

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CORNELIUS HOLLIS,

Plaintiff,

v.

MAGGIE OLSON,

Defendant.

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Case No. 1:08-cv-633

Hon. Robert J. Jonker

**OPINION AND ORDER**

Before the Court is Defendant's Motion for a New Trial, or, in the Alternative, Motion for Remittitur (the "Motion"). (docket # 126.) Plaintiff opposes the Motion. (docket # 128.) For the following reasons, the Court **DENIES** Defendant's Motion.

**FACTUAL BACKGROUND**

Plaintiff filed a First Amendment retaliation action under section 1983, alleging that Defendant violated his First Amendment right when she "wrote up" Plaintiff on a major misconduct ticket in retaliation for Plaintiff asking Defendant why she was taking or allowing others to take merchandise from the prison store without payment. After a three-day trial, a jury returned a verdict in favor of Plaintiff, awarding him \$16,000 in compensatory damages, \$1 in mental or emotional damages, and \$50,000 in punitive damages. The Court subsequently reduced the award by \$1 based on its conclusion that 42 U.S.C. § 1997e(e) precluded an award for mental or emotional injury as a matter of law because Plaintiff suffered no physical injury as a result of Defendant's conduct. (docket # 123.)

Defendant's Motion requests a new trial on the issue of damages, or in the alternative a reduction of Plaintiff's damages award, based on the belief that the jury's compensatory damages award of \$16,000 "is excessive and manifests plain injustice." (docket # 127, at 5-6.) Defendant believes Plaintiff was in temporary segregation as a result of the misconduct ticket for a relatively short period of time, and that the record is devoid of evidence that his reputation was damaged or that he suffered any harm that would support the jury's compensatory damages award. Therefore, Defendant argues that a new trial is appropriate under FED. R. CIV. P. 59(b) on the sole issue of damages, or alternatively requests the Court to reduce Plaintiff's compensatory damages award to an unspecified amount.

#### ANALYSIS

Under FED. R. CIV. P. 59(b), the Court has the discretion to grant a new trial when "a jury has reached a 'seriously erroneous result' as evidenced by (1) the verdict being against the weight of the evidence; (2) the damages being excessive; or (3) the trial being unfair to the moving party in some fashion, i.e., the proceedings being influenced by prejudice or bias." *Holmes v. Massillon*, 78 F.3d 1041, 1054-56 (6th Cir. 1996); *see also* FED. R. CIV. P. 59(b). "The standard of review on the issue of excessiveness of a verdict is whether the verdict is 'shocking' or manifests 'plain injustice.'" *Carpenter v. GAF Corp.*, 16 F.3d 1218, 1994 WL 47781, at \*14-\*15 (6th Cir. Feb. 15, 1994). Defendant's alternative request for remittitur implicates a similar standard of review, as it requires letting a jury award stand "unless the award is (1) beyond the range supportable by proof or (2) so excessive as to shock the conscious, or (3) the result of a mistake." *Leila Hosp. & Health Center v. Xonics Medical Sys., Inc.*, 948 F.2d 271, 278 (6<sup>th</sup> Cir. 1991).

A First Amendment retaliation claim under section 1983 is a constitutional tort. *See Kraemer v. Luttrell*, 189 Fed. App'x 361, 365–66 (6th Cir. 2006) (citing *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc)). “Accordingly, when § 1983 plaintiffs seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to principles derived from common law torts.” *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 306 (1986). “[T]he basic purpose’ of § 1983 damages is ‘to compensate persons for injuries that are caused by the deprivation of constitutional rights,’” and may include “not only out-of-pocket loss and other monetary harms, but also such injuries as ‘impairment of reputation . . . , personal humiliation, and mental anguish and suffering.” *Id.* (citations omitted).<sup>1</sup> These compensatory damages are intended to make Plaintiff whole for the violation of his constitutional rights, and are legally distinguishable from a cause of action “for mental or emotional injury suffered while in custody without showing of physical injury,” which is prohibited under the Prison Litigation Reform Act (“PLRA”).

