

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1802, A11-567**

James R. Williams,  
Respondent (A10-1802),  
Appellant, (A11-567),

vs.

Orlando Henry “Tubby” Smith, et al.,  
Appellants (A10-1802),  
Respondents (A11-567).

**Filed October 17, 2011  
Affirmed  
Worke, Judge**

Hennepin County District Court  
File Nos. 27-CV-09-16611, 27-CV-07-22194

Donald Chance Mark, Jr., Alyson M. Palmer, Fafinski Mark & Johnson, P.A., Eden  
Prairie, Minnesota;

Richard G. Hunegs, Hunegs LeNeave & Kvas, P.A., Minneapolis, Minnesota; and

Charles E. Spevacek, William M. Hart, Damon L. Highly, Meagher & Geer, P.L.L.P.,  
Minneapolis, Minnesota (for James R. Williams)

Mark B. Rotenberg, Brian J. Slovt, Jennifer L. Frisch, University of Minnesota,  
Minneapolis, Minnesota (for University of Minnesota)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and  
Connolly, Judge.

## UNPUBLISHED OPINION

**WORKE**, Judge

The University of Minnesota and Orlando Henry “Tubby” Smith argue that the district court: (1) erred by denying their motion for judgment as a matter of law; (2) abused its discretion by denying their motion for a new trial; (3) lacked jurisdiction over the case presented at trial by James R. Williams; and (4) abused its discretion by declining to remit the jury’s damage award. On cross-appeal, Williams also challenges the district court’s remittitur decision. We affirm.

### FACTS

In the spring of 2007, James R. Williams was employed as an assistant men’s basketball coach at Oklahoma State University. On March 22, 2007, Williams was contacted by Orlando Henry “Tubby” Smith, then the head men’s basketball coach at the University of Kentucky. Smith was considering leaving Kentucky for the head-coach position at the University of Minnesota, where Williams had served as an assistant coach from 1971 to 1986. Smith was interested in learning about Williams’s experiences at Minnesota, and Williams shared his insights into coaching and recruiting players at the university. Minnesota hired Smith as its new head men’s basketball coach on March 23. Shortly after the announcement of the hiring, Williams received a phone call from Jim Dutcher, the former head coach at Minnesota whom Williams worked under during his previous tenure at the university. Dutcher asked Williams if he was interested in leaving Oklahoma State and returning to Minnesota as an assistant coach to Smith. Williams

informed Dutcher that he was not interested in the position at Minnesota and intended to stay at Oklahoma State.

Nevertheless, Smith contacted Williams again on March 30. Smith and Williams discussed the assistant-coach position at Minnesota for two hours. Smith and Williams negotiated the salary parameters that would entice Williams to leave Oklahoma State for Minnesota, and Smith planned to continue their discussion in the following days. Smith next contacted Williams on April 1 and asked him to fax his résumé to the university. On the evening of April 2, Smith called Joel Maturi, the director of athletics at Minnesota who had hired Smith one week earlier. Smith informed Maturi that he intended to add three assistant coaches, including Williams.

After ending the call with Maturi, Smith called Williams and offered him an assistant-coach position at Minnesota. Williams accepted the offer. Smith volunteered to call Sean Sutton, Williams's head coach at Oklahoma State, and inform him that Williams had agreed to leave Oklahoma State for Minnesota. Williams told Smith that he preferred to call Sutton himself. Smith then discussed Williams's first recruiting trip on behalf of Minnesota, which Smith assigned to Williams for the upcoming weekend. Following his conversation with Smith, Williams called Sutton and verbally resigned from his position at Oklahoma State. Sutton expressed his disappointment, but told Williams that he understood the move and requested that Williams submit his resignation in writing in accordance with his contract.

The following morning, Maturi sent two e-mails to staff members announcing Smith's assistant-coaching staff and requesting the necessary accommodations to

officially add the coaches to the staff at Minnesota. Following the e-mails, Maturi was approached by a university administrator regarding Williams's previous employment at Minnesota. The administrator informed Maturi that Williams committed several "major" violations of National Collegiate Athletics Association (NCAA) bylaws governing student-athlete amateurism during his previous tenure, and was twice cited by the NCAA for his improprieties at Minnesota. Maturi requested that the administrator research Williams's previous misconduct at the university and report back to him.

