

~~JUDGE'S COPY~~
ORIGINAL

HONORABLE KIMBERLY PROCHNAU
Trial Date: May 18, 2009

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SEAN R. KITELEY and TRACEY A.
KITELEY, a married couple,

Plaintiffs,

v.

RAYBURN J. LEE, an individual, and
ZACHARY J. LEE, an individual,

Defendants.

NO. 06-2-34414-6 KNT

~~PLAINTIFFS' PROPOSED FINDINGS~~
OF FACT AND CONCLUSIONS OF
LAW

THIS MATTER was tried to the Honorable Kimberly Prochnau, without a jury, from May 18, 2009 through May 19, 2009. Plaintiffs Sean Kiteley and Tracey Kiteley appeared personally and through their attorneys of record Anthony A. Todaro and Kelby D. Fletcher of Peterson Young Putra. Defendants appeared personally and through their attorney of record, Soloman Kim.

BASED ON the evidence admitted during the trial, the Court makes the following:

Findings of Fact

1. On March 7, 2006, at around 9:15 a.m., plaintiff Sean Kiteley was stopped at a red traffic signal at the intersection of 356th and Pacific Highway in Federal Way, Washington. Mr. Kiteley was on his way to work at Les Schwab Tire Center in Federal Way. While Mr. Kiteley was waiting for the traffic signal to turn green, defendant Rayburn Lee crashed his

~~PLAINTIFFS' PROPOSED FINDINGS OF~~
FACT AND CONCLUSIONS OF LAW - 1

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1 Volkswagen Corrado into the back of Mr. Kiteley's car. After crashing into Mr. Kiteley's car,
2 Rayburn Lee turned his car around and fled from the collision scene. Mr. Kiteley did nothing
3 to cause Rayburn Lee to flee.

4 2. Mr. Kiteley called 911 to report the collision to the police. Mr. Kiteley then
5 turned his car around to follow Rayburn Lee and get his license plate number. Mr. Kiteley
6 lawfully followed Rayburn Lee into a nearby parking lot at "The Heights" apartment complex.
7 While Mr. Kiteley was waiting for the police in the parking lot of "The Heights," Rayburn Lee
8 intentionally rammed his car into Mr. Kiteley's car two times and then fled from the parking
9 lot.

10 3. Police responded and met Mr. Kiteley in the parking lot of "The Heights." Mr.
11 Kiteley did not have his insurance information in his car so he called his wife, plaintiff Tracey
12 Kiteley. Ms. Kiteley and the couple's 4-year-old son drove to "The Heights" to deliver the
13 insurance information to Mr. Kiteley and the police officers. After talking to Mr. Kiteley and
14 some of the employees at The Heights, the police officers left. Sean and Tracey Kiteley spoke
15 for a few minutes in the parking lot and then said their good-byes.

16 4. Once Mr. Kiteley said good-bye to his wife and started to walk back to his car,
17 he heard running footsteps and saw Rayburn Lee sprinting towards him. Rayburn lifted his
18 shirt and pulled out a pistol and "pistol-whipped" Mr. Kiteley across the face, injuring Mr.
19 Kiteley. Mr. Kiteley yelled to his wife to "get out of here" with their 4-year-old son. Tracey
20 Kiteley saw Rayburn Lee "pistol-whip" and punch Sean Kiteley in the face.

21 5. While Rayburn Lee repeatedly punched Mr. Kiteley in the face, Mr. Kiteley felt
22 sharp stabs in his back. Mr. Kiteley looked over his shoulder and saw defendant Zachary Lee
23 with a shiny knife. Rayburn Lee severely and intentionally beat Mr. Kiteley's face and
24 Zachary Lee stabbed Mr. Kiteley six times with a 4-inch knife blade.

25 6. When Rayburn and Zachary Lee were finished attacking Mr. Kiteley, Rayburn
26 Lee got into Mr. Kiteley's car and intentionally crashed the car into another car in the

1 parking lot. Mr. Kiteley managed to get away and climbed up some stairs at the apartment
2 complex to look for a safe place to hide from defendants. Tenants at the apartment complex
3 called 911 and tried to help Mr. Kiteley stop the profuse bleeding. Tracey Kiteley ran up the
4 stairs after her husband and also tried to help him. Tracey Kiteley saw her husband bleeding
5 profusely while they waited for the medics to arrive.

