

THE ARKANSAS SUPREME COURT HELD THAT CHARITABLE
IMMUNITY DID NOT DENY THE CIRCUIT COURT OF SUBJECT-
MATTER JURISDICTION.

The Arkansas Supreme Court heard *Entertainer, Inc. v. Duffy*¹ as a certified question pursuant to Arkansas Supreme Court Rule 1—2(a)(5) and (d) because it dealt with the court’s authority to regulate the practice of law.² The court affirmed the circuit court’s entry of default judgment.³

The case involved a complaint filed by Cory Duffy claiming that he had been shot twice outside of The Entertainer.⁴ Duffy named Charles E. Wells and The Entertainer as the defendants in the case.⁵ Wells was the alcohol-permit holder of The Entertainer which was an Arkansas corporation doing business in Mississippi.⁶ Duffy’s complaint alleged that other shooting and stabbing incidents at The Entertainer had made the business aware of the dangers that their actions may create for innocent patrons.⁷ Duffy alleged “claims for breach of high duty of care, negligence, negligent hiring, negligent retention, and negligent supervision and training.”⁸ Duffy claimed that these actions were committed not negligently but recklessly or wantonly, and he therefore also had a claim for punitive damages.⁹

Duffy served Wells with the appropriate papers on December 19, 2009.¹⁰ Wells failed to respond and the court granted a motion for default judgment on February 1, 2010.¹¹ Wells’s attorney, J.L. Wilson, filed an answer on behalf of Wells and The Entertainer later that day but failed to make a motion to set aside the default judgment that had been granted by the court.¹² At that time, The Entertainer had not been properly served and brought into the case as a party.¹³ In 2010, The Entertainer was finally served with a complaint and summons.¹⁴ The Entertainer never responded to any requests or orders, so in January 2011 the court struck its answer and

1. 2012 Ark. 202, ___ S.W.3d ____.
2. *Entertainer*, 2012 Ark. 202, ___ S.W.3d ____.
3. *Id.* at 1, ___ S.W.3d at ____.
4. *Id.* at 2, ___ S.W.3d at ____.
5. *Id.*, ___ S.W.3d at ____.
6. *Id.*, ___ S.W.3d at ____.
7. *Id.*, ___ S.W.3d at ____.
8. *Entertainer*, 2012 Ark. 202 at 2, ___ S.W.3d at ____.
9. *Id.*, ___ S.W.3d at ____.
10. *Id.*, ___ S.W.3d at ____.
11. *Id.*, ___ S.W.3d at ____.
12. *Id.*, ___ S.W.3d at ____.
13. *Id.*, ___ S.W.3d at ____.
14. *Entertainer*, 2012 Ark. 202 at 2, ___ S.W.3d at ____.

entered default judgment against it as well.¹⁵ No motion to set aside this judgment was ever made.¹⁶

The court scheduled a hearing for April 2011 to determine damages.¹⁷ The court awarded \$520,000 in compensatory damages and also \$1,560,000 in punitive damages.¹⁸ After this judgment was entered, another law firm filed a motion for a new trial on behalf of Wells and The Entertainer claiming that the previous attorney had failed to inform the appellants of any proceedings regarding the case.¹⁹ The new motion also claimed that punitive damages were improper, that The Entertainer was not a proper party, and that The Entertainer was immune to liability based on its status as a nonprofit organization.²⁰ The Entertainer also argued against the award of attorney's fees to Duffy.²¹ The motion for a new trial was denied and this appeal followed.²²

Appellants claimed the right to a new trial under Arkansas Rule of Civil Procedure 59 based on the actions of their attorney in abandoning them without notice.²³ The appellees argued that the appellants did not properly protect their interests and therefore waived any possible right to a new trial.²⁴ The court recognized that the most important factor in determining whether or not the parties properly protected their rights was their communication with the attorney.²⁵ The court acknowledged that hiring an attorney is not enough if the client later makes no effort to communicate with that attorney.²⁶ It is also not enough for a client to have a third party handle communication with the attorney when the client has knowledge that the third party is not responsible.²⁷ The appellants presented no evidence showing that they had attempted to keep in contact with their attorney or to stay up to date regarding the proceedings.²⁸ Based on this information, the court found no abuse of discretion in the refusal of the circuit court to order a new trial.²⁹

