

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

MICHELLE FLESHNER, Plaintiff/ Respondent,)	No. ED90853
)	Appeal from the Circuit Court
)	of St. Louis County
v.)	Date: January 20, 2009
)	
PEPOSE VISION INSTITUTE, P.C., Defendant/Appellant.)	
)	

Defendant employer appeals from a judgment entered on a jury verdict in favor of plaintiff, a former at-will employee, in her lawsuit to recover damages for wrongful termination based on her claim that she was terminated in retaliation for communicating with United States Department of Labor investigators.

REVERSED AND REMANDED.

Division Four Holds:

1. The trial court erred in refusing to give a verdict director that required exclusive causation.
2. The FLSA does not preempt plaintiff's common law wrongful discharge action under the public policy exception because the FLSA does not provide for punitive damages, whereas punitive damages are available in the common law action.
3. Missouri public policy, as reflected in the Missouri Minimum Wage Law, is broad enough to protect an employee's communications with federal labor investigators even though the Missouri statute only sanctions employers who retaliate against employees for communicating with state labor investigators.
4. We do not reach issue of jury misconduct because it is not likely to arise in a second trial.
5. Defendant's claim of error relating to post-termination evidence of its dispute with plaintiff over a non-compete agreement was not preserved by a timely objection.
6. We do not reach the issue relating to denial of a limiting instruction because the necessity of a limiting instruction in a second trial would depend on whether, in what form, and in what context the evidence would be admitted in that trial.

Opinion by: Kathianne Knaup Crane, J. Booker T. Shaw, P.J. and Mary K. Hoff, J., concur.

Attorneys for Appellant: James Paul, Joshua Bortnick, Mark Goodman and Sheila Greenbaum

Attorneys for Respondent: Jerome Dobson, Michelle Dye Neumann and Gregory Rich

Attorneys for Amicus Curiae: J. Bennett Clark, Emma Harty and James Weiss

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.