency room complaining of chest pain and shortness of breath. She was examined by Dr. David Kim and she was diagnosed with exacerbation of emphysema. Dr. Kim ordered that Mantooth receive two units of blood.

On October 28, 1998, the Red Cross notified CMC that it had supplied the hospital with blood that did not meet Red Cross standards. The Red Cross discovered that the blood given to Mantooth had come from a donor who had lived for 13 months in a region of Africa where a rare and undetectable strain of HIV known as "Group O" had been found. On November 4, 1998, CMC notified Mantooth's physician, Dr. Howell, about the situation and Dr. Howell informed

Mantooth that the blood she had received should not have been accepted by the Red Cross. Mantooth underwent HIV tests in December 1998, March 1999, and April 1999, all of which were negative. Mantooth was very upset about the possibility that she had been exposed to the strain of HIV, and she claimed that she lived in fear that she had the virus and would pass it to family members. Mantooth did not, however, seek medical treatment for emotional distress or for any physical injury allegedly caused by the transfusion.

On August 27, 1999, Mantooth filed suit alleging that Drs. Kim and Howell were negligent. She also

included claims of negligence and the negligent and intentional infliction of emotional distress against the Red Cross. The trial court granted summary judgment to the Red Cross after concluding that Mantooth failed to present any evidence that she was actually exposed to HIV, and there was no basis for her claims of negligence or infliction of emotional distress. After Mantooth's death on May 23, 2001, Lester Johnson, the executor of her estate (the "Estate"), continued to pursue her claims.

The Estate appealed, and the Court of Appeals affirmed the trial court's grant of summary judgment to the Red Cross on the negligence claims. In so doing, the Court of Appeals agreed with the trial court that Mantooth's failure to demonstrate recoverable damages was fatal to the claims. Citing Russaw v. Martin, supra, the Court of Appeals reasoned that Mantooth was not exempt from Ohio's legal requirement of demonstrating "actual exposure" to HIV in order to recover damages for emotional distress resulting from the Red Cross's negligence.

The Estate contends that the Court of Appeals clearly erred in precluding any recovery against the Red Cross for negligence when the Estate proved each element of negligence. We disagree. Furthermore, the Estate failed to show the existence of recoverable damages in support of the negligence claims asserting physical injury and/or financial loss.

The Court of Appeals having correctly determined that the Estate's negligence claims for physical injury and financial loss could not survive summary judgment, the only remaining question of negligence was whether the Estate's claim for damages for Mantooth's emotional distress was foreclosed by Russaw. The Estate argues that by applying Russaw to bar Mantooth's recovery for emotional distress, the Court of Appeals created an inflexible burden, impossible to meet, which deemed Mantooth's reasonable fears "per se unreasonable."

In Russaw, a woman was awaiting treatment for her daughter at a hospital emergency room at the same time as an elderly patient was being treated. An emergency room nurse capped a needle used to administer anti-anxiety medication to the elderly patient, and put the syringe and needle into her pocket along with her pen and keys. As the nurse attempted to remove the keys from her pocket in an effort to distract the woman's daughter, the hypodermic needle intertwined with the keys and fell out, striking and puncturing the woman's thigh and drawing blood. The needle was considered to be "contaminated," although it had not come into contact with the elderly patient's bodily fluids, and the woman was informed of her rights concerning blood testing for hepatitis and HIV infection. The woman consented to a blood test, and within ten days she received a test report indicating that she had tested negatively for hepatitis and HIV; the elderly patient also tested negatively for hepatitis and HIV. Over the next few months, the woman and her husband had additional tests performed, all with negative results. The couple sued the nurse and the hospital alleging negligence. On cross-motions for summary judgment, the trial court determined that any claim for mental anguish based on fear of contracting hepatitis or acquired immune deficiency syndrome ("AIDS") in the future was speculative and not compensable.

The Court of Appeals in Russaw determined that to allow the plaintiff recovery for emotional injuries and mental anguish without any proof that she was actually exposed to HIV or hepatitis was "per se unreasonable."In so holding, the Court of Appeals rightly reasoned that it is necessary for recovery that there must be some reasonable connection between the act or omission of a defendant and the damages which a plaintiff has suffered. Without factual evidence of a causal connection between the alleged breach of duty and the purported damages, the damages must be considered whimsical, fanciful and above all too speculative to form the basis of recovery. . . . [Cite omitted.]

Mantooth could have shown her exposure to HIV by the experience of symptoms of HIV or AIDS, by her or the donor, or by another to whom Mantooth or the donor might have transmitted HIV. But Mantooth failed to offer evidence of exposure in any manner; she made no showing that any of her physical ailments were the result of exposure to HIV in any form or were the product of anything other than her known numerous, serious, and independent medical conditions.

The Court of Appeals properly applied Russaw to find that the Estate failed to carry its burden with regard to the claim of negligent infliction of emotional distress.

Lindevaldsen, Justice, dissenting.

