21CA1096 Alonzo v Marquesan Cross 07-28-2022

COLORADO COURT OF APPEALS

Court of Appeals No. 21CA1096
Jefferson County District Court No. 20CV30671
Honorable Philip J. McNulty, Judge

Bernadette Villalobos Alonzo,

Plaintiff-Appellant,

v.

Marquesan Cross LLC, d/b/a Reliant Towing and Recovery,

Defendant-Appellee.

JUDGMENT AFFIRMED IN PART, REVERSED IN PART,
AND CASE REMANDED WITH DIRECTIONS

Division VI
Opinion by JUDGE HARRIS
Dunn and Johnson, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced July 28, 2022

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¶ 1 Plaintiff, Bernadette Villalobos Alonzo, asserted four claims against defendant, Marquesan Cross LLC, d/b/a Reliant Towing and Recovery (Reliant Towing), in connection with Reliant Towing's attempted repossession of her car. After the parties' presentation of their evidence to a jury, the trial court directed verdicts in favor of Reliant Towing on all claims.

¶ 2 On appeal, Alonzo contends that the trial court erred by directing verdicts, as she presented sufficient evidence to allow a reasonable jury to return a verdict in her favor on each of her claims. We agree with respect to two of the claims. Therefore, we reverse the judgment in part, affirm it in part, and remand for further proceedings.

I. Background

¶ 3 Alonzo obtained a loan to buy a car in March 2019. She made at least one payment, but by December 2019, she was in default on the loan. The lender hired Reliant Towing to repossess the car.

¶ 4 Following an attempted repossession of the car, Alonzo sued Reliant Towing, asserting three claims: a violation of the Colorado Fair Debt Collection Practices Act (CFDCPA), invasion of privacy,

and extreme and outrageous conduct. The trial court later granted Alonzo's motion to add a claim for exemplary damages.

¶ 5 At trial, it was undisputed that on December 10, 2019, at approximately 8:30 p.m., repossession agents arrived at Alonzo's home. From there, however, the parties' evidence diverged.

¶ 6 A neighbor who lives across the street from Alonzo was at home that night with her adult son and niece. The three of them heard "a commotion" coming from outside — "super loud" banging and yelling. The neighbor looked outside and saw two men at Alonzo's house. One of them was standing with his back to the front door, kicking on it, and one of them was "flipping over flowerpots, like looking for keys." She saw the men go through a gate into the backyard and shine flashlights into the windows of the house. One of the men tried to use a keypad to get into the garage. The neighbor thought the men "were trying to break into the house," so she called the police.

¶ 7 Meanwhile, the neighbor's son and niece, who were visiting from out of town and had never met Alonzo, went outside. They saw one person pounding on Alonzo's front door and yelling for her to "[c]ome to the door." Both the son and the niece saw the man

jump the fence into Alonzo's backyard and attempt to get into the garage. According to the niece, the man was "strobing" the flashlight into Alonzo's windows and "trying to peek into the lower right window" of the house. While the son and niece were standing outside, a second man got out of a truck and offered them money to call him if they saw Alonzo or her car. The niece explained that they called the police because they "weren't sure . . . if something nefarious was going on or if [the men] were really trying to repo a car."

¶ 8 Alonzo, who was inside the house with her daughter and two-year-old granddaughter, heard "aggressively loud[]" banging and kicking on her front door. When she went upstairs to investigate, she saw the doorknob moving, "like somebody was trying to turn it." She initially thought strangers were trying to break into her home, but then she realized that the people at her house were repossession agents. One agent, a woman, Alonzo thought, went to the back door, while a second agent remained at the front door. The agent at the front door threatened to call the police and report a theft; he told Alonzo, "You [are] going to go to jail." The agent at the back door yelled obscenities and demanded that Alonzo open the

door. The agents shone lights into the house and banged on the windows. Alonzo, her daughter, and her granddaughter hid in a bedroom.

