IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT
en banc

COMPLETE TITLE OF CASE

RONALD WILLIAMS,

Respondent,

v.

CITY OF KANSAS CITY, MISSOURI,

Appellant.

DOCKET NUMBER WD83835
(Consolidated with WD83938)

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: December 21, 2021

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Sandra C. Midkiff, Judge

JUDGES

Mark D. Pfeiffer, Gary D. Witt, Anthony Rex Gabbert, Edward R. Ardini, Jr., and W. Douglas Thomson, Judges, and Joseph M. Ellis and Thomas H. Newton, Senior Judges, CONCURRING IN MAJORITY OPINION.

Cynthia L. Martin, Chief Judge, and Alok Ahuja, Karen King Mitchell, and Thomas N. Chapman, Judges, CONCURRING IN DISSENTING OPINION.

ATTORNEYS

David A. Lunceford, Lee's Summit, MO, and Christina J. Nielsen, Lorain, OH, Attorneys for Respondent.

Timothy R. Ertz, Assistant City Attorney, Kansas City, MO, Attorney for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT
en banc

RONALD WILLIAMS, Respondent,
v.
CITY OF KANSAS CITY, MISSOURI, Appellant.

WD83835 (Consolidated with WD83938) **Jackson County**

Before: Cynthia L. Martin, Chief Judge, Alok Ahuja, Mark D. Pfeiffer, Karen King Mitchell, Gary D. Witt, Anthony Rex Gabbert, Edward R. Ardini, Jr., Thomas N. Chapman, and W. Douglas Thomson, Judges, and Joseph M. Ellis and Thomas H. Newton, Senior Judges

In this consolidated appeal, the City of Kansas City, Missouri ("City"), appeals from the judgment entered by the Circuit Court of Jackson County, Missouri ("trial court"), following a jury verdict in favor of Mr. Ronald Williams ("Williams"), awarding him compensatory and punitive damages on his claims of retaliation and hostile work environment under the Missouri Human Rights Act ("MHRA") and attorney fees with a multiplier, expenses, and costs; and from the order denying the City's post-trial motions for judgment notwithstanding the verdict ("JNOV"), new trial, and merger of compensatory damages. The City alleges nine points of error in the admission of evidence, attorney fees award, and denial of its post-trial motions.

AFFIRMED.

Majority Opinion of the Court en banc holds:

1. In the City's **first** point, it asserts that the trial court erred in denying its motion for JNOV because it proved its affirmative defense of failure to exhaust administrative remedies in that the charges of discrimination filed with the Commission did not contain a claim of hostile work environment.

The City failed to preserve its affirmative defense claim for appellate review. The City's affirmative defense pleading in its Answer, and later, Amended Answer is nothing more than a conclusory statement of bare legal assertions that both ignores express language contained within the actionable charges of discrimination and fails to plead specific facts required to support its affirmative defense.

Alternatively, the City failed to prove its affirmative defense as a matter of law. For the City to prove that Williams's hostile work environment claim was not exhausted, the City had the burden to establish that: (1) Williams's administrative complaint did not give the City notice of the hostile work environment claim; and (2) the hostile work environment claim was not like or

reasonably related to the allegations of the administrative charge in that there was no factual relationship between them. The City did not meet either of these elements of proof. Thus, the trial court did not err in denying the City's motion for JNOV.

2. In the City's **second** point, it contends that the trial court erred in denying the City's motion for new trial because the verdict director submitted to the jury on Williams's claim for retaliation misdirected, misled, or confused the jury in that the instruction contained disjunctive alternatives that were not properly exhausted before the Commission. Likewise, in the City's **fourth** point, it asserts that the trial court erred in denying the City's motion for new trial because the verdict director submitted to the jury on Williams's claim for hostile work environment misdirected, misled, or confused the jury in that the instruction contained disjunctive alternatives that were not exhausted in the charges of discrimination filed with the Commission.

