If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

JULIE L. RONAN,

Plaintiff/Counterdefendant-Appellee,

v

FAMILY CHIROPRACTIC & WELLNESS OF MIDLAND, PLLC, and FREDERICK KNOCHEL III,

Defendants/Counterplaintiffs-Appellants.

UNPUBLISHED
May 20, 2021

No. 352706
Midland Circuit Court
LC No. 18-005224-CZ

Before: SHAPIRO, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

In this action under the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq*., defendants, Family Chiropractic & Wellness of Midland PLLC (Family Chiropractic) and Frederick Knochel III (Knochel), appeal a judgment entered in favor of plaintiff Julie L. Ronan following a jury trial. The jury awarded plaintiff $150,000 in noneconomic damages. We affirm.

I. BACKGROUND

Plaintiff worked at Family Chiropractic as a receptionist from September 2014 through February 2016. Knochel owned Family Chiropractic, and the staff typically comprised a receptionist and a massage therapist. At trial, plaintiff and Knochel gave substantially different accounts of the events at issue in this case. However, in reviewing the trial court's decision to deny defendants' motion for judgment notwithstanding the verdict (JNOV), we must view "the testimony and all legitimate inferences drawn from the testimony in the light most favorable to [plaintiff]." *Diamond v Witherspoon*, 265 Mich App 673, 682; 696 NW2d 770 (2005). Because we must resolve all credibility issues in plaintiff's favor, we will set forth her version of events.

Multiple witnesses testified that Knochel made demeaning comments about women when he was at work and often judged and remembered women by their appearance. Plaintiff testified that Knochel would make unflattering comments regarding her weight and figure. On one occasion, Knochel referenced the size of her arms by "flapping my bat wings at me." Plaintiff was

proud of her appearance, but she was self-conscious about her arms. She told Knochel this, but he "continued going" until plaintiff excused herself and went outside to cry. Plaintiff testified that when she lost some weight, Knochel told her that she "was a two or three before, and I could be a five or six now," apparently rating her appearance on a scale of 1 to 10.

Knochel continuously introduced sexual conversation at the office. For example, Knochel told plaintiff he was involved in a swinger's community and he sent her an e-mail invitation for a swinger's party, which she declined. Plaintiff testified that Knochel would often joke about how he did not wear underwear because he needed to "give his balls room to breathe." Plaintiff testified that Knochel asked her to call a patient who worked for the local health department to bring condoms for him to her appointment. Plaintiff initially refused, but she made the call after Knochel insisted. When the patient arrived with the condoms, Knochel told plaintiff and the patient that "the small ones weren't gonna fit."

Knochel's behavior went beyond comments. Plaintiff testified that she once returned from a lunch break and heard Knochel having sex in the office. She said that the receptionist from the adjacent office in the building asked her to address the situation because their patients heard the sexual encounter. Knochel would also leave explicit pictures on plaintiff's work computer. Plaintiff arrived to work one day to find photographs of the woman Knochel was seeing, in various states of undress, on her work computer. On another occasion, Knochel saved a picture of a vagina as the desktop home screen to plaintiff's work computer. Plaintiff said that she repeatedly complained to Knochel about his behavior, and he would stop for a time, but "then when it happened again, it escalated."

Knochel would ask plaintiff to give him massages, including rubbing his lower back. Plaintiff testified that on one occasion, Knochel was lying on his stomach and he "wanted me to do his back and go lower down or, 'Oh, right there.' " As "it became more and more," plaintiff told Knochel that she "didn't want to touch him." Plaintiff also recalled a time when Knochel ripped a seam in his pants, and he asked her to staple them while he was wearing them even though his "butt cheeks were exposed." Plaintiff suggested that Knochel take the pants off but, after he insisted, she stapled the back of the pants while he had them on.

A business conference in Atlanta ended up being the proverbial final straw. Plaintiff told Knochel she would not be able to attend the conference with him because her daughter had a cheer competition, but Knochel told her she was going to the conference. Knochel initially told plaintiff they would be sharing a room to save money, but after plaintiff expressed her discomfort, Knochel assured her that the hotel room would be a suite with two separate bedrooms. After arriving at the hotel, however, plaintiff learned that Knochel booked one room with two beds rather than a suite. After the front desk told plaintiff there were no other rooms available at the hotel, plaintiff returned to the room, thinking that Knochel was at the conference. Instead, she found him sleeping on the bed with his shirt off and pants undone and it did not appear he was wearing underwear. Plaintiff was upset and screamed at Knochel to wake up. He, in turn, became very upset and called plaintiff "a stupid fucking cunt" and told her she was being paid for the weekend, so she "was gonna do whatever he told me to do." Plaintiff testified that she went down to the lobby and called her aunt, Ruth Rivette, who changed her flight. Ruth testified that plaintiff was "hysterical" and that she was "terrified" of Knochel. Plaintiff testified that she "cried on the plane all the way home" and decided to leave her job. Soon after the trip, plaintiff scheduled a meeting with Knochel to discuss

