STATE OF MICHIGAN

COURT OF APPEALS

HELENE C. RAUCH, M.D.,

Plaintiff-Appellee,

v

WAYNE STATE UNIVERSITY, DR. PAUL MONTGOMERY, LOUIS LESSEM, and DANIEL BERNARD,

Defendants-Appellants.

UNPUBLISHED
April 28, 2000

No. 196508
Wayne Circuit Court
LC No. 93-317974 CZ

HELENE RAUCH,

Plaintiff-Appellee,

v

WAYNE STATE UNIVERSITY, PAUL MONTGOMERY, LOUIS LESSEM, and DANIEL BERNARD,

Defendants-Appellants,

and

DAVID ADAMANY,

Defendant.

No. 209309
Wayne Circuit Court
LC No. 93-317974 CZ

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

In this employment discrimination action, a jury found defendant Wayne State University (WSU) liable for age discrimination and retaliation under the Civil Rights Act (CRA), MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*., and found defendant Louis Lessem (Lessem), an associate general counsel employed by WSU, liable for invasion of privacy and tortious interference with a business relationship or expectation of a business relationship. In Docket No. 196508, defendants[1] appeal as of right from the judgment awarding plaintiff $669,102.38. In Docket No. 209309, defendants appeal by leave granted from an order awarding plaintiff attorney fees and costs of $297,207.17. We affirm in Docket No. 196508, and remand for further proceedings in Docket No. 209309.

I. Docket No. 196508

A. Claims Against Lessem

Lessem first claims that the trial court erred in denying his motions for summary disposition based on governmental immunity under MCR 2.116(C)(7).[2] We disagree.

Initially, we note that Lessem has failed to properly present this issue for appellate review because he has not provided this Court with a transcript or a settled statement of facts for the summary disposition hearings. *Thomas v McGinnis*, ___ Mich App ___; ___ NW2d ___ (rel'd 2/8/2000, #201840), slip op, p 7; *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992).[3] It is the appellant's obligation to secure the complete transcript of all proceedings in the lower court unless production of the full transcripts is excused by order of the trial court or by stipulation of the parties. *Admiral, supra*. This Court's review is limited to the record provided on

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[1] Although there are four defendants identified as appellants, this appeal only pertains to the liability of defendants WSU and Lessem. Defendants Montgomery and Bernard were relieved of all liability at trial and that portion of the verdict is not challenged on appeal.

[2] Lessem's first motion for summary disposition was actually brought under MCR 2.116(C)(4) in which Lessem asserted that his conduct was taken in his official capacity as Associate General Counsel, and thus, exclusive jurisdiction over this matter rested in the Court of Claims. In his supporting brief, Lessem additionally argued that he was entitled to governmental immunity from plaintiff's claims. Although the trial court denied defendant's motion pursuant to MCR 2.116(C)(4), because defendants do not challenge the denial of summary disposition on jurisdictional grounds, we review the ruling under the correct subsection dealing with immunity granted by law, MCR 2.116(C)(7). *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395, n 3; 573 NW2d 336 (1997). Moreover, although defendant's second motion for summary disposition again requested dismissal under MCR 2.116(C)(4) (as well as (C)(10)), the trial court correctly recognized that MCR 2.116(C)(7) was the appropriate subsection under which defendant's motion should be considered.

[3] Citations to clerical entries in the lower court record identifying filings and court hearings are not an appropriate substitute for the appellant's obligation to support an argument with "specific page references to the record." MCR 7.212(C)(7).

appeal and will not consider any alleged evidence or testimony that is not supported by the record presented to this Court. *Id.*

MCR 7.210(B)(2) provides the appropriate procedures to settle a record where the lower court proceedings were transcribed but the parties are unable to obtain a copy from the reporter. *Id.* While the record reflects that appellant made certain efforts to procure the transcripts, there is no indication that appellant was excused from producing the transcript for this Court's review. Nonetheless, we will review this issue because of the legal, rather than factual, nature of the claim. See *Admiral, supra.* To the extent that appellant's claim depends on facts unascertainable on the record, we decline review. *Id.*

This Court reviews a trial court's denial of summary disposition de novo to determine whether the moving party was entitled to judgment as a matter of law. *Spikes v Banks*, 231 Mich App 341, 345-346; 586 NW2d 106 (1998). In deciding whether to grant a motion for summary disposition under MCR 2.116(C)(7), the court must accept the allegations contained in the pleadings, affidavits, depositions, and other documentary evidence as true, affording the benefit of doubt to the nonmoving party. MCR 2.116(G)(5); *Patterson v Kleiman*, 447 Mich 429, 434; 526 NW2d 879 (1994); *Spikes, supra* at 346.