6 7. Medics arrived within a few minutes and immediately intubated Mr. Kiteley.
7 He was airlifted to Harborview Medical Center in Seattle where he was diagnosed with a
8 deviated septum and six deep stab wounds – five stab wounds in his back and one stab
9 wound on his left elbow, which severed his ulnar nerve. Mr. Kiteley spent one week at
10 Harborview and underwent two surgeries.

11 8. Mr. Kiteley's deviated septum and the stab wounds on his back have healed
12 with residual scarring. Mr. Kiteley's left ulnar nerve is permanently damaged. He has
13 significantly reduced sensation and motor skills in his left arm and hand. Mr. Kiteley lost his
14 job at Les Schwab Tire Center because of his permanent ulnar nerve injury.

15 9. Defendants Rayburn Lee and Zachary Lee engaged in extreme and outrageous
16 conduct and intentionally or recklessly caused emotional distress to plaintiffs. Defendants'
17 conduct was the proximate cause of severe emotional distress to plaintiffs Sean Kiteley and
18 Tracey Kiteley. Sean Kiteley was a direct recipient of the extreme and outrageous conduct
19 and Tracey Kiteley was an immediate family member present at the time the conduct
20 occurred.

21 10. Tracey Kiteley viewed her husband, Sean Kiteley, while defendant Rayburn
22 Lee attacked Mr. Kiteley without provocation. Tracey Kiteley also viewed her husband,
23 Sean Kiteley, shortly after the attack by defendants when Mr. Kiteley was bleeding at the
24 apartment complex while waiting for the medics to arrive. Tracey Kiteley was present at the
25 scene of the attack and shortly thereafter, and she has suffered from objective symptoms of
26 emotional injury including depression, sleeplessness, anxiety and nightmares.

1 Ms. Kiteley did take prescription medication for these symptoms from March 9, 2006
2 until the family moved to Georgia in 2008.

3 11. Photographs were admitted of Mr. Sean Kiteley's recovery at the hospital and at home
4 after the assault. (Plaintiffs' Exhibit No. 15).

5 12. After Mr. Sean Kiteley's release from the hospital, within a month and a half, Mr. Kiteley
6 returned back to work at Les Schwab tire center in Federal Way. Shortly thereafter, Mr.
7 Kiteley's employment at Les Schwab was terminated and that the proximate cause of
8 that termination were the injuries suffered due to the assault. Mr. Kiteley later found
9 another employment during his residence in Washington State and then later moved
10 from Washington to Georgia in April 2008.

11 13. Defendants have admitted by way of failing to respond to Requests for Admission that
12 \$70,650.13 of Sean Kiteley's past medical expenses were proximately caused by
13 defendants' conduct and were both reasonable and necessary. The total amount for
14 the payments made by the health insurance provider was \$58,770.91. This amount of
15 \$58,770.91 was ordered to be repaid by both Mr. Rayburn Lee and Zachary Lee by an
16 Order Setting Restitution through their criminal trial on February 20, 2007 by the
17 Sentencing Judge, the Honorable James Cayce. This restitution amount is a subrogation
18 obligation to be paid back to BlueCross BlueShield and this obligation to repay Mr.
19 Kiteley's medical treatment costs is a joint and several obligation between both
20 Defendants. (Defendants' Exhibit No. 12). In order to avoid a double recovery, it is
21 appropriate that judgment be ordered for the difference between the restitution ordered
22 and the total medical bills defendant has admitted to in the amount of \$11,879.22.
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14. The Kiteleys received \$10, 698.32 from the Crime Victims Fund (Ex 12) to reimburse them for expenses caused by the assault. The court has insufficient evidence to conclude that the Kiteleys suffered economic damages including medical bills, time lost from work, and out of pocket expenses from the time of the assault up to the time of the restitution order that was not covered by the Crime Victims compensation program.

15. Mr. Sean Kiteley testified to medications he is presently taking and being prescribed to date. He suffers constant pain due to the damage to the ulnar nerve and takes methadone for this pain. He must pay for the methadone out of pocket \$160 every two weeks.

