IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SARAH R. LITTLE,		**No. 29206-1-III**
Respondent and Cross-Appellant,	)	**Division Three**
v.	)	
ROBERT RANDALL BAKER; BAKER INVESTMENT GROUP, LLC, a Washington limited liability corporation,	)	**UNPUBLISHED OPINION**
Appellant.	)	

Kulik, C.J. —Robert "Randy" Baker and Baker Investment Group, LLC, appeal the trial court's award of $25,000 to Sarah Little for her successful sexual harassment based hostile work environment claim. We conclude that substantial evidence supports the trial court's findings of fact and conclusions of law that sexual harassment occurred. Ms. Little cross-appeals the decision that Mr. Baker's touching did not constitute assault. She also appeals the trial court's method for determining reasonable attorney fees. We affirm the trial court in all respects except the award of attorney fees. We remand that

issue for recalculation consistent with our opinion.

FACTS

Robert "Randy" Baker owned and operated Baker Investment LLC in Spokane, Washington. Beginning in 2005, Sarah Little worked as Mr. Baker's administrative assistant for over three years. Baker Investment was originally located in an office building in downtown Spokane. The business moved to Mr. Baker's residence in 2008. Mr. Baker had other employees in the office in addition to Ms. Little. Ms. Little had daily contact with Mr. Baker.

The employees described the atmosphere at Baker Investments as easy going, laid back, and fun. On a daily basis, Mr. Baker would hug Ms. Little as well as other employees. Mr. Baker would refer to these hugs as "'booby hugs.'" Clerk's Papers (CP) at 252. She alleges that he would come up behind her and touch her breasts while hugging her. None of the witnesses testified to seeing any inappropriate hugs between Mr. Baker and Ms. Little; however, most witnesses heard Mr. Baker refer to hugs as "'booby hugs.'" Witnesses also described the hugs as "'harmless' touching" and testified that Mr. Baker used "'booby hugs'" in a joking manner. CP at 228-29.

Mr. Baker referred to Ms. Little and another female employee, Susie Trumbull, as "'his bitches.'" CP at 252. Ms. Little may have referred to herself in this manner.

Mr. Baker took Ms. Little and his other employees out for lunch, referring to these outings as "'nooners.'" CP at 252. Ms. Little used the term in the same context. In contrast, Ms. Trumbull and Ms. Little both testified that when the office was moved to Mr. Baker's home, Mr. Baker asked both women on more than one occasion if they would like to accompany him upstairs for a "nooner." Both women took these requests as a sexual overture and not harmless.

Mr. Baker called Ms. Little "'sexy Sarah.'" CP at 252. He would often compliment her appearance by telling her she looked "'hot.'" CP at 252. He often asked Ms. Little to dress sexy for work.

Mr. Baker never asked for sex from Ms. Little and there was never a sexual or intimate relationship between them. Ms. Little contends that some of Mr. Baker's touching was unwanted and offensive. She stated that she told Mr. Baker his behavior was unwanted on more than one occasion. Ms. Trumbull heard from Ms. Little that Mr. Baker could be "'suggestive with females,'" but did not believe the situation could be too serious based on Ms. Little's statements. CP at 253. Mr. Baker was involved in two inappropriate incidents with another employee, Lauren Braley.

Ms. Little testified that if she did not endure Mr. Baker's conduct, her employment could be in jeopardy. Ms. Little earned more than $50,000 per year at Baker Investments.

She used the company credit card for personal purchases. Mr. Baker gave her gifts and financial help with the purchase of her home, car, and appliances. Ms. Little has a criminal record. Mr. Baker made comments to Ms. Little that she would not be able to find a comparable paying job with her felony convictions.

On December 6, 2008, Ms. Little and Mr. Baker had an argument about Ms. Trumbull, and Ms. Little walked out. Mr. Baker called Ms. Little and asked her if she was returning to work. Ms. Little declined to return, and Mr. Baker agreed to consider her "'laid off.'" CP at 253.

Ms. Little contends that she was humiliated, stressed out, and lost weight due to the stress of the working conditions. She presented no receipts for counseling or medical treatment.

Ms. Little filed suit against Mr. Baker and Baker Investment Group, claiming sexual harassment based on a hostile work environment, negligent infliction of emotional distress, assault, and constructive discharge due to the intolerable work environment. The trial court denied Ms. Little's claims for negligent infliction of emotional distress, assault, and constructive discharge. The court ruled in favor of Ms. Little's sexual harassment claim, awarding her $25,000 in damages for emotional distress. The court also granted Ms. Little reasonable attorney fees, awarding her one-fourth of the amount requested,

based on her success on only one-fourth of her claims.

Mr. Baker appeals the trial court's decision on the sexual harassment claim and damages. Ms. Little cross-appeals the decision on the assault claim and the calculation of attorney fees.

ANALYSIS

The scope of review of a decision following a bench trial is whether the findings of fact are supported by substantial evidence and whether those findings support the conclusions of law. *Dorsey v. King County*, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988). "Substantial evidence is evidence sufficient to persuade a rational, fair-minded person of the truth of the finding." *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Appellate courts defer to the trial court's determinations on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *Snyder v. Haynes*, 152 Wn. App. 774, 779, 217 P.3d 787 (2009). "Unchallenged findings are verities on appeal." *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002). Conclusions of law by the trial court are reviewed de novo. *Id.* A trial court is not required to make findings on stipulated or uncontroverted matters. *Swanson v. May*, 40 Wn. App. 148, 158, 697 P.2d 1013 (1985).

The Washington law against discrimination (WLAD), chapter 49.60 RCW, states

that it is an unfair practice for any employer to discriminate against any person in terms or conditions of employment because of sex. RCW 49.60.180(3). A sexual harassment claim is characterized as either a quid pro quo harassment or a hostile work environment claim. *Payne v. Children's Home Soc'y of Washington, Inc.*, 77 Wn. App. 507, 511 n.2, 892 P.2d 1102 (1995). "In the typical hostile work environment case, an employee seeks damages from an employer for being subjected to unwelcome sexual harassment at work that 'affected the terms or conditions of employment.'" *Henningsen v. Worldcom, Inc.*, 102 Wn. App. 828, 836, 9 P.3d 948 (2000) (quoting *DeWater v. State*, 130 Wn.2d 128, 135, 921 P.2d 1059 (1996)). "In the typical quid pro quo harassment case, an employee seeks damages from an employer for a supervisor or employer's extortion or attempted extortion of sexual favors in exchange for a job benefit or the absence of a job detriment." *Id.*[1]

In a sexual harassment hostile work environment claim, the employee must first identify and prove the offensive conduct. *Doe v. Dep't of Transp.*, 85 Wn. App. 143, 148, 931 P.2d 196 (1997). Then, the employee must demonstrate that the conduct (1)

[1] The trial court appears to combine the two types of sexual harassment claims. The court incorrectly incorporates all four elements of a hostile work environment claim to prove quid pro quo sexual harassment. The court's error is not fatal. Both parties argue the merits of a hostile work environment claim, and the court addresses all the elements in its opinion. Likewise, this court addresses Ms. Little's sexual harassment claim based on a hostile work environment.

was offensive and unwelcome, (2) occurred because of sex or gender, (3) affected the terms or conditions of employment, and (4) can be imputed to the employer. *Washington v. Boeing Co.*, 105 Wn. App. 1, 10, 19 P.3d 1041 (2000).

The question on review is whether the trial court's findings of fact establish the four elements of Ms. Little's sexual harassment claim. *See Robel*, 148 Wn.2d at 45. If the court makes the necessary findings to support an element of the claim, then no further inquiry is needed. *Id*. Otherwise, written memorandum opinions and transcripts of oral opinions can be used to determine the factual basis for the trial court's decision. *In re Welfare of Todd*, 68 Wn.2d 587, 592, 414 P.2d 605 (1966).

(1) *Offensive and unwelcome contact.* For the first element of a sexual harassment hostile work environment claim, the employee must demonstrate that offensive, unwelcome contact occurred. *Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 401, 406, 693 P.2d 708 (1985). "Conduct is unwelcome if the employee does not solicit or incite it, and regards it as undesirable or offensive." *Schonauer v. DCR Entm't, Inc.*, 79 Wn. App. 808, 820, 905 P.2d 392 (1995).

Mr. Baker contends that Ms. Little participated in the conduct and, therefore, cannot claim it was unwelcome. He contends that finding of fact 30 shows that Ms. Little used the term "'nooner'" and may have referred to herself as one of the "'bitches.'" He

also uses trial testimony to show that Ms. Little initiated some of the hugs and did not object to the compliments of being called "'sexy'" and "'hot.'" Because of Ms. Little's participation, Mr. Baker assigns error to these following two findings regarding unwanted and offensive contact:

> 5. On a daily basis, [Mr.] Baker would hug [Ms.] Little as well as other employees. Some of [Mr.] Baker's touching of [Ms.] Little was unwanted and offensive.
>
> . . . .
>
> 16. [Ms.] Little stated she had told [Mr.] Baker his behavior was unwanted on more than one occasion.

