

Rel: October 16, 2026

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2025-0022

Envoy Air, Inc.

v.

Jada Creagh

**Appeal from Mobile Circuit Court
(CV-19-902572)**

PER CURIAM.

Envoy Air, Inc. ("Envoy"), has appealed from a final judgment that the Mobile Circuit Court entered in favor of Jada Creagh on her claim of

retaliatory discharge. That judgment, which was based on a jury's verdict, awarded Creagh \$250,000 in compensatory damages for mental anguish and \$425,000 in punitive damages. For the reasons set forth herein, we affirm the judgment insofar as it holds Envoy liable for Creagh's harm, but we remand the case to the trial court with instructions for that court to provide written findings in support of its refusal to remit both the compensatory damages and the punitive damages.

Facts and Procedural History

In 2018, Creagh was an employee of Envoy, which operates commercial flights. On October 25, 2018, Creagh was working the final flight of the night at the Mobile Regional Airport when she slipped and fell on a set of stairs, which resulted in an injury to her shoulder. Creagh reported the injury to her shift supervisor, Cody Arthur, who, according to Creagh, told her that "the last person who had reported getting hurt on the job was no longer there." Arthur denied making any such statement and testified that he "didn't imply that [Creagh] c[ould] be terminated for getting hurt at work." Either way, Creagh told Arthur that she was "hurting," and Arthur "said okay" and left to attend to other

duties. Creagh then went home. Pursuant to Envoy's policies in effect at that time, any on-the-job injury should have been documented "within two hours of the injury or as soon as possible." However, Arthur did not document Creagh's injury until sometime the following day because he was "unfamiliar with the process at the time" and because her injury had occurred "very late at night."

Creagh was scheduled to work the following morning, but, when she awoke that morning, she telephoned her shift supervisor for that day -- someone other than Arthur -- "to let him know that [she] got hurt last night" and that she was "really in pain and need[ed] to call out." The shift supervisor told Creagh that "he didn't have any report of [her] being hurt," that "[Arthur] didn't mention it," and that there were "already ... people out" that day so she "need[ed] to come in." Creagh thus went to work as scheduled, but, when her shift supervisor saw her, he "realized that [she] was hurt" and, at that point, told her that she "need[ed] to go see the doctor now." The doctor who treated Creagh told her that she needed to remain out of work for several weeks and restricted her from "lifting [anything] greater than 10 pounds" when she returned to work.

However, Creagh's normal duties required her to be able to lift "50 pounds at least" and required much "[p]ushing, pulling, [and] lifting."

Creagh's manager at Envoy was Brigitte Atkinson, and Creagh testified that she and Atkinson "got along great before [her] injury." Specifically, Creagh testified that Atkinson "seemed like a great woman" and was "[f]riendly," that Atkinson "would say good morning" and "would compliment [her]," and that she and Atkinson would "laugh about things in passing." In short, Creagh testified that she "didn't have any issues with [Atkinson] to begin with." However, Creagh testified that, when she returned to work on November 21, 2018, her interactions with Atkinson "were dry" and that Atkinson "seemed agitated," "no longer spoke to [her] in the morning," and "[s]ometimes ... would walk past and not say anything." In addition, Creagh testified that she had reported to Atkinson that she was "having problems with pushing, pulling, [and] lifting anything over 10 pounds" but that Atkinson had failed to ensure that she was "always provided help," even though Envoy had agreed that "[a]ssistance w[ould] be provided [to Creagh] for lifting anything over 10 [pounds]."

Creagh also testified regarding interactions she had witnessed between Atkinson and other Envoy employees around that time:

"Q. Did you see Atkinson interact with other employees at Envoy before November 30, 2018?

"A. Yes.

"Q. Based upon that observation that you saw, what was she like?

"....

"A. She was mean. She was terrifying. She would talk down to them. She would yell at them. A lot of us tried to avoid her, just to stay off her radar.

"Q. When [Atkinson] came out of the office did you have an opportunity to see what the other employees did?

"....

"A. They would scatter. They would try to stay out of her way. She would pick one person and zoom in -- we were already short staffed. She would threaten our jobs. Stated the Mobile station would no longer exist if we didn't do what she was telling us to do or if we didn't straighten up.

"....

"Q. What were the time pressures that she was referring to?

"....

"A. On-time departures. Delays. The lines at the ticket counter. Fuel. Even if the delay wasn't on us ... she would still blame us and say [we] [were] not doing anything.

"Q. Did you ever ... before November 30 have an opportunity to hear her talk about people missing work?

"A. Yes.

"Q. Tell us about that.

"....

"A. One day we were in the break room ... in between flights. We had worked two morning flights and then we were relaxing or trying to relax before the next one. She came out of her office yelling and screaming, where is everyone; we are having to borrow employees from other stations. No one should be taking off work. It doesn't matter what they have going on. This is important. They need to be here so that we can get things done. You could hear her and passengers could hear her too."

On November 30, 2018, Creagh returned to her doctor for a follow-up appointment and was given a return-to-work note that continued to place physical restrictions on her work. However, there are two return-to-work notes in evidence, both pictured below, and there is conflicting evidence as to which note Creagh gave to Atkinson. The first return-to-work note has two computer-generated X's in the boxes next to two preprinted restrictions, which restricted Creagh from "overhead work" and from lifting anything heavier than 10 pounds. The second return-to-work note, which we will refer to as "the altered note," has those same two computer-generated X's, but those two computer-generated X's have

been partially covered by two handwritten X's. There is also a third handwritten X in the box next to the preprinted restriction against any "push/pull" activity, but no computer-generated X appears in that box on either return-to-work note.

RETURN TO WORK

Patient's Name: Creagh, Jada Date: 11/30/2018

This to verify the above patient is under my care. According to her examination, this patient is able to return to work. Patient is able to return to restricted duty as follows:

☐ No Driving	☐ No/ ☐ Limited stair climbing
☐ No/ ☐ Limited Use of ☐ Rt ☐ Lt Upper Ext	☐ No/ ☐ Limited kneeling
☒ No/ ☐ Limited lifting > ____ lbs	☐ No/ ☐ Limited bending
☒ No/ ☐ Limited overhead work	☐ No/ ☐ Limited squatting
☐ No/ ☐ Limited push/pull > ____ lbs	☐ No/ ☐ Limited ladder climbing

Other: NO OVERHEAD WORK. LIMITED LIFTING - NOTHING OVER 10LBS
RESTRICTIONS UNTIL FOLLOW UP FROM MRI

FROM 11/30/2018 TO

RETURN TO WORK

Patient's Name: Creagh, Jada Date: 11/30/2018

This to verify the above patient is under my care. According to her examination, this patient is able to return to work. Patient is able to return to restricted duty as follows:

☐ No Driving	☐ No/ ☐ Limited stair climbing
☐ No/ ☐ Limited Use of ☐ Rt ☐ Lt Upper Ext	☐ No/ ☐ Limited kneeling
☒ No/ ☐ Limited lifting > ____ lbs	☐ No/ ☐ Limited bending
☒ No/ ☐ Limited overhead work	☐ No/ ☐ Limited squatting
☒ No/ ☐ Limited push/pull > ____ lbs	☐ No/ ☐ Limited ladder climbing

Other: NO OVERHEAD WORK. LIMITED LIFTING - NOTHING OVER 10LBS
RESTRICTIONS UNTIL FOLLOW UP FROM MRI

FROM 11/30/2018 TO

Creagh testified that she did not write the three handwritten X's on the altered note and that "that [is not] the note that [she] handed to [Atkinson]." Atkinson testified, however, that the altered note is the note she received from Creagh and that, either that same day or the next day, she telephoned Valerie Conerly -- one of Envoy's worker's compensation analysts stationed in Texas -- and "told her that [Creagh's return-to-work note] doesn't look right." Atkinson then sent a copy of the altered note to Conerly. Conerly later contacted Creagh's doctor and asked for a copy of the return-to-work note that had been given to Creagh, and the doctor sent Conerly a copy of the return-to-work note that does not contain the three handwritten X's.

