STATE OF MICHIGAN

COURT OF APPEALS

JOAN BADALUCCO,

Plaintiff-Appellee,

V

CITY OF AUBURN HILLS,

Defendant-Appellant.

UNPUBLISHED
December 28, 2001

No. 222113
Oakland Circuit Court
LC No. 96-516071-NZ

Before: Saad, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from a jury verdict entered in favor of plaintiff in this Whistleblowers' Protection Act case. Defendant argues that the trial court erroneously denied its motion for judgment notwithstanding the verdict, erroneously denied its motion for a new trial, and erroneously denied its motion for remittitur of the jury's verdict. We affirm.

I. Factual and Procedural Background

Plaintiff Joan Badalucco is a road patrol officer with the City of Auburn Hills Police Department. In November 1995, plaintiff witnessed a superior officer, her direct supervisor, strike a handcuffed prisoner. Initially, she did not report the incident. However, after learning from fellow officers that their supervisor had committed the same type of misconduct on more than one occasion, plaintiff reported the misconduct to the Deputy Police Chief. Defendant never disciplined the officer who struck the prisoner; rather, the department promoted him. In contrast, the department pressured plaintiff to resign, sent plaintiff for a psychological fitness-for-duty exam, and penalized plaintiff with a nine-day suspension from duty, among other adverse employment actions.[1]

Plaintiff sued defendant under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq*, arguing that defendant imposed the adverse employment actions in retaliation for

[1] Because we review the facts of this case in order to determine whether the trial court appropriately denied defendant's motion for judgment notwithstanding the verdict, we must view all legitimate inferences from the evidence in the light most favorable to the plaintiff. *Badalamenti v William Beaumont Hospital-Troy*, 237 Mich App 278, 284; 602 NW2d 854 (1999). Accordingly, we set forth the above facts as recounted by plaintiff.

plaintiff's report of police misconduct. After a four-day trial, the jury found in plaintiff's favor and awarded her damages of $1,352,600. The parties stipulated to a reduction of that verdict to account for present cash value, and the circuit court entered a judgment against defendant in the amount of $859,365.22. Defendant appeals as of right.

II. Direct Evidence and the *McDonnell Douglas* Framework

Initially, we note that both parties analyze the present case in terms of the burden-shifting framework established in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). Although the federal courts originally created the *McDonnell Douglas* approach for race discrimination cases, our Supreme Court adopted that approach for use in age and gender discrimination cases brought under the Michigan Civil Rights Act (CRA). *Hazle v Ford Motor Co*, 464 Mich 456, 462-463; 628 NW2d 515 (2001); *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-178; 579 NW2d 906 (1998). This Court has also adopted the *McDonnell Douglas* approach for use in WPA cases. *Phinney v Perlmutter*, 222 Mich App 513, 563-564; 564 NW2d 532 (1997).

As our Supreme Court explained in *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 537-538; 620 NW2d 836 (2001):

> The *McDonnell Douglas* approach was adopted because many plaintiffs in employment-discrimination cases can cite no direct evidence of unlawful discrimination. The courts therefore allow a plaintiff to present a rebuttable prima facie case on the basis of proofs from which a factfinder could *infer* that the plaintiff was the victim of unlawful discrimination. [Emphasis in original, footnote omitted.]

However, our Supreme Court unanimously explained that the *McDonnell Douglas* burden-shifting framework simply does not apply in cases where the plaintiff is able to produce direct evidence of employment discrimination. *Hazle*, *supra* at 462. "In such cases, the plaintiff can go forward and prove unlawful discrimination in the same manner as a plaintiff would prove any other civil case." *Id*.

> Intentional discrimination can be proven by direct and circumstantial evidence. 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. The shifting burden of proofs as contemplated in *McDonnell Douglas* . . . only apply to discrimination claims based solely on indirect or circumstantial evidence of discrimination. [*DeBrow*, *supra* at 539-540 (internal quotations, citations and footnotes omitted).]

