STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1515

Timothy Wodarck,
Appellant,

vs.

Lakota Inc.,
Respondent.

Filed December 30, 2019
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CV-17-999

Daniel Gray Leland, Leland Conners PLC, Minneapolis, Minnesota (for appellant)

Brian F. Kidwell, Kidwell Law Office, LLC, St. Louis Park, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

SLIETER, Judge

Appellant Timothy Wodarck sued his former employer, respondent Lakota Inc., for wrongful termination. The jury awarded Wodarck, in addition to other damages, $145,600 for lost future earning capacity. Lakota filed a motion for judgment as a matter of law (JMOL), seeking to overturn the jury's award for lost future earning capacity, which the district court granted. Because consideration of the evidence most favorable to the jury's verdict demonstrates insufficient evidence to support the jury's verdict, we affirm.

FACTS

Wodarck proceeded to a jury trial against his former employer Lakota on his claims under the Minnesota Whistleblower Act (MWA), Minn. Stat. §§ 181.931-.937 (2018); the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.44 (2018); and Minn. Stat. § 181.79 (2018). Wodarck sought injunctive relief, back pay, front pay, compensatory damages, attorney fees, and treble damages.

A unanimous seven-person jury primarily found in favor of Wodarck. First, the jury found Lakota violated the MWA because Wodarck reported in good-faith a violation of federal law prohibiting entering into a marriage to evade immigration law, which motivated Lakota to discharge him from employment. Second, the jury found Lakota violated the MHRA by discharging Wodarck from his employment with Lakota based on his marital status. Third, the jury found Lakota violated Minn. Stat. § 181.79 through unlawful wage deductions. Based on these findings, the jury awarded Wodarck $31,236.26 in past wage loss, $145,600 in future lost earning capacity, no compensatory damages, and no compensation for unlawful deduction from wages due or earned. It is the district court's order vacating the $145,600 jury award that we consider.

The district court granted Lakota's JMOL motion, determining that the evidence did not support the jury's award for lost future earning capacity. In reaching its decision, the district court relied on *Ray v. Miller Meester Advert., Inc.*, 684 N.W.2d 404, 407-08 (Minn. 2004), and *Feges v. Perkins Rests., Inc.*, 483 N.W.2d 701, 710 (Minn. 1992), to conclude that the award of lost future earning capacity was unsupported as a matter of law. The district court reasoned that Wodarck "presented no evidence that his termination by Lakota prevented him from finding reemployment after he lost his [new] job." The district court vacated the lost-future-earning-capacity award. This appeal follows.

D E C I S I O N

A party moving for JMOL after a jury verdict need not have "moved for judgment as a matter of law before submission of the case to the jury." Minn. R. Civ. P. 50.02. To grant JMOL, the record must establish that there is "no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Minn. R. Civ. P. 50.01(a). When addressing a motion for JMOL after a verdict is returned, the district court may "(1) allow the judgment to stand, (2) order a new trial, or (3) direct entry of judgment as a matter of law." Minn. R. Civ. P. 50.02(a).

We review *de novo* a district court's decision to grant or deny a motion for JMOL. *See Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 55 (Minn. 2019); *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018). Appellate courts view "the evidence in a light most favorable to the nonmoving party" and make "an independent determination of whether there is sufficient evidence to present an issue of fact for the jury." *See Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006). "'In applying this standard, (1) all the evidence, including that favoring the verdict, must be taken into account, (2) the evidence is to be viewed in the light most favorable to the verdict, and (3) the court may not weigh the evidence or judge the credibility of the witnesses.'" *Kedrowski*, 933 N.W.2d at 55 (quoting *Lamb v. Jordan*, 333 N.W.2d 852, 855 (Minn. 1983)).

