

MISSOURI COURT OF APPEALS – WESTERN DISTRICT
DIVISION III (HARDWICK, P.J., HOWARD, J., and AHUJA, J.)
OCTOBER 4, 2017—9:30 A.M.
MISSOURI WESTERN STATE UNIVERSITY
ST. JOSEPH, MISSOURI

WD80108

Janet Mignone, Respondent,

vs.

Missouri Department of Corrections, Appellant

Janet Mignone worked for the Department of Corrections (DOC) as a corrections officer I at the Western Missouri Correctional Center. While working at the Center's Housing Unit 6, Mignone claims that she was subjected to unwelcome conduct of a sexual nature by two DOC employees and that she was treated differently than other employees because she complained of discrimination. Janet Mignone filed this employment discrimination action under the Missouri Human Rights Acts (MHRA) against the DOC. Mignone submitted to the jury one claim of sexual harassment and two claims of retaliation. The jury returned a verdict for the DOC on the harassment claim but found for Mignone on both retaliation claims. Thereafter, the trial court issued its judgment awarding Mignone \$100,000 in actual damages, \$1,000,000 in punitive damages, and attorney's fees in the amount of \$276,186 and costs.

Appellant's points on appeal:

- (1) The trial court erred in giving jury instruction 12, because it included in the disjunctive six alleged discriminatory acts, in that Mignone failed to proffer sufficient evidence to support each alleged discriminatory act.
- (2) The trial court erred in submitting jury instructions 12 and 13, because they omitted an element of the substantive law, in that they do not require that the jury find any complaint made by Mignone was in good faith.
- (3) The trial court erred in submitting jury instructions 12 and 13, because they failed to instruct the jury on the elements of hostile work environment claims, in that they lacked language about severity, pervasiveness, and DOC's response.
 - a. The instructions did not require a finding that the alleged acts were sufficiently severe and pervasive.
 - b. The instructions did not require a finding that DOC knew or should have known of the harassment and failed to take action.
- (4) The trial court erred in admitting improper and unduly prejudicial evidence, because one "me, too" witness was not similarly situated and Mignone's Exhibits ZZZ confused the issues at trial, in that the witness did not make a complaint and the exhibit related to ultimate issues for the jury's determination.

- a. The trial court admitted irrelevant and unduly prejudicial testimony of a third-party employee's experience, which was dissimilar to Mignone's allegations.
 - b. The trial court erred in admitting Exhibit ZZZ, which confused the issues at trial and contained conclusions relating to ultimate issues for the jury's determination.
- (5) The trial court erred in allowing the issue of punitive damages to be submitted to the jury, because there was not substantial evidence that the DOC acted with evil motive or reckless indifference, in that the evidence demonstrated the actions alleged in instruction 12 did not damage Mignone and DOC promptly responded to the actions alleged in instruction 13.
- (6) The trial court erred in not remitting the punitive award against DOC, because the award fails to comport with due process, in that the complained-of behavior did not result in financial or physical damage and the ratio of compensatory-to-punitive damages was unwarranted.
- a. DOC's conduct was not reprehensible.
 - b. The double digit ratio of compensatory-to-punitive damages was unwarranted.

WD80474

In the Interest of: Baby Girl Arnold, Plaintiff;

Juvenile Officer, Respondent,

vs.

