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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

TRACY WHITE, **Plaintiff,** **v.** **STATE OF IOWA and IOWA DEPARTMEHNT OF HUMAN SERVICES,** **Defendants.**	**Case No. LACL146265** **RULING ON DEFENDANT'S MOTION FOR NEW TRIAL OR REMITTITUR and MOTION FOR JUDGEMNET NOTWITHSTANDING THE VERDICT**

Before the Court is Defendant's Motion for New Trial or Remittitur and Motion for Judgement Notwithstanding the Verdict. The Court held a hearing regarding this matter on July 16, 2021. After considering the arguments of the parties, and having reviewed the file and the applicable case law, the Court now enters the following ruling:

PROCEDURE

On November 11, 2019, Plaintiff, Tracy White filed a sexual harassment claim against the State of Iowa and the Iowa Department of Human Services (DHS). After an eleven day trial, a jury found in favor of Plaintiff and award her $260,000 for past emotional distress and $530,000 for future emotional distress. On June 11, 2021, Defendant filed this Motion for Remittitur and Motion for Judgement Notwithstanding the verdict.

STANDARD OF REVIEW

"The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve in inferior courts; but no person may be deprived of life, liberty, or property, without due process of law." Iowa Const. art. I, § 9. "The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy." *Bedford, Breedlove & Robeson*, 28 U.S. 433, 446 (1830).

> A jury that represents a fair cross-section of the community enables "the commonsense judgment of the community [to serve] as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge." *Id.* at 530, 95 S.Ct. at 698. It also helps legitimize the legal system and is "critical to public confidence in the fairness of the criminal justice system." *Id.* Finally, it encourages civic participation through the shared administration of justice. *Id.*

State v. Plain, 898 N.W.2d 801, 821 (Iowa 2017) (quoting *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975).

"In jury trials controverted issues of fact are for the jury to decide. That is what juries are for. To hold that a judge should set aside a verdict just because he would have reached a different conclusion would substitute judges for juries. It would relegate juries to unimportant window dressing. That we cannot do." *Lantz v. Cook*, 127 N.W.2d 675, 677 (Iowa 1964). "A ruling on a motion for new trial following a jury verdict is a matter for the trial court's discretion. In ruling upon such motions for new trial the trial court has a broad, but not unlimited, discretion in determining whether the verdict effectuates substantial justice between the parties." *Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d 587, 594 (Iowa 1999) (internal citations omitted). Appellate courts are generally "reluctant to interfere with a jury verdict and give considerable deference to a trial court's decision not to grant a new trial." *Id.*

ANALYSIS

I. Whether damages are excessive.

A new trial may be granted only if the State shows that Defendants' substantial rights were materially affected by excessive damages appearing to have been influenced by passion or prejudice. Iowa R. Civ. P. 1.1004(4). "Passion is the state of mind produced when the mind is powerfully acted upon and influenced by something external to itself [and] ... is one of the emotions of the mind known as anger, rage, sudden resentment, or terror." *WSH Prop., LLC v.*

Daniels, 761 N.W.2d 45, 49 (Iowa 2008) (quoting *Collins v. State*, 102 So. 880, 882 (1925)). An "evidentiary basis for the jury's assessment of damages dispels any presumption that the excessiveness of the verdict was motivated by passion." *Id.* at 50-51.

"[T]he amount of an award is primarily a jury question, and courts should not interfere with an award when it is within a reasonable range of evidence." *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 772 (Iowa 2009) (citing *Kautman v. Mar-Mac Cmty. Sch. Dist.*, 225 N.W.2d 146, 147 (Iowa 1977)); *see also Riniker v. Wilson*, 623 N.W.2d 220, 230 (Iowa App. 2000) (citing *Gorden v. Carey*, 603 N.W.2d 588, 590 (Iowa 1999)) (Stating "[t]he amount of damages awarded is peculiarly a jury, not a court, function"). Generally, a court should "not disturb jury verdicts pertaining to damages unless they are flagrantly excessive or inadequate, so out of reason so as to shock the conscience, the result of passion or prejudice, or lacking in evidentiary support." *Harsha v. State Sav. Bank*, 346 N.W.2d 791, 799 (Iowa 1984).

