STATE OF MINNESOTA

IN SUPREME COURT

C3-02-1605

Court of Appeals

Meyer, J.
Dissenting, Gilbert, J.

Patricia Ludowese Ray,

Respondent,

vs.

Filed: July 29, 2004
Office of Appellate Courts

Miller Meester Advertising, Inc.,

Appellant,

Robert V. Miller,

Defendant.

S Y L L A B U S

Front pay is a component of actual damages subject to multiplication under Minn. Stat. § 363.071, subd. 2 (2002).

Affirmed.

Heard, considered, and decided by the court en banc.

O P I N I O N

MEYER, Justice.

In this appeal, we are asked to decide whether front pay is subject to multiplication under Minn. Stat. § 363.071, subd. 2 (2002).[1]

Appellant Miller Meester Advertising, Inc. (MMA), a Minnesota-based advertising agency, hired respondent Patricia Ludowese Ray in June of 1996 in the position of Vice President/Group Creative Director. At the time she was hired, Ray had 21 years of experience in the advertising industry. In June 1998, after two years of employment and without a negative performance evaluation, Ray was promoted to the position of Creative Director, the first woman to hold that position. Two months later, Ray was terminated by Robert V. Miller, MMA's owner. She was terminated without warning and with no prior criticism of her job performance. Ray then sued MMA and Miller for unlawful gender discrimination under the Minnesota Human Rights Act (MHRA), Minn. Stat. ch. 363 (2002), and Title VII of the federal Civil Rights Act, 42 U.S.C. § 2000e-5(g) (2004).

Ray's Title VII claim was tried to a jury and the MHRA claim was tried to the court. The presiding judge used the jury in an advisory capacity with regard to claims of discrimination under the MHRA. By special verdict, the jury found that Ray was terminated on the basis of her gender and awarded past wage loss in the amount of

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[1] Section 363.071, subdivision 2, has been renumbered and now may be found at Minn. Stat. § 363A.29, subd. 4 (Supp. 2003).

$73,866, past compensatory damages in the amount of $95,000, future compensatory damages in the amount of $42,250, and punitive damages in the amount of $500,000.

On June 7, 2001, the district court issued its findings of facts and conclusions of law with respect to the MHRA claims. The court concluded that MMA terminated Ray in violation of the MHRA. The court ordered a total of over $1 million in damages on both the Title VII and MHRA claims. The MHRA damage award included $123,004 for three years of front pay which, under Minn. Stat. § 363.071, subd. 2 (2002), the court doubled to $246,008.

MMA appealed, and among its claims of error it asserted that doubling the front pay award was not permitted under the MHRA.[2] The court of appeals reversed the entire Title VII award due to evidentiary errors. *Ray v. Miller Meester Adver., Inc.*, 664 N.W.2d 355, 372 (Minn. App. 2003). The court of appeals also reversed the district court's trebling of emotional distress damages under the MHRA. *Ray*, 664 N.W.2d at 370. The court of appeals found no other errors in the district court's evidentiary rulings or determination of liability and damages under the MHRA. *Ray*, 664 N.W.2d at 372. We granted MMA's petition for review on the issue of whether front pay is subject to multiplication under the MHRA.

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[2] MMA asserted that the district court abused its discretion by admitting testimony that was either an improper lay opinion, irrelevant, unduly prejudicial, or an improper expert opinion. *Ray v. Miller Meester Adver., Inc.*, 664 N.W.2d 355, 362 (Minn. App. 2003). MMA also argued that the admission of inadmissible evidence resulted in prejudicial error in both the Title VII jury trial and in the MHRA bench trial. *Ray*, 664 N.W.2d at 362.

We begin by briefly examining the nature of front pay. "In employment contracts, the general rule is that '[t]he measure of damages for breach of an employment contract is the compensation which an employee who has been wrongfully discharged would have received had the contract been carried out according to its terms.'" *Feges v. Perkins Rests., Inc.*, 483 N.W.2d 701, 709 (Minn. 1992) (quoting *Zeller v. Prior Lake Pub. Sch.*, 259 Minn. 487, 493, 108 N.W.2d 602, 606 (1961)). However, a court may award future damages, or front pay, for lost compensation that occurs after the time of trial. *Id.* at 710. The potentially speculative nature of front pay awards is limited by the plaintiff's duty to mitigate damages, the evidence presented concerning the extent of the potential damages, and the principle that front pay awards are limited to the damages caused by the breach of contract. *Id*.

Under the MHRA, when a court finds that an employer engaged in an unfair discriminatory practice, the court shall order the employer to pay "compensatory damages in an amount up to three times the actual damages sustained." Minn. Stat. § 363.071, subd. 2 (2000). The question in this case is whether front pay is a component of "actual damages" and, therefore, subject to multiplication under the MHRA. This is an issue of statutory construction that we review de novo. *State v. Wukawitz*, 662 N.W.2d 517, 525 (Minn. 2003).

The legislature did not provide a definition of actual damages in the MHRA. However, we have already construed the meaning of this phrase in *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 275 (Minn. 1995). In *Phelps* we cited with approval the definition of actual damages found in *Black's Law Dictionary*.

Phelps, 537 N.W.2d at 275. *Black's Law Dictionary* defines actual damages as "[a]n amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses. – Also termed *compensatory damages.*" *Black's Law Dictionary* 394 (7th ed. 1999). We concluded in *Phelps* that "[i]n general, compensatory damages 'consist of both general and special damages. General damages are the natural, necessary and usual result of the wrongful act or occurrence in question. Special damages are those which are the natural but not the necessary and inevitable result of the wrongful act.'"[3] *Phelps*, 537 N.W.2d at 275 n.2 (quoting *Black's Law Dictionary* 390 (6th ed. 1990)). We further construed the term "actual damages" as having the meaning ascribed by common law.[4] *See id*. at 275.

The common law principle that actual or compensatory damages may include future losses is well established in Minnesota. *See, e.g.*, *Pietrzak v. Eggen*, 295 N.W.2d

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[3] Likewise, the Restatement (Second) of Torts defines compensatory damages as "the damages awarded to a person as compensation, indemnity or restitution for harm sustained by him." *Restatement (Second) of Torts* § 903 (1979). Section 910 of the Restatement further states that the victim of a tort "is entitled to recover damages from the [tortfeasor] for all harm, past, present and *prospective*, legally caused by the tort." (Emphasis added.) The Restatement also notes that both general and special damages are forms of compensatory damages. *Id.* § 904. The Restatement, like *Phelps*, defines general damages as "compensatory damages for a harm so frequently resulting from the tort that is the basis of the action that the existence of the damages is normally to be anticipated and hence need not be alleged in order to be proved." *Id*. (1). The Restatement defines special damages as "compensatory damages for a harm other than one for which general damages are given." *Id*. (2).

[4] The dissent asserts that we improperly rely on the Restatement of Torts and prior tort cases to define compensatory damages. To the contrary, we are merely relying on our precedent in *Phelps*, where we looked to the common law definition of compensatory damages as defined by *Black's*. *See Phelps*, 537 N.W.2d at 275.

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