Here, there was an actual exposure to blood that was later flagged by the Red Cross. If doctors and nurses wear gloves and ritualistically wash their hands to avoid exposing themselves to blood—tainted or "clean"—it is fanciful to say that the fear stemming from exposure to blood is unfounded or unreasonable. In this case, the defendant even admitted the blood did not meet their standards andshould not have been used. So, the defendant Red Cross is really saying, "This blood has no business being inserted into the veins of another." Therefore, Mantooth's fear of exposure to blood that resulted from the Red Cross's own warning to her is both reasonable to Mantooth and foreseeable to the Red Cross. To suggest that fear is only reasonable upon a direct exposure to HIV, instead of this actual internalization of the "flagged" blood of some stranger, is an illogical and impractical refutation of the everyday practices and fears of glove-wearing, hand-washing doctors and nurses everywhere. Consequently, I dissent.

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

COMPLAINT

Plaintiff Paul Porter hereby stated for his complaint against Donald Adams, M.D., the following:

1.

Defendant, Donald Adams, M.D., is a resident of Fulton County, Georgia and is subject to the jurisdiction of this Court. He may be served at his residence address, 450 Lake Court, NE, Atlanta, Georgia 30328.

2.

On August 17, 2021, Plaintiff went to the Atlanta Medical Clinic, a walk-in medical facility operated by Defendant and located at 175 Peachtree Street, Atlanta, Georgia. Plaintiff was suffering from "hay fever" and went to Defendant's clinic for treatment.

3.

When Plaintiff arrived at the clinic, he was asked to complete several forms and was then escorted to an examining room. The nurse took his temperature and blood pressure and told him that Dr. Adams would be in momentarily. The nurse then left the room.

4.

Plaintiff approached the examining table to sit down and await the doctor. As he stepped close to the table, he felt a sharp stab of pain in the side of his foot. When Plaintiff looked down, he saw a syringe protruding from the side of his foot, through the open side of his sandal.

5.

As Plaintiff reached to remove the syringe, he saw another syringe lying on the floor, just under the edge of the examining table. Plaintiff removed the syringe from his foot and pressed the "call" button on the wall next to the door.

6.

When the nurse answered Plaintiff's call, he told her about the syringes. She took both syringes and went to notify the Defendant. Defendant arrived several minutes later.

7.

After examining Plaintiff's puncture wound and finding it to be quite deep, Defendant gave Plaintiff a tetanus injection and a prescription for antibiotics. He bandaged the wound and then completed his examination and treatment of Plaintiff for the allergy symptoms for which Plaintiff had initially sought treatment.

8.

On the following day, Plaintiff received a telephone call from the nurse at the clinic. She informed him that, since the syringe had been used and the clinic could not determine on whom, he should be tested for HIV and hepatitis.

9.

Plaintiff went immediately to be tested for exposure to both HIV and hepatitis. He was tested again six months and one year later. All tests have been negative.

10.

During the period in which Plaintiff did not know whether he had been exposed to HIV or hepatitis, Plaintiff became extremely fearful and depressed. He sought medical treatment for weight loss and inability to sleep, and he began to have problems concentrating on his work. He missed at least fifteen days at work during the year following his injury. Further, his fears for the future led to the termination of his engagement to be married.

COUNT ONE: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

11.

Defendant's conduct was negligent or grossly negligent and directly and proximately caused Plaintiff to suffer physical pain and great mental distress.

12.

Defendant's conduct caused Plaintiff to incur medical expenses, not only for the initial injury, but also for additional medical tests to ascertain whether he had been exposed to HIV or hepatitis.

13.

Defendant's conduct caused Plaintiff to miss fifteen days of work during the year following his injury and to incur lost wages as a result.

COUNT TWO: CONSCIOUS INDIFFERENCE TO CONSEQUENCES AND RISKS

14.

Defendant's conduct showed an entire want of care which would raise the presumption of conscious indifference to the circumstances such that Plaintiff is entitled to an award of punitive damages pursuant to O.C.G.A. § 51-12-5.1 (2000).

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendant for the following:

1. Plaintiff's past and future medical expenses;
2. Plaintiff's lost wages incurred as a result of his injuries;
3. Damages for physical pain and suffering;
4. Damages for emotional pain and suffering;
5. Punitive damages in the amount of $250,000;
6. All costs of this action; and
7. Such other and further relief as the Court deems just.

This 17th day of January, 2022.

Payne & Payne,
LLP 127 Peachtree Street
1600 Candler Building Atlanta, GA
30303 404.681.3450

PAULA PAYNE
Attorney for Plaintiff
Georgia Bar Number 042295

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

ANSWER

Defendant Donald Adams answers Plaintiff's complaint as follows:

FIRST DEFENSE

Plaintiff's complaint fails to state a complaint upon which relief may be granted

SECOND DEFENSE

Defendant further answers the specific allegations of the numbered paragraphs in Plaintiff's complaint as follows:

1.

The allegations of Paragraph 1 are admitted.

2.

The allegations of Paragraph 2 are admitted.

3.

The allegations of Paragraph 3 are admitted.

4.

Defendant is without sufficient knowledge or information to either admit or deny the allegations of Paragraph 4.