As a threshold matter, we note that the parties have conflated two distinct categories of damages. Front pay, which was a damage specifically pleaded by Wodarck, is distinct from lost future earning capacity. The district court instructed the jury on lost future earning capacity, and the jury awarded $145,600 on that instruction. "[A] court may award future damages, or front pay, for lost compensation that occurs after the time of trial." *See Ray*, 684 N.W.2d at 406. Because of its speculative nature, whether a plaintiff has a right to front pay "is limited by the plaintiff's duty to mitigate damages, the evidence presented concerning the extent of the potential damages, and the principle that front pay awards are limited to the damages caused by the breach of contract." *Id.*

Contrasted with front pay damages, lost future earning capacity is often considered in the context of personal-injury cases. *See, e.g.*, *Young v. Hansen*, 209 N.W.2d 392, 395 (Minn. 1973); *Herbst v. N. States Power Co.*, 432 N.W.2d 463, 468 (Minn. App. 1988), *review denied* (Minn. Feb. 10, 1989); *Kwapien v. Starr*, 400 N.W.2d 179, 183-84 (Minn. App. 1987). The parties do not point us to any precedential caselaw, and we found none, addressing lost future earning capacity as a form of damages in a case involving wrongful termination.[1] The district court granted JMOL because the evidence did not support the

[1] We did find cases from federal appellate courts that addressed the concept of lost future earning capacity as a potential damage in wrongful termination. *See, e.g.*, *Teutscher v. Woodson*, 835 F.3d 936, 957-58 (9th Cir. 2016); *Williams v. Pharmacia, Inc.*, 137 F.3d 944, 953 (7th Cir. 1998) ("When reputational injury caused by an employer's unlawful discrimination diminishes a plaintiff's future earnings capacity, she cannot be made whole without compensation for the lost future earnings she would have received absent the

jury's future damages award. In doing so, the district court explained that Wodarck failed to establish he would suffer future lost earning capacity. We agree with the district court. Wodarck obtained comparable employment following his termination from Lakota, which indicates that his earning capacity was not adversely impacted by his termination from Lakota. Based on the evidence offered at trial, the district court properly granted JMOL on Wodarck's claims of lost future earning capacity as an appropriate damage.

As previously noted, Wodarck sought damages for front pay in his complaint. Though the jury was not specifically instructed as to front pay, we nevertheless consider whether the district court properly granted JMOL on the jury's verdict without considering the law related to front pay as applied to the jury's award.

For an aggrieved party to receive front pay in a wrongful-termination case relying on the MHRA,[2] that party has a duty to mitigate, and must establish a breach by the employer, and that the damages are a natural, usual, and necessary result of that breach. *See Ray*, 684 N.W.2d at 406-07. The evidence presented by Wodarck at trial established

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employer's unlawful activity."). These cases are not binding on this court. *See State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) ("The court of appeals is bound by supreme court precedent . . . .").

[2] A similar form of relief would appear to be permitted pursuant to the MWA. "[A]n employee injured by a violation of section 181.932 may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief as determined by the court." Minn. Stat. § 181.935(a). If a violation of the MWA occurs, then "the court may order any appropriate relief, including but not limited to reinstatement, back pay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of an employee who was the subject of the alleged acts of misconduct." *Id.* (c).

that he obtained comparable work through a different employer approximately five months after his wrongful discharge from Lakota. The district court properly concluded that this evidence demonstrates that the wrongful discharge from his prior employer did not prevent his future employment. Because Wodarck obtained comparable employment, Wodarck is not entitled to front pay. *See Feges*, 483 N.W.2d at 710 ("[T]he plaintiff's duty to mitigate damages limits front-pay awards to those cases where the plaintiff has been unable to find comparable employment after termination.").

Wodarck also asserted at trial that his new employer discharged him because someone from Lakota called and made derogatory statements about him. Although we accept Wodarck's claims as true based on the posture of this case as an appeal from JMOL, *see Kedrowski*, 933 N.W.2d at 55, these assertions are not relevant to Wodarck's claims for unlawful termination and thus cannot support a front pay award. *See Ray,* 684 N.W.2d at 408 ("As [the supreme court has] clearly stated, front pay awards are limited to the damages caused by the employer's breach.").

Even considering the evidence most favorable to the jury's verdict, Wodarck presented insufficient evidence to support the jury's future damage award. The district court properly granted JMOL and vacated the future damage award.

Affirmed.