

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA CLARK,

Plaintiff-Appellee/Cross-Appellant,

v

JOHN F. THOMPSON, d/b/a EAST FRANKLIN
RESTAURANT,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
March 10, 2000

No. 211517
Wayne Circuit Court
LC No. 96-639657-NZ

Before: Bandstra, P.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment, on a jury verdict, awarding plaintiff "\$40,000, plus interest in the amount of \$4,665, plus costs to be taxed." Plaintiff cross-appeals. The jury found that plaintiff, a waitress at defendant's restaurant, was constructively discharged when defendant refused to take remedial action to prevent sexual harassment by Dorian Blair, a male cook employed by defendant. We affirm.

Defendant first claims that he was denied the opportunity to introduce evidence that plaintiff left her job voluntarily, and not because of sexual harassment. However, defendant has not identified any adverse ruling where he allegedly was denied an opportunity to present such evidence. A party may not leave it to this Court to search for a factual basis to sustain or reject its position. *Great Lakes Division of National Steel Corp v City of Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998). In any event, defendant acknowledges that there was evidence from which the jury could have concluded that plaintiff was not constructively discharged. Further, the trial court instructed the jury, without objection, on constructive discharge in accordance with SJI2d 105.05. Defendant contends that this instruction denied him the opportunity to present evidence that defendant voluntarily resigned. Because defendant did not object to this instruction, appellate review is precluded absent manifest injustice. *Phinney v Perlmutter*, 222 Mich App 513, 557; 564 NW2d 532 (1997); see *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999) (unpreserved claims of error are forfeited absent plain error affecting substantial rights). No manifest injustice appears in this case because the instruction correctly reflects the standard by which plaintiff was required to prove her claim. *Radtke v Everett*, 442 Mich 368,

372; 501 NW2d 155 (1993). It did not prevent the jury from considering defendant's evidence. We find no merit to defendant's contention.

Next, defendant claims that the trial court erred in admitting evidence pertaining to plaintiff's wage loss. We review the admission of evidence for abuse of discretion. *Price v Long Realty, Inc.*, 199 Mich App 461, 466; 502 NW2d 337 (1993). After defendant claimed that he owed plaintiff only \$43 in back wages, plaintiff introduced a document showing that the Department of Labor had ordered defendant to pay her \$663 in back wages and penalties. Defendant contends that wage loss was not alleged in the complaint. Contrary to defendant's contention, plaintiff pleaded a wage loss claim in ¶ 12 of her complaint. Plaintiff withdrew the wage loss claim before closing argument and the trial court instructed the jury to disregard the evidence on wage loss. We presume the jury followed the court's instructions. *Bordeaux v Celotex Corp.*, 203 Mich App 158, 164; 511 NW2d 899 (1993). Defendant has not demonstrated any basis for relief.

Defendant contends that the trial court abused its discretion in allowing testimony from defendant's sister, Joanne Thompson, regarding Dorian Blair's parole status while he was employed at the restaurant. *Price, supra* at 466. Admission of this testimony was not error. The fact that Blair was a parolee was not at issue. However, defendant denied knowing that Blair was a parolee until after plaintiff resigned. This tended to rebut plaintiff's version of what occurred because plaintiff had testified that defendant refused to take action against Blair because of Blair's parolee status and consequent need for a job. The time at which defendant knew of Blair's status was, therefore, critical to the case. The testimony from defendant's sister, who co-managed the restaurant with defendant, was relevant to the conflict in testimony. See *Rodriguez v Solar of Michigan, Inc.*, 191 Mich App 483, 487; 478 NW2d 914 (1991) (In dram shop action, evidence of decedent's intoxication was relevant to impeach widow's testimony as to her knowledge of his activities). No abuse of discretion is shown. In addition, evidence of Blair's parole status was already before the jury, having been elicited from plaintiff without any objection. Even assuming that the admission of this evidence was improper, it was harmless. *People v Bartlett*, 312 Mich 648, 660-661; 20 NW2d 758 (1945).

In light of our disposition of defendant's direct appeal, we find it unnecessary to address plaintiff's cross-appeal.

We affirm.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald