STATE OF MICHIGAN

COURT OF APPEALS

NANCY ROPP, MARGY KUTZERA and DEBORAH MORGAN,

Plaintiffs–Appellees,

v

WURTSMITH COMMUNITY FEDERAL CREDIT UNION,

Defendant–Appellant.

UNPUBLISHED
April 19, 1996

No. 156443
LC No. 88-001874-NO

Before: Murphy, P.J., and Corrigan and P.D. Houk,* JJ.

PER CURIAM.

In this employment discrimination case, defendant appeals as of right from a judgment entered in favor of plaintiffs following a jury trial. We affirm in part and reverse in part.

I

Defendant is a credit union with branches in Oscoda, Tawas City, Grayling, Mio and Au Gres, Michigan. Plaintiffs are all former employees of defendant. Plaintiffs Nancy Ropp and Margy Kutzera began working for defendant in 1966 and 1975, respectively. Plaintiff Deborah Morgan began working for defendant in 1986, after defendant merged with Morgan's former employer, Northeastern Community Credit Union. The events which serve as the predicate for this action allegedly occurred after defendant hired Terry Bigda as its new president in 1985.

Plaintiff Ropp was the assistant manager for the Oscoda branch when Bigda arrived in 1985. After Bigda's arrival, Ropp was reassigned to the position of Financial Operations Officer, and then

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*Circuit judge, sitting on the Court of Appeals by assignment.

later demoted to a position of "loan specialist," which entailed a cut in pay. Ropp was also transferred to the Tawas office and then later transferred back to the Oscoda office. In addition to these position changes, Ropp claimed that she was subjected to an ongoing course of unfair and unwarranted treatment by Bigda, including unreasonable work assignments, excessive workloads and unreasonable deadlines, and a continuing course of unfounded criticism, insults, threats, and other hostile comments. Ropp was terminated from her employment approximately one month before becoming eligible for early retirement.

Plaintiff Kutzera held the position of "head teller" when Bigda arrived. According to Kutzera, Bigda told her that she was going to head the loan department, but then ultimately gave that position to a male, David Corkery. Kutzera later received a series of reprimands from Bigda, which she claimed were unfounded. She was ultimately demoted and transferred from the Oscoda office to the Mio office, which was a significant distance from her home. Kutzera was subsequently offered a chance to return to the Oscoda office, but only in exchange for a waiver of her legal rights, which she refused to do. Kutzera was later allowed to transfer to a lower position at the Au Gres office and from there was transferred to the Tawas office, during which time she allegedly continued to be subjected to a course of unfair and unwarranted treatment. Kutzera eventually obtained another job, believing that she was being "railroaded" out of her employment with defendant.

After plaintiff Morgan began working for defendant in 1986, she progressed from the position of loan teller to loan officer and then to a "leader" position at the Tawas branch. Morgan claimed that she was interested in the Tawas branch manager position, but defendant hired a male for this position, Roger McMurray, without the position being posted. Morgan felt that she was not considered for the position because she was a woman. When McMurray quit after only three months on the job, the branch manager position was posted and Morgan applied. Morgan claimed that she was interviewed by Bigda and Robert Revenaugh, but was asked very little about her qualifications and experience. She did not receive the position. Morgan claimed that she subsequently contacted Revenaugh to let him know she was upset about not getting the position and informed him that it was her intent to respond in writing. Shortly thereafter, Morgan received a written reprimand from Revenaugh wherein Revenaugh accused Morgan of having falsified her time card, which he likened to "theft."

Plaintiffs Ropp, Kutzera, and Morgan subsequently instituted this action against defendant, alleging sex discrimination under the Civil Rights Act, MCL 37.2202(1)(a) *et seq*.; MSA 3.548(202)(1)(a) *et seq*., and intentional infliction of emotional distress. Plaintiffs' claims were predicated on the unfavorable employment decisions described above, as well as the existence of an ongoing course of allegedly unfair and unwarranted treatment which, according to plaintiffs, was linked to their status as females. Defendant denied any discriminatory intent and further claimed that legitimate non-discriminatory reasons existed for the various employment decisions that were made.

The jury found in favor of plaintiffs, awarding $700,000 to plaintiff Ropp, $245,000 to plaintiff Kutzera, and $65,000 to plaintiff Morgan. The judgment that was subsequently entered included

prejudgment interest, costs, and attorney fees. Defendant's motions for directed verdict, judgment notwithstanding the verdict, new trial and remittitur were all denied by the trial court, as was a pretrial motion for summary disposition.

II

We begin by addressing defendant's claim that the trial court erred in denying its motions for directed verdict or judgment notwithstanding the verdict with respect to the sex discrimination claims. Defendant argues that the evidence was insufficient to establish a prima facie case of sex discrimination. Alternatively, defendant contends that, even if a prima facie case of sex discrimination was established, it provided legitimate, nondiscriminatory reasons for its employment decisions and plaintiffs failed to produce sufficient evidence to show that those reasons were a mere pretext for discriminatory conduct. We disagree. In reviewing a trial court's failure to grant a motion for directed verdict or judgment notwithstanding the verdict, this Court must examine the testimony and all legitimate inferences that may be drawn therefrom in the light most favorable to the plaintiff. *Matras v Amoco Oil Co*, 424 Mich 675, 681-682; 385 NW2d 586 (1986). If reasonable jurors could honestly reach different conclusions, neither the trial court nor this Court has the authority to substitute its judgment for that of the jury. *Id.*

To establish a prima facie case of sex discrimination, a plaintiff must show membership in a class protected under the Civil Rights Act, MCL 37.2202(1)(a) *et seq.*; MSA 3.548(202)(1)(a) *et seq*., and that, for the same or similar conduct, the plaintiff was treated differently than a member of the opposite sex. *Howard v Canteen Corp*, 192 Mich App 427, 431-432; 481 NW2d 718 (1992). If the defendant employer asserts legitimate, nondiscriminatory reasons for its actions, the plaintiff must then show that the reasons asserted were a mere pretext for discrimination. *Id.*

In the instant case, plaintiffs carried their burden of establishing a prima facie case of sex discrimination. The plaintiffs, because they were women, were members of a protected class under the Civil Rights Act. Plaintiffs introduced evidence that Bigda did not work well with women in positions of authority; that female employees tended to receive a disproportionate share of work in comparison to similarly situated male employees; that male employees who requested additional training or help often received it, whereas similar requests from female employees were ignored or denied; and that female employees were treated more harshly, and disciplined more frequently, than male employees for similar conduct. Plaintiffs also presented evidence that defendant's hiring patterns, particularly for supervisory positions, tended to favor males. Additionally, there was evidence that Bigda complained to several women that they were overpaid, that Bigda sometimes either created a new position or downgraded an existing position in lieu of promoting a woman, allegedly to avoid paying a woman a higher rate, and that male employees were more often paid outside the pay matrix. Plaintiffs also introduced a memorandum from defendant's supervisory committee to the board of directors. The memorandum expressed concern over the appearance of discrimination stemming from recent administrative changes, the treatment of Kutzera and Ropp, the advancement of a male employee, and recent hiring patterns.

Although contradictory evidence was presented by defendant with respect to some of these matters, the trial court was required to consider the evidence in the light most favorable to plaintiffs. When viewed in such a light, the evidence was sufficient to enable a reasonable jury to conclude that plaintiffs were treated differently on account of their sex.