¶ 9 Police arrived shortly after the neighbor's 911 call. The neighbor's son said that he told the responding officer that the repossession agent had kicked Alonzo's door "hard enough to get into the house," but the officer testified that no one at the scene complained about the agents' conduct. Apparently while the officer was on scene, the niece told the repossession agent that it was "kind of shitty to repo somebody's car so close to the holidays," to which the agent responded, "[W]ell, that fat-ass bitch should have paid her fucking bills." The son, too, told one of the agents that it "was not cool what he was doing, especially that time of night," and, while the officer was present, threatened to "kick [the agent's] fucking ass" if he did not leave — an interaction the repossession agent did not recall at trial. The officer left the scene within five minutes, without issuing any citations or warnings. Shortly thereafter, the repossession agents left.

¶ 10 The next morning, Alonzo's daughter saw "trash all over [the] yard." She figured the repossession agents had thrown it there because it had not been there earlier.

¶ 11 Joshua Bales, the repossession agent, had an entirely different recollection of the incident. He agreed that he went to Alonzo's house to attempt a repossession of her car, that he knocked loudly on the door, and that he went into the backyard so he could take photographs of the car inside the garage. But he otherwise disputed the version of events recounted by the neighbors, Alonzo, and Alonzo's daughter. He denied kicking the door, jiggling the doorknob, looking under the flowerpots for a key, shining his flashlight into or banging on Alonzo's windows, yelling obscenities, threatening to have Alonzo arrested, or telling the neighbor's niece or son that Alonzo did not pay her bills. He acknowledged that another person (a male friend) accompanied him to Alonzo's house, but he said that the friend stayed in the truck "the entire time that night." (At trial, the friend did not recall the incident at Alonzo's house.)

¶ 12 At the close of Alonzo's case-in-chief, the trial court granted Reliant Towing's C.R.C.P. 50 motion for directed verdicts on the

CFDCPA and exemplary damages claims. Then, after all the evidence had been presented, the court directed verdicts in Reliant Towing's favor on Alonzo's remaining claims of invasion of privacy and outrageous conduct.

II. Standard of Review

¶ 13 Directed verdicts are not favored. *See State Farm Mut. Auto. Ins. Co. v. Goddard*, 2021 COA 15, ¶ 25. Thus, a motion for directed verdict should be granted "only in the clearest of cases," *Devenyns v. Hartig*, 983 P.2d 63, 70 (Colo. App. 1998), when the evidence, viewed in the light most favorable to the nonmoving party, "is simply unable to support a verdict" in the non-moving party's favor. *Huntoon v. TCI Cablevision of Colo., Inc.*, 969 P.2d 681, 686 (Colo. 1998).

¶ 14 A motion for directed verdict "admits the truth of the adversary's evidence and of every favorable inference of fact which may legitimately be drawn from it." *Salstrom v. Starke*, 670 P.2d 809, 811 (Colo. App. 1983). And when the adversary's evidence establishes a prima facie case, "even though the facts are in dispute, it is for the jury, and not the judge, to resolve the conflict." *Rocky Mountain Hosp. & Med. Serv. v. Mariani*, 916 P.2d 519, 527

(Colo. 1996) (quoting *Romero v. Denver & Rio Grande W. Ry. Co.*, 183 Colo. 32, 37-38, 514 P.2d 626, 629 (1973)); *see also Salstrom*, 670 P.2d at 811 (In deciding a motion for directed verdict, the court "may not presume to weigh the evidence presented.").

¶ 15 We review de novo the trial court's decision to direct a verdict. *Goddard*, ¶ 26. In doing so, we apply the same standards as the trial court — we consider all the facts in the light most favorable to Alonzo and determine whether a reasonable jury could have returned a verdict in her favor on each of her claims. *Id.*

III. Discussion

A. Colorado Fair Debt Collection Practices Act Claim

¶ 16 The CFDCPA, §§ 5-16-101 to -134.5, C.R.S. 2021, is patterned on the federal Fair Debt Collection Practices Act (FDCPA). *Udis v. Universal Commc'ns Co.*, 56 P.3d 1177, 1180 (Colo. App. 2002). Like its federal counterpart, the CFDCPA is a remedial consumer protection statute "designed to protect consumers from various abusive practices engaged in by" collection agencies. *Id.*