CP at 252-53.

Mr. Baker does not find error with the portion of finding of fact 5 that states he hugged Ms. Little and other employees. As for evidence of other offensive touching, testimony of witnesses supports the finding that such contact existed. Elondrus Lee, an employee of Mr. Baker, remembers Mr. Baker rubbing Ms. Little's shoulders and patting her on the buttocks. Ms. Trumbull remembers Mr. Baker touching Ms. Little's cleavage while making a joke. Uncontested conduct included Mr. Baker's use of the terms "'his bitches,'" "'booby hug,'" "'nooners,'" and "'sexy Sarah.'" CP at 252.

As for the trial court's determination that Ms. Little considered some of Mr. Baker's touching offensive and unwelcome, Ms. Little testified that not all of Mr. Baker's hugs were acceptable to her. She described how she attempted to protect herself from

Mr. Baker touching her breasts during hugs. Ms. Braley, a friend of Ms. Little and another employee of Mr. Baker, testified that Ms. Little was frustrated with some of Mr. Baker's behavior, such as his "booby hugs" and being referred to as "sexy Sarah." Substantial evidence in the record exists to support the trial court's finding that Mr. Baker touched Ms. Little and that she considered some of his touching unwanted and offensive.

Finding of fact 16 relates to Ms. Little's contention that she discussed Mr. Baker's conduct with him. Ms. Little testified that she told Mr. Baker on various occasions that his "booby hugs," putting his hand inside her shirt, and putting his hands on her lower back and buttocks was unacceptable. She also testified that she told him that his touching and verbal remarks were upsetting her. The evidence in the record supports the finding that Ms. Little said she told Mr. Baker that his conduct was unwanted and offensive.

Mr. Baker presents conflicting evidence as an attempt to change the trial court's finding that Ms. Little found the conduct unwelcome and offensive. On appeal, findings of fact will not be disturbed based on conflicting evidence. *Delegan v. White*, 59 Wn.2d 510, 512, 368 P.2d 682 (1962). "Substantial evidence may support a finding of fact even if the reviewing court could interpret the evidence differently." *Synder*, 152 Wn. App. at 779. While Mr. Baker may not be in agreement with the trial court's decision, there is sufficient evidence to support the trial court's finding of fact that Ms. Little found the

conduct unwelcome and offensive, the first element of a sexual harassment claim.

(2) *Harassing conduct occurred because of gender*. For the second element, the employee must prove her gender was the motivating factor for the offensive conduct. *Glasgow*, 103 Wn.2d at 406. The offensive conduct would not have occurred had the employee been of a different sex. *Schonauer*, 79 Wn. App. at 820.

Several findings of fact support the conclusion that Mr. Baker's offensive conduct revolved around Ms. Little's gender. He referred to hugs from Ms. Little as "'booby hugs,'" which places emphasis on her breasts. CP at 252 (finding of fact 6). He called her sexy and told her she looked "'hot,'" which refers to her female body. CP at 252 (finding of fact 9). He called lunch dates with Ms. Little and his other employees as "'nooners,'" a term with sexual innuendo. CP at 252 (finding of fact 10). He also referred to Ms. Little and another female employee as "'his bitches'" which in context references their female gender. CP at 252 (finding of fact 11).

Even though the findings of fact do not expressly state that these comments were made because of gender, Mr. Baker's comments implicate the female gender. Therefore, the court's factual findings support its conclusion that the second element of a sexual harassment claim was established.

(3) *The harassing conduct altered the terms and conditions of employment*. A

plaintiff must show, under a totality of the circumstances, that the harassing conduct was sufficiently pervasive to alter the terms and conditions of employment. *Glasgow*, 103 Wn.2d at 406. This court considers "the frequency and severity of the discriminatory conduct; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it reasonably interferes with an employee's work performance." *Washington*, 105 Wn. App. at 10. "'Casual, isolated, or trivial'" incidents are not actionable. *Sangster v. Albertson's, Inc.*, 99 Wn. App. 156, 162-63, 991 P.2d 674 (2000) (quoting *Glasgow*, 103 Wn.2d at 406.)