The Court’s jury verdict form (which Defendant did not object to) reflected this distinction. After finding in favor of Plaintiff, the jury was required to assess damages to Plaintiff for (1) compensatory damages, *specifically excluding damages for mental or emotional injury*; (2) damages for mental or emotional injury; and (3) punitive damages. (docket # 122). The jury returned a

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<sup>1</sup> The jury instructions, which Defendant did not object to, reflected this definition of compensatory damages, stating in relevant part:

The purpose of compensatory damages is to make Plaintiff whole—that is, to compensate Plaintiff for the damage that he has suffered. If Plaintiff prevails, you may . . . consider other forms of compensatory damages such as harassment, humiliation, damage to his reputation, pain and suffering, mental anguish, discomfort he suffered because of Defendant’s conduct, and for harms suffered as a result of being confined to administrative segregation.

verdict of \$16,000 in compensatory damages, \$1 in nominal damages for mental or emotional injury, and \$50,000 in punitive damages. The Court previously reduced Plaintiff's award by \$1 to reflect its conclusion that section 1997e(e) precludes such a damages award. In the Motion, Defendant does not object to the Court's instruction of this issue or challenge the jury's punitive damages award, but rather argues that the \$16,000 in compensatory damages is not supported by the record, and the Court should either grant a new trial on the damages issue or reduce the compensatory damages to what the Court can only assume would be a nominal amount based on Defendant's Motion.

After reviewing all relevant matters of record, the Court declines to disturb the jury verdict, and therefore denies Defendant's request for a new trial or remittitur. Plaintiff was issued a non-bondable major misconduct ticket for allegedly threatening to kill Defendant while working for her in the prison store. The jury's verdict indicates they believed Plaintiff did not threaten Defendant, but that the misconduct ticket was rather in retaliation for Plaintiff questioning Defendant regarding items that were being taken from the prison store. At trial, Plaintiff testified to the potential long range ramifications of having a major misconduct ticket in your record, including serving additional custodial time on a sentence, or being denied favorable parole consideration. After the ticket was dismissed and Plaintiff was returned to his cell, Plaintiff testified that he was confronted and harassed by prison guards based on his alleged conduct. After filing his grievance and complaint in this matter, Plaintiff indicated that he was known by the prison guards as "the inmate who sued Defendant," had property confiscated as a result of this association by guards at the prison housing him before trial, and continued to be harassed. Of course, being placed in segregation even for a limited time, carries its own stigma and loss of privileges. A jury could reasonably conclude from this evidence that a compensatory damages award of \$16,000 was appropriate, particularly given

Defendant's somewhat inexplicable testimony, in which she never denied Plaintiff's version of events, or tried to offer an explanation for her own conflicting accounts of what happened.

In the Motion, Defendant emphasizes that Plaintiff (1) spent less than one hour in administrative segregation; (2) did not suffer any loss of employment income with the prison, because he was given a higher-paying job two days after the incident; and (3) he suffered no physical harm as a result of Defendant's conduct. Defendant's argument is unpersuasive, however, because it fails to account for Plaintiff's testimony regarding the impact and potential impact these events had on his life both immediately following and some time after the incident took place. Plaintiff's testimony was credible and heartfelt on these matters, and the jury could readily assess the significance of these matters to Plaintiff, and contrast that with the almost cool indifference that Defendant appeared to display toward the situation. The jury was provided instructions regarding each type of damages that could be awarded to Plaintiff and special interrogatories on the jury form that required delineation between each of them. The Court does not find the compensatory damages award shocking or beyond the range supportable by proof, and therefore denies Defendant's Motion.

**ACCORDINGLY, IT IS ORDERED THAT** Defendant's Motion for a New Trial or, in the Alternative, Motion for Remittitur (docket # 126) is **DENIED**.

**IT IS FURTHER ORDERED THAT** Plaintiff's counsel shall supplement the previous Motion for Attorney Fees and Costs (docket # 125) with any additional costs accrued that counsel believes are payable by Defendant under 42 U.S.C. § 1988(d) no later than **Friday, May 18, 2012**. Defendant shall file a response no later than **Friday, June 1, 2012**.

**IT IS SO ORDERED.**

Dated: May 1, 2012

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE