

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

KENNETH FERGUSON,

Appellant-Respondent,

v.

CURATORS OF LINCOLN UNIVERSITY, In Their Official Capacities, a/k/a LINCOLN
UNIVERSITY,

Respondent-Appellant.

DOCKET NUMBER WD78752
(Consolidated with WD78777 and WD78784)

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: May 31, 2016

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

JUDGES

Division Four: Ahuja, C.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Michael G. Berry, Marshall V. Wilson, and Theodore L. Lynch
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Attorneys for Appellant-Respondent,

Kent L. Brown and Judith Anne Willis
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Attorneys for Respondent-Appellant.



**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

KENNETH FERGUSON,)
)
) **Appellant-Respondent,**)
)
 v.)
) **OPINION FILED:**
) **May 31, 2016**
)
 CURATORS OF LINCOLN)
 UNIVERSITY, In Their Official)
 Capacities, a/k/a LINCOLN)
 UNIVERSITY,)
)
) **Respondent-Appellant.**)

WD78752 (Consolidated with WD78777 and WD78784)

Cole County

Before Division Four Judges: Alok Ahuja, Chief Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

The Board of Curators for Lincoln University (Lincoln) appeals the trial court’s judgment, entered upon a jury’s verdict, finding Lincoln liable for age discrimination under the Missouri Human Rights Act against former Lincoln employee, Kenneth Ferguson. Lincoln brings three points on appeal, arguing error in the admission of evidence, lack of sufficient evidence to make a submissible case, and error in the award of attorneys’ fees. Ferguson cross-appeals, arguing that the trial court failed to consider additional time required to respond to post-trial motions in calculating the amount of attorneys’ fees to award.

Affirmed.

Division Four holds:

1. Discriminatory comments made by those in a position to influence the decisionmaker are relevant to the question of whether the plaintiff’s age was a contributing factor in the adverse employment decision.
2. Proof that the defendant’s explanation for an adverse employment decision is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional

discrimination, and rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination.

3. Though mere inquiries into the retirement plans of an employee who is of retirement age do not rise to the level of age discrimination, when the decision to terminate an employee is based upon an age-dependent factor (such as retirement eligibility) and the employer offers implausible alternate explanations for the termination, and there is evidence that someone with the ability to influence the decision acted based on age-based stereotypes, there is sufficient evidence from which a jury can infer that age was a contributing factor to the termination decision.
4. Normally, a petition for attorneys' fees is not an authorized after-trial motion that serves to extend the time period for filing a notice of appeal, but when a request for attorneys' fees is filed by a plaintiff pursuant to the MHRA, the trial court is well within its authority to treat it as a motion to amend under Rule 78.04. And, if a court opts to do so, the motion then constitutes an authorized post-trial motion, which has the effect of extending the time in which the trial court retains jurisdiction.
5. A motion to amend the judgment is not "ruled on" for purposes of Rule 81.05 unless, within ninety days of its filing: (1) the motion is explicitly denied; (2) the trial court takes no action on it; or (3) an amended judgment is actually executed and filed.
6. If the combined effect of several orders entered in a case, including an order denominated "final judgment," is to dispose of all issues as to all parties, leaving nothing for future determination, then the collective orders combine to form the "final judgment" from which an appeal can be taken.
7. In the absence of a contrary showing, the trial court is presumed to know the character of the services rendered in duration, zeal, and ability, and because the trial court is considered to be an expert on the question of attorneys' fees, it may fix the amount of attorneys' fees without the aid of evidence.
8. The prevailing market rate is only a starting point, as the rate charged should also take into account the experience, skill, and expertise of the attorneys as well as the complexity, significance, and undesirability of the case.

Opinion by: Karen King Mitchell, Judge

May 31, 2016

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