

**MISSOURI COURT OF APPEALS-WESTERN DISTRICT
DIVISION IV
KAREN KING MITCHELL, CHIEF JUDGE, PRESIDING,
LISA WHITE HARDWICK, JUDGE
THOMAS N. CHAPMAN, JUDGE
OCTOBER 10, 2019
MISSOURI WESTERN STATE UNIVERSITY
ST. JOSEPH, MISSOURI**

WD82516

Greer Cooper-Dorsey, Respondent,

v.

Time Warner Cable, Appellant.

Time Warner Cable (TWC) appeals from the circuit court's denial of its motion to compel arbitration. The facts as alleged claim that Greer Cooper-Dorsey (Dorsey) worked as a recruiter at TWC from May 2016 to February 2017. In May 2016, Dorsey received a mutually binding arbitration agreement with TWC as part of a "web-based 'onboarding' process" used by TWC for its employees. According to TWC, Dorsey logged onto TWC's Onboarding System on May 16, 2016, using a unique login ID and a temporary confidential access code. TWC claims that, as part of the onboarding process, Dorsey had to select and review the arbitration agreement and that Dorsey accepted the arbitration agreement by clicking a box that said she understood and agreed to be bound by the arbitration agreement for disputes arising out of her employment. Dorsey recalls being presented with TWC's onboarding forms, but she does not recall electronically signing an arbitration form. She also states that no one ever discussed arbitration with her. Dorsey filed a petition against TWC and three TWC employees in the Circuit Court of Jackson County, alleging age discrimination, harassment, and retaliation under the Missouri Human Rights Act. TWC filed a motion to compel arbitration and dismiss or stay proceedings with the circuit court. The circuit court denied TWC's motion to compel arbitration. TWC now appeals.

Appellant's points on appeal:

1. The Circuit Court erred in denying the motion to compel arbitration as an initial matter, because questions of arbitrability should have been referred to the arbitrator in accordance with a delegation provision, in that Ms. Dorsey has not directly challenged it and it is not unconscionable.
2. The Circuit Court erred in denying the motion to compel arbitration of the claims in this action, because (A) a valid arbitration agreement exists between Ms. Dorsey and TWC, in that (1) TWC offered the agreement, (2) Ms. Dorsey accepted and signed the agreement, and (3) consideration existed for the agreement in the form of mutual promises to arbitrate and the beginning of employment; and (B) this dispute falls within the scope of the arbitration agreement, in that (1) the agreement covers "any and all claims . . . arising

from or related to” employment, including Ms. Dorsey’s claims, and (2) Ms. Dorsey is estopped from refusing to arbitrate her identical claims against TWC employees.

WD82663

State of Missouri, Respondent,

v.

Thomas J. Savage, Appellant.

Thomas J. Savage appeals from the circuit court’s judgment denying his Motion to Retax Costs. The facts as alleged claim that Savage was found guilty by a jury of the class D felony of burglary in the second degree and the class A misdemeanor of stealing. The circuit court sentenced Savage to six years in the Missouri Department of Corrections for burglary and to 180 days in the County Jail for stealing. The circuit court further ordered restitution in the amount of \$4,711.54 and entered its order, over Savage’s objection, taxing costs to Savage. The circuit court and the prosecutor certified a Bill of Costs to the Missouri Department of Corrections. The certificate states that the charges listed were “properly dischargeable” against the State, that Savage was “insolvent,” and that none of the certified costs other than the board bill were incurred “on the part of the defendant.” On March 4, 2018, Savage filed a Motion to Retax Costs, arguing that the certified Bill of Costs had the effect of taxing costs to the State and that the circuit court’s original order taxing costs against Savage was void. The circuit court denied Savage’s Motion to Retax Costs. Savage now appeals.