15. *Id.* at 3, ___ S.W.3d at ____.
16. *Id.*, ___ S.W.3d at ____.
17. *Id.*, ___ S.W.3d at ____.
18. *Id.*, ___ S.W.3d at ____.
19. *Id.*, ___ S.W.3d at ____.
20. *Entertainer*, 2012 Ark. 202 at 3, ___ S.W.3d at ____.
21. *Id.* at 4, ___ S.W.3d at ____.
22. *Id.*, ___ S.W.3d at ____.
23. *Id.*, ___ S.W.3d at ____.
24. *Id.*, ___ S.W.3d at ____.
25. *Id.* at 5, ___ S.W.3d at ____.
26. *Entertainer*, 2012 Ark. 202 at 5, ___ S.W.3d at ____.
27. *Id.*, ___ S.W.3d at ____.
28. *Id.* at 6, ___ S.W.3d at ____.
29. *Id.*, ___ S.W.3d at ____.

Regarding the award of attorney’s fees by the circuit court, the court identified that it was a collateral matter.³⁰ The appellants filed the notice of appeal based on the original judgment from April 1, 2011.³¹ They did not mention the desire to appeal the granting of attorney’s fees in this original notice for appeal.³² Because the appeal regarding attorney’s fees was not properly admitted, the court refused to review the matter.³³

The Entertainer also claimed that it should be immune from suit based on its status as a nonprofit entity.³⁴ However, the court recognized that any such affirmative defenses under the catch-all category of Arkansas Rule of Civil Procedure 8(c) must be pled in the initial response to the complaint, counterclaim, cross-claim, or third-party claim.³⁵ The Entertainer also claimed that because of this status, the court did not have subject matter jurisdiction.³⁶ This affirmative defense, however, does not impact subject matter jurisdiction.³⁷ Because The Entertainer failed to assert this affirmative defense at that time, it was not valid on appeal.³⁸

The final issue on appeal was the award of punitive damages.³⁹ The appellants claimed that because they were charged with only negligence, punitive damages were improper because that type of damages is not awarded in negligence cases.⁴⁰ Appellee claimed that because the appellants did not attend the hearing, they could not challenge the punitive damages award.⁴¹ The court recognized that the appellee’s claim was faulty because the appellants were not procedurally barred from appealing the award of punitive damages because they did not attend the hearing.⁴² When reviewing this appeal, the court had to decide whether the judge’s rulings based on the allegations in the complaint were clearly erroneous.⁴³ Because of the evidence of many prior incidents at The Entertainer where other patrons were injured, the circuit judge’s decision to allow punitive damages was not clearly erroneous after it was decided that The Entertainer acted recklessly or wantonly with regards to its patrons.⁴⁴ This decision meant that The Entertainer acted

30. *Id.*, ___ S.W.3d at ___.

31. *Id.* at 7, ___ S.W.3d at ___.

32. *Entertainer*, 2012 Ark. 202 at 7, ___ S.W.3d at ___.

33. *Id.*, ___ S.W.3d at ___.

34. *Id.*, ___ S.W.3d at ___.

35. *Id.* at 8, ___ S.W.3d at ___.

36. *Id.*, ___ S.W.3d at ___.

37. *Id.*, ___ S.W.3d at ___.

38. *Entertainer*, 2012 Ark. 202 at 8, ___ S.W.3d at ___.

39. *Id.* at 9, ___ S.W.3d at ___.

40. *Id.*, ___ S.W.3d at ___.

41. *Id.*, ___ S.W.3d at ___.

42. *Id.*, ___ S.W.3d at ___.

43. *Id.* at 11, ___ S.W.3d at ___.

44. *Entertainer*, 2012 Ark. 202 at 11, ___ S.W.3d at ___.

with more than mere negligence and could be subjected to punitive damages.⁴⁵

*Entertainer, Inc. v. Duffy*⁴⁶ emphasized the necessity that a client take an assertive role throughout the commission of a lawsuit. Merely hiring an attorney does not alleviate the client of all other responsibilities regarding the case.

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45. *Id.*, ___ S.W.3d at ___.

46. 2012 Ark. 202, ___ S.W.3d at ___.