IN THE COURT OF APPEALS OF IOWA

No. 6-299 / 05-0320
Filed October 11, 2006

JANIE NEUROTH,
Plaintiff-Appellee,

vs.

PREFERRED CARTAGE SERVICE, INC., ROD MOORMAN, A.J. POLKIEWICZ, and KEN JEPSEN,
Defendants-Appellants.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

Defendants appeal the district court's ruling denying their motion for new trial. **AFFIRMED.**

Mariclare Thinnes Culver of Duncan, Green, Brown & Langeness, P.C., Des Moines, for appellants.

James Ellefson and Sean K. Heitman of Moore, McKibben, Goodman, Lorenz & Ellefson, L.L.P., Marshalltown, for appellee.

Heard by Huitink, P.J., Mahan,J., and Hendrickson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

MAHAN, J.

Preferred Cartage Service, Inc. (Preferred Cartage), Rod Moorman, A.J. Polkiewicz, and Ken Jepsen appeal the district court's ruling denying their motion for new trial. They argue the district court erred in denying their motion for new trial because (1) individual liability does not extend to nonsupervisory coworkers under the Iowa Civil Rights Act and (2) Ken Jepsen cannot be held individually liable under the Iowa Civil Rights Act. We affirm.

I. Background Facts and Proceedings

Preferred Cartage performs "shag" services for Swift Meat Packing Plant in Marshalltown. The company provides drivers and truck tractors to move truck trailers around the lots and loading docks at the packing plant. Preferred Cartage employees are responsible for inspecting the trailers and checking temperature settings on the refrigeration units of loaded trailers. The company also operates both the wash-out and the scale house. Twenty-one people are employed by Preferred Cartage in Marshalltown: three wash-outs, nine shag drivers, seven clerical workers, one supervisor, and one manager. The supervisor supervises the wash-outs and the drivers. The manager is the final authority at the Marshalltown facility.

Janie Neuroth began working at Preferred Cartage on May 29, 2001, as a wash-out. Her duties included washing, inspecting, and fueling refrigerated trailers. In October 2001 she became a shag driver. Defendants Rod Moorman and A.J. Polkiewicz were also both shag drivers. Alex Pineda was Neuroth's supervisor, while defendant Ken Jepsen was the manager.

Neuroth began receiving harassment while she was working as a wash-out. The harassment increased, however, when she began working as Preferred Cartage's first and only female shag driver. Other shag drivers questioned her ability to do the job, subjected her to blonde jokes and other comments, and refused to help her open twisted and corroded trailer and container doors. Both Moorman and Polkiewicz expressed the opinion that a woman should not be a shag driver. Moorman repeatedly told Neuroth to "get down and blow me." He also told her he knew she must be "on her knees" when he thought she received favorable treatment. Both men also bear hugged her against her will. Because they used the Preferred Cartage radios to make jokes and comments, other employees heard their harassment.

Neuroth generally complained to Pineda, and Pineda passed the complaints on to Jepsen. Jepsen, however, claimed he did not know of the harassment until Neuroth filed her civil rights complaint. Another employee testified that, prior to receiving the complaint, Jepsen said the comments on the radio had to stop. Nevertheless, Moorman and Polkiewicz did not receive written reprimands until after Neuroth's civil rights complaint was filed. Apparently the harassment from the other shag drivers was so bad, one of the Swift foremen both talked to Pineda about it and gave him a note to pass on to Jepsen. By all accounts, however, Neuroth was doing her job. She even received an extra pay raise.

The harassment continued despite Neuroth's requests that it stop. She eventually quit her job on January 27, 2003. She filed a petition in the district court on August 29, 2003, alleging sexual harassment in violation of both the

Iowa Civil Rights Act and Title VII of the Federal Civil Rights Act. In response, the defendants filed a motion for summary judgment and a motion to dismiss as to the individual defendants. The court dismissed Neuroth's Title VII claims against the individual defendants, but denied all remaining issues in the motion.

A jury trial began on October 26, 2004. During trial, the defendants made no motions for directed verdict. While they made objections to four proposed jury instructions, they never argued that the issue of individual liability could not be submitted to the jury. The jury returned a verdict for Neuroth, finding she was subjected to a hostile or abusive work environment because of her sex or gender. Each of the four defendants was found liable. The jury awarded Neuroth $34,284.31 in lost wages and benefits and $5000 for emotional pain and mental anguish. Additionally, the jury also awarded Neuroth $70,000 in punitive damages. Of the total damages awarded, Polkiewicz and Moorman were found liable for $1000. Judgment was entered against Preferred Cartage and Jepsen for the lost wages, benefits, emotional pain, and mental anguish damages. Preferred Cartage is liable for the entire amount awarded by the jury.

The defendants filed motions for new trial, remittitur, and to amend the judgment. They argued (1) Title VII caps a plaintiff's punitive and emotional distress damages at $50,000; (2) the Iowa Civil Rights Act does not allow individual liability; (3) the correct standard for calculating punitive damages was not submitted to the jury; and (4) there was insufficient evidence to show a hostile work environment, sex-based conduct, severe and pervasive harassment, or constructive discharge. The district court reduced the punitive damages award to $50,000, but denied the rest of the motion. Defendants appeal.

II. Standard of Review

We review the denial of a motion for new trial according to the grounds on which it is based. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). Because the defendants present a legal question, we review for errors at law. *Id.*

III. Merits

The defendants argue that, under the Iowa Civil Rights Act, individual liability does not extend to nonsupervisory coworkers. They also argue that Jepsen cannot be individually liable under the Iowa Civil Rights Act because Neuroth failed to present evidence that he actually participated in the harassment. Therefore, the defendants claim, neither of the issues concerning individual defendants' liability should have been submitted to the jury.

Neuroth argues the defendants failed to preserve their arguments. She points out that they made no motion for directed verdict. Further, while they objected to a few jury instructions, none of the objections argued the court could not submit the issue of any defendant's individual liability.

The defendants acknowledge they never made any motion for directed verdict. Further, they do not claim any of their objections preserve the issues they raise on appeal. Instead, they point to their motion for summary judgment for preservation. Arguments denied in a motion for summary judgment, however, are not preserved after a full trial on the merits, unless the issue is somehow preserved through action at trial. *See Kiesau v. Bantz*, 686 N.W.2d 164, 174 (Iowa 2004) (holding that after a full trial on the merits, a previous order denying motion for summary judgment merges with the trial and is no longer appealable

or reviewable); *Klooster v. North Iowa State Bank*, 404 N.W.2d 564, 567 (Iowa 1987) (noting that the court's rulings on motions for directed verdicts supersede determinations made for the purposes of summary judgment and refusing to consider assignments of error relating to the summary judgment stage). In addition, with regard to the jury instructions, a failure to object before presentation to the jury waives the issue. *Ladeburg v. Ray*, 508 N.W.2d 694, 697 (Iowa 1993).

We agree with the defendants that there were important issues at stake in this trial. However, considerations of fairness and judicial economy mandate that we will not review issues on appeal unless they were properly preserved below. *Bill Grunder's Sons Constr., Inc. v. Ganzer*, 686 N.W2d 193, 197-98 (Iowa 2004); *State v. Mulvany*, 603 N.W.2d 630, 632 (Iowa Ct. App. 1999). Because the defendants failed to object, move for directed verdict, or otherwise preserve their arguments for appeal, we must affirm the district court's ruling denying their motion for new trial.

AFFIRMED.