

**[J-54-1999]**  
**THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

SHERRY WERTZ,	:	No. 134 M.D. Appeal Docket 1998
	:	:
Appellant,	:	Appeal from the Order of the
	:	Commonwealth Court entered February
	:	20, 1998, at 148 C.D. 1997, affirming in
v.	:	part and vacating in part the order of the
	:	Court of Common Pleas of Clinton County
	:	entered April 12, 1995, at 793-94.
CHAPMAN TOWNSHIP; CHAPMAN	:	:
TOWNSHIP SUPERVISORS; ROBERT	:	709 A.2d 428 (Pa. Cmwlth. 1998)
WALIZER; DEAN SCOTT AND ROBERT	:	:
YOUNG,	:	ARGUED: April 26, 1999
	:	:
Appellees.	:	:
	:	:

**DISSENTING OPINION**

**MR. JUSTICE CASTILLE**

**DECIDED: December 21, 1999**

I respectfully dissent from the majority's conclusion that a plaintiff seeking monetary damages under the Pennsylvania Human Relations Act (PHRA or Act) is not entitled to a trial by jury. The right to a jury trial is central to our system of justice. See Pa. Const. Art. I, § 6;<sup>1</sup> 42 Pa.C.S. § 5104(a).<sup>2</sup> It has never been the law in this Commonwealth that an

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<sup>1</sup> Article I, § 6 provides that "[t]rial by jury shall be as heretofore, and the right thereof remain inviolate."

<sup>2</sup> 42 Pa.C.S. § 5104(a) provides: "Except where the right to trial by jury is enlarged by statute, trial by jury shall be as heretofore, and the right thereof shall remain inviolate."

individual is entitled to a jury trial only where that right is specifically provided in legislation. Nor, in my view, should it be the law that the right to a jury trial is wholly dependent upon affirmative legislative action. The statutory provisions regarding the filing of various actions such as negligence and defamation suits, for example, are silent as to the availability of a jury trial, yet a jury trial is afforded to a plaintiff in such actions. See 42 Pa.C.S. §§ 5523-24. Similarly, a plaintiff in an employment discrimination action under the PHRA should be entitled to a jury trial.<sup>3</sup>

The majority relies on our recent decision in Hoy v. Angelone, 554 Pa. 134, 720 A.2d 745 (1998), in which we found that a plaintiff in an action under the PHRA could not recover punitive damages. As the majority correctly states, that holding was based upon the fact that the PHRA does not specifically provide for punitive damages, nor does the legislative history indicate that the legislature intended that punitive damages be recoverable under the PHRA. The majority, however, overlooks the fact that our decision in Hoy was also grounded upon the underlying purpose of the PHRA, which is remedial rather than punitive in nature. While the availability of punitive damages would not be consistent with the remedial nature of the PHRA, the same is not true of the availability of a jury trial. Thus, this case is as distinguishable from Hoy as the issue of the availability of punitive damages is from the right to a jury trial. There exists no fundamental right to recover punitive damages; therefore, our decision in Hoy does not violate any fundamental rights. To extend the holding in Hoy to the instant case carries this Court's reasoning in Hoy to an unwarranted extreme where a fundamental constitutional right – the right to a jury trial – is infringed. I believe that such a result is contrary to the letter of the law in Pennsylvania.

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<sup>3</sup> In the federal court system, 42 U.S.C. § 2000-e provides that a plaintiff in an employment discrimination action entitled to a trial by jury.

The majority embraces a strict construction of the Pennsylvania Constitution when it also concludes that there is no constitutional right to a jury trial in employment discrimination actions because no such right existed prior to the enactment of our Constitution in 1790. In its analysis of this issue, the majority concedes that “the rights of women and minorities at that time in our history were ‘underdeveloped’ to say the least.” Slip Op. at 9. That being said, the majority then goes on to ensure that those rights will remain quite “underdeveloped” by applying a rule of law that would require that the rights of women and minorities in the 20<sup>th</sup> century be congruent with what those rights were in the 18<sup>th</sup> century in order for a jury trial to be available in this instance. The majority is, in essence, saying that women and minorities are, at least to the extent of their right to a jury trial, stuck with the state of their rights in 1790 unless legislature affirmatively expands those rights. Certainly the framers of our Constitution intended that it be interpreted to meet the needs of society as it grew and changed. An interpretation of the Constitution that is too rigid to encompass societal changes makes a mockery of the spirit of that document and the rights it grants to the citizens of this Commonwealth. Thus, I would hold that the Pennsylvania Constitution guarantees appellant the right to a trial by jury in this employment discrimination action.

Accordingly, I would reverse the order of the Commonwealth Court.