

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KENNETH SCIOTTI,

Plaintiff-Appellee,

v

36<sup>th</sup> DISTRICT COURT,

Defendant-Appellant,

and

CITY OF DETROIT,

Defendant.

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UNPUBLISHED

May 22, 2007

Nos. 266160; 267887

Wayne Circuit Court

LC No. 03-327602-CD

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

In Docket No. 266160, defendant 36<sup>th</sup> District Court appeals as of right a judgment in favor of plaintiff Kenneth Sciotti in the amount of \$424,000. In Docket No. 267887, defendant appeals as of right the trial court's order granting attorney fees to plaintiff in the amount of \$148,775 under the attorney fee provision of the Elliott-Larsen civil rights act (ELCRA), MCL 37.2802.<sup>1</sup> In Docket No. 266160, we affirm the judgment, but reverse the trial court's denial of defendant's motion for directed verdict with respect to plaintiff's retaliation claim. In Docket No. 267887, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

Plaintiff, a white male, filed a reverse race discrimination and retaliation lawsuit against defendant pursuant to the ELCRA, MCL 37.2101 *et seq.* The basis for the lawsuit was plaintiff's claim that defendant failed to promote plaintiff because he was white and because plaintiff

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<sup>1</sup> In this order, the trial court also awarded plaintiff costs in the amount of \$2,439.27. Defendant does not challenge the trial court's award of costs to plaintiff.

complained about being overlooked for promotions to supervisory positions based on his race. Plaintiff alleged that defendant hired less qualified African Americans for positions that plaintiff was qualified to do.

Plaintiff first began working for defendant as a file clerk in 1979. Early in his career with defendant, plaintiff received two automatic promotions. However, plaintiff asserted that since 1985, he has applied regularly for promotions and has never been promoted. Plaintiff estimated that he has applied for promotions more than twenty times. Plaintiff testified that he filed a reverse discrimination lawsuit against defendant in 1993, after he had unsuccessfully applied numerous times for a position as a probation officer. The lawsuit settled in 1995, and, as a result, he was promoted to the position of probation officer.

According to plaintiff, after he was promoted to probation officer in 1995, he sought promotions to numerous supervisory positions, but defendant never promoted him to a supervisory position. At trial, plaintiff detailed eight supervisory positions which he applied for but did not get. He applied for a position as a probation supervisor in March 1998, March 1999, and March 2002. He did not receive any of those positions. In June 2002, he applied for a supervisor position in central records. He did not receive this position. In August 2002, he applied for three supervisory positions and was not hired. In July 2003, he applied for the supervisory position in jury services and was again unsuccessful in being promoted.

According to plaintiff, he was qualified for all of these supervisory positions. First, as stated above, he had been employed by defendant since 1979. In addition, he had a bachelor's degree in management. In 26 years of working for defendant, he had never been disciplined. He attended seminars and conferences related to his job. On some occasions, when plaintiff's supervisor, Terrance Evelyn, was absent from work due to illness or vacation, plaintiff was chosen to fill in as the temporary supervisor because Evelyn knew that plaintiff was capable of handling the supervisory duties. Plaintiff had been awarded certificates for perfect work attendance every year from 1998 through June 2004. In addition, plaintiff received a personal letter from the chief judge in 2004 congratulating him for his "long term commitment and employment" with defendant and commending "the exceptional work that [plaintiff] ha[d] done over the years."

Plaintiff also presented evidence that some of the individuals who were hired to fill the positions he applied for were not as qualified as him. Diallo Humphries, one of the individuals who was hired by defendant to fill one of the supervisory positions sought by plaintiff, was a relative of the chief judge. Plaintiff asserted that applicants for this position were required to complete an assignment on the computer as part of the interview process, and Humphries failed to do so, yet he was still hired. Sue Cook, who worked in the Human Resources (HR) department from 1998 to 2001, testified that Humphries had received suspensions, requests for demotions, and performance appraisals. In addition, one woman who was hired to fill a supervisory position did not meet the educational requirements posted for the position, but was still hired. Furthermore, one person who was hired for a supervisory position did not even work for the court and therefore lacked experience with the court and another individual was not as qualified as plaintiff because she was a secretary and was promoted directly to a supervisory position. According to Cook, individuals who did not meet the qualifications for a certain position, nevertheless would quite often receive interviews and be awarded positions, and the HR

director subjectively determined who was qualified. In Cook's opinion, it was predetermined who would receive positions.

