

STATE OF MICHIGAN
COURT OF APPEALS

TIGRAN MOVSISYAN,

Plaintiff-Appellee/Cross-Appellant,

v

IPAX CLEANOGEL, INC,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED

June 11, 2013

No. 299235

Wayne Circuit Court

LC No. 06-624011-CZ

Before: MARKEY, P.J., and TALBOT and DONOFRIO, JJ.

PER CURIAM.

In this age discrimination case, defendant appeals by right a jury verdict in plaintiff's favor for economic damages of \$387,000 and non-economic damages of \$13,000, which the trial court in post-trial rulings reduced to economic damages of \$197,269.30 and non-economic damages of \$13,000. Defendant also appeals various other orders of the trial court that denied its motions for summary judgment, directed verdict, and for a new trial or judgment notwithstanding the verdict (JNOV). Plaintiff cross-appeals the trial court's ruling granting remittitur regarding future economic damages. We affirm.

I. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Under MCR 2.116(C)(10), the motion tests the factual adequacy of a complaint and must be supported by affidavits, depositions, admissions, or other documentary evidence. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The trial court in deciding the motion must view the substantively admissible evidence submitted up to the time of the motion in a light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). "Summary disposition is appropriate . . . if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West*, 469 Mich at 183.

Appellate review of the trial court's decision on a motion for directed verdict and JNOV is also de novo. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). A motion for directed verdict or JNOV should be granted only if the

evidence and all legitimate inferences from the evidence viewed in a light most favorable to the nonmoving party fail to establish a claim as a matter of law. *Id.*

A trial court's decision on a motion for new trial or remittitur is reviewed on appeal for abuse of discretion. *Shaw v Ecorse*, 283 Mich App 1, 16-17; 770 NW2d 31 (2009). The trial court abuses its discretion when it chooses an outcome that is outside the range of principled outcomes. *Heaton v Benton Constr Co*, 286 Mich App 528, 538; 780 NW2d 618 (2009).

III. ANALYSIS

A. MOTION FOR SUMMARY DISPOSITION

Defendant has failed to brief the merits of its claim that the trial court erred by denying its motion for summary disposition. Where a party fails to brief the merits of an alleged error or cite authority in support of its argument this Court deems the issue abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Further, MCR 7.212(C)(7) requires that an appellant present a statement as to preservation, standard of review, and argument "as to each issue." Defendant did not present a statement as to preservation, the standard of review, or argument with citation to authority to support its position as to "each issue." Defendant, therefore, has waived appellate review of this issue. *Woods v SLB Property Mgt LLC*, 277 Mich App 622, 626-627; 750 NW2d 228 (2008).

Even if defendant has not waived this issue, we conclude that the trial court correctly ruled that plaintiff had produced sufficient evidence to create a question of fact whether his termination was motivated at least in part by plaintiff's age. The essence of an age discrimination claim requires that the plaintiff prove that age was a determining factor in an adverse employment action; this may be proved with either direct or indirect evidence. *Matras v Amoco Oil Co*, 424 Mich 675, 682-683; 385 NW2d 586 (1986). Direct evidence is that which "if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001)(citation omitted). An age discrimination case may be proved with relevant direct or indirect evidence without resort to the burden-shifting scheme of *McDonnell Douglas*, 411 US 792; 36 L Ed 2d 668; 93 S Ct 1817 (1973). "Where direct evidence is offered to prove discrimination, a plaintiff is not required to establish a prima facie case within the *McDonnell Douglas* framework, and the case should proceed as an ordinary civil matter." *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 539-540; 620 NW2d 836 (2001).

In this case, the trial court did not err when it found that plaintiff's pretrial deposition testimony regarding IPAX owners' comments to him about his age were direct evidence of discrimination. The trial court cited plaintiff's testimony that during casual conversation with plaintiff in the office the owners would frequently comment that plaintiff was getting older, getting sick, and needing to see a doctor more often. Plaintiff also testified about a January 10, 2005 meeting at which IPAX owners told him he was getting older, and he needed a helper. Because these comments were contemporaneous with plaintiff's hours and compensation being reduced and made shortly before his termination, they were especially relevant to whether defendant's owners harbored age animus as a reason for their decision to discharge plaintiff. The trial court correctly ruled that when viewed in the light most favorable to plaintiff, this direct and

indirect evidence was sufficient for a reasonable jury to find that age was one of the reasons that made a difference in determining whether or not to discharge plaintiff. *Hazle*, 464 Mich at 466.

B. MOTION FOR DIRECTED VERDICT

The trial court declined to rule on defendant's motion for directed verdict at the close of plaintiff's proofs at trial because no transcripts of the trial testimony were available. After transcripts were prepared, defendant again moved for directed verdict. The trial court issued an opinion and order on July 24, 2009, which denied defendant's motion for directed verdict as to plaintiff's age discrimination claim but granted defendant's motion for remittitur by reducing the jury's verdict for plaintiff of \$387,000 in economic damages and \$13,000 for non-economic damages to an award for economic damages of \$227,500 and \$13,000 for non-economic damages. The trial court reasoned that there was no evidence at trial to support an award of future damages. The trial court also awarded plaintiff attorney fees \$39,675 and costs of \$295.

Defendant first argues that plaintiff's testimony regarding Paul Katz's comments to him in July 2004 that "I'm old like you" and also that both he and plaintiff were "[be]coming older," were too remote to constitute direct evidence that plaintiff's age was a determining factor in defendant's decision to fire plaintiff in April 2005. But the trial court in ruling that plaintiff had produced direct evidence of discrimination focused on plaintiff's testimony regarding a meeting with Paul Katz two days before plaintiff was suspended on March 25, 2005, and two weeks before he was fired on April 5, 2005. Plaintiff testified that in that meeting Katz stated, "You coming old. You like or not, Paula Thomas have to work here." Not only was this comment by Katz made in close proximity to plaintiff's discharge, but it was also made in the context of defendant's having reduced plaintiff's work hours and his compensation and being ordered to train Thomas in all aspects of his job responsibilities. When considering a motion for directed verdict, the court must view the evidence and all legitimate inferences drawn from it in the light most favorable to the nonmoving party. *Sniecinski*, 469 Mich at 131. Viewed in that light, the trial court did not err by ruling that if plaintiff's testimony were believed, it was for the jury to determine if Katz comments were innocent expressions of empathy or evidence that plaintiff's age was a factor in terminating his employment.

In light of the factors for determining whether an employer's statement is relevant evidence of discrimination or merely a "stray comment," *Krohn v Sedgwick James, Inc*, 244 Mich App 289, 292; 624 NW2d 212 (2001), the trial court did not err in rejecting defendant's argument in that regard. The comment the trial court relied on was (1) made by a key decision maker, Paul Katz, (2) was, according to plaintiff's testimony, part of a pattern of age-related comments, (3) was made in close proximity to plaintiff's discharge, and (4) although open to differing interpretations, can reasonably be construed as displaying discriminatory bias on the basis of age. *Id.* On the facts and circumstances of this case, defendant's argument regarding stray remarks was one for the jury. See *DeBrow*, 463 Mich at 541 (holding the employer's "stray remarks" argument in that case was an argument for the finder of fact to consider).

Because the trial court correctly concluded that plaintiff had produced both direct and indirect evidence of age discrimination, the court's denial of defendant's motion for directed verdict was not erroneous. *DeBrow*, 463 Mich at 539-541. Plaintiff presented evidence that viewed in the light most favorable to the plaintiff would permit a reasonable jury to find that he

was discharged at least in part because of his age. *Matras*, 424 Mich at 682. Although this reasoning alone is sufficient to deny defendant’s motion for directed verdict, the trial court also denied the motion under the burden-shifting analysis utilized in discrimination cases.

As an alternative to producing direct evidence, a plaintiff may prove unlawful age discrimination by circumstantial evidence, employing the *McDonnell Douglas* burden-shifting framework. *Matras*, 424 Mich at 683. Under this approach, a prima facie case of age discrimination is established by evidence that the plaintiff (1) belongs to a protected class; (2) he was discharged; (3) he was qualified for the position, and (4) he was replaced by a younger person. *Id.* “Once [a] plaintiff has sufficiently established a prima facie case, a presumption of discrimination arises. The burden then shifts to the defendant to articulate a ‘legitimate, nondiscriminatory reason’ for plaintiff’s termination.” *Lytle v Malady (On Rehearing)*, 458 Mich 153, 173; 579 NW2d 906 (1998)(citation omitted). If the defendant produces evidence of a legitimate, nondiscriminatory reason for the plaintiff’s discharge, the burden returns to the plaintiff to establish that the employer’s stated legitimate reason is merely a pretext for discrimination. *Sniecinski*, 469 Mich at 134.

