IN THE COURT OF APPEALS OF IOWA

No. 7-065 / 06-0396
Filed March 28, 2007

JAMES F. RIGGAN,
Plaintiff-Appellee/Cross-Appellant,

vs.

RAY G. GLASS,
Defendant,

HAWKEYE STATE BANK,
IOWA CITY, IOWA,
Defendant-Appellant/Cross-Appellee,

STATE OF IOWA, ex rel., CIVIL
REPARATIONS TRUST FUND,
Intervenor-Appellee.

Appeal from the Iowa District Court for Johnson County, Amanda Potterfield, Judge.

Bank appeals judgment finding it liable for conversion, fraud, and punitive damages. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Patrick M. Roby and Robert M. Hogg for Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellant/cross-appellee.

Martin A. Diaz, Iowa City, for appellee/cross-appellant.

Thomas J. Miller, Attorney General, and Richard Mull, Assistant Attorney General, Ames, for intervenor-appellee.

Heard by Huitink, P.J., and Vogel and Eisenhauer, JJ.

HUITINK, P.J.

Hawkeye Savings Bank (HSB) appeals from a judgment finding it liable for conversion, fraud, and punitive damages. HSB contends it is not vicariously liable for employee embezzlement and for alleged misrepresentations made by its chief financial officer to conceal the embezzlement from customer James Riggan.

I. Facts and Prior Proceedings

Riggan was a close friend of Ray Glass, the president, CEO, and loan officer for HSB. Riggan operated a handful of small businesses and relied on HSB for all his banking needs. In 2001 Riggan consolidated a number of small loans into a single million-dollar loan through HSB. Riggan also had a house account through HSB with an open note. When Riggan needed money for his business needs, he would call the bank, and it would deposit the funds into his house account. Even though a large volume of funds transferred between the open note and his house account, Riggan did not keep a close watch on the loan balance because he "left all that up to" Glass.

In May 2001 Glass began to write phony loans for numerous bank customers and then deposit the proceeds in his personal account, the account of his spouse, or the accounts of other customers whose loans were in default. Glass claimed he was attempting to hide the bank's bad debts and maintain the bank's perfect image. Between May and September 2001, Glass increased Riggan's loan by approximately $130,000 and transferred the proceeds to his own personal accounts.

In July 2001 Ken Garetson, the chief financial officer and controller at HSB, discovered that Glass was moving funds between his own personal account and several customer accounts. Garetson questioned Glass about the transactions. Glass explained that the customers knew what was happening and they were comfortable with it. Garetson did not make any further investigation or report the activity to HSB's board of directors. HSB's chief teller, Barbara Ann McNeil, became suspicious of Glass's activities in the fall of 2001. The vice-president in the loan department also became suspicious when she discovered that Glass was commingling funds. McNeil and the vice-president confided in each other, and on July 4, 2002, they approached Garetson with their information. The group was hesitant to accuse the president and CEO of the bank of illegal activities, so McNeil agreed to do further investigation and to prepare a report of her findings. She gave this report to Garetson in August. Garestson did nothing with the report. In late October, McNeil and the vice president of the loan department gave Garetson an ultimatum: if he did not notify the board of directors, then they would do it themselves. Garetson then told the bank's owner about the improper commingling of funds. When confronted with the evidence, Glass confessed. He was relieved of his duties shortly thereafter.

In February 2003 Riggan's personal accountant, Robert Rehfuss, met with Garetson and McNeil to discuss Riggan's accounts. Rehfuss asked them to look at certain loan advances because he could not determine where the money had gone. McNeil analyzed the transactions and prepared a report detailing how Glass had increased Riggan's loan and deposited the proceeds in his own personal accounts. She gave this report to Garetson in late February or early

March. Garetson told her she was not allowed to discuss this information with Riggan or Rehfuss. Garetson said he would be handling all subsequent discussions with Riggan and Rehfuss.