Timothy Arnold and Royce Arnold, Appellants

When the Juvenile Officer filed a first amended petition alleging that Baby Girl Arnold was without proper care, custody and support pursuant to section 211.031.1, RSMo, Timothy Arnold (Father) and Royce Arnold (Mother) failed to respond. Father and Mother then failed to appear for the adjudication hearing on January 9, 2107. The trial court found that both parents were duly notified by certified mail at their address located at 4227 Paseo, Kansas City, Missouri. The trial court, therefore, granted leave to proceed in default against the Father and Mother and found that the child was in need of care and assumed jurisdiction over the child. The court found that Baby Girl Arnold's two siblings were under the jurisdiction of the court due to physical abuse and neglect and that both parents presented a risk of harm to the child. Further, in regard to disposition, the court found that reasonable efforts had been exercised to prevent removal of the child from the home but that continued placement of the minor child in the home was contrary to the welfare of the child, that both parent had made no progress in over a year in addressing the barriers to reunification identified in the case involving Baby Arnold's siblings, and that both parents failed to participate in services and have obstructed the Children's Division in the provision of reasonable efforts as to services. The court found that Father and Mother had "continuously demonstrated an inability to make protective decisions in this child and the siblings' best interest." The court further noted that the parents had absconded with the child and that the child's safety was at serious risk. The court stated that the permanency goal would be determined once the child was located and that Baby Girl Arnold should be committed to the

custody of the Children's Division for appropriate licensed placement until further order of the court. Father and Mother appeal from the trial court's judgment claiming that Kansas has jurisdiction over the child because Baby Girl Arnold was born in the State of Kansas. Indeed, after the birth of Baby Girl Arnold, Kansas took temporary protective custody of the child. When, however, the Juvenile Officer of Jackson County, Missouri, filed the petition alleging that the child was without proper care, custody, and support and after the Jackson County Circuit Court issued a *capias* for the child and placed the child in protective custody and in the temporary legal custody of the Children's Division, Kansas released jurisdiction of the child. The Kansas court found that "Court involvement in Kansas [was] no longer necessary" and that "the child has been placed in Missouri State custody where her siblings are already in custody."

Appellant's points on appeal:

- (1) The trial court erred in asserting jurisdiction over Baby Girl Arnold because under RSMO § 211.031.1 Baby Girl Arnold was neither a resident of nor found within Jackson County and was alleged to be in need of care and treatment and the court's order stating that Missouri had jurisdiction of Baby Girl Arnold based upon 211.031 was against the weight of the evidence, a misapplication of the law and reversible error because Baby Girl Arnold was a resident of the State of Kansas and Kansas had jurisdiction over the child.
- (2) The trial court erred in asserting jurisdiction over Baby Girl Arnold because under the Missouri UCCJEA § 452.740, Baby Girl Arnold's home state was that of Kansas and the court's order that Missouri had jurisdiction over Baby Girl Arnold was reversible error because the question of jurisdiction was not correctly applied to the facts and Kansas had been the home state of Baby Girl Arnold since her birth and Kansas had jurisdiction over Baby Girl Arnold.

WD80283 (consolidated with WD80317)

Floyd Finch, Appellant-Respondent,

vs.

Bruce Wayne Campbell, et al., Respondents-Appellants

Floyd Finch and Bruce Campbell formed a general partnership to practice law starting September 1, 2009. They did not enter into a written partnership agreement but agreed the partnership would be governed by Missouri's Partnership Law. On August 1, 2012, the partnership was dissolved. On January 18, 2013, Finch initiated this lawsuit against Campbell and Campbell's newly formed law firm, Bruce Campbell Law Firm LLP. Finch alleged that Campbell improperly excluded Finch from the partnership and the partnership profits. Finch sought an accounting of the partnership assets and profits, imposition of a constructive trust, injunctive relief (the trial court granted Campbell's and his firm's motion for summary judgment on this count), and money damages for breach of a fiduciary duty. Campbell and his firm filed an answer denying Finch's allegations and asserted counterclaims alleging breach of fiduciary duty, unjust enrichment, breach of contract and implied duty of good faith and fair dealing. In particular, Campbell and his firm alleged that Finch breached a fiduciary duty by "failing to observe timekeeping, billing, and collection practices." On January 16, 2014, the trial court granted Finch's motion for an immediate accounting and appointed a Special Master to conduct a