The governmental immunity act, MCL 691.1407(2); MSA 3.996(107)(2), provides immunity from liability for injuries caused by an officer, employee or member of a governmental agency while in the course of employment or service if (1) the governmental actor is acting or reasonably believes he is acting within the scope of his authority, (2) the governmental agency is engaged in the exercise or discharge of a governmental function, and (3) the governmental actor's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. However, an intentional tort committed by a governmental agent is not within the exercise or discharge of a governmental function, and therefore, governmental immunity is not an available defense to an intentional tort. MCL 691.1407(3); MSA 3.996(107)(3); *Jones v Powell*, 227 Mich App 662, 672; 577 NW2d 130 (1998), citing *Blackman v Cooper*, 89 Mich App 639, 643; 280 NW2d 620 (1979). See *Sudul v City of Hamtramck*, 221 Mich App 455, 458, 480-481 (J. Murphy, concurring in part and dissenting in part); 562 NW2d 478 (1997) *Payton v City of Detroit*, 211 Mich App 375, 393; 536 NW2d 233 (1995).

Whether a government agent engaged in intentional conduct sufficient to defeat a summary disposition motion based on governmental immunity is determined by the pleadings. *Vermilya v Dunham*, 195 Mich App 79, 81; 489 NW2d 496 (1992). Here, plaintiff's complaint alleged facts permitting a reasonable jury to conclude that Lessem engaged in conduct amounting to an intentional interference with an advantageous business relationship which requires a showing of intentional conduct. See *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 699; 552 NW2d 919 (1996). Because the defense of governmental immunity is unavailable under circumstances where intentional conduct is alleged, the trial court properly denied Lessem's motion for summary disposition under MCR 2.116(C)(7) on the intentional interference claim. Although the trial court incorrectly analyzed the issue under a "gross negligence" standard, this Court will not

reverse a trial court's ruling when the right result was reached for the wrong reason. *Glazer v Lankin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).

With respect to the invasion of privacy claim, although there is some question whether the "false light" theory of invasion of privacy requires a showing of intentional conduct, as opposed to knowledge or reckless conduct, see *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 170-171; 551 NW2d 132 (1996); *Sawabini v Desenberg*, 143 Mich App 373, 381, n 3; 372 NW2d 559 (1985), because plaintiff's "false light" theory of invasion of privacy was not before the court at the time the summary disposition motion was considered (only the "private facts" theory was presented), we need not decide whether summary disposition was appropriate on that claim. Further, because the "private facts" theory of invasion of privacy was not submitted to the jury for consideration, we need not decide whether that tort was specifically barred by immunity.

Lessem next argues that the trial court erred in denying his motions for directed verdict and judgment notwithstanding the verdict (JNOV) on plaintiff's invasion of privacy and tortious interference with a business relationship claims. We disagree. Again, we note that this Court has not been provided with a transcript or settled statement of facts on the hearing of these motions, *Thomas, supra*; *Admiral, supra*, however, because there are sufficient facts in the existing record to review this issue, we nonetheless consider the claim.

We review a trial court's denial of a directed verdict de novo. *Candelaria v B C General Contractors, Inc*, 236 Mich App 67, 71; 600 NW2d 348 (1999). When evaluating a motion for directed verdict, a court must consider the evidence and all legitimate inferences in a light most favorable to the nonomoving party. *Id.* A directed verdict is appropriately only when no factual question exists upon which reasonable minds may differ. *Id.* at 71-72.

