OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION IV

SAMANTHA KELLEY,	)	No. ED110609
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	St. Francois County
vs.	)	
	)	Honorable Wendy L. Wexler Horn
STATE OF MISSOURI, DEPARTMENT OF CORRECTIONS,	)	
	)	
	)	
Appellant.	)	Filed: September 26, 2023

Before Kelly C. Broniec, Sp.J., Philip M. Hess, J., and James M. Dowd, J.

The Missouri Department of Corrections (the "Department") appeals the judgment of the Circuit of St. Francois County entered on a jury verdict in favor of plaintiff Samantha Kelley ("Kelley") on her claim of sexual harassment based on a hostile work environment brought under the Missouri Human Rights Act ("MHRA"), Chapter 213 RSMo. In her petition, Kelley alleged that she was subjected to unwelcome sexual harassment by two non-supervisory male co-workers, and that the Department, despite having actual and/or constructive knowledge of the sexual harassment, failed to take prompt and effective remedial action to stop it. The jury found in favor of Kelley, and awarded her actual and punitive damages. The trial court also awarded Kelley her reasonable attorneys' fees, including a 1.5 multiplier.

The Department raises four points on appeal: (1) Kelley failed to make a submissible case that the Department knew or should have known of the harassment and failed to take prompt and effective remedial action to stop it; (2) Kelley failed to establish that the Department's conduct warranted punitive damages; (3) the punitive damages award was grossly excessive; and (4) the trial court erred in applying a 1.5 multiplier to the attorneys' fees awarded to Kelley.

Prior to submission of this case on appeal, Kelley, as the prevailing party below, filed a motion seeking her attorney's fees on appeal pursuant to § 213.111.2 and Local Rule 400, arguing that the MHRA permits courts to award court costs and reasonable attorney fees to prevailing parties and that if we affirm the judgment of the trial court, she will continue to be the prevailing party. Kelley requests $23,095.00 for her reasonable attorneys' fees and $763.50 for her costs of litigation in connection with this appeal. The Department has objected to the hourly rate requested by Kelley.

AFFIRMED AND REMANDED TO DETERMINE ATTORNEYS' FEES.

DIVISION IV HOLDS: In reviewing the record most favorable to the judgment, we find (1) Kelley presented substantial evidence for the jury to conclude the Department knew or should have

known of the hostile work environment and that the Department failed to take prompt remedial action; (2) the jury was presented with clear and convincing evidence that the Department's conduct was with "reckless indifference" supporting an award of punitive damages; (3) the punitive damages award was not grossly excessive in that there was sufficient evidence to demonstrate the reprehensibility of the Department's conduct supporting the punitive damages award and the ratio of punitive damages to actual damages was well within the range generally considered to comport with due process; and the trial court's use of a 1.5 multiplier for Kelley's attorneys' fees was consistent with the factors presented in *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425 (Mo. banc 2013).

We also grant Kelley's motion for attorney's fees on appeal because § 213.111.2 requires courts to award attorneys' fees unless the award would be unjust, and the Department does not contend an award would be unjust. Further finding the trial court is better equipped to hear evidence and argument on the issue of attorneys' fees and to determine the reasonableness of the fee requested, we remand the cause to the trial court for further determination of the appropriate amount of attorneys' fees on appeal to which Kelley is entitled.

Opinion by: PER CURIAM

Attorney for Appellant: Matthew J. Laudano

Attorney for Respondent: Gregory A. Rich

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.