Appellant’s points on appeal:

1. The trial court erred in denying Appellant’s Motion to Retax Costs, because Appellant is not responsible for the costs, in that the trial court followed the proper statutory procedure in ordering costs to be taxed against the State, pursuant to Mo. Rev. Stat. § 550.190 & § 550.210.
2. The trial court erred in denying Appellant’s Motion to Retax Costs, because Appellant is not responsible for the costs, in that the trial court may not assess costs against indigent persons represented by a legal aid society or legal services organization.

WD82435

Sundee Harris, Appellant,

v.

Victor L. Phillips Company, A Corporation, Respondent.

Sundee Harris appeals from the circuit court’s judgment granting summary judgment in favor of Victor L. Phillips Company (VLP) on Harris’s sex and disability discrimination claims

under the Missouri Human Rights Act (MHRA). The facts as alleged claim that, Harris worked for VLP for sixteen years in the Parts Department. On September 18, 2013, Harris went on Family and Medical Leave Act (FMLA) leave from her employment at VLP due to a non-occupational left shoulder injury. In mid-December 2013, Harris requested to return to work at VLP on light duty with no use of her left arm, but that request was denied by VLP. In February 2014, Harris's position at VLP was filled by an individual who had already been employed by VLP. On March 17, 2014, Harris attempted to return to work at VLP but was informed that VLP had no open position for her and that she was terminated. On March 17, 2014, Harris filed a Missouri Commission on Human Rights Charge of Discrimination, alleging that she was treated differently in the terms and conditions of employment due to her gender and that VLP refused to allow her to return to work unless she was able to perform all job duties at 100 percent. The Charge stated that the last date of discrimination took place on "12/15/2013." On May 15, 2014, Harris filed an Amended Charge of Discrimination with the Missouri Commission on Human Rights, containing the same allegations of the original charge but stating that VLP failed to accommodate her due to her disability. The Amended Charge stated that the last date of discrimination took place on "12/15/2013." After receiving a "Notice of Right to Sue" from the Missouri Commission on Human Rights, Harris filed a Petition for Damages with the circuit court on February 24, 2016. Harris alleged that she was the only female union employee working for VLP at the time of her termination. She further alleged that VLP refused to allow her to return to work after taking medical leave for a shoulder injury, failed to return telephone calls from Harris and from Harris's doctor's office regarding Harris's medical condition, failed to provide reasonable accommodations for Harris to allow her to return to work, and then terminated her employment. Harris contended that VLP held her to different requirements for her return to work after her medical leave than male employees and that VLP's supervisor treated her differently and less favorably than the male employees. VLP filed a motion for summary judgment, arguing that Harris's claims were time barred because neither her charge nor her amended charge filed with the Missouri Commission on Human Rights mentioned her termination but stated that the last discrimination occurred on December 15, 2013. VLP also argued that a prior arbitration conclusively determined that, prior to March 17, 2014, Harris was not able to perform the essential duties of her position, that she was unable to return to work with accommodation to a different position, and that VLP's decision to terminate her was for valid, job-related reasons. The circuit court granted VLP's motion for summary judgment and entered judgment in favor of VLP. VLP now appeals.

Appellant's points on appeal:

1. The trial court erred in granting summary judgment on Harris' sex and disability discrimination claims under the MHRA because to the extent the trial court based its judgment on a finding that Harris' claims were time barred that finding was contrary to the evidence when viewed in a light most favorable to Harris in that Harris timely filed her lawsuit within two years of her termination, Harris exhausted her administrative remedies with respect to her termination, VLP had notice that Harris' termination was included in her amended charge of discrimination, and Harris' termination was reasonably related to the allegations contained in her charges of discrimination.

2. The trial court erred in granting summary judgment on Harris' sex and disability discrimination claims under the MHRA because to the extent the trial court based its judgment on a finding that Harris' claims were barred by collateral estoppel arising from the prior arbitration proceeding that finding was contrary to the evidence when viewed in a light most favorable to Harris in that VLP failed to establish that the arbitration claim involved issues that are identical to the current action, the arbitration award did not result in a final judgment on the merits, and Harris did not have a full and fair opportunity to litigate her discrimination claims in the arbitration proceeding.