Florida State University Law Review

Volume 6 | Issue 1 Article 11

Winter 1978

Ingram v. Pettit, 340 So. 2d 922 (Fla. 1976)

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Tort Law—NEGLIGENT INTOXICATED DRIVER LIABLE FOR PUNITIVE DAMAGES WITHOUT PROOF OF ABNORMAL OR RECKLESS DRIVING—*Ingram v. Pettit*, 340 So. 2d 922 (Fla. 1976).

Margaret Ingram was injured when her car was struck from the rear by a car driven by Robert Pettit. Ingram was stopped at an intersection on a well-lighted four-lane highway at night when the accident occurred; Pettit was driving at an estimated speed of thirty to thirty-five miles per hour. A breathalyzer test taken after the accident showed Pettit's blood alcohol content to be twenty-six hundredths of a percent (.26%);[1] there was no indication, however, that Pettit was operating his car recklessly prior to the accident. Ingram sued for compensatory and punitive damages. The trial court directed a verdict for Ingram as to Pettit's liability for negligence but against her on the issue of punitive damages. When the jury was later unable to reach a verdict for compensatory damages, the court declared a mistrial. Upon retrial, the judge granted summary judgment denying punitive damages. Ingram appealed the denial of punitive damages, arguing that voluntary intoxication coupled with a negligent act provided a basis for awarding punitive damages.[2] The First District Court of Appeal affirmed the trial court decision, holding that Pettit's negligence was not the culpable or gross negligence required to sustain an award of punitive damages.[3] The Florida Supreme Court, in an opinion by Justice England, reversed, holding that state policy now allows juries to award punitive damages "where voluntary intoxication is involved in an automotive accident in Florida without regard to external proof of carelessness or abnormal driving . . . ."[4]

Prior to this decision, Florida treated the intoxicated driver in accordance with long-established rules for punitive damages. *Ingram v. Pettit* stands as a radical departure from prior practice and may significantly alter the tort liability of drivers who cause accidents while intoxicated even though they may have been observing ordinary precautions. Courts will be required to consider and award punitive damages in a greater number of accident cases than before. Another possible result of *Ingram* is that plaintiffs who

1. Legal presumption of intoxication arises at .10% blood alcohol content. FLA. STAT. § 322.262(2)(c) (1977).

2. Ingram v. Pettit, 303 So. 2d 703 (Fla. 1st Dist. Ct. App. 1974).

3. *Id.* at 704.

4. Ingram v. Pettit, 340 So. 2d 922, 924 (Fla. 1976). The court added a caveat: "[P]rovided always the traditional elements for punitive liability are proved, including proximate causation and an underlying award of punitive damages."

meet the statutory no-fault threshold may be encouraged even more to sue in tort if the driver charged with the accident was intoxicated.[5] Additionally, a defendant may feel greater pressure to settle if he has been imbibing prior to the mishap.

This comment will briefly examine the development of the law of punitive damages in Florida and explore what effect *Ingram* may have on the traditional prerequisites for assessing punitive damages against an intoxicated driver. Prior to *Ingram,* negligence equivalent to criminal misconduct was required before imposing punitive damages on the drinking driver. A clear showing that the defendant's intoxication was the proximate cause of the accident had to be shown before punitive damages could be awarded. It was not sufficient to show that the driver was drunk when the collision occurred. This comment will trace the evolution and demise of this higher standard of misconduct; it will discuss how *Ingram* has cast doubt on the efficacy of proximate causation proof in tort recovery of punitive damages against drunk drivers.

