

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TEQUEA FISHER

**v.
H & H MOTOR GROUP, LLC**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD83318

DATE: October 20, 2020

Appeal From:

Jackson County Circuit Court
The Honorable Gregory B. Gillis, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge and Thomas N. Chapman, Judge

Attorneys:

Melika T. Harris, Kansas City, MO, for respondent.

Anthony L. Gosserand, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TEQUEA FISHER, RESPONDENT,

v.

H & H MOTOR GROUP, LLC, APPELLANT.

WD83318

Jackson County

Before Division Three Judges: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge, and Thomas N. Chapman, Judge

H&H Motor Group, LLC ("H&H"), appeals the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), finding in favor of Tequea Fisher on her claim against H&H under the Missouri Merchandising Practices Act ("MMPA"), section 407.025.1, RSMo, and awarding Fisher \$10,728 in actual damages, \$32,184 in punitive damages, and \$13,816 in attorney's fees. H&H raises five points on appeal: (1) that there was not sufficient evidence to support the trial court's finding that H&H violated the MMPA because H&H's actions were merely "arguably negligent" not fraud; (2) that the judgment erroneously awarded Fisher damages not recoverable under the MMPA; (3) that the trial court abused its discretion in entering judgment for Fisher after it had originally entered judgment in favor of H&H; (4) that there was not sufficient evidence to support the trial court's award of punitive damages; and (5) that the trial court erred in allowing Fisher to testify that she was unable to register her vehicle because it was based upon inadmissible hearsay. Fisher moves this court for an award of attorney's fees on appeal.

**AFFIRMED, AS AMENDED PER RULE 84.14, AND REMANDED FOR
DETERMINATION OF REASONABLE APPELLATE ATTORNEY FEES.**

Division Three holds:

Substantial evidence supports the trial court's finding that H&H violated the MMPA. For civil violations it is unnecessary for the plaintiff prove intent to defraud. And, even if proof of fraud were required, H&H's failure to provide Fisher with a valid assignment of title at the time it sold her the vehicle is fraud by definition under section 301.210.4, RSMo.

Because Fisher attempted to return the vehicle and repudiate the sale, she was not limited to the benefit of the bargain measure of damages, but could receive the return of her purchase price, plus incidental damages. The cost of storing the vehicle, which could not be parked on the street since it was not legally titled and licensed, was a recoverable incidental damage; money Fisher lost in possible business opportunities because she did not have a usable vehicle was too far removed from the purchase to be recoverable.

The trial court was not confined to entering judgment in favor of H&H on remand from the prior appeal. Upon remand, Fisher was allowed to respond and be heard on the motion to amend the judgment, and the trial court was free to enter any proper judgment, requested in the pleadings, that it found to be supported by the facts and the law.

There was sufficient evidence to support the trial court's award of punitive damages, because H&H's owner would have known that the title was not properly assigned had he looked at it, and because the H&H employees laughed at Fisher and taunted her when she attempted to rescind her purchase of the vehicle after she could not obtain valid title.

The trial court did not err in allowing Fisher to testify that she could not register her vehicle. There was not inadmissible hearsay, because Fisher's counsel did not ask her what anyone told her about the title, and Fisher did not testify as to what anyone told her; she only testified that she was unable to register the vehicle when she attempted to do so.

Section 407.025, RSMo, and Special Rule 29 of this Court provide for a reasonable award of attorney's fees on appeal. Having prevailed on all of the significant issues on appeal, we grant Fisher's motion for appellate attorney's fees and remand to the trial court for the purpose of determining and awarding to Fisher the appropriate amount of reasonable attorney's fees for the work related to this appeal.

Opinion by: Gary D. Witt, Judge

October 20, 2020

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