

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-13871

Non-Argument Calendar

LADI MARCH GOLDWIRE,

Plaintiff-Appellee-Cross Appellant,

versus

CITY OF RIVIERA BEACH, FLORIDA,

Defendant-Appellant-Cross Appellee.

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:18-cv-81285-WPD

Before JORDAN, NEWSOM, and LUCK, Circuit Judges.

PER CURIAM:

The city of Riviera Beach, Florida appeals a jury verdict in favor of Ladi March Goldwire on her retaliation claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a). Goldwire cross-appeals, challenging the denial of her motion under Federal Rules of Civil Procedure 50 and 59 for judgment notwithstanding the verdict and a new trial as to her claims under the Equal Pay Act of 1963, 29 U.S.C. § 206(d), and the Florida Whistleblower Act, Fla. Stat. § 112.3187. We affirm.

FACTUAL BACKGROUND

The city hired Goldwire in January 2017 as a building official whose responsibilities included administering, interpreting, and enforcing the Florida Building Code and local ordinances. Her first supervisor was Terrence Bailey, the city's acting director of development services. Initially, Goldwire was eligible for a provisional building official license because she'd had a general contractor's license for more than ten years. While negotiating her salary, Goldwire and her interviewers agreed that she'd get a raise after obtaining her provisional license. Goldwire received her provisional license in April 2017 but had to take a series of five tests to qualify for a standard license. The city provided Goldwire with a take-home vehicle as a fringe benefit for which she was taxed.

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Two months into her employment, Goldwire sent a memorandum to the city's legal department stating that she'd reviewed an ongoing construction development by Palm Beach Cold Storage and determined that the valuation of the project was understated. Goldwire assessed additional fees on the developer stemming from the adjusted valuation she'd calculated. The next day, under Goldwire's orders, the city issued a stop work order on the project, which was ninety percent completed, based on claims that the developer had failed to procure certain permits.

The drama resulting from Goldwire's dealings with Palm Beach Cold Storage generated a fair amount of media coverage. Three weeks after the stop work order, Danny Jones, deputy city manager, told Goldwire to pull back from the order. Jones also informed Goldwire that she'd improperly used her assigned take-home vehicle and subsequently revoked it.

In April 2017, Goldwire sent an email to the city's director of human resources, Bruce Davis, the city manager, Jonathan Evans, and Bailey, requesting a meeting to discuss what Goldwire perceived to be hostile aspects of her work environment. Davis and Eureka Young, the city's assistant director of human resources at the time, conducted an investigation that included interviews with Goldwire and others in the department. No further action was taken. Goldwire received her standard building official license in 2018. At some point, Goldwire's base salary was raised pursuant to a cost-of-living increase.

In 2019, Goldwire approved two permits—one for a floating dock and one for a fence. Both were opposed by Karen Hoskins, then city manager, and Goldwire’s new supervisor Jeff Gagnon, whom the city had hired as development services director. Before approving the permits, Goldwire sent a memorandum to Hoskins and Gagnon stating her opinion that there was no legal basis for denying the dock permit. When Gagnon revoked both permits, Goldwire sent an email to the city manager and city attorney protesting Gagnon’s actions. On April 19, 2019, Goldwire sent a similar letter to acting city manager Dierdre Jacobs and was fired later that day.

PROCEDURAL HISTORY

In her operative complaint, Goldwire raised claims of discrimination, hostile work environment, and retaliation pursuant to Title VII; violation of her equal protection rights pursuant to 42 U.S.C. section 1983; and violations of the Equal Pay Act and Florida Whistleblower Act. Goldwire sought compensatory damages among other relief. She asserted that the city paid her less than her male comparators, retaliated against her for filing an internal complaint, posted her unredacted personnel file to Facebook, illegally revoked permits she issued, and fired her after she objected to the revocations. The city moved for summary judgment, which the district court granted as to Goldwire’s hostile work environment and section 1983 claims. The case proceeded to a jury trial on the remaining claims. Neither party moved for a directed verdict or

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judgment as a matter of law before the case was submitted to the jury on the claims they now challenge on appeal.

A. Equal Pay Act Claim

At trial, Goldwire testified that she was hired at a base salary of \$75,839.00 per year. She claimed that, despite the assurances of her interviewers, she received no pay raise after earning either her provisional or her standard building official license. Consequently, she was paid less than her male predecessors and successor. The jury was presented with evidence that, adjusted for inflation, Peter Ringle (Goldwire's predecessor) earned a base salary of \$90,027.12, Gilbert Vetter (Ringle's predecessor) earned \$93,127.98, and Kenneth Loihle (Vetter's predecessor) earned \$101,546.10. Goldwire's replacement, Michael Grimm, was hired at an annual salary of \$92,000.00.

