MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DANNY PETIFURD, Respondent,
v.
MISSOURI DEPARTMENT OF CORRECTIONS, Appellant.

DOCKET NUMBER WD87416

DATE: May 27, 2025

Appeal From:

The Circuit Court of Jackson County, Missouri
The Honorable J. Dale Youngs, Judge

Appellate Judges:

Division One: Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Mark D. Pfeiffer, Judges

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Attorneys:

Christina J. Nielsen, Talladega, AL, Attorney for Respondent.

Andrew Bailey, Attorney General, Jefferson City, MO, and Nicolas Taulbee, Assistant Attorney General, Kansas City, MO, Attorneys for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.
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WD87416 Jackson County

Before Division One Judges: Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Mark D. Pfeiffer, Judges

The Missouri Department of Corrections appeals the judgment in favor of former employee Danny Petifurd on his claim of retaliation under the Missouri Human Rights Act. On appeal, DOC alleges the trial court erred in denying its motion for judgment notwithstanding the verdict because Petifurd failed to present substantial evidence of a causal connection between his MHRA-protected activity and his termination. DOC also asserts the trial court erred by applying a 1.5 multiplier to calculate attorneys' fees awarded to Petifurd in that the court considered the contingent nature of the case when determining the lodestar amount and again when evaluating whether to apply a multiplier to that amount.

AFFIRMED. REMANDED FOR DETERMINATION OF REASONABLE ATTORNEYS' FEES ON APPEAL.

Division One holds:

1. When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict and disregard all evidence to the contrary.

2. Whether the plaintiff made a submissible case is a question of law, which we review *de novo*. We will reverse the jury's verdict only where we find no probative facts supporting it.

3. The MHRA prohibits an employer from discriminating or retaliating against a person because they opposed any practice prohibited by the MHRA or filed a complaint, testified, or participated in any way in any investigation or proceeding under the statute.

4. To make a submissible case for retaliation under the MHRA, a plaintiff must show: (1) he complained of discrimination; (2) the defendant took adverse action against him; and (3) a causal relationship existed between the complaint and the adverse action.

5. The requisite causal relationship exists where the employee's protected classification actually played a role in the adverse employment action or decision and had a determinative influence on that action or decision.

6. In establishing the causal connection, a plaintiff can rely on direct evidence of retaliation, including remarks by the employer demonstrating a discriminatory attitude and comments reflecting a discriminatory animus in the employment decision-making process.

7. A plaintiff also can rely on circumstantial evidence tending to support an inference of retaliatory motive, such as proof that the defendant's proffered explanation for the adverse employment action is unworthy of credence, deviation from the defendant's typical disciplinary process, and temporal proximity of the protected conduct and adverse employment action.

8. Petifurd offered both direct and circumstantial evidence that he was terminated for testifying truthfully about gender discrimination within DOC. Thus, there was sufficient evidence to support the jury's finding that a causal relationship existed between Petifurd's MHRA-protected activity and his termination, and the trial court did not err in denying DOC's motion for JNOV on his retaliation claim.

9. The MHRA authorizes courts to award reasonable attorney's fees, including reasonable appellate attorney's fees, to a prevailing party. A prevailing party is one that succeeds on any significant issue in the litigation which achieved some of the benefit the parties sought in bringing suit.

10. We review the trial court's award of attorney's fees for an abuse of discretion, meaning we will not reverse a fee award unless the amount is arrived at arbitrarily or is so unreasonable that it indicates indifference and a lack of proper judicial consideration.

11. The trial court is an expert on fees because of its familiarity with the issues in the case and the character of the legal services provided. Thus, we presume a fee award is correct, and the complaining party has the burden to prove otherwise.

12. While the trial court has discretion to award reasonable attorney's fees, relevant factors to be considered include (1) the rates customarily charged by the attorneys involved in the case and by other attorneys in the community for similar services; (2) the number of hours reasonably expended on the litigation; (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.

13. The decision to apply a multiplier should be made on a case-by-case basis, with due regard given to whether (1) counsel's fees were always contingent on the outcome of the case; (2) taking the case precluded counsel from taking other less risky cases; and (3) counsel's work on other cases was delayed due to the demand of preparing the instant case for trial (the *Berry* factors).

14. While a trial court should avoid awarding a multiplier based upon facts that it considered in its initial determination of the lodestar amount, all three of the *Berry* factors need not be present in order to apply a multiplier.

15. Here, there was ample affidavit and time record evidence of the second and third *Berry* factors which were not duplicative of any factor the trial court considered in setting the lodestar amount.

16. Even if the trial court did duplicate its consideration of the contingent nature of the representation, we decline to find that the court abused its discretion in applying a 1.5 multiplier to the lodestar amount where other non-duplicative factors supported use of the multiplier.

Opinion by: Karen King Mitchell, Presiding Judge May 27, 2025

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