Meanwhile, Williams arrived at Oklahoma State that morning and drafted his letter of resignation. Prior to submitting the letter to Sutton, however, Williams received a phone call from Smith. According to Williams, Smith then informed him for the first time that "[Maturi] is going to have to sign off on [the] hiring." But Smith also told Williams that he did not expect Maturi's final approval to be problematic. Williams received another phone call from Smith a few hours later, during which Smith informed Williams that Maturi now voiced "strong opposition" to his hiring. But Smith called Williams a third time early in the afternoon to discuss Williams's upcoming recruiting assignment. Williams tendered his letter of resignation after the third phone call from Smith; Sutton had already hired Williams's replacement at this time.

Later that afternoon, Maturi was finally informed that Williams's previous major violations twice placed the university on probationary status with the NCAA, serious penalties which Maturi deemed to disqualify Williams for an assistant-coaching position at Minnesota. Williams was officially informed that Minnesota was not hiring him sometime during the week of April 8 and promptly began exploring legal action against

the university. Thereafter, Williams interviewed for assistant-coaching positions at Florida State University and at Kentucky. Williams was not hired for either position because, in his opinion, he disclosed his intent to sue Minnesota during his interviews. Williams decided against trying to return to Oklahoma State and also passed on applying for at least one other assistant-coaching position. To this day, Williams has not returned to coaching in college basketball.

Williams commenced this action against Minnesota and Smith,<sup>1</sup> asserting claims for breach of contract, promissory estoppel, equitable estoppel, intentional interference with contract, negligent misrepresentation, negligence, defamation, vicarious liability, and due-process violations of his property and liberty interests. *Williams v. Bd. of Regents of Univ. of Minn.*, 763 N.W.2d 646, 650 (Minn. App. 2009). Williams and Minnesota moved for dismissal under Minn. R. Civ. P. 12.02 for failure to state a claim upon which relief may be granted. *See id.* The district court granted the motion and dismissed all claims, specifically concluding that the common-law claims were barred by the doctrine of separation of powers: because Williams was challenging a decision-making process of the executive branch, Williams was required to obtain a writ of certiorari and failed to do so. *See id.* Williams appealed the dismissal to this court. We affirmed the dismissal of Williams's constitutional claims and each common-law claim except for the negligent-misrepresentation claim. *Id.* at 655. Because the negligent-misrepresentation claim did not involve a challenge to the decision-making process of the

---

<sup>1</sup> Maturi was originally named in the suit, but was later dismissed on the ground of qualified immunity.

executive branch, this court reversed in part and remanded that claim for further proceedings. *Id.* at 652-53.

The negligent-misrepresentation claim was tried to a jury. Williams's attorney began his opening argument by making several comments seeming to attack the university's hiring process, prompting Minnesota and Smith to move to dismiss the case. The district court denied the motion for dismissal, opting instead to give a limiting instruction to the jury which clarified that the decision-making process of the university was not at issue in this case. Williams opened his case-in-chief by calling then-congressman James Ramstad, hall-of-fame basketball player Kevin McHale, and Dutcher to testify; each witness described his own personal accolades and then testified about his personal admiration for Williams. The district court acknowledged at the end of the first day of trial that such testimony was character evidence and "technically not admissible," and discouraged Williams's counsel from further examination into character. Over the objection of Minnesota and Smith, the district court also permitted Williams to call three expert witnesses to testify about the industry standard pertaining to hiring assistant coaches in college basketball. The jury returned a verdict in favor of Williams, finding that: Smith falsely represented to Williams that he had final authority to hire assistant basketball coaches at Minnesota; Smith failed to use reasonable care, either in obtaining information pertaining to his hiring authority or in communicating information about his hiring authority to Williams; Williams relied on Smith's misrepresentation; Williams's reliance was reasonable; and Williams was harmed by the reliance. The jury awarded Williams \$1,237,293 in damages.