Plaintiff presented statistical evidence as part of his case. According to this evidence, the criminal traffic division has 14 supervisors and all 14 are African American. In the civil real estate division, 13 out of 14 supervisors are African American. In the 24 years that the probation department had existed, there was only one white probation supervisor, and this individual was promoted to supervisor when plaintiff was promoted to probation officer as a result of his previous reverse discrimination lawsuit. In addition, all of the supervisory positions that plaintiff applied for were filled by African Americans. Finally, since 1998 or 1999, defendant had filled 18 supervisory positions, and all of these positions were filled by African American individuals.

On July 14, 2005, the jury found that plaintiff's race was one of the motives or reasons in defendant's failure to promote plaintiff *or* that defendant retaliated against plaintiff. The jury awarded plaintiff damages in the amount of \$424,000. Defendant moved for judgment notwithstanding the verdict (JNOV) and a new trial, and the trial court denied both motions. On September 9, 2005, plaintiff moved for and was awarded costs and attorney fees under the attorney fee provision of the ELCRA, MCL 37.2802.

## II. DOCKET NO. 266160

Defendant first argues that the trial court erred in denying its motions for directed verdict, JNOV or new trial with respect to plaintiff's reverse discrimination claim because plaintiff failed to establish a *prima facie* case of discrimination. This Court reviews *de novo* a trial court's decision with respect to a motion for directed verdict. *Wickens v Oakwood Healthcare System*, 242 Mich App 385, 388; 619 NW2d 7 (2000), *rev'd and vacated in part on other grounds* 465 Mich 53 (2001). This Court must view the evidence presented up to the time of the motion in the light most favorable to the nonmoving party and must grant every reasonable inference to the nonmoving party and resolve any conflict in the evidence in favor of the nonmoving party to determine whether a question of fact existed. *Id.* at 388-389. A directed verdict is appropriate only when no factual questions exist on which reasonable minds could differ. *Id.* at 389. This Court may not substitute its judgment for that of the jury. *Id.*

This Court reviews *de novo* the trial court's decision on a motion for JNOV. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 592; 708 NW2d 749 (2005). In reviewing a trial court's decision on a motion for JNOV, this Court views the evidence in the light most favorable to the nonmoving party. *Id.* A motion for JNOV should be granted only if there is insufficient evidence to create an issue for a jury. *UAW v Dorsey*, 268 Mich App 313, 333; 708 NW2d 717 (2005), *rev'd in part* 474 Mich 1097 (2006).

This Court reviews a trial court's decision on a motion for new trial for an abuse of discretion. *Robertson, supra* at 595. This court will not overturn a verdict if there is an interpretation of the evidence that provides a logical explanation for the jury's findings. *Id.*

Under the ELCRA, an employer may not discriminate against an individual with respect to employment because of race. MCL 37.2202(1)(a); *Lind v Battle Creek*, 470 Mich 230; 681 NW2d 334 (2004). An employee may bring a reverse discrimination complaint under the

ELCRA. See *Lind, supra*. Proof of an employer's discriminatory treatment may be based on direct evidence of racial bias or indirect or circumstantial evidence. In most cases involving discrimination, direct evidence does not exist. *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). Therefore, in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973), the United States Supreme Court developed a framework for examining discrimination claims in the absence of direct evidence. Under the *McDonnell Douglas* framework, in order to establish a prima facie case of discrimination, a plaintiff must present evidence (1) that he belongs to a racial minority; (2) that he applied and was qualified for a position for which the employer was seeking applicants; (3) that, despite his qualifications, he was rejected, and (4) that after his rejection, the position remained open and the employer continued to seek applications from individuals with the plaintiff's qualifications. *McDonnell Douglas, supra* at 802. In *Hazle, supra*, our Supreme Court applied the *McDonnell Douglas* framework to a racial discrimination claim. In applying the *McDonnell Douglas* framework in *Hazel* our Supreme Court recognized that the variety of facts in discrimination cases require the courts to tailor the elements of the *McDonnell Douglas* framework to "fit the factual situation at hand." *Hazle, supra* at 463 n 6. Therefore, the plaintiff in *Hazle* was required to present evidence that (1) she belonged to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) that the position was given to another person under circumstances giving rise to an inference of unlawful discrimination. *Id.* at 463.

Defendant does not contest plaintiff's satisfaction of the first two elements of a prima facie case of racial discrimination. However, defendant does contend that plaintiff failed to establish that he was qualified for the positions which he sought and that plaintiff failed to establish that race was a motivating factor in defendant's hiring decisions, i.e., that the position was given to another person under circumstances giving rise to an inference of unlawful racial discrimination.

Plaintiff presented evidence that he was qualified for the supervisory positions that he sought. J. Otis Davis, defendant's court administrator, was responsible for the day-to-day operations of the court and had the power to hire, fire, and discipline court employees. Davis asserted that an employee who sought a supervisory position had to be qualified and that if two individuals were equally qualified, the individual with the most seniority would be hired. According to Davis, when hiring for such supervisory positions, an applicant's education, attendance, commendations, and seniority are considered in determining which candidate is best qualified to fill the position. Evidence showed that plaintiff had a bachelor's degree in management. There was evidence that plaintiff was awarded certificates for perfect work attendance every year from 1998 through June of 2004. Plaintiff had worked for defendant since 1979 and he had completed an impressive number of courses through the court from 1998 through 2003. Davis testified that when plaintiff applied for one of two Court Services Supervisory II positions, he (Davis) wrote a memorandum in which he stated that plaintiff was well-qualified for the position. According to Davis, plaintiff met the qualifications for the Court Services Supervisory II positions. Furthermore, Evelyn, plaintiff's on and off supervisor for approximately seven years, wrote a letter of recommendation for plaintiff for employment opportunities outside the court, and the letter indicated that plaintiff had excellent supervision skills, always completed his work in a timely manner, had leadership skills, was willing to assist his co-workers, had an excellent attendance record, and was a self-starter. According to Evelyn, when Evelyn went on vacation, plaintiff was sometimes assigned to perform Evelyn's

supervisory duties because Evelyn knew that plaintiff was capable of covering for him. Based on this evidence, we conclude that plaintiff submitted sufficient evidence that he was qualified for the supervisory positions which he sought.

To establish that discrimination was a motivating factor in an employer's action, the evidence must suggest that, if otherwise unexplained, the actions were more likely than not based on the consideration of impermissible factors. *Hazle, supra* at 470-471. A plaintiff is not required to show circumstances giving rise to an inference of discrimination in any one specific manner. *Id.* at 470.

Defendant argues that there was no direct evidence that plaintiff did not receive promotions because of his race. However, direct evidence is not necessary; proof of discriminatory treatment in violation of the ELCRA may be established by direct evidence or by indirect or circumstantial evidence. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 132; 666 NW2d 186 (2003). In this case, plaintiff presented evidence sufficient to give rise to an inference in unlawful discrimination. Plaintiff presented evidence that he was more qualified than some of the individuals who were hired to fill the supervisory positions which he sought. For example, as explained above, Humphries, who was hired by defendant to fill one of the supervisory positions sought by plaintiff, was a relative of the chief judge. Plaintiff asserted that applicants were required to complete an assignment on the computer as part of the interview process, and Humphries failed to do so and still was hired. One woman who was hired to fill a supervisory position did not meet the educational requirements posted for the position, but was still hired. Furthermore, one person who was hired for a supervisory position did not even work for the court and therefore lacked experience and seniority with the court and another individual was not as qualified as plaintiff because she was a secretary and was promoted directly to a supervisory position. Sue Cook opined that individuals who were not qualified were often promoted by defendant. Cook also testified that the HR director would subjectively determine who was qualified for positions and that she believed that it was predetermined who would receive promotions. In *Hazle*, our Supreme Court held that an employee who was the only applicant with a college degree and credits toward a master's degree and was the only applicant with substantial work experience with the defendant presented evidence of circumstances giving rise to an inference of unlawful discrimination. *Hazle, supra* at 472. Similarly then, the evidence produced by plaintiff regarding plaintiff's qualifications for the supervisory positions he sought and the qualifications of the individuals who received the promotions, constituted sufficient circumstantial evidence to give rise to an inference of unlawful discrimination.

Plaintiff also presented statistical evidence to support his claim of reverse discrimination. The use of statistics may be relevant in establishing a prima facie case of discrimination, particularly when combined with other evidence. *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 360-361; 486 NW2d 361 (1992). In this case, the statistical evidence revealed that all of the supervisors in the criminal traffic division are African American, that 13 out of 14 supervisors in the civil real estate division are African American, that all of the supervisory positions that plaintiff applied for were filled by African Americans, and that since 1998 or 1999, defendant had filled 18 supervisory positions, and all of these positions were filled by African American individuals. This statistical evidence, coupled with evidence plaintiff provided regarding plaintiff's qualifications for supervisory positions relative to some of the individuals

who were actually hired for those supervisory positions, was sufficient to establish a prima facie case on the fourth element of this reverse discrimination claim against defendant.