"In passing on the alleged excessiveness of damages, we need to determine only whether there was substantial evidence to support the verdict." *Clarey v. K-Products, Inc.*, 514 N.W.2d 900, 903 (Iowa 1994); *Estate of Long v. Broadlawns Med'l Ctr.*, 656 N.W.2d 71, 90 (Iowa 2002). The evidence must be considered in the light most favorable to the plaintiff. *Ort v. Klinger*, 496 N.W.2d 265, 269 (Iowa Ct. App. 1992). The court must uphold an award of damages "so long as the record discloses a reasonable basis from which the award can be inferred or approximated." *Westway Trading Corp. v. River Terminal Corp.*, 314 N.W.2d 398, 403 (Iowa 1982). If "the verdict has support in the evidence the [other factors, including prejudice,] will hardly arise." *Estate of Long*, 656 N.W.2d at 90; *Baker v. John Morrell & Co.*, 266 F. Supp. 2d 909, 944-45 (N.D. Iowa 2003) ("'the issue to be decided here is not the size of the award alone, but the evidence supporting the award.'") (quoting *Evans v. Port Auth. of N.Y. & N.J.*, 273 F. 3d 346, 354 (3d Cir. 2001)).

Defendant contends that under Rule 1.1004(6) the damages are not supported by sufficient evidence. Both Plaintiff and Defendant cite many of the same cases in support of their arguments. What is clear, is that damages is a fact based question that cannot be resolved by comparing numbers in different cases. *Wagaman v. Ryan*, 142 N.W.2d 413, 420 (Iowa 1966).

"Evidence of a hostile environment must not be compartmentalized, but must instead be based on the totality of the circumstances of the entire hostile work environment." *Delph v. Dr. Pepper Bottling Co.*, 130 F.3d 349, 355 (8th Cir. 1997); *Madison v. IBP, Inc.*, 257 F.3d 780, 793 (8th Cir. 2001), *judgment vacated on other grounds*, 536 U.S. 919 (2002) based on *Morgan*, 536 U.S. 101. The *Morgan* court rejected a challenge to the trial court's admission of evidence that other women and African Americans were harassed. *Morgan*, 257 F.3d at 793. The "Eighth Circuit Court of Appeals has recognized that harassment directed at others of which the plaintiff is aware can constitute evidence of a hostile environment as to the plaintiff." *Stricker v. Cessford Const. Co.*, 179 F. Supp. 2d 987, 1001 (N.D. Iowa 2001). "[H]ostile work environment claims are by nature cumulative—proof of such claims often requires evidence of multiple acts of harassment (including evidence of harassment experienced by other employees besides the plaintiff) over a period of time." *Davis v. Packer Eng., Inc.*, 2016 WL 11689521, at *4 (N.D. Ill., Nov. 14, 2016).

The fact that Mike McInroy was a perpetrator of some of this harassment is important. "[T]he status of the harasser is a relevant factor in the mix of all the circumstances." *Steck v. Francis*, 365 F. Supp. 2d 951, 973 (N.D. Iowa 2005) (citations omitted). "Where the harasser is a supervisor, 'victims are and are reasonably perceived to be more vulnerable to supervisor harassment, because when the harasser is a supervisor, the harasser may, and often does, find it easier to target and harass the victim.'" *Strom v. Holiday Cos.*, 789 F. Supp. 2d 1060, 1083 (N.D.

Iowa 2011) (citing *Steck*, 365 F. Supp. 2d at 972-73). "Where the harasser is a supervisor, the impact of the harassment is heightened: Harassment by a supervisor appears to carry the weight and imprimatur of the employer's authority and seems to authorize or condone like conduct by subordinates, thereby fostering a perception that the environment as a whole is hostile." *Steck*, 365 F. Supp. 2d at 972; *see also Ellis v. Houston*, 742 F.3d 307, 320 (8th Cir. 2014).