On December 3, 2018, Creagh arrived at the airport to work her scheduled shift. During that shift, Creagh reported to Atkinson that she was "not really getting the help" she needed and that other employees were "complaining," and Atkinson responded by telling Creagh that she had been "getting reports or complaints that [Creagh] [was] being combative." Creagh denied those allegations and insisted that she was "just asking for help." According to Creagh, Atkinson then asked her if she "fe[lt] like [Envoy] was a good fit for [her]," and Creagh said that she

"like[d] working here" and "just need[ed] help until [she] g[ot] better." Creagh testified that, at that point, Atkinson "got mean or mad and ... said [she] [would] find a way to get rid of [her]." According to Creagh, Atkinson did not "bring up the three [handwritten] X's" during that conversation or otherwise "make any complaint ... whatsoever about the November 30, 2018, return-to-work slip." After that conversation, Creagh continued to work as scheduled, and at least once she reiterated to Atkinson during the following days that she was "still not getting the help that [she] needed." According to Creagh, Atkinson said that she was "working on it."

On December 12, 2018, Conerly emailed Bridgette Warren-Murrell, Envoy's Director of Human Resources ("HR") Operations, who was stationed in Texas, and David Barrera, who also worked in Envoy's HR department in Texas. That email stated:

"I'm looping you in on this. This employee has a worker's compensation claim. She presented a work status note from her physician. The GM, Brigitte Atkinson, stated it appeared to be tampered with. We requested the nurse on her claim obtain a work status note directly from her doctor. The notes are different. This appears to be fraud."

That same day, Warren-Murrell replied with the following email: "FYI ... In the past, we usually separate for falsifying documents as it violates

our guiding principles." Later that day, Barrera sent Atkinson the following email: "When you return to your station, engage [Creagh] in conversation as to why there is a discrepancy in her Work Status Note that she presented. If her responses don't add up, we can set-up a debrief and compare so that we can talk about any disciplinary steps."

On December 28, 2018, Atkinson called Creagh into her office and "started to question [Creagh] about [the] doctor's note." According to Creagh,

"[Atkinson] showed me the doctor's note and it looked similar to mine. She asked me whose is this. I said, this is my doctor's note but that's not the one that I gave you. She showed me another one with just two computer-generated X's like the one that I had given her. She said, who put these X's on the other one? I said, I don't know. The doctor's nurse ... just prints them out or she does that and gives them to me and I bring them here. She said, well, someone did it. I said, it wasn't me. She said, well, we are going to suspend you pending an investigation. I said, I didn't do this. She said, I'm going to need your badge and keys."

Following that conversation, Atkinson emailed Conerly, Barrera, and Warren-Murrell. That email states, in pertinent part:

"I just had a conversation with [Creagh] I gave her a copy of the form she gave me and asked her if this is the one [the doctor] gave [her] and ... she replied yes. So I then gave her the second one and she said that it was a different one. I said this is what the doctor's office sent to us. She said she knows nothing about it that they gave her this one. She said [the

nurse] printed it out and she was the one that put the X's in the box because there weren't any there and I said yes there were if you look you can see them underneath the original ones, she said well I don't know that is what they gave me. She said are you accusing me of doing it, I said I am asking you if you did it and she stated no [the nurse] put the X's in the boxes."

It appears that Conerly shared that information with Johnathan Wilson, another of Envoy's HR employees stationed in Texas, and, that same day, Wilson sent Atkinson the following email:

"Per our conversation, the employee has now been provided the opportunity to speak to the discrepancy between the document that she provided and the document that was provided by the doctor's office. The employee has not provided sufficient reason as to why the two documents are different. The resulting conclusion is that the document was altered after leaving the doctor's office, and prior to being turned in to Envoy. The altering of official documentation is considered a violation of Envoy Guiding Principles and Business Ethics. Specifically, the Guiding Principles say, 'We conduct ourselves with the highest standards of honesty, integrity and fairness -- obeying all the laws of the communities in which we work or do business. We must all understand and comply with our business ethics policies.'

