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**IN THE COURT OF APPEALS OF IOWA**

No. 3-231 / 92-661

**DEBRA LEE JOHNSON,**

Plaintiff/Appellant,

**vs.**

**EXECUTIVE SERVICES, INC., a/k/a UNIVERSAL PRINTING SERVICES, INC., GEORGE H. SPRINGER, JR., GEORGE H. SPRINGER, III, TIMOTHY SPRINGER, and BETTY SPRINGER,**

Defendants/Appellees.

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Appeal from the Iowa District Court for Polk County, Richard Strickler, Judge.

Debra Johnson brought suit against her employer claiming the employer wrongfully terminated her because she testified in favor of a former coemployee at an unemployment compensation hearing. **REVERSED AND JURY VERDICT REINSTATED.**

Victoria L. Herring, West Des Moines, for appellant.

Gregory Kenyon and Jon Anderson of Stamatelos & Kenyon, P.C., West Des Moines, for appellees.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

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**HAYDEN, J.**

Plaintiff, Debra Johnson, appeals the trial court's order granting defendant's motion for judgment notwithstanding the verdict in this wrongful termination action. We reverse and reinstate the jury's award of punitive damages.

Johnson is a former employee of defendant Universal Printing Services, also known as Executive Services, Inc. (Universal). Universal employed Johnson as a shipper and receiver.

In October 1990 Universal fired a coemployee of Johnson's after she allegedly told a supervisor to "get off my [expletive deleted]." Johnson allegedly overheard the comment; however, she thought the coemployee said "why don't you get off my back." The coemployee subsequently sought unemployment compensation benefits from the Iowa Department of Job Service, and she served Johnson with a subpoena to testify as to what she said to the supervisor. Johnson attended the hearing and testified her coemployee did not swear at the supervisor.

Upon returning to work after the job service hearing, Johnson was terminated on the ground she gave false testimony at the hearing. Johnson brought this action against Universal, alleging the company wrongfully terminated her employment. She sought actual and punitive damages. The matter proceeded to a jury trial.

During trial, Universal moved for a directed verdict as to punitive damages. The employer contended Johnson failed to present sufficient evidence to support punitive damages. The trial court overruled the motion. On December 20, 1991, the jury returned a verdict in Johnson's favor and awarded $1997 in actual damages and $45,000 in punitive damages.

On December 27, 1991, Universal filed a motion notwithstanding the verdict. Universal sought to set aside the punitive damages award on the ground the court should have granted the motion for directed verdict and on the ground the damage award was excessive. Johnson filed a resistance and brief supporting resistance to defendant's motion for judgment notwithstanding the verdict. In her resistance, Johnson specifically requested a new trial. On March 24, 1992, the trial court filed its order granting Universal's motion and setting aside the punitive damage award. The court did not comment on Johnson's request for a new trial. On March 30, 1992, Johnson filed a "Motion to Modify." Johnson contended the trial court incorrectly granted defendant's motion for judgment notwithstanding the verdict. Johnson argued the only proper remedy for a party challenging punitive damages on the basis of excessiveness is a new trial. Johnson requested the court to correct its order and grant her a new trial. Defendant resisted the motion to modify. On April 7, 1992, Johnson filed an "Amendment to Motion and Motion for New Trial." Plaintiff sought to amend the caption of her motion to modify to a

motion for new trial, and requested a new trial. Plaintiff stated her motion to modify was filed pursuant to Iowa Rule of Civil Procedure 248(b). The record fails to show the trial court addressed Johnson's motion.

Johnson appeals from the trial court's order granting the motion for judgment notwithstanding the verdict. She raises four issues on appeal: (1) the trial court, in granting the motion on the ground of excessiveness of the punitive damages award, erred because it failed to grant the motion on a proper ground, (2) sufficient evidence supported the jury's award of punitive damages, (3) the punitive damages award was not excessive, and (4) Universal failed to preserve the issue regarding the constitutionality of the punitive damages award and Pacific Mutual Life Insurance v. Haslip, 499 U.S. 1, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (1991) did not govern the issue. Johnson requests this court reverse the trial court judgment and reinstate the jury's award of punitive damages. She prays, if this court determines the judgment notwithstanding the verdict should be granted, that we grant a new trial to determine whether the award was excessive.

When considering a motion for judgment notwithstanding the verdict, the court must view the evidence in a light most favorable to the party against whom the motion is directed. Konicek v. Loomis Bros., 457 N.W.2d 614, 617 (Iowa 1990); Iowa R. App. P. 14(f)(2).

I. Judgment Notwithstanding the Verdict. "A motion for judgment notwithstanding the verdict cannot be sustained on any ground not asserted in an earlier motion for directed verdict." Dutcher v. Lewis, 221 N.W.2d 755, 760 (Iowa 1974) (citations omitted). Johnson argues the trial court erred in granting Universal's judgment notwithstanding the verdict on the ground of excessiveness because excessiveness was not a ground of the directed verdict.

Universal's motion for directed verdict was based only upon the lack of evidence of willful or wrongful intent, which is required by the Iowa Code for the assessment of punitive damages. The directed verdict preserved only the question of the sufficiency of the evidence to support a prima facie case for punitive damages. The motion for judgment notwithstanding the verdict, however, was urged upon two grounds: insufficient evidence of wrongful intent to justify punitive damages and excessiveness of the verdict. The trial court granted the motion for judgment notwithstanding the verdict based on the excessiveness of the punitive damages. Case law clearly establishes a judgment notwithstanding the verdict must stand or fall on the grounds stated in the motion for directed verdict. Konicek, 457 N.W.2d at 617 (citing Johnson v. Dodgen, 451 N.W.2d 168, 171 (Iowa 1990)). Excessiveness of the punitive damage award obviously was not a ground of Universal's motion for directed verdict. A challenge to

the excessiveness of punitive damages is not a ground to be raised in a motion for directed verdict. We note a jury verdict has not yet been rendered when a motion for directed verdict is raised. Therefore, the trial court's order granting the judgment notwithstanding the verdict was based upon a proposition not raised in defendant's motion for directed verdict. We reverse the trial court's order granting Universal's motion for judgment notwithstanding the verdict because the trial court erred in deciding the motion on a ground not included in the directed verdict motion. We reinstate the jury's award of punitive damages in favor of Johnson.

In view of our decision, we do not address the other issues Johnson raised on appeal.

Costs of this appeal are taxed to Universal.

**REVERSED AND JURY VERDICT REINSTATED.**