The idea of punitive damages has existed at least since Biblical times.[6] Several theories have been advanced to explain its later development. One theory is that the practice grew out of the early English courts' refusal to grant new trials because of excessive damages for injuries in cases which involved malice, oppression, gross fraud or negligence. Another theory is that the practice arose to counterbalance the courts' failure to recognize many wrongs which should be considered in awarding damages. A third theory is that punitive damages provided compensation for injured feelings.[7] Additionally, punitive damages provided private citizens with a substitute for personal revenge and provided society with a means of regulating undesirable conduct which, because actual damages were slight, would otherwise go unpunished.[8] Punitive damages were necessary in those cases in which compensatory damages were merely the "payment of a bargain sale price" for an advantage gained by the defendant.[9] The early Florida case of *Smith v. Bagwell* recog-

5. Before a victim can sue in tort under the Florida no-fault law he must suffer one of the following: loss of a body member; permanent loss of a bodily function; permanent injury; significant permanent scarring or disfigurement; a serious, non-permanent injury affecting normal lifestyle for at least ninety days; or death. FLA. STAT. § 627.737(2)(a)-(f) (1977).

6. Walther & Plein, *Punitive Damages: A Critical Analysis:* Kink v. Combs, 49 MARQUETTE L. REV. 369, 369 (1975).

7. J. STEIN, DAMAGES AND RECOVERY—PERSONAL INJURY AND DEATH ACTIONS § 183, at 359-60 (1972).

8. Morris, *Punitive Damages in Tort Cases,* 44 HARV. L. REV. 1173, 1183 (1931).

9. *Id.* at 1185. The author used the examples of wrongful appropriation of another's property or use of another's land. *Id.* at 1185-86.

nized that punitive damages "blend together the interests of society and of the aggrieved individual, and are not only a recompense to the sufferer but a punishment to the offender and an example to the community."[10] Later development of the doctrine emphasized that punitive damages were awarded primarily to punish the offender and to deter others from similar conduct; any extra compensation to the plaintiff was of secondary importance.[11] Florida decisions followed this line of reasoning and stressed the punitive and deterrent aspects of punitive damages.[12]

Regardless of the purpose for awarding punitive damages, most authorities agree on the type of conduct required to assess such damages. The conduct must be that which is characterized by maliciousness, willfulness, wantonness, or gross negligence or recklessness so flagrant that it amounts to an intentional violation of another's rights.[13] The early Florida decision, *Florida Southern Railway v. Hirst*[14] explained the standard of conduct:

> Exemplary damages can be allowed in cases of negligence, as distinguished from those of intentional injury, only where . . . the

10. 19 Fla. 117, 121 (1882).

11. J. STEIN, *supra* note 7, at § 177.

12. Winn & Lovett Grocery Co. v. Archer, 171 So. 214, 221 (Fla. 1936). ("Exemplary damages are given solely as a punishment where torts are committed with fraud, actual malice or deliberate violence or oppression, or when the defendant acts wilfully, or with such gross negligence as to indicate a wanton disregard of the rights of others.") Ross v. Gore, 48 So. 2d 412, 414 (Fla. 1950) ("such damages are allowed, not as compensation to a plaintiff, but as a deterrent to others inclined to commit a similar offense . . . ."). *See also* Dr. P. Phillips & Sons, Inc. v. Kilgore, 12 So. 2d 465 (Fla. 1943); Margaret Ann Super Markets, Inc. v. Dent, 64 So. 2d 291 (Fla. 1953).

The punitive and deterrent aspects of punitive damages are particularly evident when their treatment under modern liability insurance policy practice is considered:

> The policy considerations in a state where, as in Florida . . . , punitive damages are awarded for punishment and deterrence, would seem to require that the damages rest ultimately as well [as] nominally on the party actually responsible for the wrong. If that person were permitted to shift the burden to an insurance company, punitive damages would serve no useful purpose.

