

Summary of SC88950, Tracy Gilliland v. Missouri Athletic Club

Appeal from the St. Louis city circuit court, Judge Jimmie M. Edwards.

Attorneys: Gilliland was represented by Donald K. Murano of St. Louis and Kurt Cumiskey of St. Louis, and the club was represented by Peter J. Dunne and Jessica L. Liss of Rabbitt, Pitzer & Snodgrass PC of St. Louis.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals the trial court's grant of judgment notwithstanding the verdict to an athletic club he sued, its award of only \$22,000 in attorneys' fees to him and its denial of his request for "front pay." In a 7-0 decision written by Judge Michael A. Wolff, the Supreme Court of Missouri affirmed the trial court's judgment. Because the jury found against the man on his discrimination claims under the human rights act and he chose not to challenge any of its findings or move for a new trial on those claims, there is no basis for awarding punitive damages or granting equitable relief. Further, because the club chose to pay the award of attorneys' fees rather than appealing it, and attorneys' fees are authorized only for plaintiffs who prevail under the human rights act, there is no basis to award the man more attorneys' fees.

Facts: Tracy Gilliland alleged that, while working at the Missouri Athletic Club in St. Louis as a server, he was subjected to inappropriate touching and harassment by Vincent Millen, the club's operations manager of food and beverage, and that other club employees were aware of Millen's inappropriate behavior. In response to Millen's behavior, Gilliland had asked Millen to desist, had complained to the immediate supervisors of both Gilliland and Millen, and had complained to a member of the club's board of governors. Millen's conduct persisted, however, and ultimately Millen's behavior motivated Gilliland to resign his position. Gilliland subsequently sued the club. Under the state's human rights act, he claimed that the club discriminated against him on the basis of gender and race (the latter for the club's failure to promote Gilliland, who is white, instead of another employee, who is black); and that Millen had sexually harassed him and assaulted him in the workplace. He also filed a claim that he constructively was discharged. The jury found in favor of the club on the human rights claims but in favor of Gilliland on the constructive discharge claim. The jury awarded Gilliland \$60,000 in actual damages and declared the club liable for punitive damages to be determined in a second trial. The trial court entered judgment for Gilliland on the verdict, granted the club judgment notwithstanding the verdict on punitive damages, awarded Gilliland \$22,000 in attorneys' fees, and denied Gilliland equitable relief (Gilliland had sought "front pay" benefits or reinstatement). The club chose not to appeal and satisfied the judgment, including the \$60,000 in damages. Gilliland appeals the judgment notwithstanding the

verdict on punitive damages, the denial of the equitable relief he sought and the attorneys' fee award, which he alleges is inadequate.

AFFIRMED.

Court en banc holds: (1) Because the jury found against Gilliland on his human rights act claims, there no longer is a claim on which punitive damages could be awarded, no matter how outrageous the jury believed the conduct of the club and Millen to have been. Section 213.111.2, RSMo, permits recovery of punitive damages in claims brought under the human rights act; constructive discharge merits the recovery of punitive damages only if the plaintiff establishes a discriminatory motive for the constructive discharge. In its verdict, however, the jury specifically rejected Gilliland's claims for sexual harassment and race discrimination, as well as his claim for assault, leaving him no claims on which to base the recovery of punitive damages under the act. The club chose to pay the judgment and forego appealing the verdict, strategically preventing an appellate court from possibly concluding the jury verdicts were inconsistent and ordering a new trial, which could have resulted in a larger award, punitive damages and higher attorneys' fees. Similarly, Gilliland chose not to appeal the jury's denial of recovery on the basis of sexual harassment, race and assault, strategically preventing an appellate court from highlighting the possibility that the verdicts were inconsistent, which could have caused him to lose the judgment entirely. Because of the strategic choices of both parties, this Court has no choice but to affirm the trial court's judgment notwithstanding the verdict on punitive damages.

(2) The trial court's award of \$22,000 in attorneys' fees to Gilliland is affirmed because the club chose to pay it rather than appeal it. Section 213.111.2 authorizes attorneys' fees for a party that prevails under the human rights act. Gilliland, however, succeeded only on one claim – for constructive discharge – that he assumes was a recovery under the act. Although the trial court may have shared this assumption in awarding him attorneys' fees, in actuality, Gilliland succeeded on none of his claims under the human rights act.

(3) No equitable relief was available to Gilliland because the jury did not find in his favor on any of his human rights act claims. Reinstatement or "front pay" in lieu of reinstatement are equitable remedies available to a court to make whole a victim of discrimination. The jury here, however, did not find any actionable discrimination.