why he booked only one hotel room. Plaintiff's then husband, William Ronan,[1] accompanied her to the meeting because she was afraid to be alone with Knochel. Plaintiff turned in her keys after Knochel refused to meet with plaintiff and her husband in the back rather than in the lobby.

Plaintiff filed this action, alleging sexual harassment and sex discrimination. The trial court denied defendants' motion for a directed verdict on plaintiff's claims. The jury found that defendants had created a hostile work environment and awarded plaintiff $150,000 in noneconomic damages; the trial court entered a judgment in favor of plaintiff accordingly. Defendants filed a motion for a new trial and a motion JNOV. In both motions, defendants argued that the jury's verdict awarding $150,000 in noneconomic damages was excessive. Defendants then filed an amended motion for JNOV, arguing that plaintiff failed to establish a prima facie case of sexual harassment based upon a hostile environment. The trial court denied both motions. This appeal followed.

II. ANALYSIS

A. ELCRA

Defendants first argue that the trial court erred by denying their motion for JNOV regarding plaintiff's claim of a hostile work environment.[2]

ELCRA provides that an employer may not discriminate against an individual because of the individual's sex, MCL 37.2202(1)(a), and that "[d]iscrimination because of sex includes sexual harassment," which is defined in relevant part as follows:

> Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:
>
> * * *
>
> (*iii*) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment . . . or creating an intimidating, hostile, or offensive employment . . . environment. [MCL 37.2103(i)(*iii*).]

---

[1] Plaintiff and William were separated from December 2014 until either April or May 2015; they later divorced.

[2] We review de novo a motion for JNOV. *Diamond*, 265 Mich App at 681. "In reviewing the decision on a motion for JNOV, this Court views the testimony and all legitimate inferences drawn from the testimony in the light most favorable to the nonmoving party." *Id*. at 682. "If reasonable jurors could honestly have reached different conclusions, the jury verdict must stand." *Id*.

"To establish a claim of hostile environment sexual harassment in the workplace, a plaintiff must demonstrate, by a preponderance of the evidence, that: (1) the employee belonged to a protected group; (2) the employee was subjected to conduct or communication on the basis of sex; (3) it was unwelcome sexual conduct or communication; (4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior." *Rymal v Baergen*, 262 Mich App 274, 312; 686 NW2d 241 (2004).

Defendants argue that plaintiff failed to establish the third element. Defendants maintain that any sexual communication from Knochel was not unwelcome because he and plaintiff talked openly about their personal relationships. Plaintiff was not asked at trial if she discussed her personal relationships with Knochel, but she denied that she discussed any sexual relations with him, contrary to his testimony that she did. "It is for the trier of fact to assess credibility; a jury may choose to credit or discredit any testimony." *Bank of America, NA v Fidelity Nat'l Title Ins Co*, 316 Mich App 480, 512; 892 NW2d 467 (2016). Plaintiff also testified that she repeatedly objected to Knochel's sexual comments. Thus, even assuming plaintiff discussed personal matters with Knochel, it would not defeat her claim that Knochel's sexual comments were unwelcome.

Defendants also argue that plaintiff failed to establish the fourth element, i.e., that the unwelcome sexual conduct or communication substantially interfered with the employee's employment or created an intimidating, hostile, or offensive work environment. In making this argument, however, defendants overlook plaintiff's testimony about how Knochel's behavior interfered with her employment. She explained that "[i]t was often having to be discussed and talked about and tried to find a remedy to fix it. And, I was constantly going to [Knochel] about how it made me feel, and please stop it, and that's not appropriate." She testified that removing the photos off her work computer and listening to others' complaints of Knochel's behavior was time-consuming. Plaintiff specifically testified that she was unable to complete filing in a timely manner. As to whether there was a hostile environment, Knochel admitted that if the jury believed plaintiff's testimony, some of his actions could be construed as creating an intimidating, hostile, or offensive employment environment. Referring to the Atlanta business conference, defendants also argue that a single incident does not create a hostile work environment. However, this ignores plaintiff's testimony about the unwanted comments and behavior that preceded the conference.