From March 2003 to June 2003, Riggan and Rehfuss tried, to no avail, to obtain information from Garetson. In June Rehfuss was finally able to arrange a face-to-face meeting with Garetson. Garetson told Rehfuss that the examiners had looked at the accounts and found no problems. A few days later Rehfuss approached Garetson with more questions about particular transactions. Garetson told him he was busy and would contact him later. Unsatisfied with this response, Rehfuss contacted the Iowa Department of Banking. This led to a July meeting where Garetson told Riggan, Rehfuss, and HSB's new president that there was no evidence of loss in Riggan's account.

Days later, an agent from the FBI informed Riggan that Glass had embezzled $130,000 from his account. Garetson was confronted with this information, but he indicated he would need more time to look into the transactions. Riggan's subsequent attempts to speak with Garetson proved unfruitful until early August, when Garetson admitted that it looked as if money had been taken. Garetson indicated he wanted more time to investigate other transactions. In the meantime, HSB was sold to West Bank.[1]

By December 2003 the bank had still not reimbursed Riggan, so he filed the present lawsuit against Glass[2] and HSB for conversion and fraud. Two days

[1] HSB remained liable for any unresolved issues from Glass's embezzlement.
[2] Glass eventually pled guilty to federal crimes of embezzlement and money laundering.

later, HSB sent a $152,962.94 check to West Bank. West Bank applied this check towards Riggan's loan.

Riggan pursued the lawsuit, and a jury returned verdicts against Glass and HSB for conversion, fraud, and punitive damages. The jury found HSB and Glass both liable for conversion and listed the following damages:

Value of property converted:	$133,000.00
Interest on the property converted:	$23,634.85
Expenses incurred to recover property:	$13,765.00
Mental Anguish:	$13,300.00
Total	$183,699.85
Less the amount paid of $152,962.94	
Total	$30,736.91

In addition to the conversion damages, the jury awarded $183,699.85 in punitive damages against Glass and $250,000 in punitive damages against HSB for Glass's conduct. On the fraud claim, the jury awarded a $37,399.85 verdict against HSB for misrepresentations made by bank employees after March 3, 2003. The jury also awarded an additional $250,000 in punitive damages against HSB for the conduct of "other employees" at the bank.

The district court entered judgments accordingly. However, in a posttrial ruling, the court found the punitive damage awards for Glass's conduct were duplicative. It eliminated the punitive damage judgment against Glass and entered judgment against Glass and HSB, jointly and severally, for $250,000.

II. Merits

HSB raises a wide assortment of arguments on appeal. Riggan also cross-appeals and challenges the court's conclusion that the punitive damage awards were duplicative. We now address those arguments properly preserved for our review.

A. Vicarious Liability for Embezzlement

HSB contends the district court erred when it denied HSB's motion for a directed verdict and motion for a judgment notwithstanding the verdict by rejecting HSB's claim that embezzlement was, as a matter of law, outside the scope of Glass's employment.

The standard of review from the denial of a motion for a directed verdict and a motion for a judgment notwithstanding the verdict is for errors at law. *Jackson v. State Bank of Wapello*, 488 N.W.2d 151, 155 (Iowa 1992). In reviewing rulings on motions for directed verdict and judgment notwithstanding the verdict, we simply need ask whether there was sufficient evidence to generate a jury question. *Id.* We, like the district court, view the evidence in the light most favorable to the party against whom the motions for directed verdict and judgment notwithstanding the verdict are directed. *Id.*