5.

Defendant is without sufficient knowledge or information to either admit or deny the allegations of Paragraph 5.

6.

The allegations of Paragraph 6 are admitted.

7.

The allegations of Paragraph 7 are admitted.

8.

The allegations of Paragraph 8 are admitted.

9.

Defendant is without sufficient knowledge or information to either admit or deny the allegations of Paragraph 9.

10.

Defendant is without sufficient knowledge or information to either admit or deny the allegations of Paragraph 10.

COUNT ONE

11.

The allegations of Paragraph 11 are denied.

12.

The allegations of Paragraph 12 are denied.

13.

The allegations of Paragraph 13 are denied.

COUNT TWO

14.

The allegations of Paragraph 14 are denied.

WHEREFORE, Defendant prays that this Court dismiss this action and cast all costs against Plaintiff.

This 5th day of February, 2022.

King & Smalding, LLP
191 Peachtree Street,
NE Atlanta, GA 30303 404.572.4600

ALONZO DAVIS
Attorney for Defendant
Georgia Bar Number 264600

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT

Plaintiff Paul Porter hereby serves the following interrogatories upon Defendant pursuant to O.C.G.A. § 9-11-33. Defendant is required to answer in writing, under oath, within 30 days of service. These interrogatories are continuing and should be supplemented as required by Rule 26(e) of the Civil Practice Act.

1. Please indicate your full name, address, date of birth, and occupation.

2. Please list all educational institutions you have attended since high school. For each, indicate the dates attended and degree(s) awarded.

3. List your current and all previous employers following graduation from high school. For each; please provide the employer's full name, address, and telephone number; the dates you were employed; your position or title; and the name of your immediate supervisor.

4. If the Medical Clinic is a legal partnership or corporation; indicate what type of entity; the date of its creation; and the names, addresses, and telephone numbers of any officers or member of any board of directors.

5. List all legal actions or complaints with the State Board of Medical Examiners that have ever been filed against you as a result of your practice of medicine. For each, indicate the names of the parties involved, the date the action or complaint was filed, a summary of the allegations against you, and its ultimate resolution.

6. List the names, addresses, telephone numbers, and positions of all persons employed at the Medical Clinic.

7. Indicate the number of patient visits in the two weeks preceding Plaintiff's visit on August 17, 2021, by patients known or believed to be infected with HIV.

8. List the names, addresses, and telephone numbers of any person other than you and your attorney who have or may have any knowledge or information regarding the subject of this lawsuit.

This 19th day of April, 2022.

Payne & Payne, LLP
127 Peachtree Street
1600 Candler Building Atlanta, GA
30303 404.681.3450

PAULA PAYNE
Attorney for Plaintiff
Georgia Bar Number 042295

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES

1. Donald Robert Adams, M.D.
   450 Lake Court
   Atlanta, GA 30328
   General Practitioner

2. Georgia Institute of Technology	B.S.	Biology	1982-86
Medical College of Georgia	M.D.		1987-90

3. U.S. Postal Service Atlanta, Georgia 404.560.4235 Tina Welch, M.D., supervisor	Summers 1978-1982	temporary carrier
Self-employed	1990-present	general practitioner

4. The Medical Clinic is my private practice. It is not a legal partnership or corporation.

5. None.

6.

Myra Timms, RN 2856 Hillbrook Way Decatur, GA 30033 404.555.0097	Robert Soper, RN 341 Willow Glenn Court Marietta, GA 30068 770.555.7833	Terry Arnold, Office Mgr. 1046 N. Valley Drive Decatur, GA 30033 678.555.3480

7. Two.

8. None except those listed above.

This 14th day of May, 2022.

King & Smalding, LLP 191 Peachtree
Street, NE Atlanta, GA 30303
404.572.4600

ALONZO DAVIS
Attorney for Defendant
Georgia Bar Number 264600

VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, Donald Adams, M.D., who, upon being duly sworn, deposes and states under oath that the foregoing answers to Plaintiff's First Interrogatories to Defendant are true and correct, to the best of his knowledge.

This 13th day of May, 2022.

Donald Adams, M.D.

Donald Adams
Sworn to and subscribed before me this 13th day of May, 2022.

Jameela Richards
Notary Public, State of Georgia

(Notary Seal)

SUMMARY OF AUGUST 2, 2022 DEPOSITION OF LUCY HAMELIN

I was engaged to Paul Porter until I broke our engagement in June of 2022. Paul and I started dating in 2017, and I really thought we had a future together. We just hit it off right away, and I never had any doubts about us. That was, until after this stuff about AIDS started. After he got stuck with the needle in the doctor's office and he realized it could be infected with AIDS, he just couldn't think about anything else. He was constantly reading about it, the symptoms and how they're treating it now. And he'd look for the symptoms, every little thing, and he'd think it was one of the symptoms of AIDS. When he'd go and get tested, and the test would come back negative, he still worried. He just kept saying it didn't mean anything because AIDS could develop at any time. He couldn't eat or sleep. He started looking sick, with all the weight he lost. He even almost got fired from his job because he missed so much work. Lucky for him, he has a very sympathetic boss. She'd known someone who died of AIDS, so I guess she understood how worried Paul was.