Minnesota and Smith moved for judgment as a matter of law (JMOL) or, alternatively, a new trial. The district court denied the motion. The district court did, however, modify the damages awarded by the jury under the Minnesota Tort Claims Act (MTCA), entering an amended damages award of \$1,000,000. This appeal follows.

## **D E C I S I O N**

### ***JMOL***

Minnesota and Smith first challenge the district court's decision denying their JMOL motion. Minn. R. Civ. P. 50.01 empowers a district court to grant a JMOL motion when a party "has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party." A district court's JMOL decision is reviewed de novo. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009).

To successfully recover for a negligent misrepresentation, a plaintiff must demonstrate that: (1) the defendant owed a duty of care in conveying information; (2) the defendant breached that duty by negligently providing false information; (3) the plaintiff reasonably relied on the misrepresentation; and (4) damages proximately caused by the plaintiff's reliance. *Flynn v. Am. Home Prods. Corp.*, 627 N.W.2d 342, 350-51 (Minn. App. 2001). Minnesota and Smith assert that Williams's claim fails to meet the duty-of-care and reliance elements.

### *Duty of Care*

Minnesota and Smith argue that the district court erred by concluding that Smith owed Williams a duty of care. A duty of care in conveying information arises when a

party provides “information for the guidance of others in the course of a transaction in which [that party] has a pecuniary interest, or in the course of [that party’s] business, profession, or employment.” *Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418, 424 (Minn. App. 2000) (quoting *Safeco Ins. Co. of Am. v. Dain Bosworth Inc.*, 531 N.W.2d 867, 870 (Minn. App. 1995), *review denied* (Minn. July 20, 1995)). Whether a duty of care exists is a conclusion of law reviewed de novo. *See Safeco*, 531 N.W.2d at 873.

We begin by addressing Williams’s contention that our first decision in this case implicitly concluded that a duty of care existed. This argument misconstrues the legal context in which the first appeal in this matter was decided. In the first appeal, we addressed the district court’s dismissal of Williams’s claims on a rule-12 motion. *See Williams*, 763 N.W.2d at 651. The district court granted the rule-12 dismissal because the separation-of-powers doctrine requires deference to employment decisions of the executive branch and precludes judicial review absent the issuance of a writ of certiorari from the court of appeals, which Williams failed to obtain. *Id.* at 650. We affirmed the dismissal of all of Williams’s claims except for the negligent-misrepresentation claim, stating that:

District court consideration of this negligence claim could be limited to a determination of whether the university, through Smith, provided [Williams] with false information that [Williams] reasonably relied on by resigning as an assistant coach with [Oklahoma State]. Unlike the estoppel claims, the district court would focus on the representation, [Williams’s] reliance, and whether [Williams] incurred losses as a result of reliance on the alleged misrepresentation. These are considerations that do not intrude substantially on or challenge the university’s internal decision-making process. . . . Because the actual hiring decision is not at issue



and is not directly implicated, we conclude [that] the district court erred by dismissing [Williams's] negligent-misrepresentation claim on the pleadings.

*Id.* at 652-53 (footnote omitted). Accordingly, we reversed the rule-12 dismissal under the rationale that a negligent-misrepresentation claim could be considered without probing into the university's hiring procedures; therefore, such a claim would not intrude on separation-of-powers principles, which would have required a writ of certiorari. *See id.* We did not address whether Smith owed Williams a duty of care because the issue was not presented on appeal. Thus, Williams's contention that this court implicitly acknowledged the existence of a duty of care is unavailing.

Williams also argues that the existence of a legal duty presents a question of law suitable for a rule-12 motion; because Minnesota and Smith failed to raise the issue either within their original rule-12 motion or during the first appeal to this court, Williams contends that the issue is not properly before this court. In support of this assertion, Williams cites to *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173 (Minn. 1988). Williams claims that *Hoyt* requires a party to explicitly inform the appellate court that it seeks remand on an undecided issue in the event of reversal. According to Williams, if the party fails to provide such notice to the appellate court, the party is bound under *Hoyt* to the appellate court's mandate even if the mandate has placed the issue beyond resolution.