We also review a trial court's decision on a motion for JNOV de novo to determine whether there was sufficient evidence presented at trial to create an issue for the jury. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998); *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 671; 591 NW2d 438 (1998). If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand. *Central Cartage Co v Fewless*, 232 Mich App 517, 524; 591 NW2d 422 (1998). When deciding a motion for JNOV, the court must examine the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the nonmoving party. *Id.* Only if the evidence so viewed fails to establish a claim as a matter of law is JNOV appropriate. *Forge*, *supra* at 204; *Badalamenti v William Beaumont Hosp-Troy*, 237 Mich App 278, 284; 602 NW2d 854 (1999).

In plaintiff's complaint, the invasion of privacy claim was premised on the "private facts" theory (Lessem invaded her privacy by "the release of embarrassing private 'facts' about plaintiff to the [First of America] bank and others.") During trial, plaintiff successfully moved to amend her pleadings to allege the "false light" theory of invasion of privacy. Because there is nothing in the record to suggest that the "private facts" theory of invasion of privacy was presented to the jury for consideration, we need not decide whether the trial court erred in denying a directed verdict or JNOV on that theory. See *Contesti v Attorney General*, 164 Mich App 271, 278; 416 NW2d 410 (1987).

Further, while the record suggests that the "false light" theory of invasion of privacy was presented to the jury, we find no merit to Lessem's contention that plaintiff did not establish the falsity element of that claim. *Porter v City of Royal Oak*, 214 Mich App 478, 486-487; 542 NW2d 905 (1995); *Detroit Free Press, Inc v Oakland Co Sheriff*, 164 Mich App 656, 666; 418 NW2d 124 (1987). Viewing the evidence and all legitimate inferences in the light most favorable to plaintiff, we conclude that plaintiff presented sufficient evidence to create an issue of fact for the jury on whether the challenged statements reported in the Inside Wayne State article were false.[4] Accordingly, Lessem's motions for directed verdict and JNOV were properly denied.

We also reject defendant's claim that the trial court erred in denying Lessem's motions for directed verdict and JNOV on plaintiff's tortious interference with a business relationship claim. The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff. *BPS Clinical Laboratories*, *supra* at 698-699. To establish that a lawful act was done with malice and without justification, the plaintiff must specifically demonstrate affirmative acts by defendant that corroborate the improper motive of the interference. *Id.* Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference. *Id.*

Our review of the record reveals that plaintiff presented ample evidence to create a factual question for the jury whether defendants tortiously interfered with plaintiff's business relationship with First of America Bank sufficient to defeat a directed verdict and JNOV motion. Viewed most favorably to plaintiff, the evidence showed that Lessem, armed with knowledge that plaintiff's personal bankruptcy petition was dismissed but that the bankruptcy also involved a commercial building owned by plaintiff's company, intentionally revealed information to First of America Bank about plaintiff's back pay award solely to interfere with plaintiff's business relationship with the bank. The evidence further showed Lessem had been informed by plaintiff's bankruptcy attorney that plaintiff could receive her award of back pay directly because her personal bankruptcy proceeding was dismissed and, yet, two days later, Lessem contacted the bank to inform it of plaintiff's award of back pay. The bank then took immediate steps to have the back pay award placed in escrow and it subsequently foreclosed on plaintiff's commercial property due to unpaid real estate taxes. On this record, we find that the jury could reasonably infer that Lessem intended to interfere with plaintiff's business relationship with the bank, and denial of a directed verdict and JNOV was proper.

Next, Lessem argues that the trial court erred in allowing plaintiff to amend her invasion of privacy claim at trial from a "private facts" to "false light" theory. We disagree.

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[4] Plaintiff challenged the following statements contained in the Inside Wayne State article:

> Rauch did not seek approval to take a leave from WSU in order to take the residency, Lessem said. Instead, she simply took the job. She began neglecting her duties as associate professor, Lessem said.

We review a trial court's decision to permit an amendment of pleadings for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). Although plaintiff did not file a formal motion to amend the complaint, because a remand for amendment of the complaint would be a mere formality, we deem the pleading amended in the interest of judicial economy. MCR 2.118(C); *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 609; 321 NW2d 668 (1982).