Ringle testified that he didn't receive the benefit of using a take-home vehicle during his tenure as building official. Gagnon testified that he revoked Goldwire's use of a take-home vehicle because he believed that she'd mistreated the car by taking it outside the authorized area.

Randy Sherman, the city's director of finance and administrative services, testified that Goldwire's starting pay was \$75,839.37. Sherman said that she did receive a pay raise to \$82,031.04 to reflect cost-of-living increases. Without providing numbers, Sherman testified that the city paid for Goldwire's travel expenses, hotels, and tests to get her license, and sent her to

conferences, but acknowledged that the city paid for all management to attend conferences and training events.

After being instructed that they should consider all forms of compensation, the jury found that Goldwire's predecessors and successor held a job requiring similar skills under similar conditions but that Goldwire wasn't paid any less than they were.

B. Title VII Retaliation Claim

Goldwire testified that after she filed a complaint alleging a hostile work environment in April 2017, the developers of the Palm Beach Cold Storage project began submitting public records requests for her personnel file. Goldwire testified that her unredacted file subsequently was released on a Facebook group page, containing her social security card, driver's license, and other information. She asserted that her file was posted to Facebook shortly after she refused to give a release-of-power to Palm Beach Cold Storage, but she didn't remember the exact date she'd seen it, nor could she identify who posted it. She didn't enter into evidence a screenshot of the alleged posting or anything linking the city to the Facebook group the file was allegedly posted to. She claimed that she brought the file to the city's attention in an email dated February 2018—ten months after her initial complaint—but that the city ignored it. The jury was presented with the email in question, in which Goldwire stated that she'd received password reset notifications but not that her file had been released online.

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Goldwire testified that she received the password reset notifications from the websites of the Department of Business and Professional Regulation and International Code Council, agencies that govern her various licensures, even though she hadn't reset her password. She testified that whoever submitted those requests would've been required to enter her social security number, date of birth, and other information she claimed was released via Facebook. She claimed that news outlets subsequently reported on her performance on her qualifying exams for her standard building official license, which could've been obtained only from those websites.

Goldwire further testified that she filed a charge of discrimination with the Equal Employment Opportunity Commission, but she didn't mention when she did so. She claimed that she started getting videos saying that her time was up, as well as horror-themed video clips. She testified that she reported to the FBI that she was being cyberstalked and physically stalked, which frightened her. She said that she received letters stating that she needed to go and that her feelings were so hurt that she had to move.

Young testified that the city's personnel files were kept in a locked room that could be accessed only by human resources employees. She said that the city's department heads maintained files that often mimicked the official files. She said that the public didn't have access to human resources files but could request access to redacted documents. She claimed that she didn't know how Goldwire's file was released and never investigated the issue. She also

claimed that she didn't know whether Goldwire's personal information was placed on Facebook and that Goldwire had never complained to her about it but that she'd heard talk of it.

Hoskins testified that she didn't recall Goldwire's file being placed on Facebook, although she recalled Goldwire complaining that people had access to her files through public records requests. She said that she didn't investigate but told the human resources department to make sure to redact public records when processing records requests. Evans testified that he wasn't aware that Goldwire's file was posted on Facebook.

At the conclusion of the case, the district court instructed the jury that they'd have to find that the city took an adverse employment action against Goldwire and that the city took that action because of her protected activity in order to find in her favor. The district court explained that the jury would have to decide whether Goldwire had proved, by a preponderance of the evidence, that her internal complaint of sex discrimination was the main reason for the city's decision or that the city wouldn't have taken the action if Goldwire hadn't engaged in the protected activity but everything else had been the same.

The jury found that Goldwire engaged in protected activity and that the city retaliated against her by releasing her file online. Goldwire was awarded \$60,000 in compensatory damages for emotional pain and mental anguish.

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C. Florida Whistleblower Act Claim

Goldwire testified that Gagnon wasn't authorized to block or revoke building permits that she approved. She implied that city leaders were invested in ensuring that the floating dock and fence Goldwire approved would be denied because the parties seeking those permits had long histories of legal battles with the city. The jury also was presented with testimony from those parties regarding their litigation with the city. Goldwire testified that, as a result of her protected act of notifying the city manager and city attorney as to Gagnon's "illegal" activity, she was fired from her position.

During his testimony, Gagnon acknowledged that the building official had sole authority to revoke or approve building permits, but he believed that he had authority to void a dock permit. He testified that, when he'd asked about the fencing permit, Goldwire told him that it had been submitted but not yet issued. He said that he voided the fencing permit and based his authority to do so on previous discussions with an attorney. He claimed that he recommended firing Goldwire because she told him that a permit had not been issued, but he learned that a permit had been issued and thus believed that she'd lied to him. He acknowledged that, technically, someone could say that a permit wasn't issued until it was printed from the system.

Jacobs testified that Gagnon stated that Goldwire lied to him about whether she'd issued the permits and that she fired Goldwire pursuant to that recommendation.

The jury found that Goldwire engaged in protected activity but that the city didn't fire her for that reason.

D. Post-Verdict Motions and Appeal

Goldwire moved for judgment notwithstanding the verdict or, alternatively, for a new trial, arguing that the verdict on her claims under the Equal Protection Act and Florida Whistleblower Act was contrary to the great weight of the evidence. She argued that the evidence showed that she was paid less than male building officials and that she was fired because she refused to illegally revoke two permits.

The district court denied Goldwire's motion, finding that she'd failed to move for judgment as a matter of law before the case was submitted to the jury. The district court ruled that the grounds raised in Goldwire's motion didn't rise to the level of plain error because the jury's findings were supported by the evidence. The district court noted that the jury was instructed to consider all forms of compensation and could've found that Goldwire failed to meet her burden in light of evidence that she'd received a company car and fringe benefits. The district court pointed out that the jury was free to believe Gagnon's testimony that Goldwire lied to him. Finally, as to Goldwire's motion for a new trial, the district court ruled that the verdict wasn't against the great weight of the evidence.

The city timely appealed, and Goldwire timely cross-appealed.

STANDARD OF REVIEW

The sufficiency of the evidence supporting a jury's findings isn't reviewable on appeal unless the party seeking review moved for a directed verdict in the trial court, challenging the issue the party now seeks to raise. *Wilson v. Attaway*, 757 F.2d 1227, 1237 (11th Cir. 1985). Without that motion, we may inquire solely whether there was *any* evidence supporting the verdict or whether there was plain error, which—if not noticed—would result in a manifest miscarriage of justice. *Id.* In civil cases, generally, we do not notice plain error unless it involves a pure question of law. *Burch v. P.J. Cheese, Inc.*, 861 F.3d 1338, 1352 (11th Cir. 2017).

Similarly, if a party failed to move for judgment as a matter of law pursuant to Rule 50(a) before the case was submitted to the jury, a subsequent motion for judgment notwithstanding the verdict can be granted only if the movant can demonstrate plain error. *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 817 F.3d 1241, 1260 n.13 (11th Cir. 2016). Our review is limited to whether there's *any* evidence to support the jury's verdict or whether there was plain error. *Sims' Crane Serv., Inc. v. Ideal Steel Prods., Inc.*, 800 F.2d 1553, 1557 (11th Cir. 1986).

Finally, we review a district court's denial of a motion for a new trial for an abuse of discretion. *Rixey v. West Paces Ferry Hosp., Inc.*, 916 F.2d 608, 611–12 (11th Cir. 1990). The motion shouldn't be granted on evidentiary grounds unless, at a minimum, the verdict is against the great weight of the evidence. *Id.* at 611.

Normally, we won't reverse a decision denying a motion for a new trial unless there's no evidence to support the verdict. *Hercaire Int'l, Inc. v. Argentina*, 821 F.2d 559, 562 (11th Cir. 1987).

DISCUSSION

A. *The City's Appeal*

The city argues, first, that the jury's verdict against the city on Goldwire's Title VII retaliation claim should be set aside because there's no evidence that the city released her personnel file online. Second, it contends that the same verdict should be set aside because there's no evidence that it released Goldwire's file in retaliation for her protected activity. Third, it asserts that the jury erred by awarding Goldwire's emotional distress and mental anguish damages because she failed to articulate the character or degree of her distress.

Because the city didn't move for judgment as a matter of law on Goldwire's Title VII retaliation claim, our review is limited to whether there's *any* evidence supporting the jury's finding that the city released Goldwire's personnel file. *See Wilson*, 757 F.2d at 1237.

1. Whether There's Evidence That the City Released Goldwire's Personnel File

The city argues that Goldwire introduced no evidence at trial from which the jury could've inferred that the city released her file on Facebook. Specifically, the city points out that the email

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Goldwire sent in February 2018 made no mention of the incident. The city also notes that no witness testified as to any knowledge or recollection of Goldwire's file being released. Finally, the city says that there's no link between the city and the Facebook group on whose page Goldwire's file allegedly was posted.

We agree with Goldwire that there was some evidence that the city was involved in releasing the unredacted parts of her personnel file. Specifically, the city's assistant director of human resources testified that the city's personnel files were kept in a locked room accessible only to human resources employees and the city's department heads. The jury also heard that the unredacted parts of the inaccessible file made their way onto a public Facebook page. Because the city had the exclusive possession, custody, and control over the unredacted parts of the personnel file, the jury could reasonably conclude that the city was involved in releasing the file.