In this case, the trial court ruled that plaintiff’s evidence established a prima facie case of age discrimination. The only disputed element was whether the 50-year-old plaintiff was replaced by a younger person. The trial court reasoned that it was undisputed that plaintiff was replaced, at least in part, by Thomas, who was younger than plaintiff. On appeal, plaintiff argues that the trial court correctly ruled that he established a prima facie case of age discrimination but that he was replaced by Andrew Kovacich, who was 33 years old when IPAX hired him around March 29, 2005.¹ Defendant argues that plaintiff failed to show he was replaced by a younger worker because *existing* employees, Paul Katz (age 60) and Paula Thomas (age 44), performed plaintiff’s work responsibilities. Defendant also argues that plaintiff never presented Kovacich as witness to testify and did not present any evidence that Kovacich assumed any of plaintiff’s work responsibilities. We conclude that the evidence admitted in plaintiff’s case-in-chief and reasonable inferences from the evidence, viewed in the light most favorable to plaintiff, support both the trial court and plaintiff’s argument on this issue.

The trial court correctly reasoned that it was undisputed that plaintiff was replaced, at least in part, by Thomas, a person younger than plaintiff. Defendant argues that replacing one worker with an *existing* worker does not satisfy the fourth prong of a prima facie case of age

¹ In an interrogatory asking for the names of all persons who replaced plaintiff, defendant answered, “Andrew Konovich [sic], initially with assistance from Paul Katz, assumed Plaintiff’s Job responsibilities. Mr. Konovich [sic] worked for IPAX March 29, 2005 until July 11, 2005. His date of birth . . . is September 19, 1971.” This interrogatory, however, was not introduced in evidence during plaintiff’s case-in-chief. A directed verdict motion must be decided on the basis of the evidence admitted at trial. *Skinner v Square D Co*, 445 Mich 153, 165 n 9; 516 NW2d 475 (1994); *Hydr-O-Matic Pump Div, Weil-Mclain Co, Inc v G & M Underground Contracting Co, Inc*, 101 Mich App 376, 388-390; 301 NW2d 26 (1980).

discrimination, citing *Lytle*, 458 Mich at 177. In *Lytle* the plaintiff alleged age discrimination and the employer justified its action because the company was undergoing an economically motivated reduction in work force (RIF). *Id.* at 157, 177. The issue in *Lytle* was the application of the burden-shifting presumption in the context of the employer's RIF defense. The Court in *Lytle*, 458 Mich at 177 n 27, quoted *Barnes v GenCorp Inc*, 896 F2d 1457, 1465 (CA 6, 1990), noting that in a RIF case, "a person is not replaced when another employee is assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work. A person is replaced only when another employee is hired or reassigned to perform plaintiff's duties."

The present case is clearly distinguished from *Lytle* and *Barnes* because it is not a RIF case. See *Town v Michigan Bell Telephone Co*, 455 Mich 688, 711 n 9; 568 NW2d 64 (1997) (Riley, J., *concurring*), distinguishing *Barnes* because it "was addressing when an employee is replaced under a reduction in work force situation." IPAX is a small company and did not advance a RIF defense. Paul Katz testified that the entire company consisted of six to eight people with "everybody doing everything." Similarly, Alla Katz testified that IPAX was a small company, with "six of us in the business" who were "all interchangeable." Moreover, a rational trier of fact could find from the evidence that defendant specifically hired Thomas in July 2004 to replace plaintiff after plaintiff had completely trained her to perform all of the responsibilities of plaintiff's job. Consequently, the trial court correctly ruled that plaintiff had established a prima facie case of age discrimination on the basis that Thomas, a younger person, replaced plaintiff after his discharge. Because sufficient evidence to establish a prima facie case was presented, a presumption of discrimination arose, *Lytle*, 458 Mich at 173, and the burden shifted to defendant to articulate a legitimate, nondiscriminatory reason for plaintiff's termination, *Sniecinski*, 469 Mich at 134.