"Direct evidence" of employment discrimination includes "'evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Hazle*, *supra* at 462, quoting *Jacklyn v Schering-Plough Healthcare Products Sales Corp*, 176 F3d 921, 926 (CA 6, 1999). In *DeBrow*, *supra* at 538, a supervisor told plaintiff that he was "getting too old for this s***," during the meeting when he informed plaintiff of his termination. Our Supreme Court concluded that this statement qualified as direct

evidence that plaintiff's age was a factor in his discharge. *Id*. at 539. Therefore, the Court concluded that the *McDonnell Douglas* burden-shifting analysis did not apply. *Id*. at 539-540.

In the present case, plaintiff presented far more direct evidence of her employer's unlawful conduct than did the plaintiff in *DeBrow*, who relied upon a single, terse statement by his supervisor. Here, the direct evidence involved: (1) statements made by Deputy Chief Olko during the meeting when plaintiff first reported her supervisor's misconduct, and (2) statements made by Chief Dalton during the two meetings he held with plaintiff regarding her report of the supervisor's misconduct.

First, plaintiff testified that when she told Olko about her supervisor's misconduct, Olko immediately berated plaintiff, angrily accused her of trying to ruin the career of a "perfect" officer, and flatly told plaintiff that her career as a police officer had been ruined by the report. Second, Dalton admitted telling plaintiff, during their first meeting regarding the misconduct report, that plaintiff's credibility had been destroyed because of her report. Third, Dalton admitted urging plaintiff to resign, upon the threat of placing a disciplinary report into her file, and admitted telling plaintiff that a report of discipline placed in her personnel file would follow her a "long, long way." Fourth, Dalton told plaintiff that none of the other police officers in the department wanted to work with her because she had reported on another officer, and he told plaintiff that she would be better off if she resigned. Finally, when plaintiff refused to resign, Dalton immediately informed her that she would be compelled to undergo a psychological fitness-for-duty examination.

Plaintiff clearly presented direct evidence that the department took adverse employment actions against her, at least in part, because she reported police misconduct. Therefore, we do not apply the *McDonnell Douglas* burden-shifting framework in our analysis of plaintiff's WPA claim.

III. Motion for Judgment Notwithstanding the Verdict

Defendant argues that plaintiff failed to prove a prima facie claim under the WPA, and that the trial court erroneously failed to grant its motion for JNOV brought on that ground. "The determination whether the evidence established a prima facie case under the WPA is a question of law to be determined de novo." *Phinney*, *supra* at 553. This Court reviews the trial evidence to determine whether the circuit court clearly erred in denying the defendant's motion for JNOV. *Badalamenti v William Beaumont Hospital-Troy*, 237 Mich App 278, 284; 602 NW2d 854 (1999), citing *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). This Court must view all legitimate inferences from the evidence in the light most favorable to the plaintiff. *Badalamenti*, *supra* at 284. Only if the evidence so viewed fails to establish a claim as a matter of law is an order for JNOV appropriate. *Id*.

The "purpose of the WPA is to protect employees who suffer retaliation for reporting violations of law." *Phinney*, *supra* at 552. The statute provides, in pertinent part:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee . . . reports or is about to report, verbally or in writing, a violation or suspected violation of a law

> or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action. [MCL 15.362.]

To establish a prima facie case under the WPA, the plaintiff must establish: (1) she was engaged in protected activity as defined by the WPA, (2) she was subsequently discharged, threatened, or otherwise discriminated against, and (3) a causal connection existed between the protected activity and the discharge, threat or discrimination. *Phinney*, *supra* at 553. On appeal, defendant does not dispute that plaintiff engaged in protected activity as defined by the WPA, when she reported that her superior officer struck a handcuffed prisoner. Further, defendant does not dispute that plaintiff suffered adverse employment actions. Defendant only challenges the third and final element of plaintiff's prima facie case, i.e., a causal connection between plaintiff's protected activities and the adverse employment actions.