Under the doctrine of respondeat superior, an employer is liable for the tortious or wrongful conduct of its employee if the conduct occurs in the scope of the employment relationship. *Bethards v. Shivvers, Inc.,* 355 N.W.2d 39, 45 (Iowa 1984). "[T]he ultimate question in determining whether an employee's conduct falls within the scope of employment is 'whether or not it is just that the loss resulting from the servant's acts should be considered as one of the normal risks to be borne by the business in which the servant is employed.'" *Godar v. Edwards*, 588 N.W.2d 701, 706 (Iowa 1999) (quoting Restatement (Second) of Agency § 229 cmt. a (1979)). An act is deemed to be within the scope of one's employment "where such act is necessary to accomplish the purpose of the employment and is intended for such purpose, although in excess of the powers

actually conferred on the servant by the master." *Sandman v. Hagan,* 261 Iowa 560, 566-67, 154 N.W.2d 113, 117 (1967). The question is whether the employee's conduct "is so unlike that authorized that it is 'substantially different.'" *Id.* at 567, 154 N.W.2d at 117. Said another way, "a deviation from the employer's business or interest to pursue the employee's own business or interest must be *substantial in nature* to relieve the employer from liability." *Id.* at 568, 154 N.W.2d at 118 (emphasis added).

HSB argues it cannot be held vicariously liable for the embezzlement because it was a "seriously criminal" activity that was, as a matter of law, outside the scope of Glass's employment. We find no Iowa case law supporting such a rule. On the contrary, our case law indicates the question of vicarious liability is a fact-intensive analysis of the scope of the employee's conduct in light of what was reasonably foreseen by the employer. *See, e.g.*, *Godar*, 588 N.W.2d at 706-07 (analyzing school district's vicarious liability for sexual abuse by teacher under the Restatement (Second) of Agency § 229(2) (1957)). Whether an act is within the scope of employment is ordinarily a jury question, although, "depending on the surrounding facts and circumstances, the question as to whether the act which departs markedly from the employer's business is still within the scope of employment may well be for the court." *Id.* at 706. We conclude it was not improper for the court to reserve this question for the jury. *See Gina Chin & Assocs. v. First Union Bank,* 537 S.E.2d 573, 577-79 (Va. 2000) (holding that whether bank teller's scheme to deposit forged checks into acquaintance's account was within scope of employment was question for a jury).

Section 231 of the Second Restatement of Agency clearly states that "an act may be within the scope of employment although consciously criminal or tortious." At most, "whether or not the act is seriously criminal" is but one of ten factors we consider when determining whether conduct of an employee may be characterized as occurring within the scope of the employee's employment. *See id.* (citing Restatement (Second) of Agency section 229(2) (1957)).[3]

Viewing the evidence in the light most favorable to the nonmoving party, we find there is sufficient evidence from which the jury could conclude Glass was acting within the scope of his employment. In addition to being the CEO and president, Glass was also a loan officer in charge of the loan department. His criminal conduct—creating loans and directing where the proceeds of these loans would go—was well within his assigned duties at the bank. One of the purposes of his illegal conduct was to create the false impression that HSB had no bad loans and was extremely profitable. Indeed, until he was caught by his

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[3] The Second Restatement of Agency lists the following factors to be considered in determining whether conduct of an employee may be characterized as occurring within the scope of the employee's employment:

> (a) whether or not the act is one commonly done by such servants;
> (b) the time, place and purpose of the act;
> (c) the previous relations between the master and the servant;
> (d) the extent to which the business of the master is apportioned between different servants;
> (e) whether or not the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant;
> (f) whether or not the master has reason to expect that such an act will be done;
> (g) the similarity in quality of the act done to the act authorized;
> (h) whether or not the instrumentality by which the harm is done has been furnished by the master to the servant;
> (i) the extent of departure from the normal method of accomplishing an authorized result; and
> (j) whether or not the act is seriously criminal.

Restatement (Second) Agency § 229(2).

own employees, the illegal conduct was very successful in creating a fictional picture of profitability and sound management.

Finally, when considering whether Glass's conduct was reasonably foreseen by HSB, *Godar*, 588 N.W.2d at 706-07, we note that it is "far from unusual or startling that a bank employee would use his position to misappropriate money." *Olson v. Tri-County State Bank*, 456 N.W.2d 132, 135 (S.D. 1990). HSB did not set up safeguards to oversee Glass's loan transactions. Instead, the bank "pretty much left Glass to run the show." Given his broad authority and the lack of oversight inherent in the corporate structure, it was reasonable to foresee that a person in his position might abuse his authority to make the bank, and himself, look better and to pad his own wallet in the process. *See*, *e.g.*, *id.* (noting banks normally bond their employees to protect against embezzlement).