Mr. Baker argues his exercise of excess generosity did not make Ms. Little's work environment abusive. The court agreed that Ms. Little benefitted from her employment with Mr. Baker. However, the court also deemed the extra benefits were consideration for the sexual conduct. While other employee's company credit cards were taken away when used for nonwork-related purchases, Mr. Baker did not take away Ms. Little's card when she used it for personal purchases. Mr. Baker helped Ms. Little with the purchase of a home, a car, and appliances. Additionally, Mr. Baker commented to Ms. Little that her felony convictions would keep her from finding a comparable job and salary. Mr. Baker's ability to give and take the extra benefits away altered the terms of Ms. Little's employment. The benefits compelled her to stay in the sexually offensive environment

created by Mr. Baker. The court correctly viewed Mr. Baker's generous behavior toward Ms. Little as an altering condition of employment.

In addition to the extra benefits as an altering condition of employment, Mr. Baker also hugged Ms. Little on a daily basis and touched her in a way that offended her. Mr. Baker frequently used offensive terms such as "nooners," "bitches," and "booby hugs." He complimented Ms. Little on her appearance by calling her "sexy" and "hot." In combination, these actions become more than trivial or isolated. The factual findings show that the offensive conduct was pervasive.

When viewed under the totality of the circumstances, the court's findings support the conclusion that the terms and conditions of Ms. Little's employment were affected by Mr. Baker's use of sexually-charged language and that Mr. Baker provided extra benefits to Ms. Little to keep her in his employ. The court's factual findings support the conclusion that Ms. Little met the third element of a sexual harassment claim.

(4) *Harassing conduct can be imputed to Mr. Baker.* This element is not contested. Mr. Baker's actions were those of the employer.

In conclusion, factual findings support all four elements of a claim for hostile work environment based on sexual harassment. Therefore, the trial court correctly concluded that Mr. Baker sexually harassed Ms. Little.

Damages. A plaintiff who establishes intentional wrongful conduct must only offer proof of emotional distress to recover damages attributable to the wrongful act. *Herring v. Dep't of Social & Health Servs.*, 81 Wn. App. 1, 24, 914 P.2d 67 (1996) (quoting *Nord v. Shoreline Sav. Ass'n*, 116 Wn.2d 477, 484, 805 P.2d 800 (1991)). Testimony of the plaintiff combined with evidence of intentional wrongful conduct is enough to support the award. *Id*. To recover for emotional distress, "a plaintiff need not prove outrageous and extreme conduct or severe emotional distress." *Delahunty v. Cahoon*, 66 Wn. App. 829, 842, 832 P.2d 1378 (1992).

Mr. Baker challenges conclusion of law 5 which awards Ms. Little $25,000. Mr. Baker also challenges the court's ruling that he caused Ms. Little "some form of emotional distress." CP at 231. He contends the conduct was not severe enough to cause Ms. Little emotional distress. Mr. Baker does not contest the court's finding that Ms. Little claimed to be affected by the work conditions.

Ms. Little succeeded in her sexual harassment claim. According to an uncontested factual finding, Ms. Little asserted that she was humiliated, stressed out, and lost weight due to work conditions. Although not severe, these symptoms were enough for the court to establish she suffered from some form of emotional distress. Ms. Little's successful claim for sexual harassment and her evidence of emotional distress provide the necessary

proof to support the court's award of $25,000.

Cross-Appeal—Assault. Ms. Little cross-appeals the court's conclusion that Mr. Baker did not assault her.

An assault occurs when a perpetrator intentionally causes apprehension of imminent contact upon the victim, and the contact is harmful or offensive. *McKinney v. City of Tukwila*, 103 Wn. App. 391, 408, 13 P.3d 631 (2000). "A bodily contact is offensive if it offends a reasonable sense of personal dignity." Restatement (Second) of Torts § 19 (1965).

The court's factual findings do not support a conclusion that Mr. Baker acted with the necessary intent to have offensive contact with Ms. Little. Intent requires substantial certainty that the act will result in harmful or offensive conduct. Restatement (Second) of Torts § 21, cmt. d (1965). Mr. Baker hugged Ms. Little and other employees in a manner a friend would use when hugging another friend. Witnesses said the term "booby hug" was just the name for a regular hug and was used in a joking manner. The court does not reach the conclusion that Mr. Baker intended his hugs to be offensive.

Finding of fact 5 states that Ms. Little found some of Mr. Baker's touching was unwanted and offensive. It does not contradict the conclusion of law that Mr. Baker did not assault Ms. Little. This finding only confirms that Ms. Little perceived the contact as

offensive. It does not conclude that intentional, offensive conduct existed.