A. Causal Connection

When pursuing its motion for JNOV in the trial court, defendant argued that plaintiff had failed to present sufficient evidence of causation. The trial court rejected that argument, citing thirteen separate facts which plaintiff had placed in evidence. As the trial court stated:

> 1) Deputy Chief Olko berated Plaintiff and advised Plaintiff that her career could be ruined by the report;
>
> 2) Plaintiff informed Deputy Chief Olko that she was afraid of retaliation by Sgt. Chase;
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> 3) Chief Dalton advised Plaintiff that her reputation and integrity had been destroyed, that none of the other officers wanted to work with her and that her only choice was to resign;
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> 4) Chief Dalton advised Plaintiff that in return for her resignation none of the information about the report would be placed into her personnel file;
>
> 5) When Plaintiff informed Chief Dalton that she would not resign, he required her to undergo a fitness-for-duty evaluation with a psychologist before she could return to work;
>
> 6) Plaintiff was required to meet with a psychologist five times, but was found fit for duty;
>
> 7) Despite making an average score on the sergeant's exam, she received low subjective marks from the command personnel which led to her withdrawal from the promotion process;
>
> 8) Plaintiff was suspended for nine days for department policy violations based on her conduct in handling the report;

> 9) Plaintiff's suspension occurred after initiating this lawsuit and following a news report about this case;
>
> 10) Following a medical leave, Plaintiff was forced to serve her nine day suspension on consecutive days, instead of choosing her days as other officers had been permitted to do in the past;
>
> 11) During the suspension Plaintiff was required to turn in her badge and firearm, unlike what other officers had been required to do in the past;
>
> 12) When she returned to work, she requested to work either the day or midnight shift, but was placed on the afternoon shift until her union intervened and she was assigned to the midnight shift;
>
> 13) Her nine day suspension was reduced to a six day suspension prior to a grievance hearing.
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> The Court is satisfied that the foregoing evidence was sufficient to permit a jury to conclude that a nexus existed between the protected activity and the discharge, threat or discrimination. . . . [T]he Court finds a jury could reach the result it did. . . . [V]iewing the evidence in the light most favorable to Plaintiff . . . the items listed above could permit a jury to find that Plaintiff was threatened and/or discriminated against as a result of her report.

On appeal, defendant argues that the thirteen points cited by the trial court "related solely to the 'timing' of the City's actions vis-à-vis her [plaintiff's] negative report" regarding her supervisor. We disagree. This is not one of those cases where the plaintiff presents only two pieces of evidence: (1) the plaintiff reported illegal conduct, and (2) the plaintiff subsequently lost her job or suffered other adverse consequences. In this case, plaintiff presented abundant evidence that all of defendant's adverse employment actions flowed from plaintiff's meetings with Deputy Chief Olko and Chief Dalton, when plaintiff reported the police misconduct. We must view the testimony provided at trial in the light most favorable to the plaintiff. *Badalamenti*, *supra* at 284. Viewed in that light, the testimony demonstrated much more than coincidental timing of protected activity and subsequent adverse employment action. The evidence was sufficient to support a finding of causal connection between plaintiff's protected activity and defendant's adverse employment actions. Therefore, the trial court properly denied defendant's motion for JNOV.

B. Disparate Treatment

Defendant next argues that plaintiff failed to prove a prima facie claim based on a disparate treatment theory. Defendant's argument is misplaced. Plaintiff simply did not advance an employment discrimination claim based on disparate treatment. Plaintiff pleaded a WPA claim, and a WPA plaintiff need not show, as an element of her prima facie claim, that other employees were treated differently. See *Phinney*, *supra* at 553. Although plaintiff did elicit evidence regarding defendant's treatment of Officers Chase, Cemazar and Hurt, that evidence was not strictly necessary to support plaintiff's prima facie WPA claim. Rather, the evidence tended to rebut defendant's argument that its adverse employment actions against plaintiff were

taken for legitimate business reasons, and were not causally related to plaintiff's protected activity. Therefore, defendant is not entitled to relief on this ground.

C. Legitimate, Non-Discriminatory Reasons

Defendant also argues that, even if plaintiff did present prima facie evidence of unlawful discrimination, defendant articulated legitimate, non-discriminatory reasons for the adverse employment actions taken against plaintiff. However, because the *McDonnell Douglas* burden shifting analysis does not apply in the present case, defendant's presentation of such evidence, even if believed by the jury, would not defeat plaintiff's WPA claim, as a matter of law.

