

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**REM Community Options, LLC,
Defendant Below, Petitioner**

vs) **No. 11-1236** (Wood County 09-C-434)

**Laura W. Cain,
Plaintiff Below, Respondent**

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner REM Community Options, LLC (“REM”), defendant below, appeals an award of punitive damages in an employment discrimination case. Petitioner is represented by Bryan R. Cokeley, Vanessa L. Goddard, and Robert L. Bailey. Respondent Laura W. Cain, plaintiff below, is represented by Walt Auvil.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Ms. Cain asserted that her former employer, REM, terminated her employment in retaliation for her filing a workers’ compensation claim and because of her disability due to an injury received in the course of her employment. At trial, the jury found in favor of Ms. Cain on both theories of liability and awarded her \$76,000 in lost back wages, \$100,000 for emotional distress, and \$450,000 in punitive damages. After a post-trial analysis, the circuit court upheld the award of punitive damages by order entered on July 25, 2011. REM reports that it has paid the lost wages and emotional distress damages, as well as Ms. Cain’s attorney’s fees. In the instant appeal, REM only appeals the award of punitive damages.

When reviewing an award of punitive damages, we apply a de novo standard of review to the award and to the circuit court’s ruling approving, rejecting, or reducing such award. Syl. Pt. 16, *Peters v. Rivers Edge Min., Inc.*, 224 W.Va. 160, 680 S.E.2d 791 (2009).

REM argues that even when viewing the evidence in a light most favorable to Ms. Cain, the punitive damages claim should have failed as a matter of law, and the issue should not have been submitted to the jury, because Cain failed to present evidence that REM acted with malice. *See*, Syl. Pt. 4, *Mayer v. Frobe*, 40 W.Va. 246, 22 S.E. 58 (1895) (requiring “gross fraud, malice, oppression, or wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others” for the imposition of punitive damages); Syl. Pt. 7, *Alkire v. First*

National Bank of Parsons, 197 W.Va. 122, 475 S.E.2d 122 (1996) (holding that “a determination of whether the conduct of an actor toward another person entitles that person to a punitive damage award under *Mayer v. Frobe*” is the first step in our punitive damages jurisprudence paradigm).

In its “Findings of Fact and Conclusions of Law with Respect to Punitive Damages” order entered on July 25, 2011, the circuit court found that plaintiff did present sufficient evidence to support the award of punitive damages. Upon a de novo review of the record on appeal, the parties’ arguments, and the circuit court’s well-reasoned order, we agree with the circuit court’s findings of fact and conclusions of law. We hereby adopt and incorporate by reference the circuit court’s July 25, 2011, order. The Clerk is directed to attach a copy of the circuit court’s order to this memorandum decision.

REM argues that when awarding punitive damages, the jury was prejudiced by statements and argument of plaintiff’s counsel. However, we find that even if counsel had not made the complained-of statements and argument, there was still more than sufficient evidence to warrant the imposition of punitive damages. Accordingly, REM has asserted no meritorious grounds for reversal.¹

Affirmed.

ISSUED: November 16, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

¹ We note that REM does not assign any error regarding the *amount* of punitive damages the jury awarded. *See* Syl. Pt. 7, *Alkire* (holding that the second step in our punitive damages jurisprudence paradigm is an examination of whether the award is excessive). The circuit court conducted a post-trial analysis pursuant to *Garnes v. Fleming Landfill, Inc.*, 186 W.Va. 656, 413 S.E.2d 897 (1991), and concluded that the amount of the award is not excessive.