Defendant argues that a prima facie case of discrimination was not established by plaintiff Morgan because Morgan never formally applied for the Tawas branch manager position when the position first became available. However, Morgan's claim of discrimination was not predicated solely on defendant's failure to offer her the Tawas branch manager position. In any event, Morgan's failure to formally apply for the position did not preclude a claim for discrimination. The requirement of a formal application has been excused in instances where an employer has used an informal, secretive selection process. *EEOC v Metal Service Co*, 892 F2d 341, 350 (CA 8, 1990). See also *Carmichael v Birmingham Saw Works*, 738 F2d 1126, 1133 (CA 11, 1984) (where employer failed to use formal process for posting vacancies and for determining who would be considered for the job, and instead relied on word-of-mouth and informal review procedures, employer had the duty to consider all employees who might reasonably be interested). In this case, Morgan testified that the Tawas branch manager position was never posted before defendant hired Roger McMurray for the position. Morgan claimed that, before McMurray was hired, someone had been serving as the acting branch manager. Morgan had "no idea" what defendant planned to do with the position or whether defendant intended on hiring someone new as the permanent branch manager. Morgan, who held the position immediately below that of branch manager, testified that she never applied for the position because it was never posted, but would have applied had the position been posted. Under these circumstances, we find that Morgan's failure to formally apply for the position when it first became available was not fatal to her claim.

We also find that plaintiffs presented sufficient evidence to show that defendant's proffered reasons for its employment decisions were a pretext for discrimination. A plaintiff may succeed in establishing that the defendant's proffered reason was a pretext either directly by persuading the trier of fact that a discriminatory reason more likely motivated the employer, or indirectly, by showing that the proffered reason is not worthy of credence. *Pomranky v Zack Co*, 159 Mich App 338, 343; 405 NW2d 881 (1987). Defendant correctly observes that plaintiffs may not question the soundness of its business judgment as a means of showing pretext. *Dubey v Stroh Brewery Co*, 185 Mich App 561, 566; 462 NW2d 758 (1990). However, plaintiffs introduced evidence suggesting that business judgment had nothing to do with the employment decisions in question. A former member of defendant's supervisory committee testified at trial that he once questioned Bigda about his treatment of plaintiff Kutzera, which the committee member felt was unjustified, whereupon Bigda told him, "I'm getting rid of three of them and I'm starting with the toughest one first." The committee member understood Bigda to be referring to Kutzera, Ropp, and another woman. When the committee member subsequently cautioned Bigda about the possibility of his conduct leading to legal action, Bigda responded, "You win some, you lose some."

Although defendant claimed that Morgan lacked the requisite experience to be a branch manager, the record indicates that the person who was ultimately hired for the branch manager position, Roger McMurray, had no prior credit union experience, whereas Morgan held an associates' degree in banking studies and management and had worked in the banking industry since 1973. Moreover, Morgan testified that when she was interviewed for the branch manager position after McMurray quit, she was asked very little about her qualifications and experience. Defendant also claimed that Morgan was not qualified because she was not from the Tawas area. However, plaintiff presented the testimony of Ronald Fiebelkorn, who stated that he was offered the Tawas branch manager position, although he was not from the Tawas area.

This and other evidence, viewed most favorably to plaintiffs, was sufficient to enable the jury to conclude that defendant's proffered reasons for its employment decisions were a pretext for discrimination.

Accordingly, the trial court did not err in denying defendant's motions for directed verdict or judgment notwithstanding the verdict with respect to plaintiffs' claims for sex discrimination.

Defendant also argues that the trial court erred in denying its pretrial motion for summary disposition of the sex discrimination claims. We disagree. Defendant's motion was brought under MCR 2.116(C)(10). Such a motion tests the factual sufficiency of a claim. *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 357; 486 NW2d 361 (1992). The trial court must give the benefit of any reasonable doubt to the nonmoving party and determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Id.* Consistent with our prior discussion, we are satisfied that the trial court properly determined that the submitted evidence established a genuine issue for trial. Therefore, defendant's motion for summary disposition was properly denied.

III

Next, defendant argues that the trial court erred in denying its motions for summary disposition, directed verdict, or judgment notwithstanding the verdict with respect to the claims of intentional infliction of emotional distress brought by plaintiffs Kutzera and Morgan.[1] The elements of this tort are: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 342; 497 NW2d 585 (1993). Defendant maintains that the evidence was insufficient to prove the first element, namely, that the conduct complained of was extreme and outrageous. In *Linebaugh*, this Court observed:

> Liability for the intentional infliction of emotional distress has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. . . . Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.