Upon review of the record, we find no abuse of discretion by the trial court in permitting plaintiff to amend her complaint to allege the "false light" theory of invasion of privacy during trial. Although plaintiff's initial complaint alleged facts in support of a "private facts" theory, the complaint did not explicitly limit the invasion of privacy claim to that theory alone. In addition, the evidence relied upon by plaintiff to prove the "false light" theory of the claim during trial was the same as the evidence already presented on the retaliation claim against WSU. Therefore, we do not find that Lessem was unduly prejudiced by the amendment or that the amendment precluded Lessem from presenting a defense. MCR 2.118(C).

Lessem's final argument is that the trial court erred by instructing the jury on the "false light" theory of invasion of privacy. However, Lessem's claim of alleged instructional error was not preserved for appeal because he failed to object to the instructions on the specific ground that "false light" was not pleaded in the complaint. MCR 2.516(C); MRE 103(a)(1). Instead, Lessem argued that if the "false light" theory was to be presented to the jury, it should be done in conjunction with the "private facts" theory as well. Thus, Lessem explicitly requested that both theories of invasion of privacy should be presented to the jury, not just the "false light" theory. An objection on one ground at the trial court is insufficient to preserve a challenge on different grounds on appeal. *City of Westland v Okopski*, 208 Mich App 66, 72; 527 NW2d 780 (1994). Moreover, because this Court was not provided with a transcript or a settled statement of facts of the jury instructions, we are unable to further review this issue. *Admiral Ins Co, supra*.

B. Claims Against WSU

WSU first claims that the trial court erred in denying its motions for directed verdict and JNOV on plaintiff's age discrimination claim. We disagree.

The CRA, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a), states that an employer shall not

> [f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of . . . age[.]

To establish a claim of age discrimination, the plaintiff must show that (1) she was a member of the protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) she was replaced by a younger person. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 177; 579 NW2d 906 (1998). An age discrimination claim can be based on two theories: (1) disparate treatment, e.g., intentional discrimination against an individual, or (2) disparate impact, e.g., facially neutral employment policy has a discriminatory effect on members of a protected class.

Meagher v Wayne State Univ, 222 Mich App 700, 708-710; 565 NW2d 401 (1997). In this case, plaintiff has presented competent evidence only of a disparate treatment claim because she has not identified any particular employment policy having a disparate impact on older workers.

To establish a claim of disparate treatment or intentional discrimination, a plaintiff may rely on the introduction of direct or indirect evidence. *Meagher*, *supra* at 710. Direct evidence is evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor of a decisionmaker. *Downey v Charlevoix Co Bd of Co Rd Comm'rs*, 227 Mich App 621, 633; 576 NW2d 712 (1998) (age discrimination); *Harrison v Olde Financial Corp*, 225 Mich App 601, 606-607; 572 NW2d 679 (1997) (race discrimination).

In this case, plaintiff presented direct evidence of age discrimination, and thus, the *McDonnell Douglas*[5] burden-shifting analysis does not apply. The evidence showed that a number of WSU employees were involved in the employment decisions relating to the medical education plaintiff pursued while she was a faculty member at WSU. In particular, there was testimony from Associate Provost J. Richard Thorderson, a principal decisionmaker on faculty requests for leaves of absence, that he believed that plaintiff's medical degree would not benefit her research activities because she was at the "end of her career" since she had been a researcher since the mid 1960's. Thorderson further remarked that plaintiff would not complete her degree until she was in her mid-sixties, and that pursuing her medical degree "was not an appropriate development for her because of her age." The jury could reasonably infer from this evidence that Thorderson's belief that a medical degree would not benefit plaintiff's current position at WSU because she was nearing the end of her career as reflected by her age, greatly affected his decision to deny her request for a leave of absence to participate in a medical residency and offer early retirement as plaintiff's only option. In addition, Thorderson and Dr. Montgomery, the Chair of the Immunology and Microbiology Department, both cited plaintiff's efforts at obtaining a medical degree as a "mid-life crisis." Dr. Montgomery also remarked that "old timers," referring to senior researchers such as plaintiff, were not heavy grant-getters and he supported the decision to deny plaintiff's request for leave and encourage her to take early retirement instead. Further, Dr. Tse, a younger, male colleague of plaintiff's who worked with plaintiff on various projects, characterized plaintiff as an "old woman." Viewed in a light most favorable to plaintiff, we find plaintiff presented sufficient evidence of age discrimination to defeat WSU's motions for directed verdict and JNOV.

