

IN THE SUPREME COURT OF TEXAS

No. 98-1070

WAL-MART STORES, INC., ET AL., PETITIONERS

v.

JEREMIAH MCKENZIE, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE ELEVENTH DISTRICT OF TEXAS

Per Curiam

JUSTICE BAKER did not participate in the decision.

The issue in this wrongful discharge case is whether the defendants waived their complaint that only equitable remedies are available in an action under former article 5521k of the Texas Revised Civil Statutes¹ by not objecting to the submission of jury issues on compensatory and punitive damages. The court of appeals concluded that an objection to the charge is required to preserve the issue for appellate review. We hold, however, that the defendants timely challenged the availability of compensatory and punitive damages in their written response to the plaintiff's motion for judgment on the verdict. Therefore, we reverse the judgment of the court of appeals and remand for consideration of the merits.

Jeremiah McKenzie managed the automotive department in a Wal-Mart store in Tyler, Texas. In March 1992, Wal-Mart terminated McKenzie, alleging that he used products from the store

¹ See Act of 1983, 68th Leg., 1st C.S., ch. 7, § 7.01, 1983 Tex. Gen. Laws 37, *repealed by* Act of May 22, 1993, 73rd Leg., R.S., ch. 269, § 1, 1993 Tex. Gen. Laws 987, 987(current version at TEX. LAB. CODE § 21.251 *et seq.*).

without paying for them. In February 1993, after filing complaints with the Texas Commission on Human Rights and the Equal Employment Opportunity Commission, McKenzie sued Wal-Mart Stores, Inc., and one of its managers, Rick Rumfelt, for slander and for wrongful termination under the Texas Labor Code and former article 8307c of the Texas Revised Civil Statutes.² McKenzie claimed that Wal-Mart fired him in retaliation for instituting a worker's compensation claim and because he is African-American. While his suit was pending, McKenzie was hired at the Wal-Mart store in Palestine, Texas, where he had worked for several years before transferring to Tyler. One month after he was hired at Palestine, McKenzie was fired by the store manager when the regional manager learned he had been rehired there. McKenzie then amended his petition to include a charge of retaliatory discharge. The jury found Wal-Mart³ liable for wrongful discharge, awarding McKenzie \$50,000 in back-pay, \$10,000 for past mental anguish, \$5,000 for past lost credit reputation, \$250,000 in exemplary damages, and \$141,975 in attorney's fees. The jury also found that Rumfelt slandered McKenzie and awarded \$500 in damages.

McKenzie moved for judgment on the verdict. In a written response, the defendants asserted for the first time that former article 5521k authorizes only equitable relief and does not permit recovery for mental anguish, lost credit reputation, or exemplary damages.⁴ After hearing argument on the motions, the trial court rendered judgment on the jury's verdict, awarding McKenzie all

² See Act of May 7, 1971, 62nd Leg., R.S., ch. 115, 1971 Tex. Gen. Laws 884, *repealed by* Act of May 22, 1993, 73rd Leg., R.S., ch. 269, § 5(1), 1993 Tex. Gen. Laws 987, 1273 (current version at TEX. LAB. CODE § 451.002).

³ The trial court granted the defendants' motion for instructed verdict on the discrimination claim against Rumfelt.

⁴ The parties dispute whether former article 5521k governs this case or whether section 21.2585 of the Texas Labor Code applies. Because the court of appeals did not reach the merits of the damages dispute in its opinion, we need not decide this issue. We note, however, that section 21.2585 expressly authorizes recovery of compensatory and punitive damages.

damages assessed by the jury plus prejudgment interest and court costs.⁵ Wal-Mart and Rumfelt appealed. On rehearing, the court of appeals held that Wal-Mart waived any objection to the compensatory and punitive damage awards because it failed to object to the submission of the damages issues to the jury. We disagree.

To preserve a complaint for appellate review, a party must present to the trial court a timely request, motion, or objection, state the specific grounds therefore, and obtain a ruling. *See* TEX. R. APP. P. 52(a), *superseded* September 1, 1997 (current version at TEX. R. APP. P. 33.1(a)). Whether a particular remedy is available under a statute is a question of law for the court. *See Johnson v. City of Fort Worth*, 774 S.W.2d 653, 656 (Tex. 1989) (statutory construction is a question of law). Accordingly, the jury's findings are immaterial to the ultimate issue of whether compensatory and punitive damages are available under former article 5521k as a matter of law. Wal-Mart's response to McKenzie's motion for judgment on the verdict was timely and sufficiently specific to give the trial court an opportunity to resolve the legal issue before rendering judgment. *See Holland v. Wal-Mart Stores, Inc.*, _____ S.W.2d _____ (Tex. 1999).

McKenzie maintains, however, that Wal-Mart should have sought to resolve the legal issue before the trial court submitted the case to the jury because he could have then amended his pleadings to state a claim under federal law, which has specifically authorized recovery of compensatory and punitive damages since 1991. *See* 42 U.S.C. § 1981a ("Title VII"). According to McKenzie, his pleadings were broad enough to invoke a Title VII claim; he satisfied all administrative prerequisites to filing a claim under federal law; evidence of compensatory and

⁵ After the trial court rendered judgment, the defendants reasserted the nonrecoverability argument in a combined motion for judgment notwithstanding the verdict and for new trial.

punitive damages was offered without objection; and the jury questions on damages were consistent with federal law.

The right to file an amended pleading is governed by Rules 63 and 66 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 63 (governing pleading amendments) & 66 (governing trial amendments). Although each rule provides a different standard for obtaining court approval to amend pleadings, neither rule makes a distinction between pre-verdict and post-verdict amendments. Therefore, even assuming the validity of McKenzie's statements, we note that the timing of Wal-Mart's legal challenge did not affect the standards under which the court would determine whether McKenzie could have amended his pleadings to assert his federal claim. *See* TEX. R. CIV. P. 63 & 66; *see also Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938, 939 (Tex. 1990)(trial court did not abuse its discretion by allowing a post-verdict amendment to conform pleadings to the evidence). Thus, McKenzie's claim that the timing of Wal-Mart's objection left him without recourse to cure the pleading defect is without merit.

Accordingly, we hold the court of appeals erred in concluding that Wal-Mart waived error in the award of compensatory and punitive damages, and without hearing oral argument,⁶ we reverse the court of appeals' judgment and remand to that court the merits of Wal-Mart's claims.

OPINION DELIVERED: July 1, 1999

⁶ *See* TEX. R. APP. P. 59.1.