This argument perverts the holding in *Hoyt*. *Hoyt* involved two appeals and an "unusual procedural history" before the supreme court ultimately affirmed this court's resolution of an issue that was not addressed by the district court or raised by either party

on the first appeal. 418 N.W.2d at 174-75. The supreme court cautioned that the issue could have been resolved during the first appeal, had the parties been more specific in their requests for relief. *Id.* at 175-76. But the supreme court expressly noted that:

This court has not, however, imposed the requirement of a notice of review where the trial court has failed to rule on a question litigated and practical reasons continue to render such a notice unnecessary. While a notice of review might serve to call attention to the unresolved issue, an undecided question is not usually amenable to appellate review.

*Id.* at 175. Moreover, *Hoyt* did not involve a rule-12 motion, and the issue originally ignored by the district court was actually argued at the trial level. *Id.* at 174; *see also* Minn. R. Civ. P. 12 (stating that defenses *may* be brought in a rule-12 motion, not mandating such an inclusion). Williams’s procedural argument fails.

Minnesota and Smith argue that the district court erred by concluding that a duty of care existed because there is no Minnesota caselaw upholding a duty of care in the context of prospective employment. Without direct precedent, Minnesota and Smith assert that this case poses a situation akin to adversarial parties negotiating at arm’s length, and rightly contend that we have repeatedly concluded that a duty of care does not exist under such circumstances. *See, e.g., Safeco*, 531 N.W.2d at 872 (concluding that no duty is owed when two sophisticated equals are negotiating a commercial transaction).

But regardless of the lack of a direct precedent governing the prospective-employment negotiation between Smith and Williams, a duty of care still exists in all instances when a party “provid[es] information for the guidance of others in the course of business or where there is a pecuniary interest.” *Id.* at 873. Here, Smith was clearly

providing information for the guidance of Williams: Smith discussed salary structure and a first assignment while misrepresenting his authority to hire Williams, and even volunteered to contact Williams's employer to tender resignation on Williams's behalf. Additionally, even after Smith realized that he did not have the final authority over the hire and conveyed as much to Williams, Smith furthered the misrepresentation by continuing to discuss the upcoming recruiting trip that Williams was assigned to make. This was an extensive misrepresentation. Based on the specific facts of this case, we conclude that Smith owed a duty of care to Williams in conveying information during the hiring negotiations.

#### *Reliance*

Minnesota and Smith also argue that the district court erred by concluding that the evidence was sufficient to establish reliance. Minnesota and Smith first challenge the district court's conclusion that the Minnesota athletics department is proprietary in nature, not a government function, and is thereby bound by all legal obligations governing private enterprise. Minnesota and Smith argue that the district court's reliance on this distinction is without legal support, citing to the longstanding law announced by the supreme court in *Jewell Belting Co. v. Village of Bertha*: any party contracting with the government is "conclusively presumed to know the extent of authority possessed by the officers with whom they are dealing." 91 Minn. 9, 12, 97 N.W. 424, 425 (1903); *see also Morris v. Perpich*, 421 N.W.2d 333, 336 (Minn. App. 1988) (noting that apparent authority may not be advanced against the government because knowledge of the official's authority is presumed), *review denied* (Minn. May 16, 1988). Because

Williams was dealing with a government employee in Smith, Minnesota and Smith assert that Williams is presumed to have known that Smith did not have authority to make final hiring decisions. Accordingly, Minnesota and Smith claim that Williams fails to demonstrate reliance as a matter of law.

This argument is unconvincing. In *Stein v. Regents of the Univ. of Minn.*, the supreme court announced the expansive rule that: “[i]f the government is to enter into businesses ordinarily reserved to the field of private enterprise, it should be held to the same responsibilities and liabilities.” 282 N.W.2d 552, 556 (Minn. 1979) (quotation omitted). As the district court noted below, “[t]here is no regulatory or other public interest served by the basketball team. Instead, college basketball resembles a for-profit business operation designed to bring revenue and prestige to participating universities.” Minnesota and Smith do not deny the profitability of the men’s basketball program. Nor do they advance any credible argument that the basketball team is not a proprietary endeavor. Because Minnesota and Smith were engaging in a field of private enterprise when negotiating to hire Williams as an assistant basketball coach, we conclude that the supreme court’s decision in *Stein* trumps the century-old law of *Jewel Belting*. The district court did not err in this respect.

Minnesota and Smith also argue that district court erred because, as a matter of law, it is unreasonable for an individual to rely on a misrepresentation after the misrepresentation is corrected. *See Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 321 (Minn. 2007) (stating that there can be no reasonable reliance once a party knows a representation is false). Minnesota and Smith assert that the district court

erroneously concluded that Williams “verbally resigned from Oklahoma State on April 2, 2007—before Smith informed him that Maturi needed to approve his hiring.” Minnesota and Smith point out that Williams did not submit the formal letter of resignation required under his contract until the afternoon of April 3, after Smith informed him both that Maturi needed to approve the hire and that Maturi disapproved of him. As such, Minnesota and Smith claim that Williams’s reliance occurred after the misrepresentation was corrected.

We disagree. First, Minnesota and Smith overstate the “correction” that occurred. Smith casually mentioned that Maturi would need to approve the hire, but assured Williams that the approval would not be troublesome. Smith next informed Williams that Maturi strongly opposed the hiring, but called Williams afterwards to discuss Williams’s assigned recruiting trip as if Williams would still be hired despite Maturi’s objection. Any attempted correction by Smith was muted moments later by his own contradictory behavior. Thus, we conclude that no correction occurred which would invalidate Williams’s reliance as a matter of law.

Second, even if we concluded that Smith did correct the misrepresentation of his hiring authority, Minnesota and Smith argued the timing of the correction and the written resignation to the jury, and the jury found that reliance existed. “Ultimately, reliance is a jury question.” *Hoyt Props. Inc. v. Prod Res. Grp., L.L.C.*, 716 N.W.2d 366, 375 (Minn. App. 2006), *aff’d*, 736 N.W.2d 313 (Minn. 2007). And there was sufficient evidence for the jury to conclude that Williams’s reliance resulted in his resignation before any correction occurred: Sutton accepted Williams’s oral resignation on April 2, and Sutton

hired Williams's replacement contemporaneous to the supposed correction and before Williams submitted his written resignation on April 3. Accordingly, Minnesota and Smith fail to demonstrate that Williams's reliance was unreasonable as a matter of law. The JMOL motion was appropriately denied.

### *New Trial*

Minnesota and Smith argue that the district court abused its discretion by denying their motion for a new trial on the basis of evidentiary errors. A district court may grant a party a new trial upon a showing of misconduct by the prevailing party, accident or surprise that could not have been prevented by ordinary prudence, or errors of law made by the district court at trial. Minn. R. Civ. P. 59.01 (b), (c), (f). We review a district court's decision on a motion for a new trial for an abuse of discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

"The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). Furthermore, "[e]ntitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Uselman v. Uselman*, 464 N.W.2d 130, 138 (Minn. 1990).

Minnesota and Smith first challenge the admissibility of the character evidence presented by Williams. Minnesota Rules of Evidence 608(a) allows evidence of a party's truthful character to be introduced only "after the character of the witness for truthfulness

has been attacked by opinion or reputation evidence or otherwise.” Minnesota and Smith argue that Williams opened his case-in-chief by calling three “celebrity witnesses” to testify about Williams’s good character before his character had been attacked. Additionally, Minnesota and Smith allege that the jury was so star-struck by the impermissible character testimony of the celebrity witnesses that the case was effectively won before the end of the first day of trial.

Minnesota and Smith are correct that Williams’s character evidence was not admissible, and the district court acknowledged as much. However, in order to be entitled to a new trial, Minnesota and Smith must also demonstrate prejudice. Minnesota and Smith presented extensive evidence of Williams’s past NCAA infractions and the considerable harm incurred by the university therefrom, which counterbalanced any unfair advantage derived from Williams’s inadmissible character evidence. Accordingly, we struggle to see how Williams’s inadmissible character evidence was truly prejudicial. The district court did not abuse its discretion by denying the motion for a new trial on the ground of impermissible character evidence.

Minnesota and Smith also challenge the district court’s admission of expert testimony. A district court may allow expert testimony where “scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” Minn. R. Evid. 702. The opinion must also have “foundational reliability,” the basis of which is “independently admissible.” *Id.*; Minn. R. Evid. 703(b). Williams called three former head men’s basketball coaches as witnesses. Each witness testified about the typical hiring procedure at other major

universities, and each witness indicated that the head coach is usually the final authority in hiring decisions. But two witnesses also admitted their unfamiliarity with the specific hiring protocols at Minnesota. Given the witnesses' limited familiarity with the university, Minnesota and Smith argue that the district court should not have allowed the witnesses to testify.

This argument is unavailing. The district court determined that these witnesses offered insight into whether Williams was reasonable in relying on Smith's initial oral offer of employment. And Smith and one of Smith's current assistant coaches testified about why Williams's reliance was unreasonable; thus, even if the district court abused its discretion by allowing Williams's witnesses to testify as experts, such an error would not be prejudicial because it was offset by contrary testimony presented by Minnesota and Smith. Accordingly, the district court did not abuse its discretion by denying the motion for a new trial.

### ***Jurisdiction***

Minnesota and Smith also argue that district court did not have jurisdiction over the case presented by Williams. Minnesota and Smith assert that Williams impermissibly attacked the university's decision-making process throughout the course of the proceedings: Williams criticized the university's hiring process in the opening statement, asserting that no university official ever contacted the NCAA about the previous violations or offered Williams, himself, the opportunity to explain the circumstances surrounding his misconduct; Williams presented testimony about the hiring processes of other schools; Williams called witnesses to testify about how the university's final



decision not to hire him adversely affected his career in coaching; and Williams's closing argument emphasized the philosophy of redemption and shamed the university for denying Williams a chance to prove he has changed since his first tenure at Minnesota. Because Williams effectively challenged a decision-making process of the executive branch without first obtaining a writ of certiorari from this court, Minnesota and Smith claim that the district court lacked jurisdiction to preside over the specific case presented by Williams at trial.

This is the identical argument advanced to the district court; again, the argument fails. As the district court noted, the evidence presented by Williams at trial was largely relevant to the issue of whether his reliance was reasonable. And any evidence that went directly to the hiring decision rather than the misrepresentation claim was addressed by a curative limiting instruction to the jury. Accordingly, the district court took appropriate measures to ensure that the jurors were not confused about the issue at hand. Williams's case did not deprive the district court of its jurisdiction over the matter.

### ***Remittitur***

Both parties challenge the district court on the issue of remittitur. Remittitur may be granted when an award of damages fails to follow the law, is not supported by the evidence presented at trial, or appears to have been influenced by the passion or prejudice of the jury. Minn. R. Civ. P. 59.01(e), (g). We review a district court's decision regarding remittitur for an abuse of discretion. *Kwapien v. Starr*, 400 N.W.2d 179, 184 (Minn. App. 1987).

Minnesota and Smith first argue that the district court abused its discretion by refusing to decrease the jury award on remittitur as a matter of law because Williams had a duty to mitigate his damages, and Williams clearly failed to do so by not actively pursuing any open assistant-coaching positions. But the failure to mitigate was an evidentiary issue presented to the jury. The jury considered all of the evidence Minnesota and Smith currently rely on and found that Williams did not fail to mitigate his damages. The evidence presented at trial sufficiently supports the jury's finding. Accordingly, the district court did not abuse its discretion by refusing to remit damages on the ground of a failure to mitigate.

Minnesota and Smith next contend that the evidence does not support the jury award because Williams failed to produce evidence that the misrepresentation was the proximate cause of his damages. Specifically, Minnesota and Smith claim that Williams failed to demonstrate how the misrepresentation affected his inability to secure future employment or otherwise harmed his reputation. This argument is unconvincing. Williams presented testimony that the uncertainty regarding his fallout with Minnesota adversely impacted his interview processes at Florida State and Kentucky; this evidence was sufficient for the jury to find a proximate causal nexus between the misrepresentation and the damages.

Finally, Minnesota and Smith claim that the jury's award was a byproduct of Williams's closing argument enflaming the passions of the jurors. Minnesota and Smith assert that an improper influence on the jury may be inferred from Williams's counsel's persistent use of redemption rhetoric during closing arguments and the substantial

damages awarded by the jury thereafter. But the jury award was in line with the annual compensation Williams was to earn and was compounded by a reasonable timeline; the compensation was not so excessive as to compel a conclusion that the jury was impassioned. Additionally, Minnesota and Smith failed to object during Williams's closing argument and failed to request a curative instruction to counter any unfair advantage they perceived at the time. We decline to grant relief when the alleged misconduct during closing argument is only complained of after an unfavorable result is realized. *See Quill v. Trans World Airlines, Inc.*, 361 N.W.2d 438, 446 (Minn. App. 1985) (“A party is not permitted to remain silent, gamble on the outcome, and, having lost, then for the first time claim misconduct in opposing counsel’s argument.” (quotation omitted)), *review denied* (Minn. Apr. 18, 1985).

Williams argues that the district court abused its discretion by reducing the final verdict from the \$1,247,293 awarded by the jury to \$1,000,000 pursuant to the MTCA. Under the MTCA, “[t]he state will pay compensation for injury to or loss of property . . . caused by an act or omission of an employee of the state while acting within the scope of office or employment.” Minn. Stat. § 3.736, subd. 1 (2010); *see also* Minn. Stat. § 3.736, subds. 4(e), 8 (2010) (limiting the “total liability of the state and its employees acting within the scope of their employment” to \$1,000,000 or the limit of the state’s liability insurance, whichever is greater). Williams asserts that the MTCA is inapplicable to this case because Smith was acting outside of the scope of his employment when he misrepresented his authority to make hiring decisions. Accordingly, Williams argues that

the district court abused its discretion by reducing the damages below the amount awarded by the jury.

However, “scope of employment” under the MTCA means that “the employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned by competent authority.” Minn. Stat. § 3.732, subd. 1(3) (2010). The district court determined that: “At the time in which . . . Smith made the misrepresentation, he was performing the duty assigned to him by the [u]niversity; namely, he was attempting to hire an assistant coach.” The district court correctly noted that Smith was attempting to further the interests of Minnesota by extending the job offer to Williams, and that Minnesota undeniably knew Smith was recruiting assistant coaches. The district court essentially concluded that Smith was empowered to *recruit* assistant coaches; because his misrepresentation that he had final authority to *hire* assistant coaches occurred during this authorized recruitment, he was acting within the scope of his employment and, thus, protection under the MTCA was triggered. The district court did not abuse its discretion in this respect.

Williams also argues that the district court abused its discretion by affirming the court administrator’s application of a 4% pre- and post-judgment interest rate. Interest rates for judgments are governed by Minn. Stat. § 549.09 (2010). “For a judgment . . . against the state or a political subdivision of the state, regardless of the amount,” the interest rate is to be computed by the court administrator based on the secondary-market yield on the American dollar, or 4%, whichever is greater. *Id.*, subd. 1(c)(1). Williams claims that interest rate of 4% applied by the district court was incorrect because this

limitation applies only to judgments against the state, whereas other judgments exceeding \$50,000 are subject to a 10% interest rate. *See id.*, subd. 1(c)(2). Because Williams sought redress against a state employee for actions occurring outside of the scope of employment, Williams claims that the judgment was not against the state and, thus, the district court abused its discretion by applying the 4% interest rate. But, as addressed above, we conclude that the negligent misrepresentation occurred within the scope of Smith's employment under the language of the MTCA. Accordingly, the district court did not abuse its discretion.

**Affirmed.**