WSU also claims that the trial court erred in denying its motions for directed verdict and JNOV on the retaliation claim. We disagree.

MCL 37.2701(a); MSA 3.548(701)(a) provides that a person shall not "[r]etaliate or discriminate against a person because the person has opposed a violation of [the CRA], or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under th[e] [CRA]."

To establish a prima facie case of unlawful retaliation, a plaintiff must show:

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[5] *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).

> (1) that he [or she] engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).]

Internal opposition, such as complaining of discrimination in the workplace made through the employee or her representative, may form the basis of a retaliation claim under the CRA. MCL 37.2701(a); MSA 3.548(701)(a); *McLemore v Detroit Receiving Hosp*, 196 Mich App 391, 396; 493 NW2d 441 (1992).

The gravamen of WSU's challenge to the retaliation verdict is that plaintiff did not prove that there was a causal connection between the protected activity (plaintiff's charge of discrimination) and the adverse employment action (plaintiff's termination). However, viewing the evidence and all legitimate inferences in a light most favorable to plaintiff, we find that the jury could reasonably infer from the proofs that WSU retaliated against plaintiff for bringing a discrimination charge. The record reveals that around the same time that plaintiff alleged age discrimination, she was summarily fired without any tenure revocation proceedings. There was also evidence that after plaintiff was reinstated to her position pursuant to an arbitration decision, she filed a discrimination charge with the EEOC after which WSU took several retaliatory actions including: (1) contacting Sinai Hospital where plaintiff was doing her residency to request that plaintiff not be certified for a second year of her residency and threatening to question the quality of Sinai's residency program if plaintiff was accommodated, (2) reporting allegedly false statements to WSU's newspaper "Inside Edition," (3) denying plaintiff's requests for unpaid leave of absence, and (4) unjustifiably withholding plaintiff's award of back pay obtained in the arbitration proceeding. Given the close proximity of time between defendant's charge of discrimination and the adverse employment decisions, the trier of fact could reasonably infer a causal connection between the activities. The trial court did not err in denying defendant's motions for directed verdict and JNOV on the retaliation claim.

WSU next contends that the trial court erred in granting plaintiff's motion to supplement her retaliation claim after litigation had commenced. We disagree.

A trial court's decision to allow a supplemental pleading to state transactions and events that have occurred since the date of the pleadings is discretionary. MCR 2.118(E); *Winienko v Valenti*, 203 Mich App 411, 414; 513 NW2d 181 (1994). See generally *Weymers, supra* at 654. We do not find that WSU suffered any prejudice or unfair surprise by the trial court's ruling allowing plaintiff to supplement her retaliation claim. Plaintiff merely added facts to her claim that WSU embarked on a continuing course of retaliation after her initial discrimination charge was made, all of which had been explored at length during extensive discovery. In fact, WSU conceded at the motion hearing that it was "probably aware of the facts that are going to be alleged" in the supplemental pleading. Accordingly, WSU has failed to demonstrate that the trial court's ruling was an abuse of discretion.

Finally, WSU claims that the trial court erred by denying its motion for JNOV or a new trial on the ground that the verdict was inconsistent and unreliable. Specifically, WSU argues that plaintiff only

presented evidence of damages on her gender discrimination claim and did not present any evidence of damages on the age discrimination claim. Thus, because the jury returned a verdict in favor of plaintiff only on the age discrimination claim, and found against plaintiff on the gender discrimination claim, WSU argues that the award of economic damages for lost back wages and future wages was unsupported by the evidence. We disagree.