Northwestern Nat'l Cas. Co. v. McNulty, 307 F.2d 432, 440 (5th Cir. 1962). This reasoning was followed in Nicholson v. American Fire & Cas. Ins. Co., 177 So. 2d 52, 54 (Fla. 2d Dist. Ct. App. 1965) ("Based on this rationale of punitive damages, we are convinced that to allow drivers of automobiles to shift the responsibility for this type of penalty [punitive damages] to an insurance company contravenes the public policy of this state.") *See also* Suarez v. Aguiar, 351 So. 2d 1086 (Fla. 3d Dist. Ct. App. 1977) (uninsured motorist insurance in Florida does not cover punitive damages). *But see* Sterling Ins. Co. v. Hughes, 187 So. 2d 898 (Fla. 3d Dist. Ct. App. 1966), and Travelers Ins. Co. v. Wilson, 261 So. 2d 545 (Fla. 4th Dist. Ct. App. 1972), both of which allowed recovery from the insurance company when the insureds were only vicariously liable for punitive damages.

13. J. STEIN, *supra* note 7, § 185, at 366; C. MCCORMICK, HANDBOOK ON THE LAW OF DAMAGES § 79 (1935).

14. 11 So. 506 (Fla. 1892).

> negligence is of a gross and flagrant character, evincing reckless disregard of human life, . . . or there is that entire want of care which would raise the presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others which is equivalent to an intentional violation of them.[15]

This description was later adopted by the Florida Supreme Court in *Cannon v. State* as a definition of the "culpable negligence" required for a conviction of manslaughter.[16] Culpable negligence—negligence equivalent to criminal misconduct—became the standard of negligence required to award punitive damages. In a later case, driving an automobile with knowledge of a physical condition which made driving unsafe was held to provide the "criminal negligence" necessary to sustain a manslaughter conviction.[17] This holding was stated explicitly in *Bridges v. Speer,* when the Florida Supreme Court held that "where one has notice or knowledge of the existence of a physical impairment which may come on suddenly and destroy his power to control an automobile, it is negligence to an extreme degree for such person to operate such vehicle."[18] Intoxi-

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15. *Id.* at 513.

16. 107 So. 360 (Fla. 1926). The *Cannon* court stated:

> This definition of the character of negligence necessary to be shown to authorize the recovery of punitive damages may well be applied as a definition of "culpable negligence" as used in the statute (5039) [of the Revised General Statutes of 1920, now FLA. STAT. § 782.07 (1977)] defining manslaughter.

Id. at 363.

A manslaughter conviction could also have been sustained under § 5563 of the Revised General Statutes, as amended by ch. 9269, 1923 Fla. Laws 297: "[A]nd if the death of any human being be caused by the operation of a motor vehicle by any person while intoxicated, such person shall be deemed guilty of manslaughter . . . ." [now FLA. STAT. § 860.01 (1977)].

Cannon involved a woman who was charged with manslaughter in that "by her act, procurement or culpable negligence she recklessly drove an automobile against and upon the body of (the victim) . . . causing her death." 107 So. at 361. The court admitted testimony from witnesses which tended to show that the defendant was under the influence of alcohol at the time of the accident. But the court held that being "under the influence" was not sufficient to support a charge of manslaughter under § 5563 as amended. It did sustain the indictment against the defendant's motion to quash, however, by using § 5039, which defined culpable negligence.

17. Johnson v. State, 4 So. 2d 671 (Fla. 1941). Defendant had voluntarily refrained from sleeping for more than thirty hours; knowing his "condition of stupor," defendant drove his car, fell asleep at the wheel, and struck and killed a pedestrian.

18. 79 So. 2d 679, 681 (Fla. 1955). The doctrine was applied in this case to the estate of a driver who knew that her eyesight was defective, that her depth perception was bad, and that she saw objects double at times, but who nevertheless operated her automobile recklessly in attempting to pass on the right an automobile ahead of her which was turning right. The resulting accident caused the driver's death and injured the plaintiff-passenger. *See also*

cation, however, was not held to be a "physical impairment" which would make driving so unsafe as to constitute culpable negligence.