Even if the concept of legitimate, non-discriminatory reasons could have defeated plaintiff's prima facie claim, the jury specifically rejected defendant's argument that it presented legitimate, non-discriminatory reasons for the adverse employment actions taken against plaintiff. The verdict form submitted to the jury contained the following question: "Did Defendant offer any legitimate, non-discriminatory, non-retaliatory reasons for their treatment of Plaintiff?" The jury clearly marked "No" in response to that question.

When arguing its motion for JNOV before the trial court, defendant argued that it did articulate legitimate, non-discriminatory reasons for its adverse employment actions against plaintiff. The trial court rejected that argument, concluding that reasonable minds could differ regarding this issue:

> In the final analysis this became a credibility issue, centering not only on Plaintiff's suspension for violating departmental policy (which Plaintiff candidly admitted) and the midnight shift issue (which appeared to be reasonable), but also on the other issues enumerated [above] from which the jury could have concluded that there were no legitimate, non-discriminatory and/or retaliatory reasons for Defendant's conduct.

We agree with the trial court that the parties presented conflicting evidence regarding defendant's reasons for its adverse employment actions, and that the jury was entitled to resolve the issue. Accordingly, we conclude that the trial court properly denied defendant's motion for JNOV.

IV. Motion for a New Trial

Defendant next contends that the trial court erroneously denied its motion for a new trial. In the context of that motion, defendant argues that the verdict was against the great weight of the evidence.[2] With respect to a motion for a new trial, the circuit court's function is to determine whether the overwhelming weight of the evidence favors the losing party. *Phinney*, *supra* at 525. On appeal, this Court's function is to determine whether the trial court abused its

[2] Defendant's argument centers almost exclusively on the amount of damages awarded by the jury, not on the quantum of evidence supporting the jury's finding of liability. Therefore, defendant's argument overlaps, to a great extent, with its remittitur argument.

discretion in ruling on the motion. *Id*. This Court accords substantial deference to the trial court's conclusion that a verdict was not against the great weight of the evidence. *Id*.

> In determining whether the evidence was overwhelming, this Court should give deference to the trial court's unique ability to judge the weight and credibility of the testimony and should not substitute its judgment for that of the jury unless the record reveals a miscarriage of justice. [*Heshelman v Lombardi*, 183 Mich App 72, 76; 454 NW2d 603 (1990).]

As an initial matter, we note that defendant insists on referring to a $1,352,600 verdict. However, in order to avoid confusing the jury, the parties stipulated that the trial court could perform the function of reducing the jury's verdict to its present value. The trial court performed that task, reducing the verdict to a judgment of $859,365.22. We conclude that the $859,365.22 award was not against the great weight of the evidence.

A. Past Economic Damages

First, there is no dispute in this case about past economic damages. Plaintiff testified that she suffered damages in the amount of $2,600, due to out-of-pocket expenses and lost overtime related to her suspension and fitness-for-duty evaluation. The trial court concluded that $2,000 of the jury's verdict should be considered as past economic damages, and should not be reduced to present value.[3] On appeal, defendant does not contest that plaintiff suffered at least $2,000 in past economic damages.

B. Future Economic Damages

Defendant next attacks the jury verdict as an impermissible award of future economic damages. However, we note that the jury verdict form did not require the jury to distinguish between economic and non-economic damages. Therefore, it is impossible for this Court to determine whether the jury intended any portion of its award to compensate plaintiff for anticipated future economic damages. In addition, we note that defense counsel contributed to the creation of this ambiguity in the record. Defendant submitted a proposed jury verdict form which requested the jury to determine "the amount of Plaintiff's damages," without distinction between past or future, economic or non-economic categories. On the record, the trial court indicated that it would basically adopt defendant's proposed verdict form, with only minor changes. Therefore, defendant cannot complain on appeal that the jury awarded future non-economic damages, because defense counsel's actions made it impossible for this Court to determine whether the jury in fact did so. Reversible error must not be error to which the

[3] The verdict form required the jury to distinguish between neither past and future damages, nor economic and non-economic damages. Instead, the verdict form simply required the jury to list the amount of plaintiff's "actual damages" caused by defendant's violation of the WPA. Therefore, there is no definite basis in the record for determining the amount of past economic damages that the jury awarded to plaintiff. Nevertheless, it is clear that plaintiff requested only $2,600 in past economic damages. Given the jury verdict of $1,352,600, it appears likely to this Court that the jury awarded plaintiff the full $2,600 in past economic damages that plaintiff requested.

aggrieved party contributed by plan or negligence. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999). Accordingly, defendant has waived review of this issue. *Phinney*, *supra* at 537-538.

