**COURT OF APPEALS DECISION DATED AND RELEASED**

December 5, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-1204-FT**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT IV**

**JUNE HALVERSON,**

**Plaintiff-Respondent,**

**v.**

**VERNON MEMORIAL HOSPITAL,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed*.

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Vernon Memorial Hospital appeals from a judgment awarding June Halverson, R.N., $100,000 in damages for wrongful discharge from employment. Because we conclude that the circuit court did not err in entering judgment on the verdict, we affirm.

## BACKGROUND

In February 1993, Vernon Memorial Hospital (VMH) hired June Halverson, a registered nurse, to perform home health care, as well as weekend on-call hospice care. In early September 1993, the Hospice Program Director left for maternity leave. The parties dispute whether Halverson agreed to fill in as director, or whether Halverson was asked only to function as a hospice nurse. The parties also disagree whether Halverson was -- or needed to be -- oriented to hospice duties. In late September, Halverson asked to be relieved of her hospice duties on the grounds that she had received inadequate hospice orientation.

Two days after resigning her hospice duties, Halverson received a written disciplinary warning contending unprofessional conduct. Over the next six months Halverson was subjected to a series of disciplinary actions and was eventually terminated.

Halverson brought suit alleging wrongful discharge based on public policy prohibiting the firing of a registered nurse for refusing to perform services for which he or she is not qualified by education, training or experience. *See* ***Winkelman v. Beloit Memorial Hosp.***, 168 Wis.2d 12, 29, 483 N.W.2d 211, 218 (1992). VMH defended on the grounds that Halverson's discharge was for poor performance. The jury found in favor of Halverson and VMH appeals.

## STANDARD OF REVIEW

A jury verdict will not be upset by a reviewing court if there is "any credible evidence" to support the verdict, especially when it is further supported by the trial court's approval. ***Fehring v. Republic Ins. Co.***, 118 Wis.2d 299, 305-06, 347 N.W.2d 595, 598 (1984). Witness credibility and the weight afforded individual testimony is the jury's province. ***Id.*** Where more than one reasonable inference may be drawn, we must accept the inference drawn by the jury. ***Id.*** We search the record for credible evidence to support the jury verdict, not for evidence to sustain a verdict the jury could have reached, but did not. ***Id.*** We will not substitute our judgment as to the credibility of the evidence for

that of the finder of fact. ***Turner v. State***, 76 Wis.2d 1, 18, 250 N.W.2d 706, 715 (1977). A jury's findings of fact must be treated with deference by a reviewing court. ***Vonch v. American Standard Ins. Co.***, 151 Wis.2d 138, 151, 442 N.W.2d 598, 603 (Ct. App. 1989).

Further, we must sustain a jury's award of damage if there is any credible evidence to support it. ***Hunzinger Constr. Co. v. Granite Resources Corp.***, 196 Wis.2d 327, 336-37, 538 N.W.2d 804, 808 (Ct. App. 1995). The appellant must carry the heavy burden of showing that there is such a complete failure of proof that the jury verdict could only have been based on speculation. ***Johnson v. Misericordia Community Hosp.***, 97 Wis.2d 521, 566, 294 N.W.2d 501, 523 (Ct. App. 1980), *aff'd.*, 99 Wis.2d 708, 301 N.W.2d 156 (1981). This is especially so, when, as here, the circuit court has reviewed the verdict and sustained it against a claim of excessiveness. ***Id.***

ANALYSIS

VMH argues that there is such a complete failure of proof here that the jury verdict could only have been based on speculation. *See* ***Krueger v. Tappan Co.***, 104 Wis.2d 199, 201, 311 N.W.2d 219, 221 (Ct. App. 1981). We disagree.

The jury heard that Halverson initially received orientation to her home health care responsibilities. In this position, Halverson received good evaluations and a raise in salary. She was then placed in a new field, hospice care.[1] Halverson testified that she was not properly oriented to her new duties. Within days of resigning her hospice responsibilities, Halverson became the subject of a series of disciplinary actions which culminated in her firing from VMH.

---

[1] VMH makes much of the fact that Halverson was initially hired as a back-up hospice worker. However, the jury heard testimony that Halverson worked only one weekend as a hospice worker before the events in question.

The jury heard testimony from the hospital's witnesses that Halverson was fired for poor work performance. VMH witnesses also testified to Halverson's various shortcomings. The jury verdict demonstrates that it found Halverson and her witnesses more credible than those of VMH.

We conclude that sufficient evidence exists in this record from which a reasonable jury could find, as this one did, that the stated reasons for Halverson's firing were pretextual and that the firing was wrongful as against public policy. Therefore, we affirm.[2]

VMH also argues that the damages awarded were excessive and should be overturned. In VMH's view, the circuit court failed to give its reasons for sustaining the verdict and therefore, we must review the record *ab initio* to determine whether any credible evidence sustains the award. *See* ***Brogan v. Industrial Casualty Ins. Co.***, 132 Wis.2d 229, 238, 392 N.W.2d 439, 443 (Ct. App. 1986).

Our review of the record leads us to conclude that the trial court gave sufficient reasons for sustaining the verdict, and that there was credible evidence to support the jury's damage award. This is especially true in that VMH failed to present any evidence regarding damages, giving the jury no other view to consider when it concluded that Halverson was entitled to an award of $100,000.

Specifically, the circuit court made clear that the award did not shock its conscience. *See* ***Olson v. Siordia***, 25 Wis.2d 274, 284, 130 N.W.2d 827, 832 (1964). The court states that the award was not so excessive as to justify a change, especially since Halverson testified that her firing affected her ability to obtain future employment. The jury heard testimony from Halverson attributing her difficulties in finding comparable work as a nurse to the lack of a good recommendation from VMH. She also now had a spotty employment record due to her firing. The court specifically approved the jury award on the

---

[2] Because we so conclude, we specifically reject VMH's argument that the jury ignored the jury instructions and found in favor of Halverson despite being instructed that Halverson could not recover for "mere[]" retaliation. The evidence reasonably supports a finding of *wrongful* retaliation for a protected activity.

basis of Halverson's future employment prospects, finding the award reasonable. Finally, although VMH made arguments concerning the amount of the award at the postconviction hearing, VMH failed to contradict Halverson's damage case at trial.

VMH also argues that a new trial should be granted in the interest of justice because various jurors were observed nodding off during the trial, while other jurors demonstrated bias and hostility. The circuit court, which presided over the trial, specifically found that the jurors were no less attentive than civil case jurors usually are, and also found that the problem was overstated by VMH. Because the circuit court was in a much better position to evaluate the juror's behavior, we must defer. *Cf.* ***Turner v. State***, 76 Wis.2d 1, 18, 250 N.W.2d 706, 715 (1977) (credibility determinations not subject to review).

*By the Court*.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.