STATE OF MICHIGAN

COURT OF APPEALS

JOHN MCMILLAN,

Plaintiff-Appellant,

v

DWAYNE L. DAVIS,

Defendant-Appellee,

and

LARRY B. RIVERS and RIVERS INVESTMENT MANAGEMENT GROUP, INC., d/b/a RIVERS INVESTMENT,

Defendants.

UNPUBLISHED
August 5, 2010

No. 288298
Wayne Circuit Court
LC No. 07-700673-NO

Before: METER, P.J., and MURRAY and BECKERING, JJ.

MURRAY, J. (*concurring*).

I concur in both the rationale and result in the majority opinion, which affirms the trial court's denial of the plaintiff's motion for judgment notwithstanding the verdict or new trial. As the majority opinion makes clear, plaintiff's main arguments are foreclosed by the well-settled law contained within *Kelly v Builders Square, Inc*, 465 Mich 29; 632 NW2d 912 (2001).

However, I write separately to point out that plaintiff's argument, that "post-verdict discussion with the jurors established that some animus, instead of due consideration of the evidence, prompted the verdict" is not only an improper attempt to overturn the verdict, but offensive to the sanctity of the judicial system. Plaintiff makes the previously quoted argument based upon affidavits of plaintiff's co-counsel who handled the case. The first affidavit indicates that the affiant and defense counsel spoke to three members of the jury and, in response to a question about why non-economic damages were not awarded to the plaintiff, the three jurors stated something to the effect that they did not believe any party or any of the witnesses. Based on this, the affiant concluded that "the jurors were clearly biased against both parties and all witnesses in this case and showed definite animus." That affidavit was followed by an affidavit from co-counsel for plaintiff, who simply stated that, to the best of his recollection, all of the impaneled jurors were white, and that all but one of the witnesses and parties were black.

Thus, what is presented is an argument that because a black plaintiff did not get all the damages he requested at trial from an all-white jury, the jury must have acted with racial animus. However, an argument premised upon post-verdict conversations with several jurors about their thought processes is precluded by the law, *Hoffman v Spartan Stores, Inc*, 197 Mich App 289, 290-291; 494 NW2d 811 (1992), quoting *Hoffman v Monroe Pub Schs*, 96 Mich App 256, 261; 292 NW2d 542 (1980),[1] while this specific and unsubstantiated argument can only detract from the public's respect for our bedrock system of trial by jury, see *Georgia v McCollum*, 505 US 42, 49; 112 S Ct 2348; 120 L Ed 2d 33 (1992) (noting in the criminal context that there is a significant state interest in preserving the public's confidence in our jury system). There is no argument made, and therefore no evidence presented, to suggest that the jurors acted in any manner other than how they were instructed to decide this case by the trial court. And, as noted by the majority opinion, the law squarely rejects the other arguments plaintiff has made in an attempt to overturn the verdict. To now raise, as a last ditch argument, unsubstantiated and generalized notions of racial animosity into an otherwise unremarkable trial is both improper and unwarranted, and hopefully will not be presented to this Court again.

/s/ Christopher M. Murray

[1] See, also, *Shiner v Detroit*, 150 Mich App 420, 424; 387 NW2d 872 (1986), citing *Mandjiak v Meijer's Super Markets, Inc*, 364 Mich 456, 459-461; 110 NW2d 802 (1961).