full accounting of the partnership and to establish a valuation of the partnership as of August 1, 2012. Finch's accounting claims were tried to the trial court in equity, and on March 27, 2015, the trial court entered its interlocutory judgment as to Count I of Finch's petition regarding the accounting. The court determined that the value of Finch's 50 percent net interest in the dissolved partnership was \$43,435.64 and that Finch had unclean hands by trying to change the accounting methodology in this case from that used in his previous held divorce action in which he presented evidence of the value of the partnership. The circuit court, therefore, ordered that Finch was entitled to the \$30,548.57 that was deposited with the Court and ordered Campbell and his firm had to pay Finch \$12,887.07. Finch's breach of fiduciary claim and Campbell's and the firm's claims against Finch were tried to a jury. The jury returned a verdict for Finch against Campbell on Finch's breach of fiduciary claim and awarded Finch \$150,000 in actual damages. The jury also awarded Campbell \$100,000 in actual damages on Campbell's breach of fiduciary duty claim and returned a verdict for Finch on Campbell's counterclaims for breach of contract and implied duty of good faith and fair dealing and unjust enrichment. Both sides filed timely motions for judgment notwithstanding the verdict and for new trial. On October 10, 2016, the trial court entered a Final Judgment and Omnibus Post-Trial order granting Campbell's motion for judgment on Finch's count for constructive trust but otherwise denying the parties post-trial motions. The circuit court's judgment offset the \$150,000 verdict for Finch against Campbell's \$100,000 verdict against Finch for a net of \$50,000 and incorporated the first judgment for \$12,887.07 against Campbell and his firm. Both parties appeal from the trial court's judgment.

Appellant/Respondent's (Finch's) points on appeal:

- (1) The trial court erred in denying Appellant Finch's motions for directed verdict and judgment notwithstanding verdict and in awarding Judgment against Finch on Respondent/Cross-Appellant Campbell's breach of fiduciary duty counterclaim because Finch had no fiduciary duty to record his time in a particular manner or to bill clients on the schedule demanded by his partner, or to "cooperate" in billing in ways demanded by his partner, and Finch's billing or non-billing of partnership clients did not breach a fiduciary duty Finch owed to Campbell.
- (2) The trial court erred in submitting Instruction Number 11, Campbell's breach of fiduciary duty counterclaim against Finch, because:
 - (a) Under Missouri law, Finch had no fiduciary duty to Campbell to "timely record" his time for legal services, no fiduciary duty to Campbell to "timely bill clients," and no fiduciary duty to "cooperate" with Finch & Campbell LLP in the billing of clients.
 - (b) Instruction No. 11 misstated the substantive law of Missouri in submitting that Finch had a duty "to act in best interest of defendant Campbell" because, if Finch had any fiduciary duty to Campbell in regard to billing of the clients of Finch & Campbell LLP clients, then Finch's duty was to act in the best interest of clients and of both partners, rather than to act "in the best interest of defendant Campbell."
 - (c) Instruction No. 11 provided the jury with a roving commission to speculate about whether or not Finch breached a fiduciary duty to Campbell by having "failed to timely record his time," by having "failed to timely bill clients," or