"Please suspend the employee immediately, and proceed with off-boarding based upon the above determination."

Later that same day, Atkinson provided Creagh with a letter that stated, in pertinent part: "Effective today, December 28, 2018, you are being suspended pending the outcome of an investigation into the

documents you provided to this office. We will conduct our investigation as expeditiously as possible and once we have the results will advise you accordingly." During Atkinson's deposition, parts of which were read into evidence, Creagh's counsel questioned Atkinson about that letter and the investigation to which it alluded, and Atkinson testified as follows:

"Q. ... [Y]ou say, 'We will conduct our investigation as expeditiously as possible and once we have the results will advise you accordingly.' Do you see that?

"A. Yes, sir.

"Q. Did you conduct an investigation regarding this matter after December 28, 2018?

"A. It was more of the HR department did that.

"Q. Okay. But ... to your knowledge, what you're saying is the HR department conducted an investigation after December 28, 2018?

"A. Yes, sir."

Creagh likewise testified that Atkinson had told her during their December 28, 2018, meeting that "an investigation still needed to be done."

On January 4, 2019, Atkinson sent Creagh the following email: "The investigation has been completed if you could please report back to work on Monday the 7th at 9 am." As requested, Creagh returned to

work on January 7, 2019, and, after working part of her shift, went to Atkinson's office at Atkinson's request, at which point Atkinson told Creagh that she was "being let go." Atkinson also provided Creagh with a termination letter, which was signed by only Atkinson. That letter informed Creagh that her employment had been terminated for "falsification of documentation" because the return-to-work note that she had allegedly given to Atkinson "appeared to have been altered when compared to the one the doctor's office had sent." As noted, Creagh disputed the allegation that she had created the altered note, and she testified that she experienced -- and continues to experience -- mental anguish as a result of the allegedly wrongful termination of her employment.

Regarding the termination letter that Atkinson provided to her, Creagh testified as follows:

"Q. Now, on that letter that you received did it have anyone else's name on it other than [Atkinson]?"

"A. No.

"Q. Who fired you?"

"A. [Atkinson]."

Atkinson testified as follows regarding the termination letter:

"Q. Anywhere in that [termination] letter does it say that this decision to fire [Creagh] is made by anyone other than you with your signature on there?

"A. We can't terminate an employee without HR's --

"Q. Go ahead. Finish.

"A. Sorry. I have to have HR's authorization in order to terminate an employee.

"Q. Does -- and -- and my question was anywhere in that letter does it say that this is HR's decision?

"A. No, sir. Let me see that. That was one was actually mine.

"Q. Is there anything ... that you want change about the testimony that you've given?

"....

"A. Does it not ... in the paragraph at the bottom represent that it's following the guiding principles of Envoy ...? So --

"[DEFENSE COUNSEL]: Yeah.

"A. Okay. So that's -- they have to give me authorization to terminate her. I ... can't do that on my own. If HR says no, then you don't do it.

"....

"Q. I mean, so are you telling me ... that the decision to fire [Creagh] was made by HR ...?

"A. I'm telling you that the decision to fire [Creagh] was made by HR, yes, sir, because they have to give me authorization."

However, Charles Davis, one of Envoy's regional managing directors and a defense witness, testified that Atkinson did in fact have the authority to discharge an employee. Specifically, Davis testified as follows on direct examination:

"Q. In a situation where a station manager has referred an employment matter to HR for investigation, for example, if an employee is thought to have ... altered a doctor's note and then HR does an investigation, who makes the decision on discipline?

"A. In that case it would be HR. As soon as we take the issue to HR it's going to be their decision.

"Q. Did the station manager independently have authority to terminate any employee?

"A. Technically they could. It's not our process."

On cross-examination, Davis testified as follows:

"Q. Technically they could terminate, correct?

