



**In the Missouri Court of Appeals
Eastern District
DIVISION THREE**

LYNNE HARRISON,	)	
	)	
Respondent,	)	No. ED109012
	)	
vs.	)	Appeal from the Circuit Court
	)	of the City of St. Louis
HARRIS-STOWE STATE	)	Case No. 1722-CC01238
UNIVERSITY,	)	
	)	
Appellant,	)	Honorable Christopher E. McGraugh
	)	
and	)	
	)	
EMMANUEL LALANDE and	)	
TAMMY BRAMWELL-KIMBROUGH,	)	Filed: May 4, 2021
	)	
Defendants.	)	

The defendant, Harris-Stowe State University, appeals the judgment entered by the Circuit Court of the City of St. Louis following a jury verdict in favor of the plaintiff, Lynne Harrison, under the Missouri Human Rights Act (“MHRA”) for retaliatory discharge.

We affirm the trial court’s judgment on Harrison’s claim for actual damages from the University for retaliation under the MHRA as well as the trial court’s award of attorneys’ fees. We reverse the award of litigation expenses, and remand to the trial court to consider which, if any, of the out-of-pocket expenses of Harrison’s attorneys can be properly awarded as attorneys’

fees pursuant to our Supreme Court's decision in *Wilson v. Kansas City*.¹ Finally, we grant Harrison's request for reasonable attorneys' fees on appeal, and remand to the trial court to determine and enter an appropriate award.

Factual and Procedural Background

Viewed in the light most favorable to the verdict, the following evidence was adduced at trial. In the summer of 2015, Harris-Stowe State University sought a new director for its Department of Public Safety to be in charge of campus security and command the University's private security force. Plaintiff Lynne Harrison learned of the position available at the University and applied.

Harrison began her career in law enforcement as a cadet with the University City Police Department. She later graduated from the St. Louis Police Academy where she was the first woman and first person of color elected as a class president. Harrison then joined the St. Louis County Police Department in 1978. Eventually, she left law enforcement, and moved to Virginia, obtaining bachelor's and master's degrees in criminal justice from Virginia State University.

After obtaining her degrees, Harrison taught at Virginia State University, several community colleges, and as a professor with the FBI Academy. During her teaching career, she undertook specialized training, including training in the preparation of Clery reports. These are federally-mandated public reports detailing crime statistics on college campuses. An institution's failure to properly prepare and file its annual Clery report can result in significant federal fines. Annual Clery reports are due October 1.

Harrison was teaching summer courses in Virginia when she learned of the job opening for the Director of Public Safety at the University. She interviewed for the position in July 2015,

¹ 598 S.W.3d 888 (Mo. banc 2020).

undergoing interviews with numerous University officials, including the president, Dr. Dwaun Warmack, Dean Emmanuel Lalande, Assistant Dean Shawn Baker, and Human Resources Director Tammy Bramwell-Kimbrough. When Dr. Warmack met one-on-one with Harrison, he did not discuss her qualification, rather he emphasized the physically strenuous nature of the job and questioned whether Harrison was capable of the job's physical demands. Harrison would eventually be told that Dr. Warmack had not wanted to hire a woman as the Director of Public Safety.

The University offered Harrison the position in late July 2015, and she accepted. Harrison planned to move to St. Louis and officially join the University on October 5, 2015; however, the University's Clery report was due October 1. Even before being placed on the University's payroll, Harrison flew to St. Louis, collected the confidential information required for the Clery report, returned to Virginia, and prepared the Clery report from scratch for timely filing with the federal government.

Harrison officially began her job with the University on October 5. On her first day in the office, the University required Harrison to sign a form acknowledging that she was hired on the basis of a 90-day probationary period. A University employee terminated after completing probation would be entitled to an internal appeal process. After moving across the country, this was the first that Harrison heard of a probationary period for her employment. Harrison was told that if she did not acknowledge the probationary period by signing the required form, she would not be employed by the University. Harrison signed the form.

Harrison immediately encountered difficulties at the University. On October 7, 2015, Harrison sent a complaint to her immediate supervisor, Dean Lalande, regarding Tammy Kimbrough and the Human Resources Department with the subject "Passive Aggressive,

obstructionist and unprofessional conduct in the public safety department.” In her October 7 memo, Harrison complained to Lalande about problems communicating with the Human Resources Department, namely “misdirected emails, reported not received emails, the pattern of non-responsive emails, confusing emails and unprofessionally drafted emails” that raised concerns for Harrison about potential civil liability for the University. In addition, Harrison expressed concerns about the 90-day probationary period, and “unnecessary passive aggressive tactics” taken by human resources in communicating with Harrison in finalizing her employment paperwork. Harrison was first instructed to contact no one in the Human Resources Department other than Kimbrough. Harrison was then instructed not to contact the Human Resources Department at all, but to go through Lalande instead.

On October 16, Harrison again complained to Lalande about Kimbrough and others in the Human Resources Department. Harrison characterized her memorandum to Lalande as “Notification of Filing of Discriminatory Practices and Creating a Hostile Workplace” on behalf of herself, individually, and the members of the Department of Public Safety, collectively. Harrison complained of an incident where Kimbrough had “created an extreme hostile work environment by forcing herself past the staff members of the Department of [Public] Safety and attempting to knock down the door to the office of the Director of Public Safety because she demanded to be seen immediate[ly].” Harrison’s memorandum went on to complain of “systemic discriminatory practices and procedures” implemented by Kimbrough as to Harrison and members of the Department of Public Safety. As to problems affecting members of her department, she cited “reduced/missing or incorrect payroll and the interference of officers in the procedure of the performance of their duties that can result in bodily injury.”

Harrison testified that Kimbrough and Lalande were close. Kimbrough told Harrison multiple times that she was a vice-president with the power to fire employees. Lalande instructed Harrison and Kimbrough to meet and try to resolve their differences. The two met in Kimbrough's office along with human resources attorney Rhonda Wesley. Following the meeting, Harrison complained to Lalande on October 20 that Kimbrough engaged in "[h]ostile, physically threatening" behavior and intimidated Harrison with a threat of unwarranted discharge. Harrison, Kimbrough, Lalande, and Dr. Warmack met on October 21 to address the conflict, but the situation remained unresolved.

On November 23, 2015, Harrison complained to Dean Lalande about another confrontation with Kimbrough in which Kimbrough was yelling in the Department of Public Safety office, and yelled directly in Harrison's face. Harrison wrote that "if another aggressive event concerning M[s] Kimbrough takes place in this work environment, a formal incident *requesting a threat assessment investigation will be filed.*" (Emphasis in original).

On December 9, Harrison wrote Dean Lalande requesting an independent investigation into "the level of violence perpetuated by Tammy Kimbrough." She also complained about Lalande's dismissive attitude concerning her conflict with Kimbrough:

Many attempts have been made to address this issue unsuccessfully only to escalate Ms. Kimbrough's behavior and to add insult to injury the events be identified as a "girl fight." That is demeaning and insulting not only to me as a woman but, to the position I hold as Director of Public Safety. ... [Ms. Kimbrough] and her office has (sic) engaged in systemic discrimination and obstructive actions that has impeded the functioning of my department and my ability to supervise and produce the highest level of performance in my department. ... I have been required to use a separate discriminatory communication process concerning any request/contact from the Human Resource Department in the performance of my job duties that is a violation of law.

In a separate memorandum of the same date, Harrison complained to Lalande regarding the "[p]assive [a]ggressive, obstructionist and unprofessional conduct in the public safety department"

by Kimbrough and another human resources employee because they told Harrison to go through Lalande in order to interview and hire additional public safety officers. She also emailed Lalande on December 9, pointing out that she had “endured discriminatory practices, verbal abuse/physical aggression and threats of termination just for performing my duties as it pertains to my position as Director of Public Safety.”

Harrison again emailed Lalande two days later requesting the status of her complaint about “the discriminatory actions and behaviors of f[e]llow employee Tammy Bramwell Kimbrough.” She again complained of Lalande’s dismissive attitude that the conflict between Harrison and Kimbrough was simply “[t]wo pretty girls fighting for attention.” Sometime in early December, Lalande told Harrison not to email or text him any longer, to only speak with him one on one in his office because he believed Harrison was setting up a paper trail for him with her complaints.

At trial, Kimbrough acknowledged that she was convicted of committing crimes involving theft and dishonesty, and served a prison sentence before joining the University. According to Kimbrough’s testimony, Harrison knew of the convictions, and she believed Harrison was investigating her. Kimbrough had an employee with the University’s information technology department provide her with a printout of Harrison’s computer activity, which purportedly revealed contact with the court systems of states where Kimbrough once lived. An FBI agent and an investigator from the postmaster’s office came to the University to speak with Kimbrough on one occasion. She testified that “at that point I was through the ceiling with the entire situation. I reported it to Dean Lalande. I reported it to Dr. Warmack.” Kimbrough was asked to resign by Dr. Warmack, purportedly to avoid bad publicity, and received a \$35,000 severance package. Kimbrough left the University in December 2015.

Lalande testified that Harrison also drew the anger of some faculty members. Lalande received complaints from the University's dance coach and from its athletic director about conflicts occurring with Harrison in front of students and members of the public. Lalande described a tense encounter he had with Harrison in public at the homecoming concert regarding crowd control and complaints of persons, including donors to the University, being denied admission to the concert. Because of the complaints from faculty members, it was reasonable for the jury to infer that others were involved in the decision to fire Harrison.

In addition to her written complaints, Harrison testified about frequent comments throughout her employment concerning her age and sex. She stated that she was regularly called "girl" and "old woman." On learning that Harrison was 61 years old, Lalande said, "[w]e didn't know you were that old. How did you get in here?" Harrison interpreted this to be a negative comment about her age, given that Lalande and most of the people hired by the University's current administration were under the age of 40. Lalande also instructed Harrison to fire her secretary, Clarice Poindexter, because Poindexter was "slow" and "old." When Harrison refused, Lalande directed her to restructure Poindexter's job so that she would be unable to perform it satisfactorily.²

Lalande told Harrison he'd never seen a woman score so highly on the leadership ability exam that Harrison was required to take for her job. He also made comments that Harrison was "too cute" and "too feminine" to be a police officer, but should use it to her advantage if possible. Once, when Lalande received an answer from Harrison that he did not care for, he commented that it must be that time of the month. Lalande also characterized the conflict with Kimbrough as two light-skinned girls fighting to be campus queen. Public Safety Officer Keith

² Poindexter was deceased at the time of trial.

McGull testified that he observed interactions between Harrison and Lalande. He stated that Lalande often belittled Harrison, and denied her due respect as the head of the Department of Public Safety. At some point, Lalande began to bypass Harrison, and went directly to her male subordinates, telling them not to share information with Harrison.

By mid-December 2015, Harrison was hearing rumors that she would be fired. Harrison testified that she heard these rumors from people outside of her work area whom she did not know well. Nevertheless, Lalande assured Harrison her job was secure. Harrison was especially worried about her job security because she had given up her teaching career and life in Virginia, moved halfway across the country, and just signed an 18-month lease on an expensive apartment close to the University so that she could respond anywhere on campus within ten minutes.

Harrison traveled to Virginia at the end of the semester for part of the University's winter break. She returned to work on December 31, 2015, and communicated with Lalande, who was on vacation in Florida, throughout the day. At about 4:00 p.m. on December 31, the 88th day of Harrison's 90-day probationary period, the University terminated her employment. Under direction from Lalande, Assistant Dean Baker accompanied by public safety officers McGull and Lieutenant Ricky Perry delivered a ten-page termination letter to Harrison, and demanded the return of her keys. Harrison at first believed that Baker was playing a joke on her, and refused to turn over her keys. As it dawned on her that it was no joke, Harrison became extremely upset, eventually collapsed or fell, and went to the hospital via ambulance.