We find there was substantial evidence to support the jury's conclusion that Glass's tortious conduct occurred in the course of his employment.

B. Punitive Damages for Glass's Embezzlement

HSB argues that, even if Glass's conduct was within the scope of his employment for purposes of compensatory damages, it was not within the scope for purposes of the "complicity rule" for vicarious punitive damages.

Because the course of employment rule might lead to the assessment of punitive damages against an innocent employer, we analyze vicarious punitive damages under the more restrictive "complicity rule." *Briner v. Hyslop*, 337 N.W.2d 858, 866-67 (Iowa 1983). This rule is set forth in section 909 of the Second Restatement of Torts (1979):

> Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if,
>
> (a) the principal or a managerial agent authorized the doing and the manner of the act, or
>
> (b) the agent was unfit and the principal or a managerial agent was reckless in employing or retaining him, or
>
> (c) the agent was *employed in a managerial capacity and was acting in the scope of employment*, or
>
> (d) the principal or a managerial agent of the principal ratified or approved the act.

(Emphasis added.) Glass's position as president and CEO of the bank qualify him as an agent employed in a managerial capacity. Also, as noted above, there was sufficient evidence to support the conclusion Glass was acting within the scope of his employment. We therefore conclude Glass's conduct qualifies for vicarious punitive liability under the complicity rule.

HSB also argues the punitive damages award in this case was not supported by substantial evidence because "the bank itself is not sufficiently culpable to support a punitive damage award." This argument is not applicable under our complicity rule. As stated in comment b to section 909 of the Second Restatement of Torts (1979):

> *Although there has been no fault on the part of a corporation* or other employer, if a person acting in a managerial capacity either does an outrageous act or approves of the act by a subordinate, the imposition of punitive damages upon the employer serves as a deterrent to the employment of unfit persons for important positions.

(Emphasis added.) Because Glass was the president and CEO of HSB and his tortious actions were in the scope of his employment, the bank's culpability is immaterial.

C. Mental Anguish Damages

HSB argues the portion of the verdict assigning damages for mental anguish must be reversed because (1) such damages are not available for conversion and (2) the award was not supported by the evidence. Assuming, arguendo, that mental anguish damages are recoverable for the tort of conversion, we find insufficient evidence to support an award for such damages.

Damages for mental anguish were submitted to the jury as a part of the damages for conversion, not the damages associated with the claim of fraud. The limited testimony surrounding the damages for mental anguish reflected on Riggan's anger and frustration at how he had been treated by HSB, rather than his mental anguish over the conversion itself.

The district court characterized the record evidence supporting mental anguish damages as "very thin" and "not compelling." We agree with this assessment. Riggan did not consult a doctor or seek any medical treatment for his alleged mental anguish. He did not take any medications. He did not offer any expert testimony to verify his alleged mental anguish or the causal connection between his mental anguish and the conversion.

Riggan offered evidence that he met with Rehfuss and a member of clergy for an hour of fellowship and prayer about the situation, but Rehfuss indicated that Riggan's concern during the meeting "wasn't that his best friend had taken $130,000 from him." Instead, it was that the situation felt like a "bad Hitchcock movie where you think you have people helping that you don't and you think you know what's happening and you don't." This clearly reflects his mental anguish centered on the bank's misrepresentations, rather than the conversion itself.

The only testimony describing his mental anguish over the conversion was that he was "stunned," "speechless," and had "turned white" when the FBI investigator told him that Glass had embezzled $130,000 from his account. We find this evidence insufficient. *See Hoffman v. Nat'l Med. Enters.*, 442 N.W.2d 123, 128 (Iowa 1989) ("In short, merely being 'totally taken aback' or 'flabbergasted' simply does not constitute emotional distress, as a matter of law."). We therefore reverse the award for damages related to mental anguish.