I just finally couldn't stand the pressure anymore. Paul worried about it constantly. When he said he wanted to postpone the wedding, just to make sure he didn't have AIDS, that was the last straw. I just couldn't take worrying about whether he had it, or for that matter, whether he was going to give it to me. He just wasn't the same man I met and fell in love with. So I gave him his ring back and called it quits.

SUMMARY OF AUGUST 16, 2022 DEPOSITION OF PAUL PORTER

I am 33 years old and am employed as a systems analyst for Micro, Inc. My life was turned upside down when I decided to go to Dr. Adams to get some medicine for my hay fever. Everything went fine at first; I filled out the paperwork They always have you do when you go to see a doctor. Then the nurse took me back to one of the rooms. She took my temperature and blood pressure, and then told me to wait and the doctor would be right in. There was a counter with a sink in it on one side and the examining table on the other, with a little step in front to step up to get on the table. I walked over to sit on the table to wait, and as I stepped near the step, I felt a sharp stab of pain in my foot. When I looked down, there was a needle, a syringe, like they give shots with, sticking out of the side of my foot. I was wearing sandals, so there was nothing to protect my foot. I reached down and pulled it out, and as it did so, I noticed another one lying on the floor right under the edge of the table. I rang the call button on the wall to call the nurse. When she came in, I told her what happened. She took the needle and gave me some gauze to hold over the wound on my foot. It was bleeding a good bit because the needle had sort of twisted sideways, I guess when I yanked my foot backwards. Then she left.

Dr. Adams came in a few minutes later. He looked at my foot and gave me a tetanus shot. He also gave me a prescription for antibiotics, since he said it was a pretty deep puncture wound. He also gave me a prescription for something to help my allergies. I didn't think much more about it at that point. My foot hurt, but I figured it was taken care of. The next day, the nurse called me at work to tell me that I needed to be tested for AIDS and hepatitis. She informed me that the office did serve a handful of patients with hepatitis and did have "5 or 6" patients with HIV or AIDS.

I just freaked out. I went in to be tested, and I've been re-tested every six months. All I could think about for that first year, though, that year they said HIV could show up at any time, all I could think about was dying. I mean, we all know, if you get AIDS, you die. And if you're lucky, you don't give it to anyone else before you do. I couldn't eat or sleep – I've never had trouble sleeping. But I just kept thinking, "How long have I got?" or "What's going to be my first symptom?" I couldn't even make myself go into work at times, because nothing seemed important. The company would go on without me; what I did there just didn't seem important.

I never had trouble sleeping before, but I had to go to a doctor for sleeping pills. I lost weight more than 20 pounds—and I had to see a psychotherapist to help me cope.

What really hurt was what it did to my fiancée, Lucy Hamelin. I knew I was not being the kind of guy she needed. I just couldn't act like nothing was wrong, like nothing was different. Dr. Adams told me to assume that I had been exposed to HIV, and to take all the precautions. I worried about infecting her. There was just no way to think about a future when I didn't know if I had one or not. I understand why she had to break our engagement, and I don't blame her, but it hurts just the same.

SUMMARY OF AUGUST 2, 2022 DEPOSITION OF DONALD ADAMS, M.D.

I am a general practitioner. The Atlanta Medical Clinic is my private practice. I have regular patients, but I also take walk-ins. Paul Porter was a walk-in patient, who came to the clinic on August 17, 2021, for treatment of allergies. My nurse reported to me that he had been stuck with a used hypodermic needle while he was in the examining room. She gave me two hypodermic needles that she said had been found on the floor under the table. I examined Mr. Porter's wound and treated it by giving a tetanus shot and prescribing antibiotics. I also prescribed some medication for his allergies. I'm not sure what actually happened to the syringes. I assume they were placed in another "sharps" container to be properly disposed of.

The night before this occurrence, I had gone to my office to pick up some paperwork that I needed to finish. I was in a hurry since I was late for a meeting. As I reached for the files that were sitting on the counter in my examining room, I knocked the "sharps" container onto the floor. The top became dislodged and all the waste scattered all over the floor. I picked up the syringes and lancets and so forth that I saw, maybe a couple of dozen, but I didn't have a lot of time to go crawling under the furniture. I was in a hurry since I was already late for an important meeting. I did find another syringe by the sink that next morning and put it back in the container, also. In hindsight, I guess I should have had someone else look around more. I'm a very busy physician with a busy practice. I don't have the time to tend to matters like sweeping or cleaning up the floors of my exam rooms. Whether I clean or not is based on my available time because staff clean the offices and exam rooms. My job is to work with patients and manage my staff.

Yes, I am aware that being stuck by a syringe that has been used on a patient who is positive for HIV is one method by which a person can contract HIV. That's why we have "sharps" containers, to protect against that kind of thing.