Plaintiffs brought forth evidence that showed several inappropriate comments. The trial record and the briefs adequately reflect the evidence presented but the Court will highlight one instance in which McInroy told Plaintiff he had a dream about Plaintiff dressed in leather whipping him. In terms of the physical and psychological effects, Plaintiff brought forth evidence that showed Plaintiff's mental health deteriorated as a result from being harassed while employed by Defendant. Plaintiff's therapist diagnosed her with several disorders resulting from her experiences at work, and Plaintiff broke out in shingles twice. Other witnesses testified that Plaintiff changed as a person and was no longer as outgoing and warm as she used to be. Finally, Plaintiff's therapist testified that Plaintiff's symptoms would continue well into the future. The above is substantial evidence sufficient to support the jury's verdict. The jury had the opportunity to assess the evidence and witnesses presented as is their constitutional duty. Clearly, they found Plaintiff's witnesses to be credible, and found the evidence convincing. The jury performed their duty as the consensus of the community and the Court will not over turn their verdict.

Defendants further argue that under Rule 1.1004(4), a new trial is needed due to the jury awarding damages they believe are excessive due to passion or prejudice. Their argument is focused on their previous motion in limine trying to exclude evidence of harassment and other discriminatory remarks not directed at Plaintiff. They argue that since the Court allowed this evidence in, the jury was roused into a passion and wished to punish Defendant. The Court denied

that motion on the record on the day of trial, and need not restate the reasons here. *See generally, Schwapp v. Town of Avon*, 118F.3d 106, 111 (6th Cir. 1997). The only evidence of the jury was influenced by passion or prejudice Defendant offers, is the amount awarded in damages. However, as explained above there is factual support for the jury's verdict which dispels any presumption that the excessiveness of the verdict was motivated by passion. *WSH Prop., LLC. v. Daniels*, 761 N.W.2d 45, 51-52 (Iowa 2008). Therefore, the jury was not improperly influenced by passion by the inclusion of instances where Defendant harassed other employees.

II. Jury Instructions

a. Instruction Number 16

Jury instruction number 16 read:

> In determining whether discriminatory or harassing conduct was sufficiently severe or pervasive enough to create a hostile environment, you may consider sexually harassing conduct that was directed toward others in the workplace, so long as Plaintiff Tracy White was aware of that conduct. Plaintiff is entitled to recover damages for conduct that she was aware of that caused her emotional distress. **You may consider harassment which Tracy White was unaware of in determining intent, whether the harassment was part of a pattern or practice, whether Defendants had notice of the conduct, and whether Defendants took prompt and remedial action that was reasonably calculated to end the harassment.**

Jury Instructions No. 16 (emphasis added). Defendants take issue with the emphasized portion above. Defendant again tries to make the argument this Court has rejected several times regarding whether incidences of harassment and discrimination not directed towards Plaintiff is irrelevant. The Court will not readdress it again aside to say that it has no merit.

This information can only be used for limited purposes, however. The court in *Sandoval v. American Build. Maintenance Industries, Inc.*, 578 F.3d 787, 802-03 (8th Cir. 2009) set the parameters.

> A plaintiff, however, is not limited to offering such evidence only to prove the subjective component of a sexual harassment claim. Irrespective of whether a

> plaintiff was aware of the other incidents, the evidence is highly probative of the type of workplace environment she was subjected to, and whether a reasonable employer should have discovered the sexual harassment.

Sandoval, 578 F.3d at 802; *see also*, *Williams v. ConAgra Poultry Co.,* 378 F.3d 790, 793–94 (8th Cir. 2004) (holding that while evidence of harassment directed at other employees was not relevant to the plaintiff's subjective perception of hostility, the evidence is relevant to prove the type of workplace the plaintiff was subjected to).

The above jury instructions correctly limited the scope of how the jury could consider evidence of harassment of which Plaintiff was unware. As a final note, a jury is presumed to follow the instructions. *State v. Ondayog*, 722 N.W.2d 778, 784 (Iowa 2006). Therefore, jury instruction number 16 is without error.

b. Instruction Number 20

Defendant claims jury instruction number 20 is flawed because it does not include mitigation instructions. Defendant does not provide and case law in support of a mitigation instruction in sexual harassment cases. Regardless, Defendant has not provided the expert medical testimony required to receive a mitigation instruction in cases where the defendants argue a plaintiff could have received medical treatment to mitigate damages. *Greenwood v. Mitchell*, 621 N.W.2d 200, 207 (Iowa 2001). Therefore, Defendant has not carried their burden in demonstrating a mitigation instruction should have been added.