"A. Yes.

"Q. That's part of the policies and procedures at Envoy, correct?

"A. It's not.

"Q. But technically they could. What do you mean by technically?

"A. As the general manager if they sign a termination form they could terminate someone. However, our process would

be to go through HR so we can ensure that everything is followed correctly."

Davis was also asked on cross-examination about Envoy's response to Creagh's requests for production:

"Q. Let's get back to the technicality that we talked about with the HR. Let me show you what has been marked as Plaintiff's [Exhibit] 178 where Envoy responded. Have you seen this document before?

"A. No, I don't believe so.

"Q. In the question it says, identify by name, address and job title the supervisory chain of command on the date of termination of the plaintiff from the plaintiff up to the highest ranking officer of the company. Can you read for the jury what Envoy's answer was?

"A. The plaintiff was terminated by Brigitte Atkinson, station manager.

"Q. Does it say anything else?

"A. No.

"Q. Is that a technicality?

"....

"A. I'm not a lawyer. I'm not sure.

"Q. You used the word. I didn't pick it. You picked it.

"A. I didn't say technicality. I said technically an agent of the company, being Brigitte Atkinson, could have signed to hire an employee or signed to terminate an employee. However,

our process is to ensure we go through our HR department or our recruiting department.

"Q. Does it say what your policy is there? Does it say that HR was involved in this in any way?

"A. It does not."

During the cross-examination of Davis, the trial court admitted into evidence a copy of Envoy's job description for its HR employees. That document states that an HR employee "provide[s] counsel and recommendations to supervisors and managers in matters of employee conduct, performance, corrective and disciplinary action, consistent with company policies and applicable federal and state labor laws." Davis then testified as follows regarding that document:

"Q. Under here it says, key required skills: Ability to conduct and manage complex investigations and recommend action, provide counsel and recommendation to supervisors and managers. Did I read that correctly?

"A. Yes.

"Q. The word is 'recommendations,' correct?

"A. Yes.

"Q. Doesn't say final decision maker, does it?

"A. It says recommendation.

"Q. It specifically talks about applying to managers, which would be Brigitte Atkinson. Right?

"A. Yes."

As part of her case, Creagh read into evidence the following excerpts from Conerly's deposition:

"Q. I just marked Exhibit 17, and it's a job description for HR consultant and business partners. Do you see that?

"A. Yes.

"....

"Q. If you go to the second page of Exhibit 17 where it has key required skills, do you see that?

"A. Uh-huh.

"....

"Q. It says, ability to conduct and manage complex investigation and recommend action. Did I read that correctly?

"A. Yes.

"Q. Okay. So you know you testified previously in response to a question about what your understanding of what HR did, is that consistent with your understanding, that HR would conduct and manage complex investigations and recommend action?

"A. Yep.

"Q. Okay. And they're recommending action to who, the operational people?

"A. When you say operational, are you meaning like the station managers or leaders?

"Q. Yes.

"A. Yes, uh-huh.

"....

"Q. And then it says, provide counsel and recommendations to supervisors and managers in matters of employee conduct, performance, corrective and disciplinary action consistent with company policies and applicable federal and state labor laws. Did I read that correctly?

"A. That's the way I read it, uh-huh."

Josh Hernandez, a "senior business partner for Envoy," testified for the defense regarding the email that Wilson sent to Atkinson and the investigation that occurred in conjunction with Creagh's discharge. Specifically, Hernandez testified as follows on direct examination:

"Q. The last sentence of the email [that Wilson sent to Atkinson], that is a directive as I'm reading it from [Wilson] to [Atkinson]?

"A. Yes.

"Q. At any point in any of the materials that we have reviewed so far related to this investigation did [Atkinson] make the decision to terminate Creagh without anyone else's input?

"A. No.

"Q. Based on this email do you believe that Atkinson made the determination to terminate Creagh without input from anyone else?

"A. No.

"....

"Q. I'm going to hand you what has been admitted as Defendant's [Exhibit] 13. Do you recognize that?