Because the court's findings do not support a conclusion that Mr. Baker intentionally committed offensive conduct, the trial court's conclusion of law 4 is correct. Mr. Baker did not assault Ms. Little.

Attorney Fees. A trial court's award of attorney fees is reviewed for an abuse of discretion. *Chuong Van Pham, v. Seattle City Light*, 159 Wn.2d 527, 538, 151 P.3d 976 (2007).

RCW 49.60.030(2) entitles a plaintiff to request reasonable attorney fees for a successful WLAD claim. The lodestar method has been adopted for calculating reasonable attorney fees under the WLAD. *Collins v. Clark County Fire Dist. No. 5*, 155 Wn. App. 48, 99, 231 P.3d 1211 (2010); *but see Carle v. McChord Credit Union*, 65 Wn. App. 93, 110-11, 827 P.2d 1070 (1992) (determining the trial court had the discretion to calculate attorney fees based on the plaintiff's successful claims).

The lodestar method multiplies an attorney's reasonable hourly rate by the number of hours expended on the matter. *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 149-50, 859 P.2d 1210 (1993). "In determining the attorney's reasonable hourly rate, the trial court may consider the skill level the litigation requires, the time limitations the litigation imposes, the size of the potential recovery, the attorney's reputation, and the

undesirability of the case." *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 341, 54 P.3d 665 (2002). "The court must limit the lodestar to hours reasonably expended, and should therefore discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time." *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983).

The goal in allowing attorney fees for sexual harassment claims is to enable vigorous enforcement of the laws against discrimination and to make it financially feasible for individuals to enforce such claims. *Martinez v. City of Tacoma*, 81 Wn. App. 228, 235, 914 P.2d 86 (1996) (quoting *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 675, 880 P.2d 988 (1994)). The attorney fee entitlement necessitates a liberal construction to encourage private enforcement of the WLAD. *Id*. Attorney fees for claims brought under the WLAD should not be limited to the plaintiff's degree of monetary success. *Minger v. Reinhard Distrib. Co.*, 87 Wn. App. 941, 948, 943 P.2d 400 (1997).

In the trial court's findings regarding attorney fees, the trial court concluded that calculation under the lodestar method versus awarding the plaintiff one-fourth of her requested attorney fees resulted in a similar amount. Then, in the following finding, the court awarded Ms. Little one-fourth of her requested attorney fees based on the limited success of Ms. Little's claims. The trial court's method for calculating attorney fees is

problematic.

First, the trial court erred by not using the lodestar method in determining Ms. Little's attorney fees. Washington courts have adopted the lodestar method in calculating attorney fees for the WLAD claims. *Martinez*, 81 Wn. App. at 239. It appears from the findings that the court calculated an amount using the lodestar method, but decided to award attorney fees using an alternative manner. The issue surrounds the trial court's decision not to consider related claims and its emphasis on Ms. Little's degree of success.

Second, the trial court erred by choosing not to consider time Ms. Little spent on claims with common facts and related legal theories. A trial court has the discretion to reduce reasonable attorney hours where the plaintiff brought distinctly different claims for relief based on different facts and legal theories. *Id.* at 242-43. However, when several claims involve a common core of facts and related legal theories, it is proper to award fees on unsegregated claims. *Steele v. Lundgren*, 96 Wn. App. 773, 783, 982 P.2d 619 (1999) (quoting *Martinez*, 81 Wn. App. at 242-43). In a WLAD claim, if there is no reasonable way to segregate successful and unsuccessful claims, the prevailing party can recover for all work performed. *Broyles v. Thurston County*, 147 Wn. App. 409, 450, 195 P.3d 985 (2008) (citing *Blair v. Wash. State Univ.*, 108 Wn.2d 558, 572, 740 P.2d 1379 (1987)).

At trial, Ms. Little brought four claims against Mr. Baker. She was successful in her sexual harassment claim, but was unsuccessful in her claims for assault, negligent infliction of emotional distress, and constructive discharge. All of these claims revolved around a central set of facts regarding Mr. Baker's conduct toward Ms. Little. Ms. Little relied on the same discovery, trial preparation, and witness testimony to prove all of her claims. Hence, Ms. Little's claims share a common set of facts and related legal theories.