I don't know whether the syringe that injured Mr. Porter was contaminated with HIV. I think it's reasonable to say that I see more HIV patients than the average practitioner. I've developed a list of HIV patients by referral over the years and have become quite familiar with HIV treatment. I treated four patients whom I know are HIV positive in the weeks preceding Mr. Porter's visit. I'm sure there are others, but I couldn't tell you a specific number. We certainly ask for medical history on our patient information sheets. But that doesn't mean everyone will disclose that information, or they may not even know. We certainly don't run HIV tests on every patient we treat. I know that hepatitis cases are more common in my office than HIV or full-blown AIDS, but still relatively low compared to all the other kinds of maladies I see regularly. As a precaution, I had a nurse from my office instruct Mr. Porter to be tested for HIV. I know he didn't receive those tests in my clinic, but I believe he had them done elsewhere.

SUMMARY OF AUGUST 16, 2022 DEPOSITION OF SARAH WATSON, M.D.

I am a physician licensed to practice medicine in the State of Georgia. Paul Porter is one of my patients. He began seeing me in August, 2021. He came to me for an HIV test, since he'd been stuck with a used needle. He wanted reassurance after the first negative test result that he was out of the woods, but I told him that he'd need to be tested again at six months and one year after the incident, since HIV may take as long as a year to show up. I also told him that after a year, his chances of a positive test are minimal.

I have also treated Mr. Porter for insomnia. In the months following the incident with the needle, he was suffering under an extremely high stress level; he was terrified that he had been exposed to HIV and would die of AIDS. He suffered from the classic symptoms of stress induced illness. He lost some 25 pounds, could not eat or sleep, and had a great deal of difficulty accomplishing the tasks of his daily routine. He also had difficulty at work. I prescribed medication to help ease his symptoms. On my recommendation, he also began seeing a psychotherapist to help him handle his anxiety. I couldn't tell him not to worry since, obviously, the vast majority of people who contract HIV still suffer a host of complications from the disease and suffer early mortality compared to the general population. HIV is treatable, but contracting HIV irrevocably complicates one's life.

Over the course of the last year, his symptoms have begun to abate, but he still requires medication to help him sleep at night and is still seeing a therapist. These medical problems, which began in August 2021 following his injury, are directly attributable to his fear that he had been exposed to HIV. He has no other history of any type of mental or emotional problems. Nor had he previously experienced any serious medical problems.

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to O.C.G.A. § 9-11-56 (1993), Defendant hereby moves for summary judgment on Plaintiff's claims for damages arising from his alleged mental distress and on Plaintiff's claim for punitive damages. Defendant shows this Court:

1.

Plaintiff was slightly injured by a syringe lying on the floor under an examining table in Defendant's office.

2.

Defendant did not intentionally place, nor was he even aware of, the syringe lying on the floor in the examining room.

3.

Plaintiff has been tested for HIV exposure three times since his minor injury; all test results have been negative.

4.

Plaintiff cannot show that he has contracted or was even exposed to the HIV virus as a result of his minor injury.

5.

There is no issue of material fact for a jury to resolve.

6.

Therefore, Plaintiff cannot recover damages for mental distress under Count 1 of Plaintiff's Complaint. Further, as Plaintiff has no set of facts to prove an entire want of care on Defendant's part which would raise the presumption of conscious indifference to the consequences, Plaintiff cannot recover punitive damages under Count 2 of the Complaint.

Citation of authority and argument are more fully set forth in Defendant's Brief in Support of his Motion for Summary Judgment, filed herewith.

Respectfully submitted, this 19th day of November, 2022.

King & Smalding,
LLP 191 Peachtree Street, NE
Atlanta, GA 30303 404.572.4600

ALONZO DAVIS
Attorney for Defendant
Georgia Bar Number 264600

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff submits that Defendant's motion for summary judgment and respectfully shows the Court as follows:

1.

Plaintiff was injured when his foot was punctured by a used syringe that was lying on the floor in Defendant's examining room.

2.

The used syringe had been left on the floor by Defendant, who had failed to remove it and one other used syringe when he retrieved others he had spilled from a container used to dispose of hazardous medical waste.

3.

In the two weeks preceding Plaintiff's visit, Defendant treated at least four patients whom Defendant knows are infected with HIV. Additionally, Defendant's clinic treats patients on a "walk-in" basis. Defendant, therefore, does not know which, or how many, of the other patients he treated prior to Plaintiff's visit were infected with HIV.

4.

It is impossible to determine whether the used syringe which injured Plaintiff was contaminated with the HIV virus.

5.

Plaintiff suffered severe and lasting mental distress as a result of his fear of contracting the HIV virus after he was injured by the used syringe in Defendant's office. (See Plaintiff's Deposition Summary.)

6.

Defendant is fully aware that a needle-stick by a syringe previously used on someone who is HIV-positive is a medically-sound channel of transmission of the HIV virus.

7.

Defendant failed to search for and remove all used syringes after he spilled them on the floor, even though he knew the great threat such items posed to the lives and health of his patients and employees. (See Defendant's Deposition Summary.) Genuine issues of material fact remain as to whether Defendant's actions show an entire want of care so as to raise the presumption of a c onscious indifference to the consequences.

Accordingly, Defendant's Motion for Partial Summary Judgment should be denied. Citation of authority and argument are more fully set out in Plaintiff's Brief attached to this Response.

Respectfully submitted this 18 th day of December, 2022.

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PAULA PAYNE Attorney for Plaintiff
Georgia Bar Number 042295

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

TRANSCRIPT OF JANUARY 6, 2023 HEARING

Court: Good afternoon, Ms. Payne, Mr. Davis. I've read your briefs and your citation of authority. Is there anything you would like to add Mr. Davis?

Mr. Davis: Your Honor, I would just like emphasize to the Court that the law on both of these issues is settled and that, as there are no contested questions of fact here, it's pretty clear that summary judgment is appropriate. The mental distress damages are simply not recoverable without proof of exposure, and this isn't a case for punitive damages. The case law states pretty clearly that they are not recoverable merely for negligence.

Court: Ms. Payne?

Ms. Payne: Your Honor, I take issue with Mr. Davis' view of the law in Georgia on the mental distress issue. It is by no means settled in this state what the rule is in these cases. There's only been a single case, and the Court there, well, it didn't require actual exposure to the harmful disease-causing agent. The issue of whether actually exposure should be required wasn't before the court.

Mr. Davis: It's true there is only a single Georgia case, but the majority view, from those jurisdictions that have, uh, which have addressed this question, this question of "AIDS-phobia" cases, that the majority view is that the plaintiff has to show actual exposure to the HIV virus. Otherwise, it's just too speculative.

Court: I know from your briefs that this is the majority view. Ms. Payne, didn't you cite some cases that have held to the contrary on this?

Ms. Payne: Yes, Your Honor. Although many of the courts that have addressed this "exposure to HIV" question have gone the "actual exposure" route, not all have. Several jurisdictions have recognized that HIV exposure is really different from exposure to other things, things like asbestos, and that potential exposure to HIV raises questions not raised in those other types of cases. With HIV, if you get it, it's largely a death sentence. To subject someone to those fears ought to lead to liability. That's the whole purpose of tort law in this state – to compensate those who are injured. My client has suffered documented harm well beyond his physical injuries as a result of Dr. Adams's conduct, and Dr. Adams should be held accountable for that harm.

Mr. Davis: We are not disputing that Mr. Porter's experience was not pleasant, but not everything is compensable in our society. Mr. Porter can still recover for his physical pain and suffering.

Ms. Payne: Mr. Porter's physical pain, while significant, is not the primary source of his injury in this case. Living day after day not knowing whether he will have a healthy future is, well, that's what he went through, and it changed his whole life. He's standing today in an entirely different situation than any he ever envisioned. He thought he'd be happily married to the woman he loved by now. Now that's not going to happen.

Court: Ms. Payne, on what basis have such damaged been allowed?

Ms. Payne: Other jurisdictions have recognized that it is frequently impossible to prove actual exposure to HIV in needle-stick cases. Here, we don't even know what happened to the syringe, even assuming it could be tested in some way. Requiring proof of actual exposure effectively bars a plaintiff from recovering for what is probably one of the most traumatic events a person can go through.

Court: Which jurisdictions…let me see again…which did you cite?

Ms. Payne: They're right here Your Honor, on pages 2 and 3.

Court: OK, I've got them. What about the punitive damages question, that's part of your motion too, Mr. Davis, isn't it?

Mr. Davis: Yes, Your Honor. This isn't a case for punitive damages. The cases make clear that the statute requires something more than negligence, even gross negligence isn't enough. These facts, even assuming they are as Mr. Porter alleges, just don't get to intentional wrongdoing. Furthermore, the statute is not intended to punish a defendant's seeming indifference or arrogance—unless such things lead to recklessness or an entire lack of care. Here, he tried to be a little careful. That's it. He just has to try.

Ms. Payne: First, the statute doesn't require intentional wrongdoing. These facts, Your Honor, do create enough of a question as to whether Dr. Adams showed an "entire want of care" that creates the "presumption of conscious indifference to the consequences." By being in too much of a hurry to be careful with what he knew was highly dangerous medical waste, he put his patients at risk; he put Mr. Porter at risk.

Court: But you can't prove he put Mr. Porter at risk for HIV or any other illness can you?

Ms. Payne: No, we can't prove that any of the syringes in that particular "sharps" container were contaminated with HIV. But Dr. Adams, like every other physician, is well aware of the risks of needle-stick injuries as a means of transmitting the AIDS virus. And he has admitted that he doesn't know how many of the patients he sees are infected with HIV. He didn't look carefully because he was in a hurry. The level of risk he was dealing with required a much higher level of care, as he was aware…

Mr. Davis: Even assuming this is true, Your Honor, what we have here is, at worst, gross negligence, which won't support awarding punitives under the language of the statute. It's just not allowable.

Court: OK. Do you have anything further, Ms. Payne, Mr. Davis?

Ms. Payne: No, Your Honor.

Mr. Davis: No, Your Honor.

Court: Well, I've got the briefs and I'll take this under advisement. I'll give you my ruling in a few days.