¶ 17 As relevant here, the CFDCPA prohibits a collection agency from "[t]aking or threatening to take any nonjudicial action to effect dispossession . . . of property" if there is "no present right to

possession of the property claimed as collateral through an enforceable security interest." § 5-16-108(1)(f)(I), C.R.S. 2021. It is undisputed that, for purposes of section 5-16-108(1)(f), repossession companies — such as Reliant Towing — are collection agencies. *See* § 5-16-103(3)(d), C.R.S. 2021.

¶ 18 The CFDCPA does not define the phrase "present right to possession." But because repossession rights are governed by Colorado's version of the Uniform Commercial Code, *see* § 4-9-609, C.R.S. 2021, the repossession company had a "present right" to possession of the collateral only if it complied with section 4-9-609. *See Richards v. PAR, Inc.*, 954 F.3d 965, 968 (7th Cir. 2020) (interpreting identical provision in FDCPA and concluding that debt collector's "present right to possession" of collateral turns on state law governing nonjudicial repossession); *see also Consumer Fin. Prot. Bureau v. CashCall, Inc.*, 35 F.4th 734, 746 (9th Cir. 2022) (explaining that "the uniform view" of the federal courts of appeals is that a debt collector violates the FDCPA when its attempt to

collect a debt violates any provision of state law).[1] Under section 4-9-609(b)(2), if a borrower defaults, a secured creditor may take possession of collateral without judicial process, but only "if it proceeds without breach of the peace."

¶ 19 Alonzo asserted a claim for violation of the CFDCPA, alleging that during its attempt to repossess her car, Reliant Towing breached the peace. In granting the motion for a directed verdict on this claim, the trial court did not dispute that a collection agency violates the CFDCPA if it breaches the peace during a repossession. But the court found that the only evidence of a breach of the peace was the threat by the neighbor's son to assault the repossession agent.[2]

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[1] The FDCPA "contains language nearly identical to that in the Colorado statute." *Udis v. Universal Commc'ns Co.*, 56 P.3d 1177, 1180 (Colo. App. 2002). Thus, when analyzing the CFDCPA, we consider case law interpreting the FDCPA persuasive authority. *Id.* at 1179.

[2] To the extent the trial court directed a verdict based on the limited factual allegations in the complaint, it erred. Alonzo was not required to plead every fact that supported her CFDCPA claim. *See Eliminator, Inc. v. 4700 Holly Corp.*, 681 P.2d 536, 539 (Colo. App. 1984) ("Under C.R.C.P. 8 pleadings need only serve notice of the claim asserted and need not express a complete recitation of all the facts which support the claim for relief."). The question under C.R.C.P. 50 is not whether the allegations in the complaint would

¶ 20 On appeal, Reliant Towing first says that, under section 4-9-609, the prohibition on breaching the peace applies only to a completed repossession, not an attempted repossession. We need not resolve that precise issue because Alonzo alleged a violation of the CFDCPA. And under section 5-16-108(1)(f)(I), a collection agency violates the CFDCPA if, in taking *or threatening to take* possession of collateral, it breaches the peace.

¶ 21 Alternatively, Reliant Towing says that the trial court properly concluded that no reasonable juror could have found that it breached the peace during the incident at Alonzo's home. We disagree.

¶ 22 For purposes of section 4-9-609, "breach of the peace" "includes, but is not limited to," "[b]reaking, opening, or moving any lock, gate, or other barrier to enter enclosed real property" without the contemporaneous permission of the debtor or "[u]sing or threatening to use violent means." § 4-9-601(h)(2), (3), C.R.S. 2021. Whether a breach of the peace occurred is generally a fact question

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support a verdict for the plaintiff, but whether the evidence presented at trial would allow a reasonable jury to find in favor of the nonmoving party. *See State Farm Mut. Auto. Ins. Co. v. Goddard*, 2021 COA 15, ¶ 26.

for the jury. *See, e.g.*, *Droge v. AAAA Two Star Towing, Inc.*, 468 P.3d 862, 875 n.11 (Nev. 2020).

