IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

R.M.A.,	
Plaintiff,	Case No. 1516-CV20874
v.	Division 17
BLUE SPRINGS R-IV SCHOOL DISTRICT,	**ORAL ARGUMENT IS REQUESTED**
Defendant.	

DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT
OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

BLUE SPRINGS R-IV SCHOOL DISTRICT ("the School District") moves for judgment notwithstanding the verdict under Rule 72.01(b) or, in the alternative, moves for a new trial under Rule 78. These motions are supported by the following grounds:

- Plaintiff did not make a submissible case in chief, such that JNOV is required because:

  (1) Plaintiff failed to establish his sex was male; the substantial weight of the evidence was Plaintiff's sex was female rather than male. *R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 425-27 (Mo. banc 2019)(determining Plaintiff's claim is that he was discriminated against on the basis of his male sex); *Steward v. Goetz*, 945 S.W.2d 520, 528 (Mo. App. E.D. 1997).

  (2) Plaintiff failed to establish his male sex was a contributing factor in the School District's decisions that Plaintiff asserts were unlawful discrimination, because all of the evidence was that the decisions about Plaintiff's access to male-designated bathrooms and locker rooms were based on Plaintiff's female anatomy, not his male sex. *R.M.A. by Appleberry*, 568 S.W3d at 425-27; *Steward*, 945 S.W.2d at 528.

- Plaintiff did not make a submissible case for punitive damages such that JNOV is required; there was no evidence of the School District's evil motive or reckless disregard of Plaintiff's rights. *Id*.
- The jury's verdict in favor of Plaintiff on his case-in-chief was against the weight of the evidence, and the amount of damages awarded was excessive. Rule 78.02.
- The jury's verdict to award punitive damages to Plaintiff was against the weight of the evidence, and the amount of punitive damages awarded to Plaintiff was excessive. Rule 78.02.
- The jury's award of punitive damages was excessive, in violation of the Due Process Clause.
- Plaintiff injected his transgender status and introduced argument over repeated objections, including but not limited to the loaded phrase "separate but equal," and evidence designed to encourage the jury to find he was discriminated against based on his transgender status, rather than on the basis of his purported male sex, as required by the majority opinion in *R.M.A. by Appleberry*, 568 S.W.3d at 425-27.
- Dr. Jill Jacobson's testimony (and others') was erroneously admitted, in that:

  (1) she (and others) offered evidence over the School District's objection, of Plaintiff's gender and gender identity, which was irrelevant, confusing, and prejudicial, *McGuire v. Seltsam*, 138 S.W.3d 718 (Mo. banc 2004)(improvidently admitted expert testimony was prejudicial warranting a new trial); and

  (2) her testimony classifying the sex of Plaintiff was not a matter for expert testimony because it was not beyond the jury's general knowledge, § 490.065.2(1)(a), RSMo.

(conditioning admissibility of expert testimony on it "help[ing] the trier of fact to understand the evidence or to determine a fact in issue").

- The Court erred in sustaining Plaintiff's objection to the School District's offer of the Petition in Mandamus (Exhibit 210), Amended Joint Stipulation of Facts (Exhibit 211), and Judgment in *R.M.A. bnf Appleberry v. Blue Springs R-IV School District*, No. 1416-CV17208, dated March 5, 2015 (Exhibit 212), attached as Exhibits A, B, and C, respectively, and all testimony related thereto, because the petition, stipulation, and judgment were relevant to the School District's state of mind when it was making the decisions Plaintiff claims were unlawful discrimination, and in particular the evidence would have shown the jury the School District did not have the requisite evil motive or reckless disregard required for the imposition of punitive damages. *See Cox v. Kansas City Chiefs Football Club, Inc.*, 473 S.W.3d 107, 116 (Mo. banc 2015)(circumstantial evidence of state of mind in a case alleging discrimination is logically and legally relevant). Further, the Judgment (Ex. C) was the basis of the School District's estoppel defense.
- The Court erred in sustaining Plaintiff's objection to testimony and the offer of proof regarding the filing of the Petition in Mandamus (Exhibit 210), confirmation the purpose of the Mandamus as set forth in the Amended Joint Stipulation of Facts (Exhibit 211) was to require the District allow Plaintiff use of the male bathrooms and locker rooms, and the Judgment in *R.M.A. bnf Appleberry v. Blue Springs R-IV School District*, No. 1416-CV17208, dated March 5, 2015 (Exhibit 212) which specifically denied Plaintiff the access he sought (Exhibits A, B, and C). The testimony was relevant to the School District's state of mind when it was making the decisions Plaintiff claims were unlawful

discrimination, and in particular the evidence would have shown the jury the School District did not have the requisite evil motive or reckless disregard required for the imposition of punitive damages. *See Cox v. Kansas City Chiefs Football Club, Inc.*, 473 S.W.3d 107, 116 (Mo. banc 2015) (circumstantial evidence of state of mind in a case alleging discrimination is logically and legally relevant).

