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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000413-MR

LORETTA WRIGHT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 99-CI-001092

HIGHLAND CLEANERS, INC.

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: BUCKINGHAM, JOHNSON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Loretta Wright brings this appeal from a January 28, 2005, judgment of the Jefferson Circuit Court dismissing her complaint alleging constructive discharge because of sexual harassment. We reverse and remand.

In February 1999, Wright filed a complaint against her former employer, Highland Cleaners, Inc. (Highland), alleging that she was subjected to sexual harassment while employed by Highland and that such harassment led to her constructive discharge. On July 23, 2004, the circuit court entered a

pretrial order. Relevant to this appeal is the following portions of that pretrial order:

7. **Damage Itemization.** Each party seeking monetary damages of any nature at trial shall file an itemization of such damages 30 days before trial.

. . . .

17. **Compliance with Requirements.** Full and complete compliance with this order is mandatory. Failure to comply may result in reassignment of the trial date, exclusion of the evidence sought be introduced at trial, waiver of objections, or imposition of any other sanctions deemed appropriate by the Court, including attorney fees and costs resulting from noncompliance.

On September 13, 2004, Wright filed a Damage Itemization which stated, in relevant part, as follows:

1. Compensatory Damages - including but not limited to physical and mental pain and suffering, emotional distress, mental anguish, humiliation, embarrassment, loss of wages and other employment benefits, in an amount to be determined by a jury not to exceed: \$1,000,000.

2. Punitive Damages - in an amount to be determined by a jury not to exceed \$300,000.

3. Attorney fees - undetermined at this time.

The Plaintiff reserves her right to supplement this itemization of damages as discovery is ongoing.

On September 16, 2004, Highland filed a motion to compel Wright to "adequately and meaningfully itemize her damages" as set forth in Wright's damage itemization. No hearing was ever conducted on this motion nor was it ruled on.

The trial was scheduled to begin on January 25, 2005. On the first day of trial, Highland made a new motion regarding Wright's failure to itemize damages in accordance with the pretrial order. The trial court granted the motion by ruling from the bench, holding that Wright's damages were reduced to zero. Subsequently, on January 28, 2005, the circuit court entered an order and judgment dismissing Wright's claim.

Therein, the court concluded:

[P]ursuant to its Trial Order as well as the case of Fratzke v. Murphy, 12 S.W.3d 269 (1999), and Lafleur v. Shoney's Inc., 83 S.W.3d 474 (2002), that the plaintiff's damages were reduced to zero (0). After the Court made the ruling, the plaintiff then made several Motions, including a Motion to Amend the Itemization. Those Motions were denied for the reasons stated on the record.

The Court also held that due to the "zero" compensatory damages, that the only remaining damage claim was a punitive damage claim. The punitive damage claim remained pursuant to Title VII of 42 U.S.C. Title VII does not allow the awarding of punitive damages absent a compensatory damage award. Kerr-Selgas v. American Airlines, Inc., et al, 69 F.3d 1205 (1995). Therefore, the plaintiff had no damage issue to present to the jury.

This appeal follows.

Wright contends the circuit court committed error by dismissing her action for failure to properly itemize damages as required by the court's pretrial order. For the reasons hereinafter elucidated, we must agree.

The court's pretrial order simply required each party to file an itemization of any monetary damages thirty days before trial. Wright filed an itemization that included compensatory damages in the amount of one million dollars. Wright indicated that the compensatory damages included physical and mental pain and suffering, emotion distress, mental anguish, humiliation, loss of wages and loss of other employment benefits.¹ The circuit court dismissed Wright's action based upon its pretrial order and the cases of Fratzke v. Murphy, 12 S.W.3d 269 (Ky. 1999), and Lafleur v. Shoney's Inc., 83 S.W.3d 474 (Ky. 2002).

Having reviewed Fratzke and Lafleur, we view these cases as inapposite. Fratzke and Lafleur involve the failure of a party to state the amount claimed for unliquidated damages in response to an interrogatory specifically requesting disclosure of same under Ky. R. Civ. P. (CR) 8.01(2). While the trial court had entered a pretrial order requiring itemization, the crux of the decisions in Fratzke and Lafleur revolve around the

¹ After the trial court ruled that it was granting Highland's motion at trial, Wright unsuccessfully sought to amend her damage itemization by withdrawing claims for liquidated damages arising from loss of wages and employment benefits.

failure to answer an interrogatory concerning the amount claimed for unliquidated damages under CR 8.01(2).

In the case at hand, no interrogatory was submitted requesting Wright to disclose the amount she claimed in unliquidated damages. Additionally, the pretrial order did not specify that Wright was to state an amount for unliquidated damages; rather, the order simply required each party to itemize monetary damages. As the court's pretrial order did not specifically require the itemization of unliquidated damages and as no interrogatory was propounded to Wright under CR 8.01(2) requesting same, we are of the opinion that the trial court's reliance upon Fratzke and Lafleur was misplaced and erroneous. Simply put, the rule enunciated in Fratzke and Lafleur is not implicated in the case at hand.

As to the trial court's discretion to penalize Wright for failure to comply with its pretrial order, we believe the pretrial order was ambiguous and Wright's attempt to comply with the order was in good faith. As such, we must conclude that the circuit court abused its discretion by reducing Wright's damages to zero and dismissing her action for failure to comply with its pretrial order. We believe that such penalty was harsh and draconian. Accordingly, we hold the circuit court committed reversible error by reducing Wright's compensatory damages to zero and dismissing her claim.

We view Wright's remaining contentions to be moot.

For the foregoing reasons, the order and judgment of the Jefferson Circuit Court is reversed and this matter is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

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