COURT OF APPEALS
DECISION
DATED AND FILED

April 2, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP507 **Cir. Ct. No. 2011CV3641**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ROBERT HOAGUE,

PLAINTIFF-APPELLANT,

V.

KRAFT FOODS, INC.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: FRANK D. REMINGTON, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten, and Kloppenburg, JJ.

¶1 PER CURIAM. Robert Hoague appeals an order dismissing Hoague's action against Kraft Foods, Inc., on Kraft's motion for a directed verdict. Hoague contends that, as a matter of law, he is entitled to damages for emotional

distress following his wrongful termination. We disagree. For the reasons set forth below, we affirm.

¶2 In June 2009, Hoague filed a complaint with the State of Wisconsin Department of Workforce Development Equal Rights Division, claiming that Kraft had terminated Hoague's employment in violation of the Wisconsin Family and Medical Leave Act (WFMLA). In May 2011, the administrative law judge issued a decision that found that Kraft had violated the WFMLA and awarded Hoague back pay and attorney fees.

¶3 In August 2011, Hoague filed this action against Kraft, seeking damages for emotional distress based on Kraft's wrongful termination of Hoague's employment. The circuit court held a trial on December 9, 2013. At the close of Hoague's case, Kraft moved for a directed verdict. The circuit court entered an order dismissing Hoague's claim with prejudice. The court explained that, for the reasons stated on the record at trial, it found that Hoague had failed to show that his emotional distress was caused by Kraft as opposed to one or more other concurrent stressors in Hoague's life. Hoague appeals.

¶4 Hoague argues that he is entitled to compensation for emotional distress as a matter of law. Hoague contends that this is an issue of first impression, and urges us to rely on federal law to conclude that it is impossible to have no emotional distress damages following a wrongful termination.

¶5 Hoague's argument fails at the outset, however, because the federal case law that Hoague himself quotes does not stand for the proposition that emotional distress damages automatically flow from a wrongful termination. Rather, as Hoague effectively acknowledges through case law that he quotes, the case law holds that "[e]motional harm will not be presumed simply because the

complaining party is a victim of discrimination. The existence, nature, and severity of emotional harm must be proved." ***Patterson v. P.H.P. Healthcare Corp.***, 90 F.3d 927, 939 (5th Cir. 1996) (citation omitted). Additionally, as quoted in Hoague's brief, "an award is warranted only when a sufficient causal connection exists between the statutory violation and the alleged injury." *See* ***id.*** at 938. We therefore reject Hoague's argument that emotional distress damages automatically exist upon a wrongful termination.

¶6 Finally, to the extent that Hoague is arguing that the trial evidence did not support the directed verdict, we are unable to evaluate that argument due to the lack of a trial transcript in the appellate record. *See* ***Door Cnty. DHFS v. Scott S.***, 230 Wis. 2d 460, 465, 602 N.W.2d 167 (Ct. App. 1999) ("'A motion for a directed verdict should be granted only where the evidence is so clear and convincing that a reasonable and impartial jury properly instructed could reach but one conclusion.'" (quoted source omitted)). Because Hoague failed to include a transcript of the trial in the record, we cannot evaluate whether the trial evidence supported the circuit court's decision to grant Kraft's motion for a directed verdict.[1] Moreover, in the absence of a transcript, we must assume the transcript

[1] After the record was transmitted to this court, and several days before the appellant's brief was due, Hoague moved to supplement the record on appeal with the transcript of the December 2013 trial. We denied the motion, explaining that the motion was untimely and that Hoague had provided no explanation for the late request. We also pointed out that Hoague certainly should have been aware earlier in the appellate process that the transcript had not been requested. Finally, we noted that Hoague had made the same mistake in a previous appeal in this case, and was therefore on notice that he needed to inspect the record and ensure the transcript was on file.

would contain facts necessary to support the circuit court's decision.[2] *See* ***T.W.S., Inc. v. Nelson***, 150 Wis. 2d 251, 255, 440 N.W.2d 833 (Ct. App. 1989).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

[2] We note that, despite the apparent lack of merit to Hoague's arguments, Kraft has not moved for sanctions against Hoague for a frivolous appeal.