"....

"A. [It is the December 28, 2018,] suspension letter.

"....

"Q. Read the last sentence of the first paragraph.

"A. We will conduct our investigation as expeditiously as possible and once we have the results we will advise accordingly.

"Q. Here is the question, once the findings that are put into ... that email from Wilson, once that email is sent from an HR perspective at Envoy is that the end of the investigation?

"A. It is not.

"Q. What else has to happen before an investigation is concluded?

"A. In a case where it would lead to termination there are a number of things we have to do to prepare to do that which include writing up a termination letter, putting it in our system to make sure that -- we are going to be removing this

employee from several systems so a number of things have to happen before we can say this investigation is now closed or this investigation is completed. All of that wraps into when we say the investigation has not yet been completed.

"Q. If there is a delay between the time that person is suspended and they are actually terminated, is that what is happening in terms of completing the investigation?

"A. Yes, that's what is happening.

"....

"Q. I show you Defendant's [Exhibit] 14. If you will, take a look at that for me. What is that?

"A. A termination letter.

"Q. Who is that letter to?

"A. Jada Creagh.

"Q. Who signed that termination letter?

"A. Brigitte Atkinson.

"Q. We just saw that email ... where Wilson is the one who made the directive to terminate Creagh. Why did Atkinson sign the termination letter?

"A. She signed it because [Creagh] reported to her.

"Q. Is that in accordance with Envoy's policies; your direct supervisor is the one to sign the letter?

"A. Yes."

On cross-examination, Creagh's counsel reminded Hernandez, and Hernandez acknowledged, that Envoy's job description for its HR employees indicates that they "provide advice and recommendations regarding hiring and firing." However, Hernandez insisted that Wilson had made the decision to terminate Creagh's employment. Creagh's counsel then questioned Hernandez as follows:

"Q. Well, where is Wilson, the guy you say made the decision?

"A. He is no longer with Envoy.

"....

"Q. So, you are in here testifying about a decision that Wilson allegedly made even though he is the consultant that provides recommendations and advice saying that he made a decision?

"A. Yes."

In May 2022 -- before the trial in this case occurred -- Envoy terminated Atkinson's employment. When asked why her employment had been terminated, Atkinson testified: "They told me -- I'm trying to remember. I don't honestly remember, but they told me -- I thought they told me that I had failed a couple of audits." However, Ann Marie De La Paz, one of Envoy's regional managing directors, testified in her deposition -- parts of which were read into evidence -- that she had

terminated Atkinson's employment because Atkinson "was not a good manager," "didn't take any ownership for her failure to lead the team," did not "exercise the highest standards of integrity" and "fairness," did not "exercise good judgment," did not "act in the best interest of Envoy" and its customers, and did not "work as a team with other coworkers." The termination letter that De La Paz provided to Atkinson, which was admitted into evidence, corroborated De La Paz's testimony in that it indicated that Atkinson's employment had been terminated based on her "egregious" behavior, including a "lack[] [of] empathy," the "inability to provide a safe and productive work environment," "poor judgment," and the fact that "[her] outstation ha[d] failed multiple safety and compliance audits."

In 2019, Creagh filed a complaint against Envoy, in which she asserted only a claim for worker's compensation benefits -- a claim the parties would eventually settle. During the course of discovery, Envoy's original counsel, Anthony Fox, provided Creagh with a set of unsigned answers to interrogatories, one of which -- the answer to Interrogatory 14 -- stated that Creagh had voluntarily resigned her employment. Fox later provided a signature page that purportedly contains Conerly's

signature as the authorized agent of Envoy. However, it is undisputed that Creagh's employment was terminated and that the signature page was forged. Although Fox accepted responsibility for the incorrect answer to Interrogatory 14, contending that he had mistakenly assumed that Creagh had resigned, he denied responsibility for the forged signature page. Envoy also disavowed any responsibility for the forged signature page, and it subsequently dismissed Fox, retained new counsel, and amended its response to Interrogatory 14 to reflect that Creagh's employment had been terminated for "falsifying documents."