D. Cross-Appeal for Duplicative Awards

The jury awarded punitive damages awards against Glass in the amount of $183,699.85. The jury also awarded punitive damages against HSB in the amount of $250,000 for Glass's conduct. The district court entered judgment on both rulings. However, in a posttrial ruling, the district court found the awards duplicative and entered judgment against Glass and HSB, jointly and severally, for $250,000. Riggan now cross-appeals, challenging the court's conclusion that these punitive damage awards were duplicative.

The district court entered judgment against Glass and HSB jointly and severally in order to avoid "a double recovery for the conduct of Ray Glass." However, the purpose of punitive damages "is to punish the wrongdoer rather than to compensate the victim." *Team Central, Inc. v. Teamco, Inc.*, 271 N.W.2d 914, 925 (Iowa 1978). Punitive damages levied against an employer for the actions of their managerial agent "serves as a deterrent to the employment of unfit persons for important positions." Restatement (Second) of Agency § 229 cmt. b (1979). The jury learned that Glass embezzled funds from numerous customers over several months. In light of this evidence, the jury indicated on

the special interrogatory form for punitive damages that Glass's conduct and HSB's conduct were not directed specifically at Riggan.

We find the punitive damages for Glass's conduct were not duplicative. Glass was punished for his actions, and the bank was punished in order to deter it from employing unfit persons for important positions and to deter it from giving one person unfettered power with little or no oversight. Therefore, we vacate that portion of the trial court's posttrial ruling which amended the judgment entry for punitive damages.

E. Sufficient Evidence to Support the Fraud Claim

To establish a claim of fraudulent misrepresentation, a plaintiff must prove

> (1) defendant made a representation to the plaintiff, (2) the representation was false, (3) the representation was material, (4) the defendant knew the representation was false, (5) the defendant intended to deceive the plaintiff, (6) the plaintiff acted in reliance on the truth of the representation and was justified in relying on the representation, (7) the representation was a proximate cause of plaintiff's damages, and (8) the amount of damages.

Gibson v. ITT Hartford Ins. Co., 621 N.W.2d 388, 400 (Iowa 2001).

The district court instructed the jury that to recover on this claim Riggan had to prove all of the following: (1) from early March 2003 forward, HSB made representations to Riggan that he had not been a victim of embezzlement of funds by Glass; (2) the representations were false; (3) the representations were material; (4) HSB knew the representations were false; (5) HSB intended to deceive Riggan; (6) Riggan acted in reliance on the truth of the misrepresentations and was justified in relying on the misrepresentations; (7) the

representation was a proximate cause of Riggan's damage; and (8) the amount of damage.

On appeal HSB does not contend the evidence was insufficient to support the first five elements of this fraud claim or the proximate cause element. However, HSB does claim there was insufficient evidence to prove Riggan "was damaged in any way" by HSB's misrepresentations because, as HSB stated in its motion for directed verdict, "what are the damages he suffered as a result? He's been paid back. And, therefore, there is no evidence to support the claim of fraud."

We reject this argument. HSB did not relieve itself from liability for Garetson's fraudulent misrepresentations by simply giving back the money that was the subject of the misrepresentations once the lawsuit was filed.

HSB also claims the jury verdict for fraud should be reversed because Riggan failed to prove he relied on any misrepresentations by HSB. We need not address this issue on appeal because "[a] motion for judgment notwithstanding the verdict must stand or fall on grounds urged in the movant's earlier motion for directed verdict." *Ragee v. Archbold Ladder Co.*, 471 N.W.2d 794, 798 (Iowa 1991). Because this argument was not raised in HSB's motion for directed verdict, and was only raised in its motion for judgment notwithstanding the verdict, this argument is not properly preserved for our review. *Id.*; *Miller v. Young,* 168 N.W.2d 45, 49-50 (Iowa 1969) (contentions raised for the first time in movant's motion for judgment notwithstanding the verdict may not be urged on appeal).

Even if this argument was preserved, we find there was sufficient evidence to generate a jury question. Our review of the evidence, in a light most favorable to Riggan, finds substantial support for the claim that it was Garetson's intent to keep from Riggan the fact he had been a victim of embezzlement. Garetson had a detailed report indicating how the proceeds from Riggan's loan flowed into Glass's personal accounts. Despite this report, and in the face of multiple inquiries from Riggan and Rehfuss, Garetson repeatedly indicated everything was fine with Riggan's account. Riggan justifiably relied on these statements for a time and did not pursue a legal remedy, but he eventually took action after the FBI informed him his accounts were affected by the embezzlement. If not for the information from the FBI, Riggan would not have pursued this claim and would likely have never known he had lost over $130,000.

F. Sufficient Evidence to Support the Punitive Damage Award

HSB contends there was not sufficient evidence to support an award for punitive damages for the conduct of HSB's "other employees." HSB contends the misrepresentations were not "sufficiently egregious" to support punitive damage awards. We disagree.

We review an award of punitive damages for correction of errors at law. *Wolf v. Wolf*, 690 N.W.2d 887, 893 (Iowa 2005). Under Iowa law, an award of punitive damages is proper only if the plaintiff proves "by a preponderance of clear, convincing, and satisfactory evidence" that "the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another." Iowa Code § 668A.1(1)(a) (2005). Punitive damages are not awarded "because a plaintiff deserves them, but as punishment, to deter the

defendant and others from repeating *similar outrageous conduct*. . . . The conduct must be egregious." *Schultz v. Security Nat'l Bank*, 583 N.W.2d 886, 888 (Iowa 1998) (internal quotations omitted).

Sufficient evidence supports the conclusion that, after the revelation of the embezzlement, Garetson hindered, delayed, and obstructed Riggan's efforts to discover the missing funds. Eventually, he misled Riggan about his research. Even after Riggan learned from the FBI that his accounts had been mishandled, HSB was uncooperative until Riggan filed this lawsuit. We find there is clear, convincing, and satisfactory evidence sufficient to support the punitive damages award.

G. Were the Punitive Damages Awards Excessive?

HSB claims that both punitive damage awards violate the Due Process Clause of the Fourteenth Amendment because they are excessive. Appellate review for excessiveness is de novo. *Wolf*, 690 N.W.2d at 894. An appellate court reviewing a punitive damage award for excessiveness should consider three "guideposts." *BMW of N. Am., Inc. v. Gore,* 517 U.S. 559, 574-75, 116 S. Ct. 1589, 1598, 134 L. Ed. 2d 809, 826 (1996). These guideposts are:

> (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408, 418, 123 S. Ct. 1513, 1520, 155 L. Ed. 2d 585, 601 (2003).

Degree of reprehensibility. A number of factors should be considered in determining the reprehensibility of HSB's conduct: whether (1) the harm caused

was physical as opposed to economic, (2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others, (3) the conduct involved repeated actions or was an isolated incident, (4) the harm was the result of intentional malice, trickery, or deceit, or mere accident, and (5) whether the target of the conduct had financial vulnerability. *See id*. at 419, 123 S. Ct. at 1521, 155 L. Ed. 2d at 602.

We find ample evidence of reprehensible activity supports both awards. Glass's embezzlement activities spanned many months and involved deceitful practices to customers who were financially vulnerable to the bank that controlled their loan. Garetson suppressed evidence of Riggan's losses through numerous deceitful misrepresentations. If not for the information from the FBI, Riggan may have never found out Glass's embezzlement had cost him over $130,000.

Disparity between actual or potential harm and the punitive damage award. "[C]ourts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *Id.* at 426, 123 S. Ct. at 1524, 155 L. Ed. 2d at 606. The United States Supreme Court has indicated that "[s]ingle-digit multipliers are more likely to comport with due process" than larger ratios. *Id*. at 425, 123 S. Ct. at 1524, 155 L. Ed. 2d at 606.

The jury concluded actual damages associated with the conversion were $183,699.85.[4] The corresponding $250,000 awarded by the jury for this tort was

[4] The fact that HSB replaced most of the stolen funds after this lawsuit was commenced does not reduce the actual damages from the embezzlement. Also, reducing the compensatory verdict by $13,300 for the mental anguish claim does not change the ratio.

less than a ratio of two to one. The jury also awarded $250,000 for the subsequent fraudulent misrepresentations made by other employees at HSB. The jury determined damages related to the fraud were more than $37,000. This creates a ratio of less than seven to one. We conclude the total award of punitive damages of $500,000 provided an appropriate "sting" to an entity with a net worth of approximately twenty-two million dollars. *See Hamilton v. Mercantile Bank of Cedar Rapids*, 621 N.W.2d 401, 408 (Iowa 2001) (noting a "substantial sting" of punitive damages to a bank was necessary to deter it from profiting in the future by ignoring and impairing the rights of trust beneficiaries).

Comparing the punitive-damage award to civil or criminal penalties authorized in comparable cases. Another guideline to consider is the disparity between the punitive damage award and the civil or criminal penalties imposed for comparable misconduct. *Gore*, 517 U.S. at 583, 116 S. Ct. at 1603, 134 L. Ed. 2d. at 831. Comparing the punitive damage award here to other penalties provided by law, we note Glass pled guilty to the federal offenses of embezzlement and money laundering. These crimes were punishable, respectively, by up to thirty years and ten years imprisonment, and fines up to one million dollars and $250,000. HSB's total punitive damage awards are well within the criminal penalties imposed for comparable misconduct.

In light of the foregoing, we conclude both punitive damage awards were supported by clear and convincing evidence and were not grossly excessive.

III. Arguments Not Preserved for Review

HSB contends there was no evidence to support $3671.91 of the $156,634.85 awarded by the jury in compensatory damages for the converted

property. HSB raised this argument in its posttrial motion for judgment notwithstanding the verdict, but the district court did not address this argument in its ruling on posttrial motions. Our rules of error preservation are well established. Before an issue may be raised and adjudicated on appeal, the issue must have been raised before and decided by the district court. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). When the district court fails to rule on an issue properly raised by a party, that party must file a post-ruling motion bringing the omission to the court's attention. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). If the party fails to do so, error will not be preserved. *Id.* Here, the district court did not rule on HSB's claim that there was no evidence to support $3671.91 of the compensatory damages, and HSB did not bring the omission to the court's attention via a post-ruling motion. Accordingly, error on this issue has not been preserved.

HSB also asks us to find, as a matter of law, that Riggan suffered no damages because the bank ultimately could not enforce the loans to the extent that Glass added to them without Riggan's authorization. HSB did not raise this argument to the district court, so this issue has not been preserved for our review. *See id.* (noting appellate review normally is limited to issues both raised in and decided by the district court).

IV. Conclusion

This case is remanded for an entry of judgment that does not reflect the compensatory damages awarded for mental anguish. We also remand for the determination of attorney fees and distribution to the Civil Reparations Trust Fund and the claimant pursuant to Iowa Code section 668A.1(2)(b) with interest

as provided by law. *See Revere Transducers, Inc. v. Deere & Co.*, 637 N.W.2d 189, 191 (Iowa 2001).[5]

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

[5] If a jury determines punishable conduct of the defendant is not directed specifically at the plaintiff, as the jury found here, Iowa Code section 668A.1(2)(b) provides for a share of the punitive damages to be paid to the Iowa Civil Reparations Trust Fund:

> [A]fter payment of all applicable costs and fees, an amount not to exceed twenty-five percent of the punitive or exemplary damages awarded may be ordered paid to the claimant, with the remainder of the award to be ordered paid into a civil reparations trust fund administered by the state court administrator.