The evidence during plaintiff's case-in-chief and reasonable inference viewed in the light most favorable to plaintiff also supports plaintiff's argument that reasonable jurors could have found that plaintiff was replaced by Andrew Kovacich, who was almost twenty years younger. Plaintiff was suspended on March 25, 2005, and discharged on April 5, 2005. Alla Katz identified plaintiff's exhibit 7 as Kovacich's application for employment as "operations manager" dated March 29, 2005. Katz testified that IPAX hired Kovacich and testified to facts that would make Kovacich 33 years old when hired. Thomas was in her forties, and plaintiff was 50 years old when he was fired. Although Katz testified that Kovacich was hired to produce new business, she also admitted receiving other resumes in March 2005 for the "production service manager position" at IPAX. When Katz was asked if IPAX placed an advertisement for somebody to replace plaintiff in the position of production service manager, she answered, "I don't remember right now about any ad." When asked whether it was a coincidence that IPAX in March 2005 received three resumes in two days for the "production service manager position," Katz answered, "Maybe it's not a coincidence." This and other evidence admitted in plaintiff's case-in-chief viewed in the light most favorable to plaintiff would permit a rational trier of fact to find a prima facie case of age discrimination because plaintiff (1) belonged to a protected class, (2) was discharged, (3) was qualified for the position, and (4) was replaced by a younger person. *Lytle*, 458 Mich at 177.

The trial court also correctly ruled that plaintiff had produced sufficient evidence to both rebut defendant's stated legitimate reason for his discharge *and* also meet his ultimate burden of

creating a question of material fact upon which reasonable minds could differ regarding whether age discrimination was a motivating factor in the defendant's decision to fire him. *Hazle*, 464 Mich at 466. The trial court ruled regarding defendant's proffered nondiscriminatory reason for firing plaintiff—his mistreatment of Thomas—that plaintiff had produced evidence from which the jury could conclude that it was pretextual through his own testimony and by introducing Thomas' handwritten notes that included statements such as “I feel pressured to have negative opinions about Tigran,” and “I am officially stating that I enjoy working with Tigran. He is very thorough in his teaching methods.” For all of these reasons, the trial court properly denied defendant's motion for directed verdict because plaintiff had presented sufficient evidence to create a question of fact whether age was a factor in defendant's decision to discharge him.

C. MOTION FOR JNOV, NEW TRIAL, OR RELIEF FROM JUDGMENT

For the same reasons discussed with respect to defendant's motion for directed verdict, the trial court did not abuse its discretion in denying defendant's motion for JNOV, new trial, or relief from judgment. Defendant, however, raises additional arguments that are discussed below.

First, defendant argues that, based on Sixth Circuit case law, plaintiff failed to present evidence that defendant's owners did not “honestly believe” its stated nondiscriminatory reason for plaintiff's termination. Defendant cites *Braithwaite v Timken Co*, 258 F3d 488, 494 (CA 6, 2001) and *Majewski, Majewski v Automatic Data Processing, Inc*, 274 F3d 1106, 1117 (CA 6, 2001) for this argument. The *Majewski* Court stated: “As long as an employer has an honest belief in its proffered nondiscriminatory reason for discharging an employee, the employee cannot establish that the reason was pretextual simply because it is ultimately shown to be incorrect.” Federal precedent applying federal law is not binding in Michigan, but it is often used as a guide by Michigan courts applying our civil rights laws. *Meagher v Wayne State University*, 222 Mich App 700, 710; 565 NW2d 401 (1997). We conclude that the Sixth Circuit's “honest belief” rule is no more than a different iteration of Michigan's business judgment rule which states that “the soundness of an employer's business judgment may not be questioned as a means of showing pretext.” *Id* at 712. “In other words, courts must not second guess whether the employment decision was wise, shrewd, prudent, or competent. Instead, the focus is on whether the decision was lawful, that is, one that is not motivated by a discriminatory animus.” *Hazle*, 464 Mich at 464 n 7 (citations and quotation marks omitted).

The dual burden that a plaintiff alleging discrimination has once an employer produces evidence of a nondiscriminatory reason for its action is to create an issue of fact that (1) the proffered reason is either false or not the real or only reason for the action and that (2) a motivating factor for the action was unlawful discrimination. Thus, “a plaintiff must not merely raise a triable issue that the employer's proffered reason was pretextual, but that it was a pretext for unlawful discrimination.” *Hazle*, 464 Mich at 465-466 (brackets and quotation marks omitted). And, plaintiff's ultimate burden is to “create a question of material fact upon which reasonable minds could differ regarding whether discrimination was a motivating factor in the employer's decision.” *Id.* at 466.

