Summary of SC97712, *J.L. Wilson v. City of Kansas City, Missouri*
Appeal from the Jackson County circuit court, Judge Charles H. McKenzie
Argued and submitted November 5, 2019; opinion issued May 12, 2020

Attorneys: Kansas City was represented by Timothy R. Ertz of the city attorney's office in Kansas City, (816) 513-3154. Wilson was represented by Alexander Edelman and Katherine Myers of Edelman, Liesen & Myers LLP in Kansas City, (816) 607-1529; and Kevin Baldwin of Baldwin & Vernon in Liberty, (816) 842-1102.

This summary is not part of the opinion of the Court. It has been prepared by 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: An employer sued for disability discrimination appeals the circuit court's judgment on the ground the court should not have allowed the employee to present certain workers' compensation evidence during the trial or awarded the man litigation expenses under the state's human rights act. In a decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the judgment in part, reverses it in part and remands (sends back) the case. Five judges agree the circuit court erred in awarding litigation expenses as court costs under the human rights act rather than awarding them as attorney fees, as permitted by the relevant statute, if they were found to be reasonable out-of-pocket expenses a local attorney normally would charge a fee-paying client. On remand, the circuit court should determine which expenses, if any, of the man's attorneys can be awarded as attorney fees. All seven judges affirm the rest of the circuit court's judgment and agree the employer failed to preserve its objections to the workers' compensation evidence for appellate review.

In an opinion joined by one judge, Judge W. Brent Powell writes separately. Because he would find the act authorized the circuit court to award litigation expenses as court costs, he would find it unnecessary to remand the case but concurs in the remainder of principal opinion.

Facts: J.L. Wilson injured his elbow while driving a trash truck during his employment as an equipment operator for Kansas City's solid waste division. A doctor ultimately determined Wilson had a 15-percent permanent-partial disability rating at his elbow and released him to return to work with a permanent restriction of "no trash truck driving." Given the restriction, the city offered to reassign Wilson to a different position, but he declined, believing he would lose the seniority he had accumulated as an equipment operator. Ultimately, the city terminated Wilson's employment. He sued the city for disability discrimination under the state human rights act. Both before and during the jury trial, the city sought to exclude Wilson from presenting his doctor's disability report and workers' compensation rating as evidence or arguing the doctor or workers' compensation division had found him "disabled." Wilson was allowed to present evidence of the disability rating. The jury returned a verdict in Wilson's favor, awarding him actual and punitive damages. The circuit court entered its judgment accordingly and awarded him litigation expenses. Wilson appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) The city failed to preserve its objections to evidence of Wilson's workers' compensation disability rating. While it is clear the parties had an off-the-record discussion with the court about the city's objection to evidence of the workers' compensation rating and report, and the court allowed the city a continuing objection, nothing in the record shows the legal basis for the objection. And contrary to the city's assertion, its pretrial motion preserved nothing for appellate review.

(2) The circuit court erred in taxing litigation expenses as court costs. Costs only may be awarded pursuant to express statutory authority. While section 514.060 permits the award of court costs in general civil cases, it excepts cases in which a different provision is made by law. Such a provision exists for cases brought under the state's human rights act, for which section 213.111, RSMo, governs the award of court costs. No statute specifically identifies litigation expenses as court costs. To the extent certain court of appeals cases hold litigation expenses can be taxed as costs under section 213.111.2, these cases misstate the law and are overruled.

(3) The circuit court erred in awarding "litigation expenses" separately rather than exercising its discretion, under section 213.111.2, to award reasonable attorney fees, including reasonable out-of-pocket expenses an attorney in the local community normally would charge to a fee-paying client. On remand, the circuit court will have the opportunity to consider which, if any, of the out-of-pocket expenses of Wilson's attorneys can be awarded as attorney fees.

(4) Because Wilson prevailed on his claim for disability discrimination and successfully defended the judgment on appeal, except the portion awarding litigation expenses, he is a prevailing party, and this Court is authorized under section 213.111.2 to award him attorney fees on appeal. But because the circuit court is better equipped to hear evidence and argument regarding the reasonableness of the fee requested, the circuit court on remand should determine and award Wilson attorney fees and costs on appeal.

Opinion concurring in part and dissenting in part by Judge Powell: The author would affirm the circuit court's judgment in all respects. Because he would find the plain and ordinary meaning of "court costs" as used in section 213.111.2 includes all costs and expenses of litigation and authorizes recovery of all reasonable sums plaintiffs must expend to vindicate their legal rights under the state's human rights act through the courts, he would find it unnecessary to remand the case for a determination as to whether the requested litigation expenses can be awarded as attorney fees. He concurs in all other aspects of the Court's decision.