The remedy provision of the CRA, MCL 37.2801; MSA 3.548(801), provides that damages may be recovered "for injury or loss caused by each violation of this act." This means that an award of damages must "flow" from the violation. *Reisman v Regents of Wayne State Univ*, 188 Mich App 526, 542; 470 NW2d 678 (1991); *Slayton v Michigan Host, Inc*, 122 Mich App 411, 417; 332 NW2d 498 (1983). In a case where liability is proven, difficulty in determining damages will not bar recovery. *Reisman, supra* at 542. In this case, plaintiff's economic loss damages depended on whether her failure to obtain merit pay raises flowed from WSU's discriminatory or retaliatory actions with respect to the medical education she was pursuing. We agree with plaintiff that she could prove economic loss damages without expert testimony because resolution of this issue did not depend on scientific, technical or specialized knowledge. MRE 702. Moreover, viewing the evidence and all legitimate inferences in a light most favorable to plaintiff, we find sufficient evidence was presented to create a jury question on whether plaintiff's failure to obtain merit pay flowed from WSU's discriminatory and retaliatory actions. Because a missed merit pay increase in any one year would have carried over into each future year, future damages were also determinable. Accordingly, defendants were not entitled to JNOV or a new trial on this issue.[6]

C. Common Evidentiary Issues

Defendants challenge a number of the trial court's evidentiary rulings. A trial court' s evidentiary ruling will not be disturbed absent an abuse of discretion. *Dep't of Transportation v Van Elslander*, 460 Mich 127, 129; 594 NW2d 841 (1999); *Phillips v Deihm*, 213 Mich App 389, 401; 541 NW2d 566 (1995). Even if there was error in the admission of evidence, reversal is not required if the error was harmless and did not affect a substantial right of the party. MRE 103(a); MCR 2.613(A); *Merrow v Bofferding*, 458 Mich 617, 634; 581 NW2d 696 (1998).

Defendants first claim that the trial court erred in admitting testimony regarding settlement negotiations and offers of compromise to prove defendants' liability contrary to MRE 408.[7] We

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[6] WSU does not argue that the actual amount of economic damages awarded were excessive, and we offer no opinion on this matter. WSU's argument simply attacked the factual support for the damage award.

[7] MRE 408 provides:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not

disagree. Our review of this issue is limited to the specific testimony cited by defendants in support of this argument.

Over defendants' objection, the trial court admitted testimony from Dr. Weiner concerning his efforts to arrange a meeting between WSU's agents and plaintiff in 1993, before the instant action was filed. Dr. Weiner's testimony did not relate to settlement negotiations that occurred in response to the filing of a lawsuit, but rather sought to demonstrate a failed attempt by Dr. Weiner to bring plaintiff and the dean of the medical school together to discuss possible solutions before litigation commenced, particularly early retirement. Under these circumstances, we agree with the trial court that the challenged testimony was properly admitted on the narrow issue of forced retirement, which was the underlying theory of plaintiff's discrimination and retaliation claims, and was not offered to prove liability of defendants in the instant lawsuit. Evidence of defendants' numerous demands on plaintiff to take early retirement in order to pursue her medical degree did not reveal attempts to compromise or negotiate any claim because no claim had been filed at that point. Rather, testimony that defendants repeatedly offered plaintiff early retirement as her only option in order to pursue her medical degree revealed operative facts relating to plaintiff's age and retaliatory discrimination claims. See *Overseas Motors v Import Motors Ltd*, 375 F Supp 499, 537 (ED Mich, 1974), aff'd 519 F2d 119 (CA 6, 1975). MRE 408 should not be used to bar otherwise relevant evidence concerning the circumstances of an adverse employment decision simply because one party calls its communication with the other party a "settlement offer." See *Cassino v Reichhold Chemicals*, 817 F2d 1338, 1342-1343 (CA 6, 1987).

With respect to defendants' challenge to the admission of testimony from WSU President Adamany and Dr. Parrish pertaining to negotiations at an October 1991 meeting, defendants failed to timely object or move to strike the testimony, and thus, they have not preserved this evidentiary challenge. MRE 103(a)(1). Further, no plain error affecting substantial rights has been shown. MRE 103(d). Accordingly, we decline to review this claim.