Plaintiff argues—and the trial court ruled—that plaintiff created an issue of fact whether defendant's stated reasons for plaintiff's discharge were a pretext for age discrimination. Plaintiff did so with evidence of (1) IPAX owners' comments regarding plaintiff's being old; (2)

defendant sought a replacement for plaintiff well before its March 2005 investigation of alleged mistreatment of Thomas; (3) plaintiff did not mistreat Thomas and trained her as instructed by defendant's owners; and (4) plaintiff was replaced by a younger individual. An employer's stated nondiscriminatory reason for discharge may be proved a "mere pretext" by showing that the reason had no basis in fact, or if it had a basis in fact, by showing that it was not an actual factor motivating the discharge, or if the stated reason was a motivating factor, it was not the sole reason but also included unlawful discrimination as a motivating factor. *Meagher*, 222 Mich App at 712; *Matras*, 424 Mich at 682. In this case, plaintiff created "a triable issue that the employer's proffered reasons were not true reasons, but were a mere pretext for discrimination." *Lytle*, 458 Mich at 174.

Plaintiff also created an issue of fact for the jury regarding the ultimate question of whether age animus motivated his discharge. We find the quote from *St Mary's Honor Center v Hicks*, 509 US 502, 511; 113 S Ct 2742; 125 L Ed 2d 407 (1993), in *Lytle*, 458 Mich at 174, pertinent to whether plaintiff satisfied its ultimate burden of proof in this case.

"The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination, and . . . upon such rejection, no additional proof of discrimination is required[.]" [*Id.*]

Defendant also argues, in essence, that because of the age of defendant's owners (59, 60, and 68), age animus could not have motivated plaintiff's discharge. Defendant fails to support its argument with any legal authority; therefore, this argument is abandoned. *Prince*, 237 Mich App at 197. Furthermore, contrary authority exists. See *Oncale v Sundowner Offshore Services, Inc*, 523 US 75, 78-79; 118 S Ct 998; 140 L Ed 2d 201 (1998) (same sex discrimination); *Kadas v MCI Systemhouse Corp*, 255 F3d 359 (CA 7, 2001)(stating in dicta, "the relative ages of the terminating and terminated employee are relatively unimportant.").

D. ALLEGED MISCONDUCT BY COUNSEL

Defendant asserts that plaintiff's counsel denied it a fair trial by cross-examining Paul Katz regarding his testimony that Katz thought plaintiff mistreated Thomas because plaintiff was from southern Russia where people generally, as a matter of culture, are emotional and lack respect. Defendant contends that plaintiff's counsel questions and argument to the jury regarding Katz's isolated comment about plaintiff's national origin deflected the jury's attention from the issues involved and was a controlling influence on the verdict. Thus, plaintiff argues that counsel's remarks deprived defendant of a fair trial and that the trial court erred by failing to grant defendant's motions for JNOV, new trial or relief from judgment on this basis.

Defendant failed to preserve any claim of error regarding alleged improper argument of counsel by not raising a timely objection and requesting a curative instruction. *Ellsworth v Hotel Corp*, 236 Mich App 185, 192; 600 NW2d 129 (1999). To the extent the issue has been preserved as an asserted ground for defendant's motion for a new trial, the trial court did not abuse its discretion by denying the motion. *Heaton*, 286 Mich App at 538.

Additionally, because defendant injected the issue of plaintiff's national origin and raised no objection to counsel's argument, any error is not only unpreserved for appeal but has been waived. "Error to be reversible must be error of the trial judge; not error to which the aggrieved appellant has contributed by planned or neglectful omission of action on his part." *Smith v Musgrove*, 372 Mich 329, 331; 125 NW2d 869 (1964); see also, *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997)("Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence."). We conclude that defendant has waived alleged error with respect to counsel's argument, especially because defendant did not object or request a curative instruction. See *Thorin v Bloomfield Hills Bd of Ed*, 203 Mich App 692, 704; 513 NW2d 230 (1994), holding the defendants waived any error relating to closing argument by not objecting when a curative instruction could have removed the claimed error.