In 2020, Creagh amended her complaint to assert a claim of retaliatory discharge, alleging that Envoy had terminated her employment "solely because she claimed or sought to recover worker's compensation benefits." Discovery in this case was contentious, to say the least, and not simply because of the issues with Envoy's original answer to Interrogatory 14, though that is the only discovery issue relevant to this appeal. Thus, the trial court appointed a special master to manage the discovery disputes. Following an evidentiary hearing, the special master entered a detailed order in which he found "that the responsibility for drafting the incorrect answer to Interrogatory 14 lies

with Fox, not with any Envoy employee." The special master also stated that he was "unable to reach a conclusion as to who forged Conerly's signature" and that the forgery was a "mystery." Thus, in the opinion of the special master, Creagh should not "be permitted to put on evidence to the effect that the signature was forged" because that issue was "collateral to the question of whether Envoy had a legitimate basis ... for terminating [Creagh]" and "[t]he salacious nature of the issue would be a distraction to the jury and would probably overwhelm every other issue in the case."

After the special master entered his order, Envoy filed a motion in limine in which it sought to have its original answer to Interrogatory 14 excluded from evidence. The record does not contain a written order from the trial court ruling on that motion, but it appears that the parties discussed the motion before trial and that the court made some sort of ruling adverse to Envoy at that time. However, as Envoy's counsel noted during oral arguments before this Court, that discussion and oral ruling were not transcribed for the record.

During the trial, but outside the presence of the jury, the trial court and the parties revisited the issue of Envoy's original answer to

Interrogatory 14. During that discussion, Envoy's counsel stated that she "want[ed] some clarity" as to "what [the trial court] [was] doing with Interrogatory 14." The trial court ruled that Creagh would be permitted to "offer into evidence that [Envoy] stated early on in the litigation process" that Creagh had "voluntarily resigned her job." The trial court also ruled that Creagh could present the forged signature page, but the court clarified that Creagh could not "mention [one word] about [the signature page] being falsified or any of that." Following that discussion, and while still outside the presence of the jury, the trial court admitted Plaintiff's Exhibit 155 into evidence. At that time, the exhibit contained three pages -- the first page of Creagh's interrogatories, the page containing Envoy's original answer to Interrogatory 14, and the forged signature page.

At the close of Creagh's evidence and again at the close of its own evidence, Envoy moved for a judgment as a matter of law ("JML"), arguing that Creagh had failed to establish a prima facie case of retaliatory discharge. The trial court denied the motion both times. During closing arguments, Creagh's counsel revisited Conerly's testimony and reminded the jury that, in response to Interrogatory 14,

Envoy had originally answered that Creagh had voluntarily resigned her employment. Creagh's counsel then said: "Is that a witness swearing falsely to a material fact?" Envoy's counsel immediately objected and requested a mistrial, noting that the trial court had previously ruled that Creagh's counsel was "not allowed to argue [Conerly] had lied." After removing the jury from the courtroom, the trial court agreed that Creagh's counsel's argument "was in clear violation of [the court's] ruling," but the court declined to grant a mistrial. Instead, the trial court stated:

"This is what I'm going to do. I want you to substitute that exhibit. It has not gone back to the jury. Take out the signature page of Conerly's signature, put an unsigned copy into evidence. I will do a limiting instruction to the jury. ... I want the defense to give me what they propose that limiting instruction ought to be. I think it should be somewhere along the lines of letting the jury know that contrary to what [counsel] has said, Conerly never signed those interrogatory responses."

When the jury was brought back into the courtroom, the trial court stated: "Ladies and gentlemen, contrary to what [Creagh's counsel] said, I want to point out that Valerine Conerly never submitted a response to Interrogatory 14 that was sworn to by her." In accord with the trial

court's ruling, the version of Plaintiff's Exhibit 155 that was given to the jury contained a blank signature page.

