

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-2228

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WILMA BECKY CASH,

Plaintiff-Appellant,  
Cross-Appellee,

versus

JEFFERSON ASSOCIATES, ET AL.,

Defendants,

and

LIMAS JEFFERSON,

Defendant-Appellee,  
Cross-Appellant.

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No. 92-2777

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WILMA BECKY CASH,

Plaintiff-Appellant,  
Cross-Appellee,

versus

LIMAS JEFFERSON,

Defendant-Appellee,  
Cross-Appellant.

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Appeals from the United States District Court for the  
Southern District of Texas  
(CA H 90 460)

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(August 30, 1994)

Before REYNALDO G. GARZA, SMITH and PARKER, Circuit Judges.

ROBERT M. PARKER, Circuit Judge<sup>1</sup>:

On February 9, 1990, Plaintiff-Appellant/Cross-Appellee Wilma Becky Cash ("Cash") filed suit against Defendant-Appellee/Cross-Appellant Limas Jefferson ("Jefferson"), claiming racial and sexual harassment in violation of Title VII, wrongful termination due to her age in violation of the ADEA, and pendent state law claims of assault and intentional infliction of emotional distress.<sup>2</sup> On January 30, 1992, a jury trial proceeded before the district court. During the proceeding, Cash's counsel violated the court's order in limine of time-barred conduct involving sexual harassment. The court declared a partial mistrial, dismissed the jury, and proceeded with a bench trial on Cash's Title VII claims. After completion of the bench trial, the court issued its Findings of Fact and Conclusions of Law, finding for Jefferson. Cash's pendent state law claims were subsequently dismissed.<sup>3</sup>

The parties consented to the case's assignment to a magistrate

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

<sup>2</sup> Cash's suit was also filed against Jefferson & Associates, but the trial court severed and dismissed the claim on timeliness grounds. The dismissal was reversed and remanded by this Court in *Cash v. Jefferson & Associates, Inc.*, 978 F.2d 217 (5th Cir. 1992). The suit was subsequently stayed pending the outcome of this appeal.

<sup>3</sup> This dismissal has not been appealed.

judge. On May 4, 1992, a jury trial proceeded on Cash's age discrimination claim under the ADEA. At the close of Cash's evidence, Jefferson made a motion for directed verdict, which was denied. Jefferson did not renew his motion at the close of all the evidence. The jury rendered a verdict in favor of Cash in the amount of \$30,000 in damages, and final judgment was entered. Jefferson filed a motion for judgment as a matter of law and alternative motion for new trial, both of which were denied. Both parties subsequently filed motions for attorneys' fees. The magistrate judge awarded fees and costs to both parties: Cash received \$58,305 in fees and \$617.94 in costs as the prevailing party of the age discrimination claim; Jefferson received \$25,780 in fees and \$2,302.52 in costs as the prevailing party of the Title VII claims. Both parties now appeal.

Jefferson challenges the trial court's denial of his motion for directed verdict and judgment as a matter of law on Cash's age discrimination claim on the ground that Cash adduced insufficient evidence that Jefferson did not terminate her for the reasons he articulated to the court. Cash challenges the magistrate judge's award of attorneys' fees to Jefferson as the prevailing party of the Title VII claims on the ground that the trial court abused its discretion in determining that her Title VII claims were frivolous, groundless and unreasonable. Cash also claims that the trial court abused its discretion in denying her equitable relief for her age discrimination claim and in reducing her attorneys' fees award as the prevailing party of her age discrimination claim. We AFFIRM.

#### SUFFICIENCY OF THE EVIDENCE

Jefferson contends that the trial court erred in denying his motion for directed verdict at the close of Cash's evidence during the jury trial of her age discrimination claim, and in denying his motion for judgment as a matter of law. He argues that Cash failed to produce sufficient evidence at trial that Jefferson did not terminate her for the reasons he articulated to the court. Specifically, he asserts that Cash's only evidence of age discrimination was her own conclusory testimony that she was terminated because of her age. Such self-serving and speculative evidence of age discrimination "is subject to intense scrutiny on appeal." *Molnar v. Ebasco Constructors, Inc.*, 986 F.2d 115, 119 (5th Cir. 1983). Cash was required to do more than merely refute Jefferson's articulated reason in order to prove age discrimination, *Moore v. Eli Lilly & Co.*, 990 F.2d 812, 815 (5th Cir.), *cert. denied*, \_\_\_U.S.\_\_\_, 114 S.Ct. 467, 126 L.Ed.2d 419 (1993), but she failed to produce any evidence with which a reasonable factfinder could conclude that Jefferson's reasons was unworthy of credence.

Because Jefferson failed to renew his motion for directed verdict at the close of all the evidence, our review is limited to whether there exists any evidence to support the jury's verdict. *Hinojosa v. City of Terrell, Tex.*, 834 F.2d 1223, 1228 (5th Cir. 1988), *cert. denied*, 493 U.S. 822, 110 S.Ct. 80, 107 L.Ed.2d 461 (1989). Our review of the entire record leads to the conclusion that evidence was presented at trial supporting the jury's verdict

in favor of Cash. Therefore, we find that trial court did not err in denying Jefferson's motion for directed verdict and for judgment as a matter of law.