Moreover, even if not waived, counsel's conduct does not warrant relief or demonstrate that the trial court abused its discretion by denying defendant's motion for new trial. "An attorney's comments usually will not be cause for reversal unless they indicate a deliberate course of conduct aimed at preventing a fair and impartial trial." *Hunt v Freeman*, 217 Mich App 92, 95; 550 NW2d 817 (1996). Counsel did not engage in a deliberate effort to deny defendant a fair trial; he commented on evidence that defendant saw fit to place before the jury and how it might relate to plaintiff's theory of the case, i.e., that defendant engaged in deliberate age discrimination. Counsel's comments do not appear to be an attempt to inflame the jury but rather to focus on whether age discrimination motivated defendant's actions. In sum, defendant is not entitled to relief on this issue because the remarks were not so prejudicial as to have denied it a fair trial and any prejudice could have been cured by a jury instruction. *Badiee v Brighton Area Schools*, 265 Mich App 343, 373-374; 695 NW2d 521 (2005).

E. REMITTITUR

As noted already, the trial court issued an opinion and order on July 24, 2009, which granted defendant's motion for remittitur by reducing the jury verdict for plaintiff of \$387,000 in economic damages to an award of \$227,500 for economic damages. The trial court reduced its rulings from its opinion and order of July 24, 2009 to a judgment dated November 12, 2009. But in an opinion and order dated April 14, 2010, the trial court vacated this judgment because the court had neglected to offer plaintiff the opportunity of a new trial in lieu of granting remittitur, which plaintiff declined. See MCR 2.611(E)(1). Defendant moved for reconsideration of the trial court's April 14, 2010, opinion and order, arguing that the trial court failed to reduce plaintiff's award for lost wages by the amount plaintiff earned from other employment after being discharged. The trial court granted this part of defendant's motion for reconsideration and further reduced the amount of plaintiff's economic damages by \$30,230.70. Based on this ruling, the final judgment for plaintiff consisted of economic damages of \$197,269.30, non-economic damages of \$13,000, and attorney fees and costs of \$39,970.

Defendant argues on appeal that the trial court's ruling with respect to remittitur was based on speculation because it is impossible to determine how much of the jury award of economic damages was for past lost income and how much was for future lost income. Defendant also argues that the trial court erred by failing to credit it for amounts plaintiff earned after he was discharged and by failing to base plaintiff's lost income on what Thomas earned

after plaintiff was discharged. Defendant contends it is entitled to a new trial or at least an evidentiary hearing regarding plaintiff's back lost income. We disagree.

We review the trial court's ruling regarding remittitur by according due deference to the trial court's decision and only disturbing it if an abuse of discretion is shown. *Palenkas v Beaumont Hosp*, 432 Mich 527, 531; 443 NW2d 354 (1989). An abuse of discretion occurs when the trial court decision is outside the range of reasonable principled outcomes. *Heaton*, 286 Mich App at 538.

First, defendant failed to preserve a claim that plaintiff's lost wages should be calculated on the basis of what Thomas earned by presenting evidence and argument at trial and by failing to support this argument on appeal with any authority. *Badiee*, 265 Mich App 378-379. An appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Second, defendant's argument regarding remittitur conflates lack of knowledge regarding how the jury determined the amount of economic damages with the trial court's review of the record to determine the "highest . . . amount the evidence will support." MCR 2.611(E)(1). Not knowing the method the jury used to calculate damages is not a basis for setting aside the jury's verdict. *Heaton*, 286 Mich App at 539. But because the trial court adjusted the jury's economic damages award to highest amount supported by evidence, the trial court did not abuse its discretion. *Id.* at 538; MCR 2.611(E)(1).

Where, as the trial court determined here, the amount of a verdict exceeds the amount that the evidence will support, remittitur is appropriate. *Heaton*, 286 Mich App at 539. When the verdict is excessive, under the plain terms of the court rule, it must be adjusted to the "highest . . . amount the evidence will support." MCR 2.611(E)(1). An adjustment of the verdict "must be based on objective criteria relating to the actual conduct of the trial or the evidence presented[.]" *Shaw*, 283 Mich App at 17, citing *Palenkas*, 432 Mich at 532.

Here, the trial court based its ruling regarding remittitur on trial evidence that plaintiff's annual salary when he was terminated was \$65,000; plaintiff was unemployed through the rest of 2005 and in 2006, and plaintiff earned \$22,279.98 in 2007, and \$7,950 through June 9, 2008. The trial court's rulings on defendant's motion for remitter and reconsideration were based on this evidence, not on speculation or conjecture. The trial court initially determined the evidence supported an award of lost back wages based on plaintiff's \$65,000 annual salary, which calculated to \$227,500 from when was fired through the date of trial. On reconsideration, the trial court credited defendant for plaintiff's earnings in 2007 and 2008. This resulted in an award for lost back wages of \$197,269.30 (\$227,500 minus \$30,230.70). Because this amount was the highest amount the evidence supported, the trial court did not abuse its discretion. MCR 2.611(E)(1); *Heaton*, 286 Mich App at 538.

F. NON-ECONOMIC DAMAGES

Defendant argues that the evidence in this case did not support an award of non-economic damages. Defendant asserts the award of non-economic damages was based on speculation, provided plaintiff a windfall, and, therefore, must be stricken. We disagree.

The trial court ruled that plaintiff had presented evidence to support non-economic damages by testifying he “felt bad” after being discharged and “worse” by the time of trial. The trial court relied on *Hyde v University of Michigan Regents*, 226 Mich App 511, 522; 575 NW2d 36(1997), in which the Court opined “that victims of discrimination may recover for psychic injuries such as humiliation, embarrassment, outrage, disappointment, and other forms of mental anguish that flow from discrimination.” Moreover, this Court has held that in discrimination cases, such damages need not be supported by objective evidence but may be supported a plaintiff’s testimony regarding his or her own subjective feelings. *Campbell v Dep’t of Human Services*, 286 Mich App 230, 246; 780 NW2d 586 (2009). Further, when a jury’s award “falls reasonably within the range of the evidence and within the limits of what reasonable minds would deem just compensation, it should not be disturbed.” *Shaw*, 283 Mich App at 17. In *Shaw*, the Court surveyed a number of cases in which non-economic damages were awarded, and the damages awarded in this case falls below the damages awarded in the cases surveyed. *Id.* at 18-21. Giving due deference to the trial court’s decision, we cannot say that the trial court abused its discretion by denying defendant’s motion for remittitur as to the non-economic damage award. *Palenkas*, 432 Mich at 531, 534.

H. PLAINTIFF’S CROSS-APPEAL

Plaintiff argues that the trial court abused its discretion by granting defendant remittitur and reducing the award of \$387,000 for economic damages that included both past and future lost wages. Plaintiff asserts that his salary at the time of discharge, his age, and how much he had been able to earn after his discharge through the time of trial were all known to the jury. This evidence, he argues, given a normal retirement age of 65, was sufficient for the jury to calculate future lost wages. Specifically, plaintiff contends, the amount of the jury’s award for future economic damages is easily determined by subtracting the back lost wages (\$197,269.30) from the total award of \$387,000 to arrive at \$189,730.70 for future economic losses.

Plaintiff’s consent to the trial court’s order of remittitur in lieu of the trial court ordering a new trial does not waive this issue. MCR 2.611(E)(2) provides: “If the moving party appeals, the agreement in no way prejudices the nonmoving party’s argument on appeal that the original verdict was correct. If the nonmoving party prevails, the original verdict may be reinstated by the appellate court.” Nevertheless, “an appellate court must accord due deference to the trial court’s decision and may only disturb a grant or denial of remittitur if an abuse of discretion is shown.” *Palenkas*, 432 Mich at 531.

Plaintiff correctly argues that a damage award is “not speculative simply because [it] cannot be ascertained with mathematical precision.” *Health Care Call of Detroit v Atrium Home & Health Care Services, Inc*, 268 Mich App 83, 96; 706 NW2d 843 (2005). But the method by which the jury calculated damages is not the problem. Rather, as the trial court determined, the problem was lack of any evidence to support a determination of future lost income. Plaintiff bases his argument for future lost wages on assumptions that he would remain in the work force until “normal” retirement age, that he would continue to have difficulty finding work, and that

the income he would otherwise have earned at his former employment would remain constant. Plaintiff fails to point to evidence in the record that support these assumptions. Remittitur should be exercised with restraint, and “[i]f the award falls reasonably within the range of the evidence and within the limits of what reasonable minds would deem just compensation, it should not be disturbed.” *Shaw*, 283 Mich App at 17. The trial court determined the evidence supported an award for past lost income and non-economic damages but that there was no evidence to support an award for future lost income. According due deference to the trial court’s decision, we cannot say that the trial court abused its discretion. *Palenkas*, 432 Mich at 531.

We affirm. No taxable costs because neither party prevailed in full. MCR 7.219.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Pat M. Donofrio