Ms. Payne: Thank you, Your Honor.

Mr. Davis: Thank you, Your Honor.

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

ORDER

Having read the briefs of counsel, the pleadings, and the depositions in this case, and after having heard oral argument, the Court has concluded that Defendant is entitled to judgment as a matter of law. Even considering the facts in the light most favorable to the non-moving party, as required by Rule 56, the Court finds that Plaintiff cannot recover for the medical distress he may have suffered as a result of his potential exposure to the HIV virus. This state has only allowed such recovery where the Plaintiff was actually exposed to the disease-causing agent.

Further, this Court finds that the facts do not support a finding that Defendant showed such an "entire want of care which would raise the presumption of conscious indifference to the consequences" so as to support an award of punitive damages under O.C.G.A. § 51-12-5.1.

Thus, as there is no genuine issue of material fact for a jury to decide and Defendant is entitled to a judgment as a matter of law, Defendant is entitled to partial summary judgment on the issues of mental distress and punitive damages as a matter of law. The remaining issues of liability and damages as pled in Plaintiff's complaint remain to be determined at trial.

SO ORDERED, this 17th day of January, 2023.

Darius T. Jackson

HON. DARIUS T. JACKSON
Judge, Superior Court of Fulton County
Atlanta Judicial Circuit

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Plaintiff, v. DONALD ADAMS, M.D., Defendant.	CIVIL ACTION FILE NUMBER 01-CV-1234

PLAINTIFF'S NOTICE OF APPEAL

Notice is hereby given that Paul Porter, Plaintiff in the above action, appeals this Court's January 17, 2023 Order granting Defendant's motion for partial summary judgment. The Court committed reversible error in granting partial summary judgment on Plaintiff's complaint on the following grounds:

1) The trial court erred in holding that Plaintiff must prove actual exposure to the HIV virus in order to recover damages for mental distress. The Georgia courts have never imposed such a requirement, and it is contrary to the underlying purpose of Georgia tort law.

2) The trial court erred in holding that punitive damages are not recoverable in this case. The facts as set out in the Complaint, and supported by the pleadings and depositions in this case create a jury question as to whether Defendant's actions showed an "entire want of care which would raise the presumption of conscious indifference to the circumstances" as required for recovery of punitive damages under O.C.G.A. § 51-12-5.1 (2000).

The clerk shall please include the entire record in the record on appeal to the Georgia Court of Appeals. There is a transcript of a hearing to be included in the record on appeal.

This 28th day of February, 2023.

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAUL PORTER, Apellant, v. DONALD ADAMS, M.D., Appellee.	CASE NUMBER A02A0101

Martin, P.J., and Forehand, J.J., concurring; Rost, C.J., dissenting.

Martin, Presiding Judge.

This case comes before us on the trial court's grant of summary judgment to the defendant, Dr. Donald Adams. Appellant filed a timely appeal to this court alleging the lower court erred in two key respects: First, that it applied the incorrect legal standard to a mental distress case in Georgia by requiring actual exposure to the HIV virus as a necessary condition for reasonable fear and mental distress damages. Second, that the lower court erroneously found there was no question of fact remaining on whether Dr. Adams's conduct rose to such an egregious level as to permit the collection of punitive damages under O.C.G.A. § 51-12-5.1 (2000). We will address Appellant's contentions in turn.

[The court here summarized the facts of the case. Omitted for the sake of brevity.]

The issue of whether actual exposure is required in cases for damages under common law doctrines alleging infliction of emotional distress is not necessarily new to this court. This court addressed the factual context of this issue in Wimble v. Waste Disposal, Inc., 208 Ga. App. 179 (1994). However, that decision was not necessarily clear on whether actual exposure to the toxins from the waste dump was required to be shown as a matter of a plaintiff's proof. The court rightly relied on the fact that the plaintiffs had proven the toxins from the defendant's dump had "escaped" and had been consumed by the plaintiffs because the plaintiffs had proven the toxins were in their well. The court referenced the wisdom of other jurisdictions which require a plaintiff to prove actual exposure to toxins in order to prove that their anxieties and distress were not vague, irrational, or speculative. We believe this is the mandate to us from Wimble and the correct standard to apply to the present case.

Here, there are no facts Appellant can produce to show he was actually exposed to HIV or AIDS-contaminated blood. His case is distinguishable from our decision in Wimble because of that missing proof. Though well water might be different from blood, as Appellant contends, we see no reason that the actual- exposure standard should not be adopted in blood-borne disease cases. As we said in Wimble, "Damages for mental distress in such cases may not be based upon vague or irrational fears." There are, therefore, no issues of fact for a jury to resolve as Porter's fears of contracting HIV and AIDS in this case are, per se, unreasonable under the actual-exposure standard. Porter has to speculate on what viruses may or may not be present on the needle before he settles on the idea that he is at risk for one particularly harmful virus. The dissent, it seems, engages in that same speculation by essentially concluding, ipse dixit, that all used needles are dirty. We are not persuaded. Thus, the lower court did not err in the application of the actual-exposure standard from Wimble and defendant was entitled to judgment as a matter of law on his motion for summary judgment.