- The Court erred in overruling the School District's objection to Plaintiff's testimony and exhibits about the events related to the "Eighth Grade Trip," because the evidence was irrelevant and unduly prejudicial, in that the trip was not an official event of the School District, but rather a voluntary event organized by a faculty member outside the auspices of her employment by the School District, and any claimed unlawful discrimination to which Plaintiff may have been subjected was by a third party over whom the School District had no control. *McGuire*, *supra*; *see also*, *Mills v. Loethen*, 158 S.W.3d 257, 258-59 (Mo. App. W.D. 2005).
- The Court erred in admitting testimony, statistics, and exhibits about the suicide rates of transgender children, as well as alternative bathroom and locker room policies, as the same were without foundation, were irrelevant, were unduly prejudicial, and were meant to inflame the passions of the jury.
- The Court erred in rejecting the School District's proposed verdict director (attached as Exhibit D) that required the jury to find as a fact that plaintiff's sex was male, because Plaintiff's male sex was a contested issue of fact and directly related to his access to male-designated bathrooms and locker rooms. *Syn, Inc. v. Beebe*, 200 S.W.3d 122 (Mo. App. W.D. 2006); *Hervey v. Missouri Dep't of Corr.*, 379 S.W.3d 156, 159-63 (Mo. banc 2012)(failing to include the plaintiff's protected status as an essential element is

prejudicial error when the protected status is not self-evident); *see also*, M.A.I. 38.01(B) [2018 Revision]—Missouri Human Rights Act—Employment Discrimination by Reason of Disability—Existence of Disability Disputed (for actions accruing before August 28, 2017).

- The Court erred in rejecting the School District's proposed instruction on the affirmative defense of collateral estoppel (Exhibit E), because the prior Judgment in *R.M.A. bnf Appleberry v. Blue Springs R-IV School District*, No. 1416-CV17208, dated March 5, 2015, would have instructed the jury that the School District was permitted to rely on the prior litigation between Plaintiff and the School District as to Plaintiff's access to male-designated bathrooms and locker rooms. *Syn, Inc*., *supra*.
- Plaintiff's statements and argument that having different bathrooms for different sexes was "separate but equal" was a prejudicial misstatement of the law such that the plain error rule applies.
- The foregoing errors, together, accumulated to support Plaintiff's legally improper claim that he was discriminated against based on his transgender status and to encourage the jury to disregard the law in the jury instructions and reach a verdict based on transgender discrimination rather than on discrimination based on Plaintiff's purported male sex, such that, even if individually the errors were "harmless," their cumulative weight was not. *DeLaporte v. Robey Bldg. Supply, Inc.*, 812 S.W.2d 526, 536 (Mo. App. E.D. 1991).

APPLICABLE STANDARDS

Motions for JNOV:

The standard for granting a motion for judgment notwithstanding verdict (JNOV) under Rule 72.01 is the same as for granting a motion for judgment at the close of the evidence. *Western Blue Print Co. v. Roberts*, 367 S.W.3d 7, 14 (Mo. banc 2012); and *Glover v. Atchison, Topeka, & Santa Fe Ry. Co.*, 841 S.W.2d, 211, 212 (Mo. App. W.D. 1992). "A case may not be submitted unless each and every fact essential to liability is predicated upon legal and substantial evidence." *Investors Title Co. v. Hammonds*, 217 S.W.3d 288, 299 (Mo. banc 2007). Granting a motion for JNOV is a question of law and not a matter of discretion: When, as here, the plaintiff fails to adduce substantial evidence supporting any element of his case, the motion for JNOV must be granted. *Steward v. Goetz*, 945 S.W.2d 520, 528 (Mo. App. E.D. 1997). While the Court is required to give Plaintiff the benefit of all reasonable and favorable inferences to be drawn from the evidence, the Court must "not supply missing evidence or give the plaintiff the benefit of unreasonable, speculative, or forced inferences." *Id*. In this instance, Plaintiff failed to adduce substantial evidence that he was of the male sex. He also failed to adduce evidence that Plaintiff's purported male sex was a contributing factor to the School District's decisions about access to boy's bathrooms and locker rooms. In this case the verdict was the result of the jury's erroneous assumption as to the Plaintiff's male sex. It is the Court's responsibility to correct the Plaintiff's failure of proof and the jury's error. the School District is entitled to judgment notwithstanding the jury's verdict.

Motions for New Trial:

The standard for granting a motion for new trial under Rule 78 is broader than the standard for judgment notwithstanding the verdict. Granting a new trial when the verdict is

against the weight of the evidence is committed to the sound discretion of the trial court, because "[t]he trial court is in the best position to weigh the quality and quantity of the evidence and to determine whether justice has been done. If the trial court finds a verdict is against the weight of the evidence, it must have the discretion to order a new trial to protect the right to a jury trial." *Badahman v. Catering St. Louis*, 395 S.W.3d 29, 39 (Mo. banc 2013)(quotation marks and citations omitted). Similarly, "[a] trial court has the right, in the proper exercise of its discretionary power, to grant a new trial on account of any erroneous ruling, whether an objection has been made or not." *Pasalich v. Swanson*, 89 S.W.3d 555, 562 (Mo. App. W.D. 2002), *quoting Steward*, 945 S.W.2d at 528. In this instance, there were several errors at trial, largely forced by Plaintiff ignoring the import and holding of the supreme court's decision in *R.M.A. by Appleberry*, which resulted in prejudice and an erroneous jury verdict. Accordingly, the Court should invoke its discretionary power to grant the School District a new trial.

In further support of this motion for judgment notwithstanding verdict or in the alternative for new trial, the School District contemporaneously files its supporting suggestions, which are incorporated herein by reference.

WHEREFORE Defendant Blue Springs R-IV School District prays this Court to enter judgment in its favor and against Plaintiff or, alternatively, to enter an order for new trial of the above-captioned cause, and for such additional relief as the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2022, the original of the above and foregoing was filed with the Court via ECF Filing system, with a copy going by electronic mail to:

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