Defendant next argues that the trial court erred in denying his motions for directed verdict and JNOV or new trial because plaintiff failed to establish a prima facie case of retaliation.

At trial, plaintiff testified that defendant retaliated against him by not promoting him after he wrote two letters, one dated August 13, 2002, and the other dated October 31, 2002. In the August 13, 2002, letter, plaintiff asserted that he had been denied several promotions, that less qualified candidates had been given the positions which he sought, that there was a “dire need of employee diversity among its management body” and that defendant regularly discriminated in promoting individuals to management positions. The letter was addressed to Davis, the court administrator, and was copied to the chief judge, Dr. Joseph Wright (the chief deputy court administrator) and Deborah Jones (head of defendant’s HR department.). According to plaintiff, he personally hand-delivered the letter to Davis, and he also delivered it to one of the chief judge’s secretaries, to the chief deputy court administrator and to the HR department.

The ELCRA prohibits employers from retaliating against an employee for making a charge, filing a complaint, testifying, assisting, or participating in an investigation, proceeding, or hearing under the act. MCL 37.2701(a). The purposes of the retaliation provision of the ELCRA are to protect access to and operation of the procedures available to redress civil rights violations. *Meyer v Center Line*, 242 Mich App 560, 571-572; 619 NW2d 182 (2000). A prima facie case of retaliation can be established if a plaintiff proves: (1) that he was engaged in a protected activity; (2) that this was known by defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. *Id.* at 568-569.

Contrary to defendant’s arguments on appeal, we conclude that plaintiff submitted sufficient evidence regarding the first three elements of plaintiff’s prima facie claim for retaliation. However, we agree with defendant that plaintiff failed to establish sufficient evidence to establish that there was a causal connection between the protected activity and the adverse employment action.

In order to show causation in a retaliatory discrimination case, a plaintiff must show more than merely a coincidence in time between protected activity and adverse employment action. *Garg v Macomb Co Community Mental Health*, 472 Mich 263, 286; 696 NW2d 646 (2005). To establish a causal connection between a grievance and an adverse employment action, a plaintiff must show that the defendant demonstrated a discriminatory animus against the plaintiff and that, as a result of the animus, the defendant retaliated against the plaintiff for filing the grievance. *Id.* at 288. Furthermore, causation requires that the protected activity was a “significant factor” in the adverse employment action. *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001). Mere speculation or conjecture is insufficient to establish a reasonable inference of causation. *Sniecinski, supra* at 140.

Plaintiff asserted that after he wrote the letters complaining about the fact that he was not being promoted and asserting that defendant was engaging in discriminatory practices regarding promoting individuals to supervisory positions, defendant retaliated against him. He stated that after he wrote the letters, the eyes and ears of the HR employees would light up when he was in

the HR offices, and that defendant's HR director never came out to have a conversation with him when he applied for positions. Plaintiff also asserted that he never received any response whatsoever from the chief judge regarding the letters he wrote accusing defendant of discriminatory hiring practices.

We conclude that plaintiff failed to submit sufficient evidence to establish a causal link between plaintiff's letters and his failure to receive a promotion. The letters that plaintiff wrote to defendant detailing his belief that he was being discriminated against and explaining his belief that the court was in dire condition regarding its diversity in supervisory positions were written in August and October of 2002. Plaintiff had applied for three supervisory positions in August 2002. In January 2003, those positions went to other individuals. Although the three positions went to individuals other than defendant less than six months after plaintiff wrote the first letter, the mere temporal proximity is not enough to show that the letters were a significant cause in plaintiff not being promoted. Even before he wrote the letters, defendant was consistently rejecting him for promotions, and there is no indication that defendant's failure to promote him after the letters was retaliatory. Given that defendant had not promoted plaintiff to at least five positions that he applied to for before he wrote the letters, it cannot be said that the letters were a "significant factor" in causing defendant to deny plaintiff promotions after the letters were written. Although there is temporal proximity between the letters and the adverse employment action, this fact alone is not enough to establish causation.