Although it is questionable whether the conduct complained of with respect to plaintiffs Kutzera and Morgan could be viewed as being sufficiently extreme and outrageous to render defendant liable for intentional infliction of emotional distress, we find that reversal is not warranted.

It is well established that emotional distress damages are recoverable under the Civil Rights Act "to compensate a claimant for 'humiliation, embarrassment, and outrage' resulting from discrimination prohibited by the act." *Department of Civil Rights v Silver Dollar Cafe (On Remand)*, 198 Mich App 547, 549; 499 NW2d 409 (1993), quoting from *Eide v Kelsey-Hayes Co*, 431 Mich 26, 36; 427 NW2d 488 (1988). See also *Brunson v E & L Transport Co*, 177 Mich App 95, 106; 441 NW2d 48 (1989) (a victim of discrimination may recover for the humiliation, embarrassment, disappointment and other forms of mental anguish which result from discrimination). Thus, plaintiffs Kutzera and Morgan were entitled to recover emotional distress damages independent of any claim they may have had for intentional infliction of emotional distress.

Moreover, the record indicates that a special jury verdict form was used for each plaintiff. The jury verdict form for plaintiff Kutzera provided, and was completed, as follows:

> 1. Did the defendant discriminate against Margy Kutzera on the basis of her sex? Yes X No____
>
> 2. If so, did defendant's discrimination cause damages to Margy Kutzera? Yes X No____
>
> 3. If so, did the defendant's discrimination cause:
>
> a) emotional damages to Margy Kutzera? Yes X No____
>
> b) economic damages to Margy Kutzera? Yes X No____
>
> 4. Did the defendant's conduct amount to intentional infliction of emotional distress upon Margy Kutzera? Yes X No____
>
> 5. If so, did the intentional infliction of emotional distress cause severe emotional distress to Margy Kutzera? Yes X No____
>
> 6. If so, did the intentional infliction of emotional distress cause:
>
> a) emotional damages to Margy Kutzera? Yes X No____
>
> b) economic damages to Margy Kutzera? Yes X No____
>
> If you have answered "YES" to Questions *2 or 5 or both*, answer the following questions on damages.
>
> If you have answered "NO" to both Questions 2 and 5, answer no further questions.

7. a) What is the amount of Margy Kutzera's emotional damages to the present time? 30,000 .

b) What is the amount of Margy Kutzera's economic damages to the present time? 100,000 .

A similar verdict form was completed in a similar fashion for plaintiff Morgan. Defendant approved the verdict forms and did not request separate damage awards for the two different theories of liability.

As noted above, the law provides for the recovery of emotional distress damages by plaintiffs who experience discrimination. The jury in this case expressly found that plaintiffs Kutzera and Morgan both sustained emotional distress damages on account of discrimination. There is no indication in the record that either Kutzera or Morgan sought to recover damages for intentional infliction of emotional distress on the basis of conduct that was not also alleged to be discriminatory. Indeed, defendant's approval of the verdict forms, and failure to request separate damage awards for the two different theories of liability, reflect defendant's acknowledgment that any award of emotional distress damages could be predicated upon a finding of liability for *either* discrimination *or* intentional infliction of emotional distress. Under these circumstances, and because the jury expressly found that Kutzera and Morgan both sustained emotional distress damages on account of discrimination, we find that any error in submitting the intentional infliction of emotional distress claims to the jury was harmless.

IV

Defendant argues that the trial court erred in denying its motions for new trial, judgment notwithstanding the verdict, or remittitur with respect to damages.

The jury awarded plaintiff Ropp $150,000 for past economic damages, $460,000 for past emotional damages, and $90,000 for future emotional damages. Plaintiff Kutzera was awarded $100,000 for past economic damages, $115,000 for future economic damages, and $30,000 for past emotional damages. Plaintiff Morgan was awarded $50,000 for past economic damages and $15,000 for past emotional damages.