¶ 23 At trial, three witnesses testified that they saw a repossession agent either open a gate or jump the fence to access Alonzo's backyard. Alonzo's daughter testified that she and Alonzo placed bricks against the gate to prevent the granddaughter from leaving the backyard. The daughter said she did not know if the agents "jumped [the fence] or if they moved the bricks and opened" the gate, but she knew one of the agents was in the backyard. Indeed, Bale admitted that he went into Alonzo's backyard, which, according to the undisputed evidence, was enclosed by a fence and a gate. There was no evidence that Alonzo contemporaneously consented to the entry.

¶ 24 Additionally, Alonzo and her daughter described repossession agents kicking on the front door, attempting to open the door, and yelling threats to break into the house and the garage and to "kick [their] ass." The neighbor testified that based on the agents' conduct, she was afraid for Alonzo's safety. She explained that she called the police because it "looked like [the agents] were going to

get in the house" and she was concerned about "what would happen" if they did.

¶ 25 Thus, Alonzo presented evidence that, if credited by the jury, demonstrated that Reliant Towing's agents opened a gate (or simply jumped over the fence) to "enter enclosed real property" and threatened to use violent means to repossess the car — i.e., that the agents committed a breach of the peace. *See* § 4-9-601(h).

¶ 26 In its briefing, Reliant Towing weighs the evidence and urges us to conclude, as a matter of law, that "no reasonable jury could believe the stories told" by the witnesses. But as we have explained, we, like the trial court, may not weigh the evidence or the credibility of the witnesses when determining the propriety of a directed verdict. *See, e.g.*, *Bradley Realty Inv. Co. v. Shwartz*, 145 Colo. 65, 69, 357 P.2d 638, 641 (1960). Rather, every factual disagreement supported by tenable evidence must be decided in favor of the nonmoving party. *See Gossard v. Watson*, 122 Colo. 271, 275, 221 P.2d 353, 355 (1950).

¶ 27 Viewed in the light most favorable to Alonzo, the evidence created a factual dispute that had to be resolved by the jury.

Accordingly, the trial court erred by directing a verdict on the CFDCPA claim.

B. Invasion of Privacy Claim

¶ 28 Alonzo also asserted a claim of invasion of privacy. In Colorado, "invasion of privacy" encompasses three separate torts: (1) unreasonable intrusion upon the seclusion of another; (2) unreasonable publicity given to another's private life; and (3) appropriation of another's name or likeness. *Pearson v. Kancilia*, 70 P.3d 594, 598-99 (Colo. App. 2003).

¶ 29 In her complaint, Alonzo alleged that Reliant Towing had invaded her privacy by unreasonably intruding upon her seclusion. To prevail on that claim, she had to show that "another has intentionally intruded, physically or otherwise, upon [her] seclusion or solitude, and that such intrusion would be considered offensive by a reasonable person." *Doe v. High–Tech Inst., Inc.*, 972 P.2d 1060, 1065 (Colo. App. 1998). A claim of intrusion upon seclusion clearly contemplates an intrusion upon a physical space held in seclusion by the plaintiff, but it also "encompasses intrusions into a person's private concerns based upon a reasonable expectation of privacy in that area." *Id.* at 1068.

¶ 30 In directing a verdict for Reliant Towing on this claim, the trial court reasoned that the intrusion "would not have been very offensive to a reasonable person," and that Alonzo had failed to establish intentional conduct or any damages. Reliant Towing endorses this position on appeal, while Alonzo contends that a reasonable jury could have found in her favor on the claim. We agree with Alonzo.

¶ 31 In determining whether a defendant's conduct was offensive for purposes of an invasion of privacy claim, the jury may consider whether the defendant trespassed, the extent of the intrusion, the conduct and circumstances surrounding the intrusion, the defendant's motives, the setting into which defendant intruded, and the plaintiff's expectation of privacy. *See Reed v. Toyota Motor Credit Corp.*, 459 P.3d 253, 260 (Or. Ct. App. 2020). "It is the degree of intrusion that determines whether such intrusion is offensive." *Doe*, 972 P.2d at 1069.