Liberally interpreting Williams's administrative complaint, as the Missouri Supreme Court requires us to do, both the language of the charge, as well as the scope of the administrative investigation which could reasonably be expected to grow out of the charge of discrimination, would include an investigation of specific instances of the City retaliating against Williams as described in the retaliation verdict director and creating a hostile work environment as described in the hostile work environment verdict director. Accordingly, the trial court did not abuse its discretion in denying the City's motion for new trial.

3. In the City's **third** point, it asserts that the verdict director submitted to the jury on Williams's claim for retaliation contained disjunctive alternatives that were not pleaded in Williams's Petition for Damages, which prejudiced the City's defense of this case at trial.

The trial court did not abuse its discretion in denying the City's motion for new trial. The City has not shown that the retaliation verdict director misdirected, misled, or confused the jury where the City's own proffered retaliation verdict director contained disjunctive alternatives that were identical to those contained in the verdict director offered by Williams.

4. In the City's **fifth** and **sixth** points, it asserts that the trial court erred in denying its motion for new trial because the verdict director submitted to the jury on Williams's claim for hostile work environment misdirected, misled, or confused the jury in that the instruction contained a disjunctive alternative for which the City argues Williams did not have a right to sue. By the City using the exact same language in the verdict director it submitted on Williams's claim for hostile work environment, the City waived any objection.

5. In the City's **seventh** point on appeal, it asserts that the trial court erred in admitting evidence. Specifically, the City contends that the trial court erred when it allowed Leroy Jones to testify because his testimony unduly prejudiced the City in that Mr. Jones's involvement in the trial was not disclosed by Williams's counsel. However, the City admits that Williams disclosed Mr. Jones as a potential witness who would testify at trial prior to the close of discovery. The City had ample time to interview or depose Mr. Jones prior to trial, but chose not to do so. Accordingly, the trial court did not err in allowing Mr. Jones's testimony.

6. In the City's **eighth** point, it asserts that the trial court erred in denying the City's post-trial motion to merge the compensatory damage verdicts for retaliation and hostile work environment. Because the City failed to make the specific objection to the instructions it is now claiming to be error, the issue is not preserved for appellate review.

7. In the City's **ninth** and final point, it asserts that the trial court erred in awarding Williams attorney fees with a 1.5 multiplier because the trial court did not specify any factors that justified such an award. Here, the trial court had evidence before it that allowed it to assess whether a multiplier to the lodestar amount was appropriate in this case. The trial court's decision as to the amount of attorney fees, which included a 1.5 multiplier, was not arbitrary nor was the award so unreasonable that it indicates indifference and lack of proper judicial consideration.

Judge Ahuja's Dissenting Opinion states:

Judge Ahuja dissents. In his view, Williams's administrative complaint filed with the Missouri Commission on Human Rights challenged only a specific practice: the City's failure to permit him, and other African-American electricians in the Water Services Department, to take an Industrial Motor Control training course. Because Williams's administrative complaint challenged only the denial of a specific training course, the circuit court erred by permitting Williams to submit to the jury a hostile work environment claim, and a retaliation claim, which alleged that Williams had been subjected to unfounded discipline, and harassed and mistreated, in a variety of additional ways. Those additional claims were not properly exhausted before the Commission on Human Rights, and should not have been submitted to the jury. Unlike the majority, Judge Ahuja concludes that the City properly preserved its exhaustion defense by repeatedly raising it in the circuit court, in its answer, in pre-trial motions, during trial, and in post-judgment motions.

Majority Opinion by: Mark D. Pfeiffer, Judge December 21, 2021
Gary D. Witt, Anthony Rex Gabbert, Edward R. Ardini, Jr., and W. Douglas Thomson, Judges and Joseph M. Ellis and Thomas H. Newton, Senior Judges, concur.

Dissenting Opinion by: Alok Ahuja, Judge
Cynthia L. Martin, Chief Judge, and Karen King Mitchell and Thomas N. Chapman, Judges, concur

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.