Defendants next argue that the trial court abused its discretion in frequently admitting hearsay evidence. All but one of defendants' hearsay challenges have been abandoned for failure to cite specific facts and legal authority in support of their position. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim, or search for authority to sustain or reject the party's position on appeal. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Morris v Allstate Ins Co*, 230 Mich App 361, 370; 584 NW2d 340 (1998). Defendants' bare citation to pages in the transcripts in which the alleged hearsay was admitted, without any factual

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> admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also dose not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

support or argument constitutes inadequate presentation of the issue on appeal, *Goolsby*, 419 Mich 651, 655, n 1; 358 NW2d 856 (1984), and we decline to review those claims.

With regard to the one issue properly presented, the admission of alleged hearsay testimony from Marlene Kilbey, the existing record shows that defendants failed to object to the testimony on hearsay grounds at trial, and therefore, this issue has not been preserved for appeal. MRE 103(a)(1); *Meagher, supra* at 724. Further, we are not persuaded that plain error affecting any substantial right has been shown, particularly because the testimony cited by defendant involved alleged mistreatment of women at WSU and the jury found no sex discrimination. This unpreserved hearsay claim does not warrant relief. MRE 103(a).

Next, defendants contend that the trial court abused its discretion in admitting testimony on a number of collateral matters. First, defendants claim that the admission of testimony from Dr. Berk, a WSU professor in plaintiff's department, concerning a male faculty member's alleged affair with a graduate student was improper because the evidence was marginally relevant and unduly prejudicial. After a thorough review of the record, we find that any error in the admission of the evidence was harmless because the trial court limited the testimony to how Dr. Montgomery handled the alleged misconduct (i.e., whether Dr. Montgomery enforced the university rules and regulations the same in all instances of alleged misconduct), and only allowed the evidence to be considered on plaintiff's gender discrimination claim for which the jury found no liability. MRE 103; MCR 2.613(A); *Merrow, supra*. Similarly, we find that the graduate student's brief testimony that she had a social relationship with the male faculty member caused no prejudice. MRE 403. The record shows that no details on the social relationship were elicited and plaintiff's inquiry into this matter ended after defendants objected.

Second, with regard to defendants' claim that the trial court erroneously admitted testimony from WSU president Adamany and Bernard about the Lumigen lawsuit, an unrelated intellectual property litigation in which WSU was involved, any error in the admission of the evidence for a substantive purpose was harmless because the trial court admitted the testimony only as it pertained to the gender discrimination claim, for which the jury found no liability. In addition, to the extent that the trial court admitted the testimony for purposes of attacking Adamany's credibility with respect to his position on school policies and the manner in which individuals who violate those policies should be disciplined, we find no abuse of discretion, *Palenkas v Beaumont Hosp*, 432 Mich 527, 553; 443 NW2d 354 (1989), and no plain error affecting a substantial right. MRE 103(a).

Defendants next assert several arguments pertaining to the introduction of expert testimony at trial. The decision whether an individual is qualified to testify as an expert witness is within the sound discretion of the trial court and this Court will not disturb that ruling absent an abuse of discretion. *Phillips, supra* at 401. Because defendants have afforded only cursory treatment to all but two instances of alleged error in this issue, and have failed to articulate specific factual or legal support for their position, we deem the conclusory portions of this issue abandoned and decline to review them. See *Wilson, supra*; *Morris, supra*. Mere citation to excerpts in the record containing the challenged evidence, without any other facts substantiating the claim of error, is insufficient presentation of an issue on appeal. *Goolsby, supra* at 655 n 1; see also *Community Nat'l Bank, supra* at 520-521.

With respect to the two claims that were properly presented, we find no abuse of discretion. First, Dr. Herndon's opinion testimony concerning the impact of a medical degree on research and the general state licensing requirements for clinical research, was general in nature based on his own experiences and observations within the parameters of MRE 701. See *Co-Jo, Inc v Strand*, 226 Mich App 108, 116-117; 572 NW2d 251 (1997); *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447; 540 NW2d 696 (1995). Moreover, we find no abuse of discretion in the trial court's ruling admitting testimony from Dr. Paranjpe as plaintiff's expert witness, and excluding testimony from defense expert Dr. Spear. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 402; 443 NW2d 340 (1989); *Davis, v Link, Inc*, 195 Mich App 70, 73-74; 489 NW2d 103 (1992). The record adequately supports the trial court's finding that Dr. Paranjpe was qualified to testify as an expert witness in the area of economic loss and projections under MRE 702. *Mulholland, supra*. Further, the trial court reasonably concluded that while Dr. Spear was qualified as an expert witness in the "field of chairmanships and microbiology and immunology departments" based on her credentials and experience, her specialized knowledge about the standards for chairpersons in these departments on a nationwide basis would not assist the jury in understanding the issues presented or resolving any disputed fact. MRE 702.