Turning to the second issue of punitive damages, we find no error with the lower court's decision. While it is likely indisputable that Dr. Adams was negligent and showed a lack of care when he "rushed" his clean-up of the used hypodermic needles he spilled, it is also clear that his conduct was not so egregious as to trigger the punitive damages standard under O.C.G.A. 51-12-5.1. Dr. Adams could have been more careful in his cleaning, but he did not engage in any misconduct here, nor could his cleaning efforts be described as displaying an "entire want of care." After all, he did actually attempt to clean up the needles he spilled. Thus, we find this case to parallel that of Brown v. Atlanta Nursing Home, Inc., 232 Ga. App. 511 (1997). Following the logic of Brown, there are no questions of fact regarding Dr. Adams's conduct here. A jury could not find Dr. Adams to be anything more than simply negligent.

The trial court's January 17, 2023 order granting Appellee's motion for partial summary judgment is AFFIRMED.

ROST, Chief Judge, dissenting.

In its application of Wimble v. Waste Disposal, Inc., 208 Ga. App. 179 (1994), the majority misses an obvious distinction between drinking water and blood. More importantly, it misses the appropriate legal standard this court articulated in Wimble: "…a plaintiff must show that the defendant's breach of a duty owed to the plaintiff caused foreseeable harm." While it is true that a plaintiff's fear in a mental-distress case cannot be vague or unreasonable, Mr. Porter's fears were clear in that they were caused by the necessary precautions his doctor took for the sake of his health, they were provable by evidence in the record, and were entirely reasonable—as reasonable as the fears of a landowner who finds out he's drinking toxic water.

The fundamental idea undergirding Wimble is that it is not reasonable to fear clean drinking water, but it is entirely reasonable to fear drinking unclean water. In how it uses Wimble, the majority essentially says that internalizing the blood of an unknown stranger, so long as you don't know for certain what's in that blood, should produce the same amount of fear as consuming tap water. However, it's illogical to equate pathogens in bloody needles with chemical toxins in drinking water. After all, why do we even have such a thing as "sharps containers" if blood and pathogens on needles aren't in a different category of things to be feared? Pathogens are living organisms that reproduce and multiply in the blood. If this current Covid pandemic has taught us anything, it has taught us how unpredictable living viruses are. Toxins, on the contrary, do not multiply on their own. Under Wimble, it's logical to fear the "multiplication" of toxins in one's body when one is aware that those toxins were compounding by the regular consumption of one's own contaminated tap water. In this narrow sliver of its understanding, the majority gets Wimble right. Thus, an actual-exposure standard is appropriate for mental distress damages when the question involves something as every-day or as typical as drinking tap water. However, some harm-causing agents are logically more threatening and more fear-inducing and are, therefore, logically judged by a normal negligence analysis, looking at the foreseeability of the harm produced. Here, it seems the majority forgets Dr. Adams ordered Mr. Porter to be tested for HIV for a full year afterward; meaning he could foresee this harm from his breach of care. This is the more reasonable reading of Wimble for a case like Mr. Porter's.

On the second of Appellant's claims of error, the majority is correct that a case of negligence is clear against Dr. Adams but otherwise ignores how utterly careless the doctor was in this case. By ignoring in its analysis the fact that the doctor spilled used hypodermic needles—a category of garbage so unique it has its own technical name: medical waste—the majority effectively turns this medical waste into spilled milk. Nothing to cry over. If the majority stopped to consider the sharps container, how it got knocked over, how its entire contents were known to the Appellee to be loose in his office, known to the Appellee to be sharp, known to the Appellee to be used, and known to have been used upon patients seeking treatment for varying maladies, including hepatitis and HIV, then the majority might have seen there is an open question for a jury to answer here on how willful and how lacking in care the doctor's conduct and choices were. The majority seemingly condenses all the doctor's choices and conduct over two different calendar days down to "at least he tried to clean up after himself"—as if that oversimplification makes the language of O.C.G.A. § 51-12-5.1 any clearer.

Because the actual-exposure standard of toxic contamination was misapplied in the unique context of blood-borne pathogens and because there are also remaining questions of fact for a jury to settle on the egregiousness of the Appellee's conduct, I dissent.

Filed this 18th day of November, 2023.

IN THE GEORGIA SUPREME COURT

PAUL PORTER, Petitioner, v. DONALD ADAMS, M.D., Respondent.	CASE NUMBER A02A0101

PER CURIAM. The Court GRANTS the petition for writ of certiorari. The parties are hereby instructed to brief only the following issues:

1. Whether a Plaintiff must prove actual, physical exposure to the HIV virus in order to recover damages for mental distress or whether a patient's subjective belief in a possible exposure is sufficient; and

2. Whether the circumstances by which the Plaintiff was allowed to be stuck by the needle are so egregious as to authorize an award of punitive damages against the doctor under O.C.G.A. § 51-12-5.1 (2000).

All the Justices concur.

This 24th day of January, 2024.