In determining whether remittitur is appropriate, the proper consideration is whether the jury award was supported by the evidence. *Clemens v Lesnek*, 200 Mich App 456, 464; 505 NW2d 283 (1993); MCR 2.611(E)(1). This determination must be based on objective criteria relating to the actual conduct of the trial or the evidence presented. *Palenkas v Beaumont Hospital*, 432 Mich 527, 532; 443 NW2d 354 (1989). If the award falls reasonably within the range of the evidence and within the limits of what reasonable minds would deem just compensation, the jury award should not be disturbed. *Howard*, *supra* at 435-436; *Frohman v Detroit*, 181 Mich App 400, 415; 450 NW2d 59 (1989). However, if an award is not supported by the evidence at trial, it should be reversed as excessive. *Howard*, *supra*; *Brunson*, *supra*. When reviewing the trial court's decision, this Court must afford due deference to the trial court's ability to evaluate the jury's reaction to the evidence, and only disturb the

trial court's decision if there has been an abuse of discretion. *Palenkas, supra*; *McLemore v Detroit Receiving Hospital*, 196 Mich App 391, 401; 493 NW2d 441 (1992).

Defendant attacks the various verdicts for economic damages, claiming that the evidence failed to support an award of damages for lost retirement benefits and failed to support wage loss projections based on a five percent yearly raise. We find that each of these matters were supported by the evidence. The record indicates that several documents describing defendant's retirement plan, including how benefits are calculated, were received into evidence and counsel's arguments were based on those documents. Contrary to what defendant argues, this Court's decision in *Wilson v General Motors Corp*, 183 Mich App 21, 39; 454 NW2d 405 (1990), does not hold that "such a presentation" is insufficient to support an award of damages for retirement benefits. To the contrary, this Court in *Wilson* upheld an award of damages for retirement benefits, finding that "[t]he value of plaintiff's retirement benefits and stock benefits could be calculated by reference to the brochure and plaintiff's former wages." *Id.* A review of the record also discloses that both testimonial and documentary evidence was presented indicating that plaintiffs would have been eligible for yearly raises of up to five percent per year. Therefore, a jury calculation on this basis would not have been speculative. *Goins v Ford Motor Co*, 131 Mich App 185, 199; 347 NW2d 184 (1983).

Defendant also challenges the amount of the verdicts for economic damages, claiming they are excessive. Evidence was presented indicating that plaintiff Ropp sustained past lost wages and retirement benefits in excess of $150,000. Therefore, the jury's verdict of $150,000 is not so excessive as to be unsupportable. Moreover, we reject defendant's claim that Ropp improperly received wage loss damages for lost wages that she collected under the Workers' Disability Compensation Act. The record indicates that, after the jury's verdict was rendered, an order was entered reducing the verdict by "the amount of workers' compensation [benefits] . . . actually received which were duplicative of past lost wages awarded."

The verdict of $115,000 for future economic damages for plaintiff Kutzera likewise is supported by evidence of future wage and pension loss projections and, therefore, is not excessive. Indeed, defendant's primary objection to this award is that "[i]t is more reasonable to assume that plaintiff will eventually make the same or more than she would have [with defendant] if diligent efforts to mitigate [are] taken." However, this was a factual matter for the jury to resolve. Moreover, the burden of proof with respect to the issue of mitigation was on defendant. *Rasheed v Chrysler Corp*, 445 Mich 109, 130-132; 517 NW2d 19 (1994).

We find, however, that the evidence does not support the verdicts for past economic damages with respect to plaintiffs Kutzera and Morgan. The wage and pension loss projections that were presented and requested by plaintiffs' counsel at trial indicated that Kutzera and Morgan sustained past economic damages of $51,768 and $25,095, respectively. Thus, the amounts awarded by the jury, $100,000 and $50,000, respectively, are not supported. Therefore, defendant is entitled to remittitur for these items. Accordingly, the verdict of $100,000 for past economic damages for plaintiff Kutzera

is remitted from $100,000 to $51,768, and the verdict of $50,000 for plaintiff Morgan is remitted to $25,095. *Wilson*, *supra*.