Furthermore, we conclude that the remaining damage award, not allocated to past economic damages, is sustainable as an award of past and future emotional distress damages. Therefore, even if it were possible for this Court to examine the jury award in terms of future economic damages, it is not necessary for us to do so.

C. Past and Future Emotional Distress Damages

Defendant next argues that plaintiff's emotional distress damages were insubstantial, and that the verdict grossly exceeded the proofs on this issue. Given the general nature of the verdict form, it is impossible to determine how much of the verdict the jury intended to allocate for past emotional distress damages, compared to future emotional distress damages. Nevertheless, our review of the record convinces us that the proofs regarding plaintiff's past and future emotional distress damages supported the jury's verdict.[4]

Defendant complains that plaintiff presented no expert medical testimony, and that plaintiff alone testified about her emotional distress damages. Therefore, defendant contends that the jury lacked competent evidence on which to base an award of emotional distress damages. It is well-settled that damages for mental anguish, emotional distress, and humiliation may be awarded in WPA cases. *Phinney*, *supra* at 559-560. Further, victims of unlawful employment discrimination may recover for "humiliation, embarrassment, disappointment, and other forms of mental anguish resulting from the discrimination, and *medical testimony substantiating the claim is not required*." *Howard v Canteen Corp*, 192 Mich App 427, 435; 481 NW2d 718 (1992), overruled on other grounds, 461 Mich 265 (1999) (emphasis added). Therefore, the fact that plaintiff alone presented testimony regarding her emotional distress damages simply went to the weight and credibility of the testimony, and the jury was entitled to resolve such issues in plaintiff's favor.

Defendant also contends that plaintiff's testimony regarding emotional distress was insufficient to support the damage award. We disagree. Plaintiff testified that she suffered mental anguish and emotional distress, dating from her meetings with Olko in December, 1995, when plaintiff first reported her supervisor's misconduct. Plaintiff also testified that the day Chief Dalton pressured her to resign, in January, 1996, was the worst day of her entire life. After reporting her supervisor's misconduct, plaintiff experienced depression, weight gain, crying, stomach problems, and sleeplessness. She underwent hospital stress tests for a racing heart and

[4] The trial court allocated $2,000 of the jury verdict to the category of past economic damages, and reduced the remaining $1,350,600 verdict to account for present value. This action implies that the trial court considered the entire remaining award as an award of future emotional distress damages, rather than a mixture of past and future emotional distress damages. However, given the record testimony regarding plaintiff's past emotional distress damages, we conclude that the trial court (with the parties' agreement) simplified its calculations by reducing the entire emotional distress award to present value, regardless of the distinction between plaintiff's past and future emotional distress.

chest pains, and briefly treated with a counselor. Plaintiff testified that her emotional condition slowly improved while she was away from work, on medical leave for an unrelated back condition. However, she also testified that her emotional trauma recurred when she was called into work during her medical leave, to handle administrative matters.

In short, plaintiff testified that she experienced fear and anxiety whenever she was at work, and testified that she would continue to experience that fear and anxiety each and every day that she continued to work for defendant. Plaintiff testified that she felt apprehensive, even "hunted" by her superior officers, including the supervisor who committed the misconduct. Plaintiff feared that her supervisors would continue to make her life miserable, and that the nine-day suspension imposed because of her misconduct report had set her up to be fired for the smallest rule infraction. Furthermore, plaintiff testified that she feared being killed on the job because of her supervisors' attitudes toward her, given the possibility that she would not receive back-up support when needed.