II. Docket No. 209309

In Docket No. 209309, defendants challenge the trial court's denial of their motion for discovery and an evidentiary hearing to determine the reasonableness of the attorney fees and costs awarded plaintiff under the CRA, MCL 37.2802; MSA 3.548(802).[8] A trial court's award of attorney fees is reviewed for an abuse of discretion. *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982); *B & B Investment Group v Gitler*, 229 Mich App 1, 15; 581 NW2d 17 (1998); *Smolen v Dahlmann Apts, Ltd*, 186 Mich App 292, 298; 463 NW2d 261 (1990).

After a review of the record, we find that the trial court abused its discretion in denying WSU's motion for an evidentiary hearing because the trial court merely found plaintiff's bill of costs reasonable on its face without articulating specific facts in support of its finding or inquiring into the actual services rendered. *Miller v Meijer, Inc*, 219 Mich App 476, 479; 556 NW2d 890 (1996). See *Maple Hill Apt Co v Stine (On Remand)*, 147 Mich App 687, 693; 382 NW2d 849 (1985); *Petterman v Haverhill Farms, Inc*, 125 Mich App 30, 32-33; 335 NW2d 710 (1983). Defendants expressly challenged the number of hours claimed by plaintiff for attorney fees and related costs, as well as the

[8] MCL 37.2802; MSA 3.548(802) provides:

> A court, in rendering a judgment brought pursuant to this article, may award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant in the action if the court determines that the award is appropriate.

presence of billings from five attorneys and the duplication of services and charges.[9] Where the number of hours spent in preparation of litigation or the actual services rendered are in dispute, the trial court must conduct an evidentiary hearing and make particular findings of fact regarding those disputed issues. *Miller, supra*. The trial court failed to make the requisite inquiries and findings in this case.

Further, contrary to plaintiff's contention, defendants were not required to submit contradictory documentation as a condition precedent to an evidentiary hearing. The law is clear that the burden of proving fees rests upon the claimant of those fees, *Petterman, supra* at 33, and where there are factual disputes on the reasonableness of the fees claimed or the services rendered, an evidentiary hearing to resolve the disputed issues is required. *B & B Investment Group, supra*; *Miller, supra*.

Finally, because plaintiff did not prevail on all discrimination theories against WSU and only partially succeeded on her tort theories against the individual defendants, we believe that an evidentiary hearing is necessary to determine the number of hours plaintiff's attorney spent working on the claims and issues on which plaintiff was successful at trial. Portions of legal expenditures against one defendant are properly excluded in determining a reasonable attorney fee for another defendant. See *McAuley v General Motors Corp*, 457 Mich 513, 524-525; 578 NW2d 282 (1998), overruled in part on other grounds 461 Mich 265, 272; 602 NW2d 367 (1999). Accordingly, we remand this case to the trial court for an evidentiary hearing and further findings on attorney fees and costs specific to each defendant who was found liable.

Affirmed in part and remanded for further proceedings consistent with this opinion. Plaintiff, as the prevailing party in Docket No. 196508 may tax costs pursuant to MCR 7.219(A). No taxable costs in Docket No. 209309, neither party having prevailed in full. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh

[9] Although the trial court found that attorney Mires' rate of $200 per hour was reasonable in light of her experience and the complexity of the case, the trial court did not mention the four other attorneys who purportedly worked on the case and billed 205.75 hours at various rates for a total amount of $37,775. In addition, over defense counsel's objection, the trial court did not inquire and plaintiff did not offer any explanation or description of the legal services provided by J. Robinson where the demand for costs included $1,937.50, at a rate of $100 per hour, for legal services.