¶ 32 True, as Reliant Towing points out, the repossession agents went to Alonzo's home for the lawful purpose of repossessing the car. But that fact is not dispositive.

¶ 33 Alonzo presented evidence that, after she refused to open the front door in response to loud and aggressive banging, a repossession agent turned the doorknob, attempting to get inside the house. An agent either opened a closed and reinforced gate or jumped a fence to gain access to Alonzo's enclosed backyard and her garage. When the agent's efforts to enter the locked garage failed, he took photographs of the car parked inside. The neighbors observed the agent shining his flashlight into the home's windows and peering into a downstairs window, and they said that an agent offered them money to reveal Alonzo's whereabouts. According to Alonzo's daughter, the agents yelled obscenities at all three occupants of the house, including a two-year-old child. And in response to a neighbor's disapproving comment, the agent disclosed that Alonzo had not paid her bills — a statement that the agent acknowledged, if made, would have violated rules prohibiting disclosure of a debtor's financial status.

¶ 34 Whether a reasonable person would find conduct offensive is generally a question of fact for the jury. *See Fuchs v. Dep't of Revenue*, 447 S.W.3d 727, 734 (Mo. Ct. App. 2014). We disagree with the trial court that every reasonable juror would conclude that

these facts, taken together, amount to a mere "minor annoyance[]" or an "indignit[y]" "that normally would be expected to occur in life in modern society." We conclude that the evidence created a triable issue of fact as to whether the repossession agents intruded upon Alonzo's seclusion and, if so, whether the intrusion was objectively offensive.

¶ 35 As for evidence that the agents acted intentionally, if the jury credited the testimony of Alonzo, her daughter, and the neighbors, that element would be established. Even Bales did not suggest that his conduct was anything other than intentional, including his entry into the enclosed backyard — rather, he defended against the claims on the ground that he did not commit the acts at all. In any event, the issue of intent is a question of fact, involving an assessment of credibility, and therefore, unless the evidence is undisputed, that issue must be resolved by the jury. *See Nixon v. City & Cnty. of Denver*, 2014 COA 172, ¶ 31.

¶ 36 That brings us to the question of damages. One who suffers an intrusion upon her seclusion is entitled to recover damages for the harm to the particular privacy interest that has been invaded. Such damages may include general damages for harm to the

plaintiff's privacy interest resulting from the invasion, damages for mental suffering, special damages, and nominal damages if no other damages are proved. *Doe*, 972 P.2d at 1066.

¶ 37 At trial, Alonzo testified that the agents' conduct made her feel violated, embarrassed, and "inhuman." She said that because of the incident, she no longer feels safe in her home. At night, she makes sure that her room "is barricaded," and when her grandchildren visit, she sleeps in the same room with them. She explained that after the incident, she sought "guidance and comfort and counseling" from a women's group.

¶ 38 Even if the jury was unpersuaded that Alonzo had suffered any compensable injury, it could have awarded nominal damages. Thus, we disagree that Reliant Towing was entitled to a directed verdict on this claim on the theory that Alonzo failed to establish any damages.

¶ 39 In sum, we conclude that, viewing the evidence in the light most favorable to Alonzo, a reasonable jury could have returned a verdict in her favor on her invasion of privacy claim and, at a minimum, could have awarded nominal damages. The trial court therefore erred by directing a verdict on this claim.

C. Extreme And Outrageous Conduct Claim

¶ 40 On Alonzo's extreme and outrageous conduct claim, however, we agree with the trial court that the claim fails as a matter of law.

¶ 41 The elements of an outrageous conduct claim are: (1) the defendant engaged in extreme and outrageous conduct; (2) recklessly or with the intent of causing the plaintiff severe emotional distress; and (3) causing the plaintiff severe emotional distress. *Green v. Qwest Servs. Corp.*, 155 P.3d 383, 385 (Colo. App. 2006).