The trial court denied defendant's motion for a new trial, holding that plaintiff had presented sufficient factual support for the contention "that she suffered and will likely continue to suffer mental anguish and emotional distress as a direct result of Defendant's conduct." According deference to the trial court's "unique ability to judge the weight and credibility of the testimony," we cannot conclude that the trial court abused its discretion in reaching that decision. *Heshelman*, *supra* at 76. The jury heard testimony that plaintiff had suffered continuous emotional distress from December, 1995, when she initially reported the misconduct, to September, 1998, when the trial occurred. The jury also heard testimony that plaintiff planned to continue working as a police officer, that she would have extreme difficulty obtaining a job in a different police department, and that she would continue to experience emotional distress each day that she continued to work for defendant. On the above facts, we cannot say that plaintiff's emotional distress proofs were insufficient to support the jury award.

Defendant next contends that plaintiff "misled" the jury into believing that it could calculate plaintiff's future emotional distress damages by calculating her annual salary for the remainder of her anticipated working life. Defendant bases its argument on statements made by plaintiff's counsel during closing argument. However, we note that defendant failed to object to plaintiff's closing argument and failed to request a curative instruction. To preserve most issues for appeal, a party must object below. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000); *Tringali v Lal*, 164 Mich App 299, 306; 416 NW2d 117 (1987). Furthermore, an objection to evidence or argument should ordinarily be accompanied by a request for a curative instruction. *People v Harris*, 158 Mich App 463, 466; 404 NW2d 779 (1987); *People v Hayward*, 127 Mich App 50, 59; 338 NW2d 549 (1983). Due to defendant's failure to lodge a contemporaneous objection to plaintiff's closing argument, we need not review this alleged error.

V. Motion for Remittitur

Finally, defendant argues that the jury's verdict was motivated by passion, prejudice, and a desire to punish defendant. Therefore, defendant concludes that the trial court erroneously denied its motion for remittitur. We disagree.

MCR 2.611(E)(1) allows a trial court to consider whether a jury verdict is supported by the evidence. Under that rule, remittitur is only appropriate when a jury verdict is "excessive,"

i.e., if the amount awarded is greater than the highest amount the evidence will support. *Palenkas v Beaumont Hospital*, 432 Mich 527, 531-532; 443 NW2d 354 (1989). "When a verdict is within the range of the evidence produced at trial, it should not be reversed as excessive." *Howard*, *supra* at 435-436; *Brunson v E & L Transport Co*, 177 Mich App 95, 106-107; 441 NW2d 48 (1989). The trial court's inquiry is limited "to *objective* considerations relating to the actual conduct of the trial or the evidence adduced." *Palenkas*, *supra* at 532 (emphasis in original). On appeal, this Court may not disturb a trial court's ruling on a motion for remittitur unless it determines that the trial court has committed an abuse of discretion. *Id.* at 533.

The trial court, having witnessed the testimony and the evidence as well as the jury's reactions, is in the best position to evaluate the credibility of the witnesses and to determine whether the jury's verdict was motivated by impermissible considerations such as passion, bias or anger, and thus due deference should be given to the trial court's decision. *Anton v State Farm Mutual Auto Ins Co*, 238 Mich App 673, 683; 607 NW2d 123 (1999); *Phillips v Deihm*, 213 Mich App 389, 404; 541 NW2d 566 (1995). 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. *Frohman v Detroit*, 181 Mich App 400, 415; 450 NW2d 59 (1989). Nor should a verdict be set aside merely because the method of computation used by the jury in assessing damages cannot be determined. *Green v Evans*, 156 Mich App 145, 156-157; 401 NW2d 250 (1985).

The trial court ruled that plaintiff's closing argument "did not reach the level of inciting bias, prejudice or anger on the part of the jury," but was "very professional" and "clearly within the realm of argument." The court observed that "the jurors never appeared to become enraged or angered at any point during the trial, including closing statements." Based on its review of the entire trial, the court concluded that "the $859,365.22 was awarded to compensate Plaintiff for her damages caused by Defendant's nefarious conduct, and were not awarded to punish Defendant." Having reviewed the record and giving due deference to the trial court's decision, we conclude that the verdict was not greater than the highest amount the evidence will support. Accordingly, we conclude that the trial court properly denied defendant's motion for remittitur.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski