# STATE OF MICHIGAN

# COURT OF APPEALS

DELENER S. McCAMEY,

Plaintiff-Appellee,

v

DETROIT BOARD OF EDUCATION,

Defendant-Appellant.

UNPUBLISHED
February 2, 2001

No. 216340
Wayne Circuit Court
LC No. 93-328176-NO

Before: Sawyer, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from the entry of a default judgment in favor of plaintiff in the amount of $1,090,862.64. We affirm.

A default was initially entered by the trial court for plaintiff on November 1, 1995, with judgment being entered in the amount of $80,000, and defendant appealed the entry of default to this Court. Defendant argued at that time that the entry of the default had violated its right to due process, that the Open Meetings Act, MCL 15.261 *et seq*.; MSA 4.1800(11) *et seq*., had excused its violation of the trial court's order requiring attendance of its members at a settlement conference that led to the entry of default, and that the trial court improperly tried to pressure it into settling the case. This Court, however, ruled that the trial court did not err in entering the default, but that defendant willfully defied the trial court's order based on its own misinterpretation of the Open Meetings Act. *McCamey v Detroit Bd of Educ*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 1997 (Docket No. 191671).

This Court did agree with defendant, however, that it should have been permitted to present evidence regarding the actual amount of damages before a damage figure was determined by the trial court. The case was remanded to the trial court for proceedings limited to a determination of the amount of damages. The trial court received written submissions from the parties and conducted an evidentiary hearing at which plaintiff was the only witness. Evidence was presented regarding the amount of plaintiff's lost income as a result of defendant's failure to promote her due to discrimination, her lost pension benefits, and her mental and emotional damages. Defendant presented no evidence at the hearing, although it did present legal arguments, contending that it was speculative to award front pay on the basis of plaintiff's failure to obtain a promotion, contending that plaintiff might obtain one in the future, and that plaintiff's evidence regarding mental and emotional damages, in the absence of tangible physical harm, was

also speculative. It also argued that because plaintiff would have worked more weeks of the year if she had been promoted to an administrative position than she was working as a classroom teacher, any award of front pay should be discounted by the ratio of the length of the respective work years.

The trial court awarded back pay and front pay and lost pension benefits, based on the difference in what plaintiff was earning and what she would have earned if promoted had defendant not discriminated against her. The trial court awarded mental and emotional damages in a much smaller figure than plaintiff asked (one-sixth of the amount she sought) and it denied damages for physical suffering. It also denied plaintiff's request for attorney fees, but awarded interest and mediation sanctions. The award was reduced to present value.

Defendant again appeals, raising the same arguments rejected in the previous appeal regarding why the entry of default was improper, and presenting the arguments raised in the trial court regarding why damages awarded were excessive.

Defendant's arguments regarding the entry of default as being improper are precluded by the law of the case doctrine. *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 135-136; 580 NW2d 475 (1998). Defendant states correctly that the law of the case doctrine does not limit our power, but is a discretionary rule of practice. *Id*. We are not, however, prepared to depart from that doctrine here, because we believe the matters were correctly resolved in the prior appeal for the reasons stated in the prior opinion. Defendant presents no new authority that inclines us to reconsider that decision.

Further, we find that the trial court's damage award was proper. An award of front pay based on the difference between what one is earning and what one would be earning but for discrimination, reduced to present value, is proper. *Goins v Ford Motor Co,* 131 Mich App 185, 199; 347 NW2d 184 (1983).[1] Far from being based on a speculative assumption that plaintiff will receive no further promotions, this award is simply based on the facts as they stand at present.

Nor was it improper to award mental and emotional damages, even in the absence of physical harm. "It is well established that victims of discrimination may recover for humiliation, embarrassment, outrage, disappointment and other forms of mental anguish which flow from the discrimination." *Jenkins v Southeastern Michigan Chapter, American Red Cross*, 141 Mich App 785, 799; 369 NW2d 223 (1985), accord *Phillips v Butterball Farms Co, Inc (After Second Remand)*, 448 Mich 239, 249-253; 531 NW2d 144 (1995).

The trial court carefully computed all the damages. It conducted an evidentiary hearing, asked probing questions to ensure that all relevant issues were adequately addressed, and excluded irrelevant matters. The amount the trial court awarded for mental and emotional damages was far less than plaintiff asked, and plaintiff's request for attorney fees was denied, so

[1] We note that although the validity of *Goins* was questioned for a time, that question has been resolved in favor of the continuing validity of the case. *Dunbar v Dep't of Mental Health*, 197 Mich App 1, 10; 495 NW2d 152 (1992).

it is clear that the trial court exercised independent judgment, and did not simply give plaintiff what she asked. Defendant failed to present contrary evidence of its own on which the trial court could have based a lower damage award. The trial court properly considered the evidence before it, and based on that evidence, made a legally correct determination of damages. There was no error.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Hilda R. Gage