

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1996-CA-003447-MR  
AND  
NO. 1996-CA-003478-MR

LAYTON CURTIS

APPELLANT/APPELLEE

v. APPEALS FROM BOYLE CIRCUIT COURT  
HONORABLE STEPHEN M. SHEWMAKER, JUDGE  
ACTION NO. 94-CI-00005

BABCOCK INDUSTRIES, INC.,  
D/B/A MATHEWS CONVEYOR DIVISION,  
D/B/A MATHEWS CONVEYOR COMPANY

APPELLEE/APPELLANT

AND: NO. 1997-CA-000141-MR

BABCOCK INDUSTRIES, INC.,  
D/B/A MATHEWS CONVEYOR DIVISION,  
D/B/A MATHEWS CONVEYOR COMPANY

CROSS-APPELLANT

v. CROSS-APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE STEPHEN M. SHEWMAKER, JUDGE  
ACTION NO. 94-CI-00005

LAYTON CURTIS

CROSS-APPELLEE

OPINION  
AFFIRMING IN PART,  
REVERSING IN PART, AND REMANDING

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BEFORE: COMBS, DYCHE, AND GUIDUGLI, JUDGES.

DYCHE, JUDGE: The brief of appellant Layton Curtis adequately and correctly sets out the procedural history of this case, and we adopt it, omitting citations to the record.

On January 5, 1994, the Plaintiff-Appellant Layton Curtis ("Curtis") filed a Complaint in the Boyle Circuit Court against Babcock Industries, Inc. d/b/a Matthews Conveyor Division d/b/a Matthews Conveyor Company ("Matthews"). In the Complaint, Curtis claimed that he was the subject of illegal age discrimination and retaliation in violation of KRS Chapter 344. Curtis alleged that a series of discriminatory and retaliatory acts ultimately led to his demotion and forced resignation from employment with Matthews. The Complaint also asserted that Matthews breached the Negotiated Settlement Agreement between Matthews and Curtis that had resolved a previous discrimination complaint made by Curtis.

On May 7, 1996, this matter went to trial. On May 9, 1996 the jury returned its verdict. The jury found: (i) Matthews retaliated or discriminated against Curtis because he had filed a complaint with the Kentucky Human Rights Commission and/or the EEOC; (ii) Matthews did not discriminate against Curtis because of age; (iii) Matthews breached the Negotiated Settlement Agreement; and (iv) Matthews acted toward Curtis with oppression, fraud or malice. The jury awarded Curtis \$75,000.00 for lost wages and benefits, \$250,000.00 for embarrassment, humiliation and mental distress, \$104,657.00 in damages for breach of contract and \$570,373.00 in punitive damages. Following extensive briefing and oral argument, the Circuit Court awarded \$45,000.00 in attorneys' fees and costs. The Verdict, Order and Judgment was entered on June 11, 1996. Matthews then filed various post-trial motions. These motions were extensively briefed by both parties throughout the summer of 1996. On August 26, 1996, Curtis filed a Motion for Supplemental Attorney's Fees. This motion requested attorney's fees for work expended by Curtis' attorneys since the prior award of fees by the Circuit Court.

On November 26, 199[6], the Circuit Court entered its order relating to Matthews' post-trial motions and Curtis' Motion for Supplemental Attorney's Fees. Specifically, the Circuit Court ruled that Matthews' procedural arguments relating to the punitive damages were "not sufficient to set aside the verdict of the jury." The Circuit Court also found that the evidence introduced by Curtis regarding corporate assets was in response to a defense and was permissible. The Court further found that "the punitive damage award is not excessive and it is supported by the evidence." However, the Circuit Court went on to conclude that punitive damages are not recoverable under KRS Chapter 344 and thus the Court set aside the punitive damage award. The Circuit Court then concluded that the remainder of Matthews' arguments were without basis and that the evidence "easily supported" the verdict.<sup>1</sup> And finally, the Circuit Court, without explanation, denied Curtis' Motion for Supplemental Attorney's Fees.

On December 20, 1996, Curtis filed a Notice of Appeal with regard to the November 26, 1996 Order that set aside the punitive damage award and denied the supplemental attorney's fees (96-ca-003447). On December 23, 1996, Matthews filed an appeal from the Judgment entered on June 11, 1996 and from the November 26, 1996 Order of the Circuit Court (96-CA-003478). On January 2, 1997, Matthews filed a cross-appeal concerning the same matters raised in their appeal.

The main bone of contention in these appeals is the jury's award of punitive damages to Curtis, which was set aside by the trial court on the ground that such damages are not available in actions under this state's Civil Rights statute, Kentucky Revised Statutes ("KRS") chapter 344. Although we disagree with the trial court on that particular issue, we are

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<sup>1</sup>In its Order, the Circuit Court also reduced the original attorney's fee award by \$787.50.

nevertheless constrained to affirm its order setting aside the award.

In the course of trial preparation, Mathews sent interrogatories to Curtis including a request that Curtis specify the amount of damages he was claiming for various elements, including punitive damages. Despite further requests, and counsel's assurances that the information would be produced, it never was. At trial, Mathews objected to the submission of this damage element to the jury, citing Kentucky Rules of Civil Procedure ("CR") 8.01(2), which provides, in part,

When a claim is made against a party for unliquidated damages, that party may obtain information as to the amount claimed by interrogatories; if this is done, the amount claimed shall not exceed the last amount stated in answer to the interrogatories.

Our highest court has given strict construction to this provision. And, while we might agree with Curtis that enforcement of this provision is best left to the discretion of the trial court, which is in a superior position to consider the relevant factors, including prejudice to the party against whom the damages are sought, the Supreme Court has rejected this position. Fratzke v. Murphy, Ky., 12 S.W.3d 269 (1999).

That case does, however, offer an opportunity for redemption to a party who is seeking damages but who has not properly specified the amount in an answer to an interrogatory. The trial court in this case apparently assumed (without foundation) that Curtis had moved to amend his pleadings to conform to the evidence. No such motion was made; and, as Fratzke makes clear, interrogatories are not pleadings, so the

proper thing to have done was for Curtis to ask the trial court's leave to unseasonably supplement the answers to interrogatories.

Curtis argues that his tender of an instruction including a provision for punitive damages sufficiently put Mathews on notice of the intent to seek punitive damages. Fratzke allows no such harmless error analysis. The "plain and ordinary meaning of the rule" (12 S.W.3d at 273) requires that we affirm the trial court on this issue, although on a different ground than that used below.

Although the above holding makes it unnecessary for us to reach the issue of the introduction of evidence of the financial health of a parent company of Mathews, we will say that the Supreme Court has made itself equally clear on that issue.

It has been the law of this Commonwealth for almost one hundred years that in an action for punitive damages, the parties may not present evidence or otherwise advise the jury of the financial condition of either side of the litigation.

Hardaway Management Co. v. Southerland, Ky., 977 S.W.2d 910, 916 (1998) (footnote and citations omitted).

Both parties raise issues concerning the requests for attorney fees by Curtis's counsel. Mathews argues that the fees allowed by the trial court are excessive and unjustified; Curtis argues that additional fees should have been granted by the trial court for the post-trial work by counsel. We have examined the record and the documentation submitted by each side. In our consideration of this issue, we are guided by Meyers v. Chapman Printing Co., Ky., 840 S.W.2d 814, 826 (1992). At the September 4, 1996 hearing, counsel for Curtis agreed with counsel for

Mathews that "the law probably obligates the Court to do some type of brief finding as it relates to the attorney fee award . . . ." Unfortunately for both parties, and this court, no such findings were made. We are also aware that the judge who tried this case is no longer on the bench; if we remanded for findings, the current trial judge would be in no better position than we are to analyze this issue. We will not add to the burden of the new trial judge when we have the pertinent information at hand, and are familiar with the issues.

We have taken a close look at the record herein, including the trial itself, and the results thereof. We have examined the fee request and supporting documents, and the opposition to the request and its documentation. Under the standards of Meyers we find no abuse of discretion by the trial court in the award of fees or the denial of additional fees.

Mathews argues that the verdict is inconsistent on its face, and not supported by substantial evidence. We believe the verdict to be amply supported by the evidence, so we will not grant relief on this issue, except to order that on remand the judgment be reduced by \$75,000 which the parties have agreed all along constitutes double recovery. We find no evidence of passion, prejudice, or confusion on the jury's part.

The instructions given by the trial court allowed the jury to find that Mathews's conduct toward Curtis "caused him to resign." Although it might have been better to include a separate "constructive discharge" instruction, counsel could have

argued that point to the jury, fleshing out the "bare bones" instruction.

The final argument advanced by Mathews is that the trial court should have excused a juror for cause after he indicated that he had been involved in a dispute with his employer. The trial court is in the best position to judge such matters, and its exercise of discretion will not be disturbed absent clear abuse.

It is best to leave such decisions in the hands of the trial judge who must properly exercise discretion. When such discretion is properly exercised, it must be given great weight. Support for such a proposition does not require lengthy citation. The trial judge has always been recognized as the person in the best position to determine whether a prospective juror exhibits bias or partiality which would require exclusion from the panel. Davidson v. Grigsby, Ky., 451 S.W.2d 632 (1970). There is no reason to disturb the discretion of the trial judge.

Altman v. Allen, Ky., 850 S.W.2d 44, 46 (1992).

The judgment of the Boyle Circuit Court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR  
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