The letter stated that Harrison was terminated for insubordination, failure to meet expectations outlined in the job description, and lack of institutional fit. It outlined nine areas in which Harrison had failed to meet expectations: (1) obtain a license to carry a firearm through the Watchman's Division of the St. Louis County Police Department; (2) provide training for

Public Safety staff regarding “use of force, reporting, community policing, zones, etc.”; (3) provide training for Public Safety staff and campus community regarding active shooters; (4) prepare a Department of Public Safety Standard of Operations Manual; (5) form a threat-assessment team; (6) complete a crisis/emergency response plan; (7) prepare protocols for the Department of Public Safety, such as a “General Orders System, protocols for dispatchers, call log, reporting, call system, etc.”; (8) build positive relationship with key University offices; and (9) assist in the ongoing placement of cameras on the campus. By the time of her firing, Harrison had, in addition to her day-to-day duties, prepared the University’s federally-mandated Clery report, assembled a threat-assessment team and compiled its training manual, prepared a communication protocol manual, talked with her officers about training related to use of force and community policing, begun preparing a standard of operations manual for the Department of Public Safety, and scheduled officer training with the FBI.

Harrison sued the University, Lalande, and Kimbrough for hostile work environment, tangible employment action, and retaliation on the bases of age, gender, and color under the MHRA. Harrison dismissed her claims against Kimbrough, and proceeded to trial against the University and Lalande. At trial, Harrison argued that the University left her with no choice but to sue because she could not pursue her complaints through the normal channels by going either to the University’s Human Resources Department or her immediate supervisor. Harrison submitted to the jury six claims against Lalande and the University for age or gender discrimination, hostile work environment based on age or gender, and retaliatory discharge based on complaints of age or gender discrimination. The jury found in favor of Lalande on every claim, and in favor of the University on the claims of discrimination and hostile work environment. The jury found in favor of Harrison on her claim of retaliatory discharge against

the University, and awarded her \$32,000 in compensatory damages. The jury awarded no punitive damages. The trial court entered judgment in conformity with the jury's verdicts.

After having filed motions for directed verdict at the close of Harrison's evidence and at the close of all of the evidence, the University filed a motion for judgment notwithstanding the verdict. Harrison filed a motion for attorneys' fees, costs, and post-judgment interest under the MHRA. The trial court found "astonishing" Harrison's request for attorneys' fees of \$698,369 with a 1.5 multiplier for total attorneys' fees requested of \$1,047,553.50. Citing excessive hourly rates for Harrison's lead attorneys, excessive billing for a third partner to work on the case, ambiguous billings, apparent duplicative billing, billing for an internal firm matter relating to an attorney's departure, and billings totaling more than 20 hours per attorney per day for several days, the trial court reduced the billed amount of attorney's fees to \$371,210. The court then applied a multiplier of 1.25 for a total fee award of \$464,012.50. The trial court also awarded Harrison \$6,483.51 for costs and litigation expenses. Thus, the trial court's amended order and judgment dated May 1, 2020 entered judgment in favor of Harrison on her claim of retaliation against the University with an award of actual damages of \$32,000, entered judgment in favor of the defendants on Harrison's five other claims, awarded Harrison's counsel \$464,012.50 in attorney's fees, and awarded Harrison \$6,483.51 in costs and litigation expenses. The University appeals.

Discussion

In five points on appeal, the University challenges the trial court's judgment entered in favor of Harrison on her claim of retaliatory termination against the University, and the award to Harrison of attorneys' fees and litigation expenses. Harrison has submitted to this Court a motion for attorneys' fees on appeal.

In its first three points, the University challenges the trial court’s denial of its motion for judgment notwithstanding the verdict (JNOV). In Point I, the University claims that it cannot be held liable for Harrison’s retaliatory termination because the jury found in favor of Lalande—the employee whom the University maintains made the sole decision to fire Harrison—on the retaliatory termination claim against him, thus rendering inconsistent verdicts. In its second and third points, the University argues that the evidence was insufficient to establish that the University discharged Harrison for engaging in the protected activity of submitting complaints of discrimination or that those complaints had a causal relationship to her discharge.

In its last two points, the University challenges the award of attorneys’ fees and expenses. In Point IV, the University challenges the trial court’s award of attorneys’ fees to Harrison, and the application of a multiplier of 1.25. In its fifth point, the University claims the trial court erred in awarding \$6,483.51 as litigation expenses in view of the Missouri Supreme Court’s recent decision in *Wilson v. City of Kansas City*.

Standard of Review

In Points I through III, the University challenges the trial court’s denial of its motion for JNOV. We review the denial of a motion for judgment notwithstanding the verdict in essentially the same manner as we review the denial of a motion for directed verdict. *Lin v. Ellis*, 594 S.W.3d 238, 241 (Mo. banc 2020). When reviewing the denial of a motion for JNOV, we must determine whether the plaintiff presented a submissible case by offering evidence to support each element necessary for liability. *Id.* We review the evidence in the light most favorable to the jury’s verdict. *Id.*

In Point IV, the University challenges the trial court’s calculation and award of attorneys’ fees to Harrison. We review the trial court’s award of attorneys’ fees for an abuse of discretion.

DeWalt v. Davidson Serv./Air, Inc., 398 S.W.3d 491, 506 (Mo. App. E.D. 2013). We will reverse the trial court's determination only when the amount awarded is arrived at arbitrarily or is so unreasonable that it indicates indifference and a lack of proper judicial consideration. *Id.*

In Point V, the University claims the trial court erred in awarding Harrison \$6,483.51 in reimbursement for litigation expenses. Whether a statute authorizes an award of costs is a question of statutory interpretation that we review *de novo*. *Wilson*, 598 S.W.3d at 894.

Inconsistent Verdicts and the McGinnis Doctrine

In its first point, the University claims the trial court erred in entering judgment for Harrison and in denying the University's motion for judgment notwithstanding the verdict (JNOV) because the verdicts were inconsistent. The University contends that under the *McGinnis* Doctrine, the court should have entered JNOV in favor of the University because: (1) the jury found in favor of Lalande on the retaliation claim against him; (2) the retaliation claim against the University was premised on *respondeat superior*, based only on Lalande's conduct surrounding his termination of the plaintiff's employment; and (3) Lalande was the sole decision maker in the termination decision.

Under the *McGinnis* Doctrine, "when a claim is submitted on the theory of *respondeat superior* and the jury returns inconsistent verdicts, exonerating the employee, but holding against the employer, the court must grant the employer judgment notwithstanding the verdict." *Burnett v. Griffith*, 739 S.W.2d 712, 713 (Mo. banc 1987) (citing *McGinnis v. Chicago, R.I. & P. Ry. Co.*, 98 S.W. 590 (Mo. 1906)). However, the *McGinnis* Doctrine does not apply unless the employer's liability depends entirely on the conduct of the exonerated employee. *See id.* (stating doctrine does not apply to claims that base liability on a theory other than *respondeat superior*).

[U]nless the liability of the master is based solely on the negligence of the particular servant who is sued and acquitted, that is if the master is guilty of negligence distinct

from the negligence or tort of the servant, though combining with it, or the injury is due in whole or in part to the negligence of other servants than the one sued, then an acquittal of the servant sued does not nullify the verdict and judgment may go against the master.

Stith v. J. J. Newberry Co., 79 S.W.2d 447, 458 (Mo. 1934).

Our Supreme Court's decision in *Burnett v. Griffith* is instructive. In *Burnett*, an off-duty police officer employed as a security guard by two private companies arrested the plaintiff. 739 S.W.2d at 712-14. The plaintiff sued the security guard and his employers for assault, false imprisonment, and malicious prosecution. *Id.* at 712-13. On the assault claim, the jury returned a verdict in favor of the plaintiff and against all three defendants. *Id.* at 713. On the false imprisonment and malicious prosecution claims, however, the jury returned verdicts in favor of the security guard, but finding his employers liable and awarding damages. *Id.* The Supreme Court explained how such a result could be upheld for the malicious prosecution claim but not for the false imprisonment claim. *Id.* at 715-16.

Applying the *McGinnis* Doctrine, the Court held that the jury's verdict exonerating the security guard on the false imprisonment claim necessarily exonerated his employers because the plaintiff based his claim solely on the conduct of the security guard. *Id.* at 715. Thus, the only theory of liability against the employers was *respondeat superior* based on the actions of that one security guard. *Id.* In contrast, the Supreme Court held that the verdict in favor of the security guard did not exonerate his employers on the malicious prosecution claim. *Id.* at 716. The plaintiff did not base that claim solely on the conduct of the security guard, but also on the conduct of others employed by the defendant companies involved in the decision to prosecute the plaintiff. *Id.*

Also instructive is *Devine v. Kroger Grocery & Baking Company*. There, a customer claimed she was injured at Kroger's grocery store, and sued Kroger, the store manager, and the

building owner. 162 S.W.2d 813, 815 (Mo. 1942). The Court stated that when the employer's liability is not predicated solely on the negligence of the employee in whose favor a verdict has been rendered, but is based on the negligence of another employee, or that of the employer, a verdict against the employer is not inconsistent. *Id.* at 817. A verdict in favor of an employee does not bar recovery against the employer when the employer itself committed acts on which liability may be based independently of acts committed by the employee. *Id.*

Here, the University contends there was no evidence from which a reasonable jury could find that any University employee other than Lalande played any role in the decision to terminate Harrison. The University argues the retaliation claim was based solely on the conduct of Lalande, which must be excluded under the *McGinnis* Doctrine because the jury found him not liable. As the University observes, the question is whether Harrison's theory of liability depended wholly on the conduct of Lalande, or whether there was evidence that others employed by the University were involved in the decision to terminate Harrison. The record contains evidence from which a reasonable jury could find that University employees other than Lalande played a role in Harrison's retaliatory discharge.

Harrison's petition originally named Kimbrough as a defendant, but she was dismissed from the action before trial. The petition alleged that Harrison "was subjected to severe and pervasive discrimination and retaliation based on her age, gender, race, and color by one or more agents and/or employees of Defendant [the University] including, but not limited to," the defendants Lalande and Kimbrough. Harrison further alleged that the University and Lalande had "engaged in a pattern and practice of discriminating against employees over the age of forty (40)"; that the University and Lalande had "engaged in a pattern and practice of consistently discriminating against females and favoring and/or promoting male employees over female

employees”; and that the University failed to take remedial action regarding Lalande’s conduct, in effect condoning, ratifying, or authorizing it. During opening and closing statements, Harrison argued that as an older woman who spoke up for her rights and those of others, she was not a good “fit” at the University. Harrison argued:

[T]here is a preference here for a certain type of leader, certain type of candidate: A young, African American male and someone who will fall in line. Who won’t make too much noise. Who won’t make bad press. Who won’t ruin what we got going here by speaking up and speaking out, even about outlandish behavior.

The evidence reveals that Harrison encountered difficulties with several University employees in addition to Lalande whom the jury could have inferred played a role in the decision to terminate Harrison. That by mid-December, Harrison heard rumors from people outside of her work area that she would be fired is just one fact supporting such an inference.

There was extensive evidence that Harrison and Kimbrough had significant conflict from the beginning of Harrison’s employment. While Kimbrough was not Harrison’s supervisor, she nevertheless “outranked” Harrison, being a member of the executive committee and a vice-president, reporting directly to the University president, Dr. Warmack. Lalande forwarded Harrison’s October 20, 2015 email about her conflict and failed one-on-one meeting with Kimbrough to Dr. Warmack, and a meeting was arranged for Harrison, Kimbrough, Lalande, and Dr. Warmack on October 21. The meeting did not resolve any of the difficulties between Kimbrough and Harrison, and the situation worsened. Although Kimbrough testified to a much different version of events than did Harrison, the jury alone, as the trier of fact, is the sole arbiter of witness credibility, and is free to believe or disbelieve all, part, or none of any witness’s testimony. *State v. Armstrong*, 560 S.W.3d 563, 574 (Mo. App. E.D. 2018).

Kimbrough acknowledged that she had been convicted of committing crimes involving theft and dishonesty and had served a prison sentence before joining the University. According

to Kimbrough's testimony, Harrison knew of the convictions, and she believed Harrison was investigating her. Kimbrough had an employee with the University's information technology department provide her with a printout of Harrison's computer activity, which purportedly revealed contact with the court systems of states where Kimbrough once lived. An FBI agent and an investigator from the postmaster's office came to the University to speak with Kimbrough on one occasion. She testified that "at that point I was through the ceiling with the entire situation. I reported it to Dean Lalande. I reported it to Dr. Warmack." Kimbrough was asked to resign by Dr. Warmack, purportedly to avoid bad publicity, and received a \$35,000 severance package.³ Kimbrough left the University in December 2015. Lalande terminated Harrison on December 31, 2015.

Both Lalande and Kimbrough were members of the executive committee, and reported directly to Dr. Warmack. Harrison testified that Kimbrough and Lalande were very close, and that Kimbrough called Lalande by the nickname "Manny." Lalande told Harrison that Kimbrough voted against hiring her. Kimbrough told Harrison multiple times that she was a vice-president with the power to fire employees. The jury reasonably could have inferred that Kimbrough, the Director of Human Resources, played a role in Lalande's decision to terminate Harrison's employment. Likewise, the jury reasonably could have inferred that Kimbrough, as well as persons in the administration with concerns about details of Kimbrough's background becoming public, could have influenced the decision to fire Harrison.

In addition, Harrison testified that her in-person interview with Dr. Warmack struck her as odd. Whereas every other person with whom Harrison interviewed asked questions about her qualifications, Dr. Warmack did not. Instead, he focused on Harrison's physical ability to

³ Indeed, Kimbrough testified that a St. Louis newspaper published an article on Mother's Day 2016 about her background and employment at the University.

perform the job. Lalande later told Harrison that Dr. Warmack had not wanted to hire a woman for the position of Director of Public Safety. While the University obviously hired Harrison knowing she was a woman, the jury could have found that Dr. Warmack's reluctance to hire Harrison made her position more tenuous from the beginning of her employment, and made it easier for her to be fired during her probationary period.

Harrison also drew the anger of some faculty members. Lalande received complaints from the University's dance coach and from its athletic director about conflicts occurring with Harrison in front of students and members of the public. Lalande described a tense encounter he had with Harrison in public at the homecoming concert regarding crowd control and complaints of persons, including donors to the University, being denied admission to the concert. Evidence of complaints from faculty members, could have led the jury to reasonably infer that others were involved in the decision to fire Harrison.

Based on this evidence, the jury reasonably could have concluded that other University employees played a role in the decision to terminate Harrison. The jury could reasonably infer under all of the circumstances that the conduct of other employees, either independent of Lalande's conduct or in conjunction with it, was sufficient to hold the University liable, even though the jury believed the conduct of Lalande alone did not rise to the level of liability. *See Stith*, 79 S.W.2d at 458 ("[I]f the master is guilty of negligence distinct from the negligence or tort of the servant, though combining with it, or the injury is due in whole or in part to the negligence of other servants than the one sued, then an acquittal of the servant sued does not nullify the verdict and judgment may go against the master.").

Similar to the malicious prosecution claim in *Burnett* and the negligence claim in *Devine*, Harrison's retaliation claim was not based solely on the conduct of a single employee. It was for

the jury to determine whether other University employees were involved in Lalande's decision, and the jury reasonably determined this to be true. Therefore, the verdicts exonerating Lalande but finding the University liable for retaliation were not so inconsistent as to require the trial court to enter judgment notwithstanding the verdict. We deny the University's first point.

Harrison's Engagement in Protected Activity

For the sake of clarity, we next address the University's third point. The University claims the trial court erred in entering judgment for Harrison on her retaliation claim against the University and in denying the University's motion for JNOV. The University contends that Harrison failed to present sufficient evidence that she engaged in activity protected under the MHRA because none of her complaints to Lalande about Kimbrough alleged that Kimbrough's actions were motivated by Harrison's age, race, or gender. The University points out that none of Harrison's complaints, documented in her trial exhibits, attributed any of Kimbrough's actions to illegal discrimination based on Harrison's age or gender. The University further argues that Harrison's memoranda to Lalande, including her allegation that he dismissed the conflict with Kimbrough as a "girl fight," never alleged that he discriminated against Harrison because of her age or gender.

Section 213.070(2) RSMo. (2000)⁴ makes it an unlawful discriminatory practice "to retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by this chapter." Under the facts presented here, Harrison could establish a case for retaliation under the MHRA by showing that: (1) she complained of or otherwise opposed discrimination; (2) the University took adverse action against her; and (3) a causal relationship exists between the complaint and the adverse action. *McCrainey v. Kansas*

⁴ All statutory references are to RSMo. (2000).

City Missouri Sch. Dist., 337 S.W.3d 746, 753 (Mo. App. W.D. 2011). Our Supreme Court has held that if an employee's protected activity was even one contributing factor in the defendant's decision to take an act of reprisal against the employee, then there has been unlawful retaliation. *Walsh v. City of Kansas City*, 481 S.W.3d 97, 106 (Mo. App. W.D. 2016).

A plaintiff can oppose a practice that is not ultimately found to be unlawful under the MHRA, yet still proceed with a retaliation claim based on her opposition to the practice. *McCrainey*, 337 S.W.3d at 753. By providing a retaliation cause of action, section 213.070 of the MHRA encourages employees to report and oppose potentially discriminatory conduct. *Id.* at 753-54. If an employee were required to be certain that the conduct was unlawful before she reported it, an uncertain employee would be less likely to oppose conduct that the MHRA may in fact prohibit. *Id.* at 754. Therefore, in order to prevail on a retaliation claim, a plaintiff need only have a good faith, reasonable belief that the MHRA prohibited the conduct she opposed. *Id.*

Here, the University challenges the sufficiency of the evidence to establish the first element of a retaliation claim. Reviewing the evidence in the light most favorable to the jury's verdict, *Lin*, 594 S.W.3d at 241, we find the evidence sufficient to establish that Harrison opposed or complained of specific conduct in a good-faith, reasonable belief that the MHRA prohibited such conduct. In other words, there was sufficient evidence for the jury to find that Harrison complained of or otherwise opposed discrimination and a hostile work environment motivated by age or gender.

First, we observe that Harrison's opposition to discriminatory conduct and practices was not limited to her complaints about Kimbrough's behavior. Harrison testified that during her first week at the University, Lalande told her to fire Clarice Poindexter, a secretary whom Lalande described as "old" and "slow." Harrison refused to fire Poindexter, so then Lalande instructed

her to change Poindexter's job description so that Poindexter could not perform successfully. Again, Harrison refused.

Likewise, Harrison testified that when she expressed concerns about Kimbrough's behavior, Lalande dismissed the conflict as two light-skinned girls fighting to be campus queen. The jury could have believed that Lalande's description of the conflict reflected his understanding of Kimbrough's motivations. Thus, the jury could have found that Harrison's complaints about Kimbrough's conduct were, in fact, complaints of gender discrimination. Even more specifically, Harrison included in her December 9 and December 11, 2015 memos to Lalande a complaint about this cavalier dismissal of her concerns, writing that Lalande's response was demeaning and insulting to her as a woman.

An immediate result of Harrison's early complaints about Kimbrough's behavior was that Lalande directed Harrison not to contact human resources as all other University employees were entitled to do. Rather, he instructed Harrison to go through him for all human resources matters, both for those of Harrison personally and those related to the Department of Public Safety in general.

Further, following Harrison's complaints, Lalande began to bypass Harrison, going directly to her male subordinates, namely Lieutenant Perry who assumed Harrison's position when she was discharged. Officer McGull testified that he observed Lalande belittle Harrison, and deny her due respect as the head of the Department of Public Safety. In early December, Lalande told Harrison not to email or text him any longer, to speak with him one on one in his office only. He stated that he believed Harrison was laying a paper trail for him with her complaints.

Any of this evidence was sufficient for the jury to find that Harrison was fired because she complained about or otherwise opposed instances of what she reasonably and in good faith believed to be discrimination protected by the MHRA. We deny the University's third point.

Causal Relationship Between Harrison's Complaints and Her Termination

In its second point, the University claims the trial court erred in entering judgment for Harrison on her retaliation claim against the University and in denying the University's motion for JNOV. The University contends that Harrison failed to present sufficient evidence that her engagement in protected activity caused or contributed to her termination because Lalande was the sole decision maker, and because the jury found the evidence insufficient to find that Harrison's complaints contributed to Lalande's decision to terminate her.

The University's argument to support this point does not address the sufficiency of the evidence to support a causal relationship between Harrison's protected activity and her termination. The University instead reiterates that Lalande was the sole decision maker, and so the verdict against the University cannot stand. We have already rejected the University's contention that Lalande was necessarily the sole decision maker, determining that the jury reasonably could have found that other University employees were involved in Lalande's decision to terminate Harrison.

To establish a case for retaliation under the MHRA, Harrison was required to show a causal relationship between her protected activity and her termination. *Walsh*, 481 S.W.3d at 105-06; *McCrainey*, 337 S.W.3d at 753. Our Supreme Court has held that if an employee's protected activity was even one contributing factor in the decision to take an act of reprisal against the employee, then unlawful retaliation has resulted. *Walsh*, 481 S.W.3d at 106.

“Because cases involving claims of retaliatory motive are inherently fact-based and often depend on inferences rather than direct evidence, circumstantial evidence that tends to support an inference of retaliatory motive is sufficient.” *Holmes v. Kansas City Public Sch. Dist.*, 571 S.W.3d 602, 611 (Mo. App. W.D. 2018).

We reject the University’s conclusory statement that the evidence was insufficient to find that Harrison’s complaints contributed to the decision to terminate her. Viewing the evidence in the light most favorable to the jury’s verdict, *Lin*, 594 S.W.3d at 241, we find the evidence sufficient to establish that the University terminated Harrison as reprisal for her engagement in MHRA-protected activity. Harrison was fired on New Year’s Eve, the 88th day of her 90-day probationary period. Had the University terminated Harrison after expiration of her 90-day probationary period, she would have been eligible for an internal appeal of her termination. During her 88 days of employment, Harrison refused to take actions against a secretary who was “old”; complained repeatedly of hostility and obstruction from Kimbrough, who in turn complained to Lalande and Dr. Warmack about Harrison; complained of the unique procedure required of her to address human resources matters; and experienced Lelande’s dismissal of her complaints about Kimbrough, with whom Lalande was close, as a “girl fight” over who would be “queen” of the campus. In early December, Lalande told Harrison not to email or text him any longer, to only speak with him one on one because he believed that Harrison was setting up a paper trail for him.

Harrison and Lalande differed greatly in their testimony about the progress Harrison had made in her assignments. The jury alone, as the trier of fact, determines the credibility of the witnesses, and is free to believe or disbelieve all, part, or none of any witness’s testimony. *Armstrong*, 560 S.W.3d at 574. We defer to the jury’s credibility determinations. Thus, it was for

the jury to determine credibility, and by extension to decide whether the University's defense that Harrison performed inadequately in her job duties was a pretext for her termination. The jury reasonably could have inferred from the evidence that persons within the University were retaliating against Harrison, and wished to fire her before she had any right of review within the University. We deny the University's second point.

Award of Attorneys' Fees

In its fourth point, the University claims the trial court erred in its fee award. The University contends the fee award was excessive because: (1) Harrison prevailed on only one of six claims submitted; (2) her prevailing retaliation claim required different proof than her five other claims; (3) the fee request resulted from the failure of Harrison's counsel to obtain a continuance and unreliable billing practices; and (4) the case did not justify a lodestar multiplier. We disagree.

"[T]he legislature enacted section 213.111.2 to authorize an award of 'reasonable attorney fees' to the prevailing party in an MHRA action." *Wilson*, 598 S.W.3d at 896. Under section 213.111.2, prevailing employees receive an award of attorney fees "as a matter of course" although prevailing respondents must prove the case was "without foundation" to receive an award. *Gilliland v. Mo. Athletic Club*, 273 S.W.3d 516, 523 (Mo. banc 2009). The authorization for an award of attorney fees under section 213.111.2 is similar to a federal counterpart, 42 U.S.C. 1988, under which attorneys' fees are recovered unless circumstances exist that would render an award of such fees unjust. *Id.*

Factors relevant to a trial court's award of statutory attorneys' fees are: 1) the customary rates charged by the attorneys involved in the case as well as by other attorneys in the community for similar services; 2) the number of hours reasonably expended; 3) the nature and

character of the services rendered; 4) the degree of professional ability required; 5) the nature and importance of the subject matter; 6) the amount involved or the result obtained; and 7) the vigor of the opposition. *Wilson*, 598 S.W.3d at 896.

The determination of reasonable attorneys' fees is generally committed to the discretion of the trial court. *Id.* We deem the trial court an expert on fees in a given case because of its familiarity with all of the issues and the character of the legal services rendered. *Walsh*, 481 S.W.3d at 113. We presume an award of attorneys' fees is correct, and the complaining party has the burden to prove otherwise. *Id.* We will reverse only if the opposing party shows that the award of attorney fees was against the logic of the circumstances and so arbitrary and unreasonable as to shock one's sense of justice. *Id.*

Here, the trial court characterized as "astonishing" the fee request submitted by Harrison's counsel. The trial court considered the above factors, examined the attorneys' billing rates and hours expended, considered the University's objections, considered application of the lodestar multiplier, and ultimately awarded 56 percent less than the total amount Harrison's attorneys requested. Notably, the trial court cut the hourly billing rate of partners Jeremy Hollingshead and Nicholas Dudley by 20 percent based on a recent survey of median St. Louis billing rates and the rate the same attorneys billed in another recent MHRA case. The court also eliminated 152.4 hours of time billed by unnamed attorneys and staff; eliminated hours billed by an associate whose time appeared "inexplicably" in the records of both firms representing Harrison; eliminated the trial preparation fees of a third partner, Thomas SanFilippo; eliminated 42.3 hours of time related to the departure of an associate from one of the firms; and eliminated 128.9 hours of trial time billed by Hollingshead and Dudley. Of the attorneys' fees submitted by

Harrison's counsel, the trial court found that a lodestar of \$371,210 was reasonable, representing little more than half the lodestar originally requested.⁵

The University contends that the lodestar calculation should be further reduced, arguing that Harrison's six claims submitted to the jury each required distinct efforts and proof, and that her retaliation claim was easier to prove than an actual discrimination claim. The University's argument misses the mark. To prevail on her retaliation claim, Harrison had to establish that she held a good-faith, reasonable belief that the actions she complained of constituted discrimination prohibited by the MHRA. *McCrainey*, 337 S.W.3d at 754. Thus, to establish her good-faith, reasonable belief, Harrison was required to set forth detailed evidence of MHRA-prohibited discrimination in an effort to prove such discrimination. As this Court explained in *DeWalt v. Davidson Serv./Air, Inc.*:

If the plaintiff's claims for relief are based on different legal theories and facts, and counsel's work on one claim is unrelated to work on another, then the court should treat the unrelated claims as if they had been raised in separate lawsuits. Therefore, the court may award no fee for services on the unsuccessful and unrelated claims. On the other hand, if the claims for relief have a common core of facts and are based on related legal theories, so that much of counsel's time is devoted generally to the litigation as a whole and rendering it difficult to divide the hours expended on a claim-by-claim basis, such a lawsuit cannot be viewed as a series of distinct claims. In short, the efforts of the prevailing attorneys should not be discounted where the effort and proof were the same for the claims on which the plaintiff prevailed and those on which [s]he did not.

398 S.W.3d at 507 (internal citations omitted). Contrary to the University's argument, Harrison's claims of discrimination, hostile work environment, and retaliation cannot be evaluated each in isolation, but have a common core of facts and are based on related legal theories.

In addition, proof of discrimination is often complex and reliant on circumstantial

⁵ The "lodestar" is the starting point in determining reasonable attorneys' fees. *Terpstra v. State*, 565 S.W.3d 229, 250 (Mo. App. W.D. 2019). The trial court determines the lodestar by multiplying the number of hours reasonably expended by a reasonable hourly rate. *Id.*

evidence. Presentation of circumstantial evidence is often necessary in discrimination cases because, as our Supreme Court has stated, “employers are shrewd enough not to leave a trail of direct evidence.” *Terpstra v. State*, 565 S.W.3d 229, 244 (Mo. App. W.D. 2019) (quoting *Cox v. Kansas City Chiefs Football Club, Inc.*, 473 S.W.3d 107, 116 (Mo. banc 2015)).

Implicit in the University’s argument is the proposition that Harrison’s success was minimal because she prevailed on only one of six claims submitted to the jury, and that factor should influence the fee award. However, our Supreme Court has found the sixth factor identified above—the amount involved or the result obtained—not particularly relevant in human rights cases. *Wilson*, 598 S.W.3d at 896. A more significant factor is the nature and importance of the subject matter because “[t]he Missouri legislature, in enacting the human rights act, followed the lead of Congress in the choice of authorizing fees to private attorneys for enforcement of human rights claims, rather than relying principally upon government agencies for such enforcement.” *Id.* (quoting *Gilliland*, 273 S.W.3d at 523).

The University further argues that the trial court should have eliminated or reduced Dudley’s fees. The trial court did, indeed, reduce Dudley’s fees, first by reducing his hourly rate by 20 percent and then by eliminating 63 hours of time billed. Given the trial court’s careful consideration of the factors necessary for determining the lodestar and the billing records submitted, we cannot say that the trial court abused its discretion.

The court then applied a multiplier of 1.25 to the lodestar to reach a total attorneys’ fee award of \$464,012.50. After the trial court calculates the lodestar, it may find that a multiplier is necessary to ensure a market fee that compensates counsel for taking this case in lieu of working less risky cases on an hourly basis. *Terpstra*, 565 S.W.3d at 251. In doing so, however, the court

should avoid awarding a multiplier based on facts it already considered in its initial determination of the lodestar amount. *Id.*

Harrison's attorneys requested a multiplier of 1.5. The trial court reduced the multiplier to 1.25. The University argues that no multiplier is warranted because the trial court relied on the same factors to award a multiplier that it relied on to award attorneys' fees in the first instance, namely the risk taken and delay in receiving payment for time and resources devoted to the litigation. The trial court's analysis, however, demonstrates that it carefully considered the fee request and the multiplier, and did not arrive at the multiplier arbitrarily, without proper consideration, or by relying on the same factors relied on for the lodestar calculation. As a result, we cannot say that the trial court's calculation of the multiplier was an abuse of discretion. *Id.* at 252. We deny the University's fourth point.

Award of Litigation Expenses

The court awarded Harrison \$6,483.51 in addition to the award of attorneys' fees. In one instance in the judgment, the trial court referred to the \$6,483.51 as "costs" and in another instance as "litigation expenses." The University claims the trial court erred in separately awarding these "litigation expenses" because no statute specifically identifies litigation expenses as court costs. Therefore, contends the University, litigation expenses cannot be taxed as costs and awarded separately under the MHRA. We agree.

Twelve days after the trial court issued its amended judgment in this case, our Supreme Court handed down its opinion in *Wilson v. City of Kansas City*. "'An item is not taxable as costs in a case unless it is specifically authorized by statute' or by the parties' contract." *Wilson*, 598 S.W.3d at 895 (quoting *Groves v. State Farm Mut. Auto. Ins. Co.*, 540 S.W.2d 39, 44 (Mo. banc 1976)). Numerous statutes identify specific items that the court may tax as costs. *Id.* For

example, section 488.012 authorizes taxing more than 22 fees, costs, and charges as “court costs,” including filing fees, the cost of testimony transcription and court reporter services, and witness fees. *Id.* Authority for taxing other various expenses as costs is found throughout Missouri’s statutes. *Id.*

The *Wilson* Court determined that because no Missouri statute specifically identifies litigation expenses as court costs, litigation expenses cannot be taxed as costs under section 213.111.2. *Id.* at 895-96. *Wilson* went on to state, however, that the MHRA makes a plaintiff whole only if section 213.111.2 is read to authorize an award of reasonable attorneys’ fees that includes counsel’s reasonable out-of-pocket expenses normally charged to a fee-paying client. *Id.* at 897. “If, under the prevailing practice of the local community, there are reasonably incurred, out-of-pocket litigation expenses that would normally be charged to a fee-paying client, the circuit court may include those expenses when exercising its discretion, under section 213.111.2, to award a reasonable attorney fee.” *Id.*

We reverse the trial court’s award of litigation expenses. We remand the case so that the trial court will have the opportunity to consider which, if any, of the out-of-pocket expenses of Harrison’s attorneys can be properly awarded as attorneys’ fees under *Wilson*.

Attorneys’ Fees on Appeal

Finally, we consider Harrison’s motion for \$81,320 in attorneys’ fees on appeal that this Court ordered taken with the case. Section 213.111.2 authorizes the court to award court costs and reasonable attorneys’ fees to a prevailing party. A prevailing party includes one who prevails in an action brought under the MHRA, receives an award of attorney fees from the trial court, and successfully defends that favorable judgment on appeal. *Wilkins v. Bd. of Regents of Harris-Stowe State Univ.*, 519 S.W.3d 526, 548 (Mo. App. E.D. 2017).

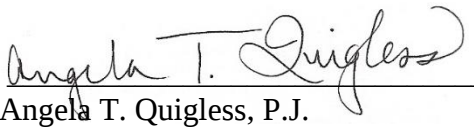
We have affirmed Harrison's claim for actual damages from the University for retaliation under the MHRA. Harrison also recovered her attorneys' fees and costs before the trial court. Having succeeded on a significant issue, Harrison is a prevailing party as defined in Section 213.111.2. *Wilson*, 598 S.W.3d at 898. Accordingly, we grant Harrison's request for reasonable attorneys' fees on appeal. Because the trial court is better equipped to hear evidence and argument on this issue and to evaluate the reasonableness of the requested fees, we remand to the trial court to determine and enter an appropriate award.

Conclusion

We conclude that the *McGinnis* Doctrine does not apply to proscribe verdicts finding the University liable while exonerating its employee, Lalande. We also conclude there is sufficient evidence that Harrison engaged in MHRA-protected activity, and that a causal relationship existed between her engagement in the protected activity and her termination from the University. Therefore, we affirm the trial court's judgment entered in conformity with the jury verdict awarding Harrison \$32,000 in actual damages from the University for retaliation under the MHRA. We also affirm the trial court's award of attorneys' fees in the amount of \$464,012.50.

In light of our Supreme Court's decision in *Wilson v. City of Kansas City*, we reverse the award of litigation expenses, and remand to the trial court to consider which, if any, of the out-of-pocket expenses of Harrison's attorneys can be properly awarded as attorneys' fees. Finally, we grant Harrison's request for reasonable attorneys' fees on appeal, and remand to the trial court to determine and enter an appropriate award.

Kurt S. Odenwald, J. and
James M. Dowd, J., concur.


Angela T. Quigless, P.J.