The *Cannon* court held that driving while intoxicated constituted culpable negligence only when the operation of an automobile by a driver in that condition resulted in the death of a person; if there was not a death, driving while intoxicated was merely a misdemeanor and did not constitute culpable negligence.[19] Evidence of intoxication was admissible in those cases which resulted in a death on "the theory that a driver so exhilarated is likely to be abnormally reckless."[20] Such evidence of intoxication, however, was not sufficient in itself to constitute culpable negligence; proof of reckless conduct or other flagrant acts was also required.[21] In *Smith v. State,* the defendant driver was charged with operating a motor vehicle "unlawfully and in a culpably negligent manner" which resulted in the death of two people.[22] The victims were walking across an unlighted highway at night, wearing dark clothing; the defendant, momentarily blinded by the lights of an approaching truck, did not see the victims until it was too late to avoid them. The jury con-

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Farrey v. Bettendorf, 96 So. 2d 889 (Fla. 1957) (motorcycle driver taking eyes off the road for a substantial length of time could be charged with knowledge that such an act is so dangerous as to amount to gross negligence); Malcolm v. Patrick, 147 So. 2d 188 (Fla. 2d Dist. Ct. App. 1962) (driver with epilepsy could be charged with knowledge that he might suffer loss of consciousness at any time); Martin v. Clum, 142 So. 2d 149 (Fla. 3d Dist. Ct. App. 1962) (knowledge of wet brakes is sufficient to submit the question of gross negligence to the jury in a guest statute case). *But see* Baker v. Hausman, 68 So. 2d 572 (Fla. 1953) (negligence will not be imputed to one who loses consciousness suddenly without knowledge that it might occur).

19. 107 So. at 362. The *Cannon* court distinguished between "under the influence of intoxicating liquor" and "intoxicated" when applying the manslaughter provision of § 5563 of the Revised General Statutes. The court held that under § 5563, only drivers who are "intoxicated" are subject to manslaughter charges, whereas those drivers who are "under the influence" are not subject to manslaughter charges, even if a death results from an accident caused by a driver "under the influence." In Frazee v. Gillespie, 124 So. 6 (Fla. 1929), the court held that driving while intoxicated was not negligence at all unless it was accompanied by actual negligence in the operation of the car resulting from the intoxication or influence of intoxicating liquors. Pettit asserted this proposition as a defense to punitive damages, but the court disallowed his argument because the *Frazee* court was divided on this question and made no decision. The concurring opinion of Justice Strum, which was the basis for the divided court in the *Frazee* decision, stated that driving while intoxicated in violation of § 5563 of the Revised General Statutes [now FLA. STAT. § 860.01 (1977)] was prima facie negligence and actionable negligence if the operation of the vehicle in that condition was the proximate cause of injury, even if death did not result. Justice Strum stated that driving while intoxicated could in itself provide grounds for negligence; however, he did not state that driving while intoxicated provided grounds for punitive damages.

20. Taylor v. State, 46 So. 2d 725 (Fla. 1950).

21. "It is sometimes said that . . . intoxication is negligence in itself; but this is scarcely correct, since a drunken man may still behave in a perfectly reasonable manner." W. PROSSER, LAW OF TORTS 154 (4th ed. 1971).

22. 65 So. 2d 303 (Fla. 1953).

victed the driver of manslaughter after determining that he was culpably negligent because of his intoxicated condition. The Florida Supreme Court reversed the conviction and held that evidence of intoxication alone "cannot make an act wanton and reckless that was not otherwise so."[23] The court specifically noted the lack of reckless conduct by the driver and the absence of other circumstances which would constitute culpable negligence when accompanied by evidence of intoxication. It was well-established that something more than the driver's intoxication was required to sustain a manslaughter conviction, or correspondingly to assess punitive damages, when an intoxicated driver was charged with culpable negligence. In *Carraway v. Revell,* the Florida Supreme Court stated that the culpable negligence required to assess punitive damages and to convict of manslaughter was higher than the "gross negligence" required to maintain an action under the Florida guest statute, further elevating the degree of negligence required to assess punitive damages.[24]

Regardless of the degree of negligence or the type of conduct required for punitive damages, the negligent conduct must be the proximate cause of the injury before liability can be found or punitive damages assessed. If the negligent conduct involves the violation of a statute, as does driving while intoxicated or under the influence, the violation of a statute is prima facie evidence of negligence; however, there is no presumption of negligence upon a showing of intoxication, nor is there a presumption that the injury is caused by the intoxication.[25] There is no right to punitive damages,

23. *Id.* at 306.

24. 116 So. 2d 16 (Fla. 1959). The Florida guest statute was ch. 18033, 1937 Fla. Laws 671. Prior to *Carraway,* gross negligence sufficient to sustain an action under the guest statute was fully equated to the willful and wanton negligence required to assess punitive damages. For two views of the degree of wantonness or recklessness required to constitute culpable negligence to sustain a manslaughter conviction, *compare* Peel v. State, 291 So. 2d 226 (Fla. 1st Dist. Ct. App. 1974) *with* Filmon v. State, 336 So. 2d 586 (Fla. 1976). Peel's failure to keep a proper lookout and running a stop sign while driving below the speed limit but at an estimated speed of 40 to 50 miles per hour, coupled with evidence of intoxication, was insufficient to sustain a conviction. Filmon's speed of 70 to 90 miles per hour, his abrupt lane changes prior to the accident, his entering the intersection with an amber light and his failure to slow down at the intersection, coupled with a blood alcohol content of .165%, was sufficient to sustain a conviction.

25. DeJesus v. Seaboard Coast Line R.R., 281 So. 2d 198 (Fla. 1953). Driving while intoxicated or under the influence violates FLA. STAT. § 860.01 (1977). The court in *DeJesus* held that violations of traffic regulations may be considered only as prima facie evidence of negligence. In footnote five of the *Ingram* decision, the court stated that violation of a traffic law raised a rebuttable presumption of negligence in accordance with Allen v. Hooper, 171 So. 513 (Fla. 1937), *approved,* Clark v. Sumner, 72 So. 2d 375 (Fla. 1954). But the *Allen* and *Clark* decisions both stated that the violation of a traffic law is prima facie evidence of

nor any right to recovery at all, unless actual negligence is proved and the negligence is shown to be the proximate cause of the injury.[26] In discussing intoxication as a proximate cause, the court in *Frazee v. Gillespie* emphasized that "for there to be a causal connection between the intoxicated condition and the damage done, such intoxication must have manifested itself by actual negligence or wrongful act of some sort."[27] Driving while intoxicated in itself has not been held to be the proximate cause of an injury unless the intoxication is manifested by unsafe driving which causes the accident. In addition to proximate cause, Florida has traditionally required a finding of actual or compensatory damages before allowing punitive damages.[28]

These traditional elements—willful or wanton misconduct to the level of culpable negligence, proximate cause, and actual or compensatory damages—have heretofore been required in Florida to assess punitive damages. The Florida Supreme Court in *Ingram v. Pettit* has altered these traditional elements in cases in which an intoxicated driver causes an accident.[29] The court stated in its opinion that "juries may award punitive damages where voluntary intoxication is involved in an automotive accident in Florida without regard to external proof of carelessness or abnormal driving, provided always the traditional elements for punitive liability are proved, including proximate causation and an underlying award of compensatory damages."[30] The court asserted that it required proof of the traditional elements; however, reckless conduct to the level of culpable negligence and proof of intoxication as the proximate

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negligence. Generally, a rebuttable presumption of negligence stands as proof of negligence and requires a directed verdict unless evidence is offered to disprove it; prima facie evidence of negligence requires a further showing of the element of proximate cause and the other elements of actionable negligence. In Bryant v. Swarts, 227 So. 2d 715 (Fla. 4th Dist. Ct. App. 1969), citing *Clark*, the court stated that "violation of a traffic statute or ordinance is prima facie evidence of negligence that may be overcome by other facts and circumstances in the cause, but it does not create a presumption of negligence . . . ."