16. Mr. Kiteley, his identical twin brother and his wife all testified to the dramatic changes in his mood and outlook on life as a result of the assault, and the dramatic change in the quality of life enjoyed by himself and his family as a result of his severe emotional distress. Mr. Kiteley is extremely anxious as a result of the attack and has isolated himself from family and social activities. He is concerned for his safety and the safety of his family. After a period of marital counseling, the Kiteleys determined that they needed to leave the area as a result of their ongoing emotional distress that was proximately caused by the assault. They incurred \$7000 in travel costs to move to Georgia. The court finds the assault is a proximate cause of these costs.

17. Sean Kiteley is currently 30 years old. No experts have testified that his life expectancy is reduced. According to the Insurance Commissioner's Life Expectancy Table, October 28, 2004, Mr. Kiteley's life expectancy is 46.20 years.

18. (Any Conclusions of Law which were erroneously designated as Findings of Fact herein shall be deemed to be included, and made part of, the Conclusions of Law set forth

1 below. Any Findings of Fact erroneously designated as a Conclusion of Law should be
2 deemed to be included, and made part of, the Findings of Fact set for the above.)

3 **CONCLUSIONS OF LAW:**

- 4
- 5 1. This Court has jurisdiction of the Parties and the subject matter of these proceedings as a
6 matter of law.
- 7 2. Defendants were and are collaterally estopped from contesting liability with respect to
8 Plaintiff, Sean Kiteley's claims of assault and outrage per this Court's prior order granting
9 summary judgment on this legal issue entered on September 14, 2007. The Defendants
10 are therefore liable to Mr. Sean Kiteley for assault and outrage. Defendants' violent and
11 intentional attack on Sean Kiteley was a proximate cause of Mr. Kiteley's injuries and
12 plaintiffs have established causes of action of assault and outrage by defendants.
- 13 3. Defendants' assault upon Mr. Sean Kiteley was extreme and outrageous that was the
14 proximate cause of severe emotional distress to plaintiffs Sean Kiteley and Tracey Kiteley.
15 Plaintiffs have established a cause of action of outrage by defendants.
- 16 4. Defendants' violent attack on Sean Kiteley was witnessed by Tracey Kiteley and was the
17 proximate cause of objective symptoms of emotional injury for Tracey Kiteley. She not
18 only witnessed the attack and called 911 but underwent added trauma by being required
19 to attempt to staunch her husband's life threatening wounds at the scene of the attack,
20 while her child was in her car at the scene and the assailants were at large. Plaintiffs have
21 established a cause of action of negligent infliction of emotional distress by defendants.
- 22 5. The Court imposes the sanction of \$2,500 against both Defendants for failing to pay the
23 travel costs for the Plaintiffs as ordered on April 10, 2009 and any other documented

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costs incurred by the Plaintiffs in the amount of \$1540. This amount ordered shall be incorporated to the final Judgment awarded in this case.

6. As a result of the assault, outrage, and negligent infliction of emotional distress by Defendants, the Plaintiffs are entitled to an award of damages as follows:

a. Economic Damages: For past and future economic and special damages which are calculated and/or determined to be proven and established in the amount of \$11,879.22. in medical costs, \$7000 for the move to Georgia, and \$15,000 in methadone costs.

b. Non-Economic Damage: For past and future non-economic and general damages to include, but not limited to: pain, suffering, inconvenience, mental anguish, disability, disfigurement, and loss of enjoyment of life experience by Sean Kiteley and with reasonable probability to be experienced in the future in the amount of \$ 360,000.

c. For Tracy Kiteley's mental anguish and emotional distress in the amount of \$120,000.

d. To avoid a double recovery the court is not awarding those damages that are covered by the restitution award. Nothing in this order affects defendants' responsibilities under the restitution award or criminal sentence.

5. The Plaintiffs shall be awarded a final Judgment against the Defendants in conformity with this final decision and adjudication of this Court after fully being advised in the premises hereof and examination of all evidence provided to this Court after a full trial on the merits. Plaintiffs shall submit a Judgment to this Court for entry in accordance with these findings.

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DONE IN OPEN COURT this 22 day of May, 2009.

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JUDGE KIMBERLEY PROCHNAU

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