¶ 42 The tort of outrageous conduct was designed to create liability for a very narrow type of conduct. *Id.* To be actionable, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Coors Brewing Co. v. Floyd*, 978 P.2d 663, 666 (Colo. 1999) (quoting Restatement (Second) of Torts § 46 (Am. L. Inst. 1965) (hereinafter Restatement)).

¶ 43 Before permitting a plaintiff to present an outrageous conduct claim to the jury, the trial court must make an initial determination that the evidence of outrageous conduct is sufficiently outrageous

as a matter of law. *Id.* at 665. We review the trial court's determination de novo. *Reigel v. SavaSeniorCare L.L.C.*, 292 P.3d 977, 991 (Colo. App. 2011).

¶ 44 To support an extreme and outrageous conduct claim, the evidence must establish conduct that is more than offensive; the conduct must be utterly intolerable. Thus, our conclusion that a reasonable jury could have found that Reliant Towing invaded Alonzo's privacy does not preclude a contrary conclusion with respect to the outrageous conduct claim.

¶ 45 Though there was evidence that the agents were aggressive, callous, and intrusive, we conclude that the evidence was not sufficient to establish extreme and outrageous conduct. *See, e.g.*, *Coors Brewing Co.*, 978 P.2d at 666 (employee's allegations that his employer engaged in an extensive criminal conspiracy involving illegal drugs and money laundering and then fired the employee to "scapegoat him for these crimes" were insufficient to support an outrageous conduct claim); *Gordon v. Boyles*, 99 P.3d 75, 82 (Colo. App. 2004) (defendant's statements on his radio show that plaintiff, a police officer, had stabbed a fellow officer did not constitute outrageous conduct as a matter of law).

¶ 46 Moreover, the evidence presented did not support a finding of severe emotional distress. While emotional distress includes "all highly unpleasant mental reactions," it is only where the emotional distress is extreme "that liability attaches." *Miller v. Miller*, 956 P.2d 887, 900 n.44 (Okla. 1998) (quoting Restatement § 46 cmt. j). The distress inflicted must be so severe that "a reasonable person, normally constituted, would be unable to cope adequately with the mental distress engendered by the circumstances." *Silverman v. Progressive Broad., Inc.*, 964 P.2d 61, 71 (N.M. Ct. App. 1998) (quoting *Jaynes v. Strong-Thorne Mortuary, Inc.*, 954 P.2d 45, 50 (N.M. 1997)). The intensity and duration of the distress are factors to be considered in determining its severity. *See Est. of Trentadue v. United States*, 397 F.3d 840, 856 (10th Cir. 2005) (citing Restatement § 46 cmt. j).

¶ 47 Alonzo's testimony that the incident caused embarrassment, fear, and feelings of violation established emotional distress but did not prove *severe* emotional distress. She admitted that her sleep was disturbed for a matter of a few days; that she did not seek treatment other than occasionally attending a women's support

group; and that she was able to enjoy activities like traveling out of state, going out to dance, and relaxing in her yard.

¶ 48 Accordingly, the trial court did not err by directing a verdict for Reliant Towing on this claim.

D. Exemplary Damages Claim

¶ 49 Under Colorado law, exemplary damages are permitted where "the injury complained of is attended by circumstances of fraud, malice, or willful and wanton conduct." § 13-21-102(1)(a), C.R.S. 2021. "Willful and wanton conduct" means conduct "purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly," without regard to the safety of others, particularly the plaintiff. § 13-21-102(1)(b); *see also Tri-Aspen Constr. Co. v. Johnson*, 714 P.2d 484, 486 (Colo. 1986) (Willful and wanton conduct "creates a substantial risk of harm to another and is purposefully performed with an awareness of the risk in disregard of the consequences." (quoting *Palmer v. A.H. Robins Co.*, 684 P.2d 187, 215 (Colo. 1984))).