26. Precisionware, Inc. v. Madison County Tobacco Warehouse, Inc., 411 F.2d 42 (5th Cir. 1969).

27. Frazee v. Gillespie, 124 So. 6, 8 (Fla. 1929).

28. McLain v. Pensacola Coach Corp., 13 So. 2d 221 (Fla. 1943). *See also* Hutchinson v. Lott, 110 So. 2d 442 (Fla. 1st Dist. Ct. App. 1959) (if punitive damages are awarded, they must bear a reasonable relation to the amount the defendant is able to pay); Elyria-Lorain Broadcasting Co. v. Nat'l Communications Indus., Inc., 300 So. 2d 716 (Fla. 1st Dist. Ct. App. 1974) (an award of nominal compensatory damages will support a much higher award of punitive damages); Lehman v. Spencer Ladd's, Inc., 182 So. 2d 402 (Fla. 1966) (evidence of a defendant's wealth is admissible to determine his ability to pay; however, if there are multiple defendants, separate verdicts should be used to assess punitive damages against each according to his ability to pay).

29. Ingram v. Pettit, 340 So. 2d 922 (Fla. 1976).

30. *Id.* at 924.

cause were not present in *Ingram*. The old requirement for punitive damages and for culpable negligence was that the intoxication must have been evidenced by other reckless conduct of the type lacking in *Smith v. State;* Pettit, however, was operating his automobile normally prior to the accident.[31] By ruling that no "external proof of carelessness or abnormal driving" is required and by allowing recovery from Pettit in this case, the court has eliminated one of the traditional elements required to assess punitive damages against an intoxicated driver. Simple negligence without reckless driving can now be proved, and if the negligence is accompanied by intoxication, the jury may be asked to award punitive damages. Ingram argued for this result on the basis of decisions in other jurisdictions.

What Ingram chose not to argue, however, and what the supreme court chose to ignore, is that the majority of the cited cases involved reckless conduct of the degree which would have sustained punitive damages under Florida's traditional formula.[32] In one of the two

31. Although Pettit apparently made no attempt to avoid the collision, there was no evidence that he was driving recklessly or in any way evidencing a drunken condition in the operation of his car prior to the impact.

32. *See* Petitioner's Brief on the Merits, at 8-20, Ingram v. Pettit, 340 So. 2d 922 (Fla. 1976), *citing* Sebastian v. Wood, 66 N.W. 2d 841 (Iowa 1954); Focht v. Rabada, 268 A.2d 157 (Pa. 1970); Ross v. Clark, 274 P. 639 (Ariz. 1929); Southland Broadcasting Co. v. Tracy, 50 So. 2d 572 (Miss. 1951); Madison v. Wigal, 153 N.E.2d 90 (Ill. App. Ct. 1958); Infeld v. Sullivan, 199 A.2d 693 (Conn. 1964); Dorn v. Wilmarth, 458 P.2d 942 (Ore. 1969); Miller v. Blanton, 210 S.W.2d 294 (Ark. 1948); Willis v. Elledge, 413 S.W.2d 636 (Ark. 1967); and Colligan v. Fera, 349 N.Y.S. 2d 306 (Sup. Ct. 1973).

In *Sebastian,* the defendant driver pleaded guilty to driving while intoxicated. Testimony established that he was unsteady on his feet, incoherent in his speech, and had weaved completely into the left lane of traffic four or five times prior to the accident. He was charged with failure to keep a proper lookout, failure to have his car under control, and failure to yield one-half of the road. The plaintiff's amended complaint alleged that the defendant "knowingly and willfully drank intoxicating liquor, became intoxicated and thereafter knowingly and willfully drove his vehicle in a reckless, wanton, and grossly negligent manner, all of which was the *proximate cause* of the accident . . . ." 66 N.W.2d at 843 (emphasis added). The defendant was obviously driving carelessly and recklessly prior to the accident.