Defendant also argues that the verdicts for emotional damages were excessive. We disagree. As noted previously, victims of discrimination may recover emotional damages for the humiliation, embarrassment, disappointment, outrage and other forms of mental anguish which result from the discrimination. *Silver Dollar Cafe (On Remand)*, *supra*; *Brunson*, *supra*.

Plaintiff Ropp testified that she went on medical leave on March 11, 1988, for a variety of problems, several of which were related to events at work. Ropp testified that she had difficulty sleeping and would have "horrendous nightmares" wherein she would encounter Terry Bigda "in all sorts of places." Ropp also had trouble eating because she would get "knots" in her stomach that were "so big, food wouldn't fit." She further testified that the humiliation, put-downs and demeaning treatment that she received at work had "totally taken away" her self-confidence and self-worth and, despite her years of accomplishment at the credit union, she felt like a "complete failure." Other witnesses also testified that there were noticeable changes in Ropp's emotional state over the course of her employment during the relevant period in question. According to one witness, Grace Charters, Ropp was not able to talk about her job without crying. Ropp sought treatment with a clinical psychologist and a psychiatrist to help her deal with her emotional problems. Ropp testified that, at the time of trial, she was still experiencing nightmares, her self-esteem and self-confidence was still low, and she was still treating with a psychologist and psychiatrist.

A psychiatrist who examined Ropp, Dr. Feldstein, testified that he formed two diagnostic impressions, one being a major depressive episode which he believed was related to Ropp's experiences at work, and the other being the presence of compulsive personality traits which were of a longstanding nature, but which became intensified and ineffective as a result of the events at work. Feldstein opined that Ropp's adaptive methods for dealing with her compulsive personality traits were "gradually undermined and destroyed" by the events at work, such that Ropp was "no longer able to function adequately," thereby leaving her "increasingly more despondent and more anxious" and with a "sense of helplessness and hopelessness." It was Dr. Feldstein's opinion that Ropp was unable to return to work at the time due to the "impairment in self-worth and self-esteem," her "accompanying depression," and "difficulty in trust relationships with supervisors because of the manner in which she had been treated." Dr. Feldstein characterized Ropp's prognosis as "guarded."

Viewed in a light most favorable to Ropp, we conclude that the evidence supported the verdicts of $460,000 for past emotional damages and $90,000 for future emotional damages. Therefore, the trial court did not abuse its discretion in denying defendant's motion for remittitur with respect to plaintiff Ropp.

Likewise, we conclude that the trial court did not abuse its discretion in denying defendant's motions for remittitur with respect to the verdicts for past emotional damages for plaintiffs Kutzera and

Morgan. Kutzera and Morgan both testified regarding the effects of the allegedly discriminatory treatment. Other witnesses also testified that they noticed changes in Kutzera's and Morgan's emotional states during the relevant periods in question. Although defendant complains that the damage awards were not supported by expert testimony, supporting medical testimony was not required. *Howard*, *supra* at 435. Viewed in a light most favorable to Kutzera and Morgan, the evidence supported the respective verdicts of $30,000[2] and $15,000 for past emotional damages.

V

Defendant next argues that the trial court erred in its award of attorney fees. The trial court awarded plaintiffs attorney fees under § 802 of the Civil Rights Act, MCL 37.2802; MSA 3.548(802). The trial court also awarded plaintiffs Kutzera and Ropp attorney fees under the mediation court rule, MCR 2.403(O)(1), and awarded plaintiff Morgan attorney fees under the offer of judgment court rule, MCR 2.405(D)(2). The record indicates that defendant stipulated to the amount of plaintiffs' attorney fees, but reserved the right to contest plaintiffs' entitlement to an award of attorney fees in the first instance.