In sum, viewing the evidence in a light most favorable to plaintiff, a reasonable jury could have perceived Knochel's conduct as "substantially interfering with . . . plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment." *Id*. at 394. Therefore, the trial court did not err by denying defendants' motion for JNOV.

B. NONECONOMIC DAMAGES

Defendants also argue that the trial court abused its discretion by denying their motion for a new trial because the award of $150,000 in noneconomic damages was excessive.[3]

MCR 2.611(A)(1) provides in relevant part:

> A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:
>
> * * *
>
> (c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

"When determining whether an award is excessive, a court may consider whether the verdict was the result of improper methods, prejudice, passion, partiality, sympathy, corruption, or mistake of law or fact, whether it was within the limits of what reasonable minds would deem to be just compensation for the injury inflicted, and whether the amount actually awarded is comparable to other awards in similar cases." *Diamond*, 265 Mich App at 694. "Victims of discrimination may recover for the humiliation, embarrassment, disappointment and other forms of mental anguish resulting from the discrimination, and medical testimony substantiating the claim is not required." *Campbell v Dep't of Human Servs*, 286 Mich App 230, 246; 780 NW2d 586 (2009) (quotation marks and citation omitted). "Because the amount required to compensate a party for pain and suffering is imprecise, that calculation typically belongs to the jury." *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 763-764; 685 NW2d 391 (2004).

Defendants first argue that the damage award was excessive because plaintiff's motivation in bringing this suit was to punish Knochel. Plaintiff testified that her "hope was that . . . a financial ruling in this matter . . . would hurt [Knochel] to the point that he wouldn't continue to do this; somebody would hold him somewhat accountable." While plaintiff's testimony could be construed as wanting to punish defendants, the jury was instructed that the "verdict must be solely to compensate [p]laintiff for her damages, and not to punish the [d]efendant," and that in determining the amount of damages, the jury should include the mental anguish, fright, shock, embarrassment, humiliation and mortification suffered by plaintiff. Jurors are presumed to follow instructions. *Zaremba Equip, Inc v Harco Nat Ins Co*, 302 Mich App 7, 25; 837 NW2d 686 (2013). Thus, even assuming plaintiff brought this suit to punish defendant, there is no reason to believe that the jury assessed damages to punish defendant rather than to compensate plaintiff.

---

[3] "Whether to grant or deny a motion for a new trial is entrusted to a trial court's discretion, which requires appellate review to be for an abuse of that discretion." *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 682; 630 NW2d 356 (2001). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016).

Defendants also argue that, although expert testimony is not required to prove noneconomic damages, plaintiff needed to produce more than her own testimony to support her allegations of pain and suffering. However, in making this argument, defendants focus solely on plaintiff's testimony about her condition following the Atlanta incident and ignore her other testimony about how Knochel's behavior emotionally affected her. Plaintiff testified that toward the beginning of her employment she asked her primary care physician to prescribe her medication to help her relax and calm down so she did not feel "so uncomfortable all the time." The jury also heard how she went outside to cry after Knochel drew attention to her arms. Plaintiff summed up her experience as follows:

> The things I saw, the things that I was subjected to were degrading, awkward, humiliating. How do you even begin to approach things like that; especially with your boss, and then there's nobody else to talk to above that. When you did approach it, it was also—often mocked by being laughed at. It became a situation where I walked in every day and I wondered what was it gonna be today. Was it gonna be something sexual? Was it gonna be angry? Was there gonna be a confrontation? Were we gonna have a good day? Was it gonna be a productive day? What kind of day was it going to be? As time went on, things became more and more awkward—bizarre—for lack of better words. The vagina picture keeps coming back and everybody wants to draw all this attention to it, and—and the truth is, [William] and I were back together at that time. And, do you have any idea how humiliating and embarrassing it is to send that picture to your husband and tell him it was on your computer? And, then your husband wants to come over and tell you to quit and say that it can't happen. But, you know that you need that income, because I had been lookin' for other work and couldn't find—you know—work to go to, because there was such a lag in employment when I had all of that time off with my son. I feel like I failed my family.

Ruth and William also testified about the emotional impact of Knochel's behavior on plaintiff.

Considering this testimony, defendants have failed to show that there was no basis for the damage award or that it was excessive. Therefore, the trial court did not abuse its discretion by denying defendants' motion for a new trial with respect to the award of $150,000 in noneconomic damages.

Affirmed. Plaintiff may tax costs as the prevailing party. MCR 7.219.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Jane M. Beckering