Because plaintiff failed to establish the fourth element of a prima facie claim for retaliation, we reverse the trial court's denial of defendant's motion for directed verdict with respect to plaintiff's retaliation claim. However, the jury found that defendant either failed to promote plaintiff based on race *or* retaliated against plaintiff. Because plaintiff introduced sufficient evidence to establish a prima facie case of his reverse discrimination claim, our holding regarding plaintiff's failure to establish the causation element of a prima facie case of retaliation does not mandate reversal of the jury's verdict.

Defendant next argues that the trial court erred in admitting the testimony of Nancy Cook. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v McLaughlin*, 258 Mich App 635, 649; 672 NW2d 860 (2003). The abuse of discretion standard recognizes "that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Under this standard, "[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). When the trial court selects one of the principled outcomes, the trial court has not abused its discretion and it is proper for this Court to defer to the trial court's judgment. *Maldonado, supra* at 388.

Defendant argues that Cook's testimony constituted improper lay witness testimony under MRE 701. Defendant also argues that Cook's testimony should have been excluded because it was irrelevant and unfairly prejudicial.

A lay witness may express an opinion regarding discrimination in an employment setting so long as the opinion complies with the requirements of MRE 701. *Wilson v General Motors Corp*, 183 Mich App 21, 35; 454 NW2d 405 (1990). MRE 701 permits lay witnesses to testify

about opinions and inferences that are rationally based on the perception of the witness and helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. *McLaughlin, supra* at 657. MRE 701 is to be applied liberally in order to help develop a clearer understanding of facts for the trier of fact. *People v Oliver*, 170 Mich App 38, 50; 427 NW2d 898 (1988), modified on other grounds 433 Mich 862 (1989).

Whether defendant engaged in discriminatory hiring practices was a fact in issue at trial. Cook, a white woman, had worked for defendant in 1980 and began working in defendant's HR department as an HR technician in 1998. She resigned in October 2001. As an individual who worked in defendant's HR department, Cook's opinion regarding the existence of discrimination was proper, at least for the time period in which she was employed by defendant, as long as the requirements of MRE 701 are met. Plaintiff asserts that Cook's testimony that there was favoritism was improperly admitted, as were Cook's general allegations that HR personnel avoided plaintiff. Cook's testimony concerned personal observations she made while working in defendant's HR department. Cook observed how plaintiff was treated by personnel in the HR department. Specifically, she testified that she observed plaintiff try to obtain answers from individuals in HR regarding why he was not being promoted and that when plaintiff would come to the HR offices, barriers would go up and HR personnel would not speak to him. Cook also made personal observations regarding defendant's hiring practices. According to Cook, the HR department would predetermine the person who would receive a promotion before individuals were even interviewed for a position. She further observed that HR interviewed individuals who were not qualified for various positions. Based on her observations, Cook believed that an applicant's race played a role in who was promoted by defendant.

Cook's testimony was based on her personal observations gleaned from her employment with defendant. Moreover, her testimony was helpful to a fact at issue, which is whether defendant's failure to promote plaintiff was based on the fact that plaintiff was white. Therefore, this portion of Cook's testimony was proper under MRE 701.

Defendant also argues that Cook's testimony that she applied for a promotion that she did not get and that she believed went to a less qualified African American should have been excluded. Cook's testimony regarding her own perceived experience with discrimination was elicited by defense counsel on cross-examination when defense counsel asked Cook to give a specific example of a case in which an individual who was not qualified for a position interviewed and received a position. In response to defense counsel's question, Cook stated that she interviewed for a position in her department and an individual who was not qualified received the position. A party cannot obtain relief on appeal for an alleged error at trial to which the complaining party contributed by plan or negligence. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999). Defendant cannot elicit testimony at trial and claim on appeal that error occurred in its admission. *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001). Therefore, defendant has waived appellate review of this issue. *Griffin, supra* at 46.

Furthermore, the trial court did not err in refusing to exclude Cook's testimony based on MRE 402 and MRE 403. Her testimony was relevant to a fact at issue, which is whether defendant's failure to promote plaintiff was based on the fact that plaintiff was white. Moreover, we reject defendant's contention that Cook's testimony should have been excluded under MRE 403.

Defendant next argues that the trial court erred in denying his motion for a new trial because the verdict is against the great weight of the evidence. A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). This Court reviews for an abuse of discretion the trial court's denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). A verdict is against the great weight of the evidence if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). If the evidence conflicts, the issue of credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998).

Defendant is not entitled to a new trial. Although plaintiff did not establish a prima facie case of retaliation, plaintiff did establish a prima facie case of reverse discrimination, and this supports the jury's verdict. In addition, as discussed above, the trial court did not abuse its discretion in admitting the testimony of Nancy Cook. Therefore, a new trial is not warranted on either of these grounds.

Defendant also contends that it is entitled to a new trial based on the trial court's denial of defendant's motion for summary disposition of plaintiff's claims of discrimination that occurred before August 2000. According to defendant, such claims were time-barred by the three year statute of limitations in the ELCRA. Defendant did not raise the issue of the trial court's denial of defendant's motion for summary disposition of plaintiff's claims of discrimination that occurred before August 2000 in its statement of questions presented. An issue not contained in the statement of questions presented is waived on appeal. *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 459; 688 NW2d 523 (2004). In any event, we observe that any error in the trial court's denial of the motion for summary disposition regarding claims of discrimination before August 2000 would be harmless because six of the eight promotions that plaintiff testified that he sought occurred after August 2000 and only two of the positions were before August 2000, and there was sufficient evidence regarding defendant's conduct towards plaintiff after August 2000 to support the verdict even if evidence regarding defendant's conduct before August 2000 had been excluded.

### III. DOCKET NO. 267887

Defendant argues that the trial court erred in awarding attorney fees in the amount of \$148,775 to plaintiff under the ELCRA. The decision to grant or deny an award of attorney fees under the ELCRA is within the sound discretion of the trial court. *King v General Motors Corp*, 136 Mich App 301, 307; 356 NW2d 626 (1984).

MCL 37.2802, the attorney fee provision of the ELCRA, provides: "A court, in rendering a judgment in an action brought pursuant to this article, may award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant in the action if the court determines that the award is appropriate." MCL 37.2802 accomplishes two purposes. "First, attorney fee awards are intended to encourage persons deprived of their civil rights to seek legal redress as well as to ensure victims of employment discrimination access to the courts." *King, supra* at 307. The second purpose of permitting recovery of attorney fees under the ELCRA "is to obtain compliance with the goals of the act and thereby deter

discrimination in the work force.” *Id.* at 308. The party seeking fees has the burden of showing the necessity of the award and documenting the appropriate hours expended and hourly rates. *Howard v Canteen Corp*, 192 Mich App 427, 437; 481 NW2d 718 (1991), overruled on other grounds by *Rafferty v Markovitz*, 461 Mich 265 (1999). In determining a reasonable amount of attorney fees to award under the ELCRA, the court must consider: (1) the skill, time and labor involved, (2) the likelihood, if apparent to the client, that the acceptance of the employment will preclude other employment by the lawyer, (3) the fee customarily charged in that locality for similar services, (4) the amount in question and the results achieved, (5) the expenses incurred, (6) the time limitations imposed by the client or the circumstances, (7) the nature and length of the professional relationship with the client, (8) the professional standing and experience of the attorney, and (9) whether the fee is fixed or contingent. *Grow v WA Thomas Co*, 236 Mich App 696, 714-715; 601 NW2d 426 (1999). In making an award of attorney fees, the trial court need not detail its findings on each specific factor considered. *Wood, supra* at 588.

The trial court did not err in awarding attorney fees to plaintiff. At the hearing regarding attorney fees, counsel for plaintiff testified that he was skilled and experienced in litigating discrimination cases (he asserted that he had “litigated well over five dozen cases in this area over the last 20 years”) and that he had been awarded attorney fees at the rate of \$250 per hour for the last six or seven years. He also presented a written itemized list that included the action, the date, and the amount of time spent on plaintiff’s case, which he conceded had been prepared after the fact to support his claim for attorney fees. According to this written document, plaintiff’s counsel spent 605.7 hours working on plaintiff’s case. Furthermore, the result achieved was extremely favorable to plaintiff, resulting in a \$424,000 jury verdict in plaintiff’s favor. Based on counsel for plaintiff’s skill, experience, expertise, and the amount of time spent on plaintiff’s case, and the favorable result of the case, the trial court properly awarded attorney fees in this case, and the amount of attorney fees awarded was reasonable.

#### IV. CONCLUSION

In Docket No. 266160, we affirm the judgment of the trial court, but reverse the trial court’s denial of defendant’s motion for directed verdict with respect to plaintiff’s retaliation claim. In Docket No. 267887, we affirm.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Stephen L. Borrello