¶ 50 A claim for exemplary damages is not a separate and distinct cause of action, but rather is "auxiliary to an underlying claim for actual damages," and therefore exemplary damages can be awarded

only in conjunction with a successful claim for actual damages. *Kirk v. Denver Pub. Co.*, 818 P.2d 262, 265 (Colo. 1991) (quoting *Palmer*, 684 P.2d at 213-14).

¶ 51 We agree with Alonzo that exemplary damages are available in connection with an underlying claim for invasion of privacy. *See Borquez v. Robert C. Ozer, P.C.*, 923 P.2d 166, 177 (Colo. App. 1995), *aff'd in part and rev'd in part on other grounds*, 940 P.2d 371 (Colo. 1997). But we disagree that the evidence supported an award of exemplary damages in this case.

¶ 52 "Colorado puts a heavy burden on a plaintiff to show why [exemplary] damages are to be awarded in a particular case." *Juarez v. United Farm Tools, Inc.*, 798 F.2d 1341, 1342 (10th Cir. 1986). To show entitlement to the damages, the plaintiff must prove all of the statutory elements beyond a reasonable doubt. *See Ballow v. PHICO Ins. Co.*, 878 P.2d 672, 682 (Colo. 1994).

¶ 53 We review de novo the trial court's determination that the evidence was insufficient to support a claim for exemplary damages. *See Qwest Servs. Corp. v. Blood*, 252 P.3d 1071, 1092 (Colo. 2011).

¶ 54 Alonzo says that the jury could have found that the agents recklessly disregarded her rights, particularly because Bales

testified that he knew from his training that he could not, for example, jump over a debtor's fence, yell obscenities, threaten to break down a garage door, or disclose personal financial information about the debtor to a third party.

¶ 55 The problem, in our view, is that the evidence did not establish beyond a reasonable doubt that the agents' conduct — as offensive as it might have been — was dangerous and created a substantial risk of harm to Alonzo, or that the agents in fact realized as much. *See Stamp v. Vail Corp.*, 172 P.3d 437, 449 (Colo. 2007) (conduct is willful and wanton if it is a "dangerous course of action" consciously chosen despite a "strong probability that injury to others will result" (quoting *Steeves v. Smiley*, 144 Colo. 5, 10, 354 P.2d 1011, 1014 (1960))); *compare, e.g.*, *Rowan v. Vail Holdings, Inc.*, 31 F. Supp. 2d 889, 900 (D. Colo. 1998) (willful and wanton conduct established by evidence showing that ski operator left an unprotected picnic deck at the bottom of a ski testing course despite several prior "close calls" with the deck, and required the deceased skier to sign a release of liability in the middle of the testing process, knowing that the skier had to finish the test), *and Jones v. Cruzan*, 33 P.3d 1262, 1264 (Colo. App. 2001) (willful and wanton conduct established by

evidence that defendant drove on wrong side of the road, over the speed limit, through a stop sign, and into a busy intersection, where his car was hit by plaintiff's car, and then eluded pursuing witnesses at high speed), *with Ferrer v. Okbamicael*, 2017 CO 14M, ¶¶ 56-57 (trial court properly rejected exemplary damages claim because plaintiff failed to allege willful and wanton conduct by cab driver who, at the time of the accident, was speeding, was talking on his cell phone, and had been driving for more hours than permitted by state regulations), *superseded by statute*, Ch. 147, sec. 1, § 13-21-111.5(1.5)(c), 2021 Colo. Sess. Laws 863, *and Pizza v. Wolf Creek Ski Dev. Corp.*, 711 P.2d 671, 685 (Colo. 1985) (trial court properly rejected exemplary damages claim because plaintiff failed to establish willful and wanton conduct where evidence did not show that ski operator should have realized that ski run was dangerous and an injury was likely).

¶ 56 Accordingly, we conclude that the court properly directed a verdict on this claim.

IV. Conclusion

¶ 57 The judgment in favor of Reliant Towing on the CFDCPA and invasion of privacy claims is reversed, and the case is remanded to

the trial court with directions to reinstate and conduct further proceedings on those claims. In all other respects, the judgment is affirmed.

JUDGE DUNN and JUDGE JOHNSON concur.