Defendant first argues that an award of attorney fees under the Civil Rights Act was improper. We disagree. MCL 37.2802; MSA 3.548(802) gives a trial court authority to award attorney fees in a civil rights case. The decision to grant or deny an award of attorney fees under this section is discretionary with the trial court. *Howard*, *supra* at 437; *King v General Motors Corp*, 136 Mich App 301, 307; 356 NW2d 626 (1984). Here, in deciding whether to grant an award of attorney fees, the trial court considered the circumstances and nature of the case, including the existence of a contingency fee agreement, in light of the purposes of the civil rights act. See *King*, *supra* at 307-308; *Wilson*, *supra* at 42. We find that the trial court properly exercised and did not abuse its discretion in awarding attorney fees.

Defendant next argues that it was improper to award attorney fees under both the Civil Rights Act and the mediation or offer of judgment court rules. However, because each of these provisions serve an independent policy or purpose, the award of attorney fees under both was appropriate. *Howard*, *supra* at 441.

Finally, defendant argues that it was improper to award statutory prejudgment interest, MCL 600.6013; MSA 27A.6013, on the portion of attorney fees awarded under the Civil Rights Act. We disagree. Defendant relies on a series of cases which hold that statutory interest may not be granted on an award of attorney fees. See e.g., *Giannetti Brothers Const Co v City of Pontiac*, 175 Mich App 442, 448-449; 438 NW2d 313 (1989); *Harvey v Gerber*, 153 Mich App 528, 530; 396 NW2d 470 (1986); *City of Warren v Dannis*, 136 Mich App 651, 662-663; 357 NW2d 731 (1984). However, none of those cases involved an award of attorney fees under the Civil Rights Act. Here, the trial court observed that, while other statutes or court rules provide for an award of attorney fees as an element of

costs, § 802 of the Civil Rights Act provides that attorney fees are recoverable as an element of damages.

Furthermore, apart from the unique treatment of an award of attorney fees under the Civil Rights Act, other cases have held that statutory interest may be granted on an award of attorney fees. See *Wayne-Oakland Bank v Brown Valley Farms, Inc*, 170 Mich App 16, 22-23; 428 NW2d 13 (1988). Cf. *Pinto v Buckeye Union Ins Co*, 193 Mich App 304, 312; 484 NW2d 9 (1992). Moreover, a recent amendment to MCL 600.6013; MSA 27A.6013 provides that statutory interest "shall be calculated on the entire amount of the money judgment, "*including attorney fees and costs.*" MCL 600.6013(6); MSA 27A.6013(6), as amended by 1993 PA 78. Although the amendment is not controlling for purposes of this case, it serves as support for the conclusion that the pre-amendment cases allowing statutory interest on an award of attorney fees is the preferred line of authority.

We reject defendant's claim that a different result is compelled by this Court's decision in *City of Flint v Patel*, 198 Mich App 153, 161; 497 NW2d 542 (1993). *Patel* involved an action that was brought under the Uniform Condemnation Procedures Act. MCL 213.51 *et seq.*; MSA 8.265(1) *et seq*. The decision was predicated on a finding that the general interest statute, MCL 600.6013; MSA 27A.6013, was not applicable because the UCPA contained its own provision governing interest on money judgments. The Civil Rights Act, in contrast to the UCPA, does not contain its own interest provision. Therefore, defendant's reliance on *Patel* is misplaced.

Accordingly, we find that the trial court did not err in awarding statutory interest on the attorney fees awarded under the Civil Rights Act.

Affirmed in part and reversed in part. The verdict for past economic damages for plaintiff Kutzera is remitted from $100,000 to $51,768, and the verdict for past economic damages for plaintiff Morgan is remitted from $50,000 to $25,095.

/s/ William B. Murphy
/s/ Maura D. Corrigan
/s/ Peter D. Houk

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[1] Defendant was granted summary disposition with respect to a claim for intentional infliction of emotional distress brought by plaintiff Ropp.

[2] Defendant incorrectly asserts in its brief that Kutzera was awarded $100,000 for past emotional damages. The jury verdict form clearly indicates that Kutzera was awarded only $30,000 for this item.