- by having “refused to cooperate with Finch & Campbell LLP in the billing of clients,” by having “failed to act in the best interest of defendant Campbell.”
- (d) Instruction No. 11 was argumentative and confusing in submitting that Finch “failed to act in the best interest of defendant Campbell,” particularly without the definition of fiduciary duty offered by Finch in refused Instruction ZZ, which the trial court erred in refusing, if Finch is found to have owed Campbell a fiduciary duty to bill clients.
- (3) The trial court erred in failing to award Finch 50% of the profits Campbell obtained by using the cash, assets, and collections of the dissolved Finch & Campbell partnership to fund the operation of the Bruce Campbell Law Firm LLP without Finch’s consent, and while excluding Finch from information about the winding-up process, because Missouri law required that the trial court award Finch 50% of the profits generated from Campbell’s use of the dissolved partnership’s assets once Finch exercised his option under Missouri law to receive 50% of Campbell’s profits from Campbell’s non-consensual use of partnership property to operate his new law firm. Alternatively, the trial court erred in failing to award Finch prejudgment interest for Campbell’s breach of fiduciary duty, because Finch was entitled to either 50% of the profits or prejudgment interest under Missouri law for Campbell’s self-dealing breach of fiduciary duty.
- (4) The trial court erred in incorporating its Interlocutory Judgment on Plaintiff’s Count I into the Final Judgment without correcting errors made therein because:
- (a) When the trial court calculated the respective interests of the two partners in connection with Plaintiff’s Count I-Action for an Accounting and Production of Documents, the trial court made erroneous factual findings not supported by substantial evidence in the record concerning purported “inflation” of Finch & Campbell’s office lease liability in Finch’s marital dissolution action, and the purported “failure” of Finch’s expert in the marital dissolution action to include the Vernon receivable in his analysis, when Finch’s expert had neither inflated the office lease liability nor failed to include the Vernon receivable in his analysis;
- (b) The trial court’s misunderstanding of the evidence in the Finch marital dissolution trial caused it mistakenly to employ the “unclean hands” doctrine to include in its evaluation of the winding-up partnership’s current value the extinguished liability for rent on the paid Finch & Campbell office lease, despite the fact that Respondent-Cross Appellant Bruce Campbell received all of the benefits of the Finch & Campbell lease after Campbell excluded Finch from the leasehold premises, and because under Missouri law the Bruce Campbell Law Firm LLP assumed the lease and received all of the benefits of the lease after Campbell excluded Finch from the leased premises;
- (c) The “unclean hands” doctrine was erroneously employed by the trial court in its ruling on Plaintiff’s Count I to shift \$203,246.01 of expenses to Finch & Campbell from the Bruce Campbell Law Firm, and to reduce the value of Finch & Campbell by \$228,147;
- (d) The trial court erroneously employed the “unclean hands” doctrine to aid Campbell—who himself acted inequitably by failing to disclose Finch & Campbell collections in the Finch marital dissolution action—because a court

- will not “aid a wrongdoer or promote unconscionable gain at plaintiff’s expense”;
- (e) The “unclean hands” does not apply because the hypothetical “wrong” identified by the Court was not done to defendants;
 - (f) The “unclean hands” doctrine does not apply because Finch did not “dirty his hands in acquiring the rights he now asserts”;
 - (g) The trial court’s “unclean hands” ruling violates the principle that “equity follows the law” and violates Missouri’s Partnership Law because it effectively reallocates the dissolved partnership’s income from 50-50 to a much higher relative percentage taken by Campbell in 2012 to 2015; and
 - (h) The Interlocutory Judgment did not address F&C collections obtained by Campbell but that Campbell did not disclose to Special Master Daniel Welsh.

Respondents/Appellants’ (Bruce Wayne Campbell, et al.’s) points on appeal:

- (1) The trial court erred in denying Campbell’s motions for directed verdict and judgment notwithstanding verdict and awarding judgment against Campbell on Appellant/Respondent Finch’s breach of fiduciary claim against Campbell as a matter of law because the accounting claims of Finch had been fully adjudicated previously in equity in the First Judgment and reduced to judgment in that under Missouri law complex partnership accountings must be completed before any law claims and are exclusively equitable proceedings in Missouri, not actions triable at law a second time to a jury for the identical split of dissolution assets after a complete trial in equity jurisdiction.
- (2) The trial court erred in denying Campbell’s motions for directed verdict and judgment notwithstanding verdict and awarding judgment against Campbell on Appellant/Respondent Finch’s breach of fiduciary claim against Campbell as a matter of law because the re-trial of the Finch accounting claims should have been collaterally estopped in that all of the accounting issues had been previously adjudicated by the trial Court in the First Judgment.
- (3) The trial court erred in denying Campbell’s motions for directed verdict and judgment notwithstanding verdict and awarding judgment against Campbell on Appellant/Respondent Finch’s breach of fiduciary claim against Campbell as a matter of law because Finch failed to prove that a 50% division of the net assets of F&C was caused by any of Campbell’s actions or that Finch had any pecuniary damage caused by Campbell, in that, the tort cause of action for breach of fiduciary duty under Missouri law requires a showing of causation and actual pecuniary damages for there to be a submissible claim.