2. Whether There's Evidence That Goldwire's Personnel File Was Released in Retaliation for Her Internal Complaint

To succeed on a Title VII retaliation claim, a plaintiff must show that her protected activity was the cause of her employer's adverse action. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 343 (2013). Causation can be shown by establishing close temporal proximity between the plaintiff's protected activity and the employment action. *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). Proximity of three to four months between the protected action and the employment action generally is insufficient. *See id.*

The city argues that the evidence presented at trial tied the release of Goldwire's file to—if anything—Goldwire's dealings with Palm Beach Cold Storage, not to any protected activity. Indeed, Goldwire testified that her file appeared on Facebook shortly after the dispute with Palm Beach Cold Storage. But she also testified that all of this occurred around the same time that she filed her internal complaint. The jury heard this testimony of close temporal proximity between Goldwire's internal complaint as to a hostile work environment and the release of her file, *see Thomas*, 506 F.3d at 1364, and then found that the city released her file in retaliation for her protected activity. This also meets the low bar required by *Wilson*. *See* 757 F.2d at 1237.

3. Whether There's Evidence That Goldwire Suffered Any Damages from the Release of Her Personnel File

Compensatory damages needn't be proved with a high degree of specificity and may be inferred from the circumstances. *Ferrill v. Parker Grp., Inc.*, 168 F.3d 468, 476 (11th Cir. 1999). A plaintiff's testimony can establish damages, and plaintiffs may recover for emotional harms. *Id.*

The city argues that there's no evidence that Goldwire was ever damaged, emotionally or otherwise, by the city's alleged conduct. But Goldwire testified that, as a result of being stalked, threatened, and receiving unwanted communications from unknown parties, she became frightened. She testified that her feelings were hurt when her poor performance on her licensing exams was released to the media. As a result of her distress, she testified

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that she felt compelled to move out of the city. From Goldwire's testimony, the jury could find that she suffered emotional pain and mental anguish because of the city's retaliation.

B. Goldwire's Cross-Appeal

Goldwire argues that the district court should've granted her motion for judgment notwithstanding the verdict or a new trial on her Equal Pay Act claim because the jury's finding that she wasn't paid less than her male counterparts is contrary to all evidence. She also contends that the district court should've granted her judgment notwithstanding the verdict or a new trial on her Florida Whistleblower Act claim because the evidence shows that she was fired for objecting to the illegal denial and revocation of permits.

Because Goldwire failed to move for judgment as a matter of law before her case was submitted to the jury, our review of the district court's denial of Goldwire's motion for judgment notwithstanding the verdict is limited to determining whether *any* evidence supports the verdict or whether she's shown plain error. *See Sims' Crane Serv.*, 800 F.2d at 1557.

1. Whether There's Evidence That Goldwire Was Paid Less Than Her Male Comparators

A plaintiff establishes a prima facie violation of the Equal Pay Act by showing that her employer paid different wages to employees of different sexes for equal work on jobs requiring equal skill and performed under similar conditions. *Meeks v. Comput.*

Assocs. Int'l, 15 F.3d 1013, 1018 (11th Cir. 1994). The burden then shifts to the employer to prove by a preponderance of the evidence that the pay differential was justified by any factor other than sex. *Id.* Wages include all forms of compensation. 29 C.F.R. § 1620.10.

Goldwire argues that no evidence in the record supports the jury's conclusion that she wasn't paid less than the city's male building officials. But the jury was instructed that they should consider all forms of compensation, including wages, salary, profit sharing, expense accounts, monthly minimums, bonuses, uniform-cleaning allowances, hotel accommodations, use of a company car, gasoline allowances, and fringe benefits. The city's director of finance and administrative services testified that Goldwire's salary was higher than she asserted. And the jury heard testimony that Goldwire received benefits that her male counterparts didn't—including access to a take-home vehicle¹—and that she was allowed to work as a third-party building official while the city paid for her to get her license, including payment for hotels.

¹ Goldwire's argument that her take-home vehicle was taxed and then later revoked is irrelevant. The jury may have inferred that this was due to conduct, not sex, and Goldwire provides no legal support for the proposition that a taxed benefit doesn't count as income for purposes of the Equal Pay Act. Salary, after all, is also taxed.

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2. Whether There's Evidence That Goldwire Was Fired in
Response to Protected Activity

The Florida Whistleblower Act prohibits government entities from retaliating against employees for engaging in protected activity. Fla. Stat. § 112.3187. Because the jury found that Goldwire engaged in protected activity, the only question before us is whether there's any evidence from which the jury may have inferred that the city fired her for any other reason.

Goldwire argues that the evidence demonstrates close temporal proximity between her protected activity and her firing. But Goldwire's supervisor testified that he recommended firing her because she lied to him and, consequently, that he could no longer trust her. Upon hearing this testimony, the jury found that Goldwire wasn't fired in retaliation for her protected activity. This also meets the low bar required by *Sims' Crane Service*. See 800 F.2d at 1557. Thus, the district court didn't plainly err by denying Goldwire's motion for judgment notwithstanding the verdict or abuse its discretion by denying her a new trial.

AFFIRMED.