III. Judgement notwithstanding the verdict.

"When considering a motion for judgment notwithstanding the verdict, the district court must view the evidence in the light most favorable to the party against whom the motion is directed." *Konicek v. Loomis Bros., Inc*., 457 N.W.2d 614, 617 (Iowa 1990); *see also Royal Indem. Co. v. Factory Mut. Ins. Co*., 786 N.W.2d 839, 846 (Iowa 2010). The Court need only decide

whether there was "sufficient evidence to generate a jury question" on the issues raised by the movant. *Id*. The motion should be denied when there is any substantial evidence to support the jury's verdict. *Id*.

"Every legitimate inference" deduced from the evidence is to be given the party against whom the motion is directed. *In re Will of Pritchard*, 443 N.W.2d 95, 97 (Iowa Ct. App. 1989). The trial court examines whether the plaintiff presented substantial evidence on each element of the claim to determine if a reasonable trier of fact could find for the plaintiff. *Poulsen v. Russell*, 300 N.W.2d 289, 296 (Iowa 1981). "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 345 (Iowa 1999); *Schlegel v. Ottumwa Courier*, 585 N.W.2d 217, 221 (Iowa 1998); *In re Estate of Bayer*, 574 N.W.2d 667, 670 (Iowa 1998).

A court may "not set aside a verdict simply because it might have reached another conclusion." *Ort v. Kli*, 496 N.W.2d 265, 269 (Iowa Ct. App. 1992); *Houvenagle v. Wright*, 340 N.W.2d 783, 785 (Iowa Ct. App. 1983). Rather, "[t]he determinative question posed is whether under the record, giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties." *Cowan v. Flannery*, 461 N.W.2d 155, 158 (Iowa 1990). Jury verdicts must be protected and undisturbed absent extraordinary circumstances:

> It is fundamental that a jury's verdicts are to be liberally construed to give effect to the intention of the jury and to harmonize the verdicts if it is possible to do so. The test is whether the verdicts can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court. Only where the verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside.

Hoffman v. Nat'l Med'l Enter, Inc., 442 N.W.2d 123, 126–27 (Iowa 1989) (internal citations omitted). This is essentially the same standard that applies to motions for summary judgment. *See, e.g., Betrand v. Mullin*, 846 N.W.2d 884, 891 (Iowa 2014).

The main thrust of Defendant's argument again centers on the Court allowing in evidence of harassing behavior not directed towards Plaintiff. The Court again rejects this argument. As for the sufficiency of the evidence presented, Plaintiff provided ample evidence that could lead a reasonable jury to find in her favor. Much of Plaintiff's evidence was discussed in the Ruling on Defendant's Motion for Summary Judgement. This evidence was sufficient to send the questions of whether the conduct was severe and pervasive, and whether the conduct was based on gender or sex to the jury. However, more evidence came to light during trial. This includes Darci Patterson referring to her subordinates' cubicles as "sniffers' row," which is a reference to seats at strip clubs located closest to the stage, Patterson sharing pictures of toys arranged in sexual positions, and Patterson having sex toys in her office.

All of the evidence presented at trial is sufficient to support the jury's verdict that the harassment was severe and pervasive as well as based on gender of sex. Therefore, the Court will not take the case from the jury.

ORDER

Therefore, for the reasons stated above the Court hereby:

DENIES Defendant's Motion for Remittitur or New Trial; and

DENIES Defendant's Motion Notwithstanding the Verdict.

State of Iowa Courts

Case Number	**Case Title**
LACL146265	TRACY WHITE VS STATE OF IOWA AND IOWA DHS
Type:	OTHER ORDER

So Ordered

Scott D. Rosenberg

Scott D. Rosenberg, District Court Judge, Fifth Judicial District of Iowa

Electronically signed on 2021-11-28 12:01:24