The court never finds that the claims are unrelated. Instead, the court determined unsuccessful claims should be factored in and separation of claims was not possible from the bills presented. The court invited Ms. Little to divide the claims but she stated that the claims were too connected to separate. So to account for success on one out of four claims, the trial awarded Ms. Little one-fourth of her requested fees without considering the nature of each of the unsuccessful claims. Because the WLAD allows for the recovery of attorney fees for unsuccessful but substantially similar claims, the court abused its discretion by not considering the common core of legal theory and related facts between Ms. Little's claims.

Last, the trial court placed too much emphasis on the limited amount of success Ms. Little achieved in her case. It is not reasonable in a WLAD case to make a deduction for attorney fees solely on how many claims the plaintiff prevailed on or the size of the

judgment. "[A]lthough it may be appropriate for a court to consider the amount of the judgment in comparison to the fee requested, in cases involving the law against discrimination, heavy reliance on the degree of success may constitute an abuse of discretion." *Steele*, 96 Wn. App. at 784.

In *Martinez*, the Washington Supreme Court decided that the trial court abused its discretion by considering the "'degree of success obtained as compared to the amount sought'" in determining a reasonable fee. *Martinez*, 81 Wn. App. at 241. In recovering attorney fees under the WLAD, heavy reliance should not be placed on the size of the judgment because success in a discrimination claim cannot be measured by monetary damages alone. *Id.* Bringing claims of discrimination is a matter of public concern that threatens rights of all people and dangers the foundations of a free democratic society. *Id*. at 241-42 (quoting RCW 49.60.010). "'Because damage awards do not reflect fully the public benefit advanced by civil rights litigation, Congress did not intend for fees in civil rights cases, unlike most private law cases, to depend on obtaining substantial monetary relief.'" *Id.* at 236 (quoting *City of Riverside v. Rivera*, 477 U.S. 561, 575, 106 S. Ct. 2686, 91 L. Ed. 2d 466 (1986)).

In *McGinnis v. Kentucky Fried Chicken of California*, the Ninth Circuit held that under the WLAD, deducting two-thirds of the hours from the lodestar amount because the

plaintiff did not prevail on two-thirds of his claims "makes no practical sense." *McGinnis v. Kentucky Fried Chicken of California*, 51 F.3d 805, 808 (9th Cir. 1994). The court reasoned that a lawyer would not allocate equal hours to each claim. Instead, the trial court should make a deduction for time actually spent on unrelated, unsuccessful claims. *Id*. at 808-09. Additionally, a trial court should not apply an indiscriminate pro rata dollar deduction for each losing claim when the claims share many of the same aspects. *Id.* at 809.

Here, the trial court stated that it considered the social policy aspects of a discrimination claim. Nevertheless, the trial court decided that Ms. Little's limited success and costs of unsuccessful claims factored heavily against a higher award. While some consideration can be given to the amount of success achieved, public policy plays a stronger role than amount of success when considering reasonable attorney fees in Ms. Little's claim for sexual harassment. Awarding attorney fees to Ms. Little that do not cover the cost of litigation discourages others from bringing a similar claim.

Furthermore, as set forth in *McGinnis*, placing too much emphasis on the degree of success ignores the time spent on the core issue in Ms. Little's complaint. Ms. Little's sexual harassment claim was the foundation for all of her other claims. Her assault, outrageous conduct, and wrongful termination claims all evolved from her sexual

harassment claim. Ms. Little likely devoted more than one-fourth of her time to the sexual harassment claim and, correspondingly, the cost to litigate was likely not one-fourth of her attorney fees.

We remand the award of Ms. Little's reasonable attorney fees for recalculation using the lodestar method and factoring in the unsuccessful related claims, social policy regarding the WLAD, and the actual time devoted to Ms. Little's harassment claim.

Attorney Fees on Appeal. Ms. Little requests an award of attorney fees and expenses on appeal. When the plaintiff is the prevailing party in a discrimination case, the plaintiff is entitled to attorney fees on appeal. *Perry v. Costco Wholesale, Inc.*, 123 Wn. App. 783, 809, 98 P.3d 1264 (2004). Because we affirm the trial court's decision that Mr. Baker sexually harassed Ms. Little, we award attorney fees for defending the appeal. She is not entitled to an award of attorney fees for costs attributed to her cross-appeal.

Summary. We affirm the trial court's decision that (1) Mr. Baker sexually harassed Ms. Little, (2) Ms. Little suffered emotional distress entitling her to an award of $25,000, and (3) Mr. Baker did not assault Ms. Little. We remand the award of attorney fees to the trial court for recalculation of attorney fees, and we award Ms. Little attorney fees on appeal.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

WE CONCUR:

_____ _____
Brown, J. Siddoway, J.