STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA BELL,

Plaintiff-Appellee/
Cross Appellant

v

VLASIC FOODS, INC.,

Defendant-Appellant/
Cross Appellee.

UNPUBLISHED
May 2, 1997

No. 185560
Saginaw Circuit Court
LC No. 91-044019-NZ

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

Plaintiff brought this action claiming defendant had discriminated against her on the basis of her sex in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.; MSA 3.48(1) et seq. The jury returned a verdict in favor of plaintiff in the amount of eighty thousand dollars. On motion for judgment notwithstanding the verdict or remittitur, the trial court reduced the judgment of plaintiff to forty-five thousand dollars. Defendant now appeals as of right and plaintiff cross-appeals. We affirm in part, reverse in part and remand for further proceedings consistent with this opinion.

This action arises from an incident in which plaintiff , a seasonal worker for defendant, tried out for a kraut puller job that would render her a regular employee. Plaintiff was not hired for the position. Plaintiff argues she did not get the job because she was a woman and defendant did not want to hire a woman for the higher paying job. Defendant argues plaintiff was not hired because she could not satisfactorily perform the job. The testimony regarding plaintiff's qualifications and defendant's actions was conflicting.

On appeal defendant first claims the trial court erred in denying its motions for directed verdict and judgment notwithstanding the verdict. We disagree.

In reviewing a decision on a motion for JNOV, this Court examines the testimony and all legitimate inferences that may be drawn therefrom in the light most favorable to the nonmoving party. *Terzano v Wayne County*, 216 Mich App 522; 549 NW2d 606 (1996). A denial of a motion for a

directed verdict is reviewed for an abuse of discretion. *Rasmussen v Louisville Ladder, Co*, 211 Mich App 541; 536 NW2d 211 (1995). This Court reviews the evidence and all reasonable inferences in a light most favorable to the nonmoving party to determine whether a question of fact for the jury existed. *Id*. If the evidence is such that reasonable jurors could honestly reach different conclusions, a directed verdict is not appropriate. *Reisman v Regents of Wayne State Univ*, 188 Mich App 526; 470 NW2d 678 (1991).

Although defendant claims plaintiff was not hired because she was not qualified to perform the job, at the close of plaintiffs proofs, the evidence revealed defendant gave permanent positions to two men who had similar problems performing the job. The court did not abuse its discretion in denying defendant's motions for directed verdict. *Merillat v Mich State Univ*, 207 Mich App 240; 523 NW2d 802 (1994); *Coleman-Nichols v Tixon Corp*, 203 Mich App 645; 513 NW2d 441 (1994). Additionally defendant's evidence plaintiff was unable to feed the line such that the line came to a complete stop while she was in the tank was offset by the testimony of one of the men hired for the position that he was also unable to keep the line supplied. Moreover other witnesses testified plaintiff was pulling the kraut about as well as the men. JNOV was properly denied.

Likewise we reject defendant's claim the trial court abused its discretion in denying its motions for new trial based on the weight of the evidence and improper comments. *Severn v Sperry Corp*, 212 Mich App 406; 538 NW2d 50 (1995). Given the conflicting testimony, we cannot say the verdict was against the great weight of the evidence and defendant has failed to demonstrate any prejudice resulting from plaintiff's counsel's alleged improper comments made during closing statements. Defendant did not request a curative instruction and the alleged error did not deny defendant a fair trial. *Reetz v Kinsman Marine Transit*, 416 Mich 97; 330 NW2d 638 (1982).

Defendant next claims the trial court erred in failing to give its requested jury instruction on the specific elements of a prima facie case of sex discrimination and the shifting of burdens. We find no abuse of discretion. *Mills v White Castle Systems, Inc*, 199 Mich App 588; 502 NW2d 331 (1993). A trial court is obligated to give additional instructions when requested if the supplemental instructions properly inform with regard to the applicable law and the standard instructions do not adequately cover an area. *Mills, supra*. However, this Court has held the standard jury instructions on employment discrimination correctly state the law and do not mislead the jury. *Wilson v General Motors Corp*, 183 Mich App 21; 454 NW2d 405 (1990).

Finally defendant claims the trial court abused its discretion in excluding evidence of the Michigan Department of Civil Rights' investigative report and Notice of Disposition finding no evidence of unlawful discrimination by defendant. We find no abuse of discretion. *People v Taylor*, 195 Mich App 57; 489 NW2d 99 (1992). Although Michigan courts have considered federal law when reviewing discrimination claims, *Featherly v Teledyne Industries, Inc*, 194 Mich App 352; 486 NW2d 361 (1992), and FRE 803(8) has been interpreted to permit the introduction of investigative reports of governmental agencies unless the circumstances show the report is untrustworthy, MRE 803(8) differs from FRE 803(8). Our Michigan Rule of Evidence does not contain subparagraph (C) which under the federal rule allows the admission into evidence of "factual findings resulting from an

investigation made pursuant to authority granted by law." As the Michigan Supreme Court held in *Bradbury v Ford Motor Co*, 419 Mich 550; 358 NW2d 530 (1984) and *Swartz v Dow Chemical Co*, 414 Mich 433; 326 NW2d 804 (1982), the failure of MRE 803 (8) to include within its scope investigative reports was intentional.

On cross appeal plaintiff claims the trial court erred in ordering her post-trial deposition and then relying on the same to remitt her damages by forty thousand dollars. We agree

MCR 2.611(E)(1) only authorizes remittitur when the jury award is not supported by the evidence. *Howard v Canteen Corp*, 192 Mich App 427; 481 NW2d 718 (1992). Here the award was supported by the evidence presented at trial. Defendant's attempt to discredit the evidence by later claims of fraud by the plaintiff should have been rejected by the court. Even after the post-trial deposition the record contains no evidence of fraud committed by plaintiff. Plaintiff was never asked whether she possessed any type of health insurance. Additionally, contrary to defendant's intimation, the fact plaintiff apparently had health insurance from another source did not negate the fact health benefits were a benefit she was deprived of from defendant because of the discrimination. Moreover plaintiff's coverage under her estranged husband's health insurance, could have easily been discovered before or during trial. Thus, even if plaintiff's failure to volunteer the information defendant now believes relevant could be considered some type of fraud, defendant would not be entitled to a new trial. *Stallworth v Hazel*, 167 Mich App 345; 421 NW2d 685 (1988). Because the verdict was supported by the evidence presented at trial and defendant presented no grounds justifying a new trial, the court erred in granting defendant's motion for remitttitur.

We remand to the trial court for entry of an order in conformity with the jury verdict and for determination and imposition against defendant of plaintiff's reasonable appellate attorney fees. *McLemore v Detroit Receiving Hospital and University Medical Center*, 196 Mich App 391; 493 NW2d 441 (1992).

Reversed and remanded. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Richard Allen Griffin
/s/ Richard A. Bandstra