In *Focht,* the court ruled that driving under the influence may under certain unspecified circumstances be deemed "outrageous conduct" and "a reckless indifference to the interests of others" sufficient to allow punitive damages. The court did not consider the factual circumstances of the case but gave an example of an intoxicated driver speeding down a thoroughfare crowded with pedestrians as a situation which would allow punitive liability. This example seemed to suggest that some sort of reckless conduct was required.

In *Ross,* the evidence as to the defendant's condition was in dispute; however, the defendant was driving in heavy traffic at a reckless speed (50 to 60 miles per hour). Defendant lost control and crossed completely into the other lane of traffic; the court thought punitive damages of $3000 was "pretty high" but sustained the award as an example and a warning.

In *Southland Broadcasting,* the driver and the plaintiff-passenger were so intoxicated that there was conflicting testimony about who was driving. The automobile was driven on the wrong side of the highway at a speed of 80 to 85 miles per hour; the driver lost control on a curve; and the car left the road, turned over several times, and stopped approximately 720 feet away. An award of punitive damages was sustained.

cases which did not involve reckless conduct, the defendant did not object during the trial to the submission of punitive damages to the jury; the supreme court, therefore, did not decide the issue of whether the evidence was sufficient to do so.[33] In the other case which did not involve reckless conduct, the court equated driving while intoxicated with "gross, willful and wanton negligence" and found that violation of a drunken-driving statute was a crime and was "morally culpable" conduct sufficient to award punitive damages.[34] The Florida Supreme Court could have held that violation of a statute is culpable conduct in itself. Instead, the court relied merely on "state policy" as evidenced by the legislature's increasingly more severe laws against driving while intoxicated in reaching its decision to eliminate "carelessness or abnormal driving" as a prerequisite to assessing punitive damages.[35]

In *Madison*, the defendant was driving over 50 miles per hour in a 35 mile per hour zone; he crossed into the other lane of traffic on a flat, straight, four-lane road. Punitive damages were sustained.

In *Infeld*, the defendant admitted in his answer that he ran into the plaintiff while driving at an unreasonable speed. He also admitted that he was under the influence of intoxicating liquor and that he was completely to the left of the center of the highway. The defendant left the scene of the accident in an attempt to avoid responsibility. Other testimony evidenced that the defendant was swerving back and forth, speeding, and driving in the wrong lane. An award of punitive damages was upheld.

In *Dorn*, the defendant testified that he drank 10 highballs and did not remember his car leaving the road, crashing through the plaintiff's bedroom wall, and knocking her from her bed. An award of punitive damages was sustained.

In *Miller*, the defendant was driving his car on the wrong side of the road over the crest of a blind hill; he was charged with reckless driving and pleaded guilty. An award of punitive damages was upheld over a dissent which suggested that since malice could be inferred from a "conscious indifference in the face of a discovered peril," the defendant should not be liable for punitive damages since he tried to avoid the accident once he saw the other car.

In each of the foregoing cases, the defendant was operating his car recklessly as evidenced by excessive speed, weaving into the opposing lane of traffic, or complete loss of control. The cases are distinguishable on their facts from *Ingram* and probably would have provided the element of reckless driving or other serious misconduct required to sustain punitive damages under Florida's traditional formula.

33. Willis v. Elledge, 413 S.W.2d at 638. In *Willis*, most similar factually to *Ingram*, the defendant, while driving well within the speed limit, struck the rear of a car stopped for traffic; there was no evidence of any other type of hazardous driving. Although the court did not decide the issue, its discussion of other cases suggested that perhaps in *Willis* the conduct was not sufficiently reckless to justify punitive damages. Since no objection was made at trial, however, the court could only award a remittitur.

34. Colligan v. Fera, 349 N.Y.S.2d at 309-10. Defendant ran into plaintiff's car while it was parked along a highway. In reaching its decision, the court considered the manner in which the impact occurred, an empty liquor bottle found in defendant's car, and the plaintiff's testimony regarding defendant's condition.

35. 340 So. 2d at 925. The court's desire to further discourage intoxicated driving by allowing the issue of punitive damages to be submitted to the jury when intoxicated drivers are involved in accidents is justifiable. The authorities cited in footnote nine of the *Ingram* opinion clearly indicate the severity of the problem the intoxicated driver poses to society.

By eliminating the requirement that the intoxication must be evidenced by "carelessness or abnormal driving," the supreme court may have also eliminated the traditional requirement that intoxication must be the proximate cause of an accident if punitive damages are to be assessed on the grounds of a driver's intoxication. The facts of *Ingram* suggest that the accident was caused by Pettit's simple carelessness or inattention to the road ahead, a not infrequent cause of accidents involving completely sober drivers. There is no evidence in the traditional sense of reckless driving that Pettit's intoxication caused the accident; yet the court ruled that punitive damages should be allowed "provided always the traditional elements for punitive liability are proved, including proximate causation . . . ."[36] Justice Sundberg's dissent suggests two possible interpretations of the court's holding. If the supreme court intends punitive damages to be based on intoxication which is the proximate cause of an accident, then a showing of intoxication as proximate cause theoretically remains an element. In *Ingram v. Pettit,* however, there was no showing that Pettit's intoxication caused the accident: intoxication as proximate cause seems to be missing in this particular situation. Seemingly, the jury was to consider punitive damages simply because Pettit happened to be intoxicated. If this second interpretation of the court's holding—that intoxication need not be the proximate cause but that the presence of intoxication justifies punitive damages—is intended, then the traditional tort requirement that the wrong complained of must be the cause of the injury before damages can be assessed has been discarded. Instead, causation is automatically imputed to the intoxication of a driver who causes an accident in that condition. As Justice Sundberg said in his dissenting opinion, "notwithstanding the lip service paid to it, the concept of proximate causation has gone by the boards."[37]

The Florida Supreme Court in *Ingram v. Pettit* has made a major

Since 1950, the number of traffic accidents involving a driver who had been drinking expressed as a percentage of the total number of traffic accidents has maintained a fairly constant level ranging from 14.9% in 1955 and 1956 to 7.3% in 1971; the average for 1971-75 is 8.3%, with a high of 9.6% in 1975. The problem becomes more apparent when the involvement of drinking drivers in fatal accidents is considered. Since 1950, that percentage has maintained a significantly higher level than the overall accident percentage; the trend in recent years is particularly disturbing—the involvement of intoxicated drivers in fatal accidents jumped from 19.1% in 1971 to 29.2% in 1972, 33.0% in 1973, 28.5% in 1974, and 34.3% in 1975. Statistics compiled from DEP'T OF HIGHWAY SAFETY AND MOTOR VEHICLES, TRAFFIC ACCIDENT FACTS (1971, 1972, 1973, 1974, 1975) and DEP'T OF HIGHWAY SAFETY AND MOTOR VEHICLES, STANDARD SUMMARY OF MOTOR VEHICLE TRAFFIC ACCIDENTS (1947-55, 1956-62, 1963-66, 1967-70).

36. 340 So. 2d at 924.

37. *Id.* at 926.

change in the tort liability of the intoxicated driver who causes an automotive accident. Punitive damages may now be assessed without regard to carelessness or abnormal driving and without proof that the intoxication caused the accident. In its decision, the court has provided what may be a long-needed sanction against intoxicated drivers and an accurate reflection of a sound state policy. In its attempt to judicially enforce that state policy, the court has glossed over the traditional tort elements heretofore required to award punitive damages, justifying its decision only on the grounds of legislative activity. The court stated, "We do not hold that intoxication coupled with negligence will always justify an award of punitive damages."[38] Future decisions will be necessary to clarify the court's meaning of that statement. *Ingram* provides little guidance as to when an intoxicated driver who causes an accident will not be subject to punitive damages.

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38. *Id.* at 924.