#### EQUITABLE RELIEF

Cash contends that the trial court abused its discretion in denying her equitable relief in the form of front pay and pre- and post-judgment interest because she proved that reinstatement was improbable and that she is unable to find suitable alternative work. We review the trial court's determination of equitable relief for an abuse of discretion. *Deloach v. Delchamps, Inc.*, 897 F.2d 815, 822 (5th Cir. 1990).

The issue of front pay may not be submitted to a jury. *Hansard v. Pepsi-Cola Metropolitan Bottling Co., Inc.*, 865 F.2d 1461, 1470 (5th Cir.), *cert. denied*, 493 U.S. 842, 110 S.Ct. 129, 107 L.Ed.2d 89 (1989). The trial court first determines whether a plaintiff is entitled to front pay, and if it so concludes, then the jury determines the amount of damages. *Id.* The term "front pay" refers a plaintiff's future lost earnings. *Id.* at 1469. Front pay has been held to be an appropriate remedy in ADEA cases, but it is available only when the plaintiff shows that reinstatement is not feasible. *Id.* The trial court in this case denied Cash's motion for equitable relief, including front pay. Our review of the record reveals evidence which supports the trial court's determination that front pay was not appropriate, including Cash's lack of evidence tending to show that reinstatement was not feasible and that she was unable to mitigate her damages. Further,

we find evidence supporting the court's denial of pre- and post-judgment interest. Therefore, we hold that the trial court did not abuse its discretion in denying Cash's motion for equitable relief.

#### ATTORNEYS' FEES

Cash contends that the trial court abused its discretion in awarding Jefferson attorneys' fees as the prevailing party of the Title VII claims, and subsequently, in reducing Cash's award of attorneys' fees as the prevailing party of the age discrimination claim. She argues that her Title VII claims were not frivolous, groundless or unreasonable in light of the fact that the district court's Findings of Fact and Conclusions of Law made no such conclusion.

A trial court may award reasonable attorneys' fees to the prevailing party in a civil rights suit. *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 1937, 76 L.Ed.2d 40 (1983); *Norris v. Hartmarx Specialty Stores, Inc.*, 913 F.2d 253, 256 (5th Cir. 1990). "The determination of reasonable attorneys' fees is left to the sound discretion of the trial court." *Norris*, 913 F.2d at 256 (citations omitted). Our review, therefore, is for an abuse of discretion. *Id.*

The magistrate judge determined that Jefferson was entitled to an award of attorneys' fees as the prevailing party of the Title VII claims. A defendant in a civil rights case is not entitled to attorneys' fees simply because he prevails, but may only be awarded such fees if the plaintiff's claim was "frivolous, unreasonable, or without foundation, or that the plaintiff continued to litigate

after it clearly became so," or when the claim was brought or continued in bad faith. *Christiansburg Garment Co. v. E.E.O.C.*, 434 U.S. 412, 422, 98 S.Ct. 694 701, 54 L.Ed.2d 648 (1978). The magistrate judge concluded that the findings of fact of the district court presiding over Cash's first trial on the Title VII claims, when viewed collectively, led to the conclusion that Cash's Title VII allegations were "frivolous, unreasonable, groundless, and brought in bad faith." The magistrate judge specifically identified six findings of the district court which supported the magistrate judge's conclusion. Having previously held that the court is given wide discretion in the award of attorneys' fees, and having found evidence in support of the magistrate judge's conclusions, we hold that the magistrate judge did not err in awarding Jefferson attorneys' fees as the prevailing party of Cash's Title VII claims.

Moreover, we hold that the trial court did not err in reducing the amount of attorneys' fees awarded to Cash. A trial court may exercise its discretion in arriving at a reasonable fee award when a plaintiff achieves only limited success in her claims, "either by attempting to identify specific hours that should be eliminated or by simply reducing the award to account for the limited success of the plaintiff." *Texas State Teachers Ass'n v. Garland Independent School Dist.*, 489 U.S. 782, 109 S.Ct. 1486, 1492, 103 L.Ed.2d 866 (1989). In addition, having considered the amount and nature of damages awarded to the plaintiff, a trial court may award low fees or no fees "without reciting the 12 factors bearing on

reasonableness." *Farrar v. Hobby*, \_\_\_U.S.\_\_\_, 113 S.Ct. 566, 575, 121 L.Ed.2d 494 (1992). The trial court in this case considered Cash's limited success on all her claims and reduced her award of attorneys' fees. We do not find the court's determination to be an abuse of discretion.

We decline to address Cash's other points of error because we find that they lack merit.

#### CONCLUSION

For the reasons articulated above, the judgment of the trial court is AFFIRMED.