As noted, the jury returned a verdict in favor of Creagh and awarded her \$250,000 in compensatory damages for mental anguish and \$425,000 in punitive damages. Following the trial, Envoy filed a written motion for a JML, continuing to argue that Creagh had failed to establish a *prima facie* case of retaliatory discharge. Envoy also challenged the damages awarded by the jury, arguing that both the compensatory damages and the punitive damages were excessive and that the issue of punitive damages should not have been submitted to the jury in the first place. The trial court denied that motion following a hearing, and Envoy filed a timely notice of appeal.

Discussion

Envoy raises the following arguments on appeal: (1) that the trial court erred by denying its motion for a JML, (2) that the court erred with respect to several evidentiary rulings, (3) that the compensatory damages are excessive, and (4) that the evidence did not support any award of punitive damages or, alternatively, that the punitive damages are excessive.

I. Envoy's Motion for a JML

Envoy argues that the trial court erred by denying its motion for a JML because, it says, Creagh failed to establish a prima facie case of retaliatory discharge. Alternatively, Envoy argues that, even if Creagh carried that burden, it "offered a legitimate non-discriminatory reason for Creagh's termination (falsification of a medical note)" and that Creagh failed to prove that this reason was pretextual. Envoy's brief, p. 44.

"We review as follows a trial court's ruling on a motion for a JML made after a verdict has been returned:

"The standard of review applicable to a ruling on a [renewed] motion for [a JML] is identical to the standard used by the trial court in granting or denying a motion for [a JML]. Thus, in reviewing the trial court's ruling on the motion, we review the evidence in the light most favorable to the nonmovant, and we determine whether the party with the burden of proof has produced sufficient evidence to require a jury determination.

"....

"... In ruling on a [renewed] motion for a [JML], the trial court is called upon to determine whether the evidence was sufficient to submit a question of fact to the jury; for the court to determine that it was, there must have been 'substantial evidence' before the jury to create a question of fact. '[S]ubstantial evidence is

evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.'"

"American Nat'l Fire Ins. Co. v. Hughes, 624 So. 2d 1362, 1366-67 (Ala. 1993) (citations omitted).'"

Complete Cash Holdings, LLC v. Powell, 239 So. 3d 550, 556 (Ala. 2017)

(quoting Lee v. Houser, 148 So. 3d 406, 414 (Ala. 2013)).

"Additionally, this Court noted in Liberty National Life Insurance Co. v. Daugherty, 840 So. 2d 152, 156 (Ala. 2002):

""A judgment as a matter of law is proper only where there is a complete absence of proof on a material issue or where there are no controverted questions of fact on which reasonable people could differ and the moving party is entitled to a judgment as a matter of law.'" Southern Energy Homes, Inc. v. Washington, 774 So. 2d 505, 510-11 (Ala. 2000), quoting Locklear Dodge City, Inc. v. Kimbrell, 703 So. 2d 303, 304 (Ala. 1997).'"

Lawson v. Moore, 25 So. 3d 417, 420 (Ala. 2008).

To establish a prima facie case of retaliatory discharge, a plaintiff must prove "1) an employment relationship, 2) an on-the-job injury, 3) knowledge on the part of the employer of the on-the-job injury, and 4) subsequent termination of employment based solely upon the employee's on-the-job injury and the filing of a workers' compensation claim."

Alabama Power Co. v. Aldridge, 854 So. 2d 554, 563 (Ala. 2002) (emphasis

added). See also § 25-5-11.1, Ala. Code 1975 (providing that "[n]o employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits" (emphasis added)).

"There is no dispute between the parties that [Creagh] established the first three elements of a retaliatory-discharge claim. The disagreement ... concerns the fourth element, i.e., whether [Creagh] established that [she] was fired 'solely' because of [her] workplace injury and the filing of a workers' compensation claim.

"'Because direct evidence demonstrating that an employer has discharged an employee solely because the employee has filed a workers' compensation claim is not often easily obtained, an employee may establish by circumstantial evidence that the actual reason for the discharge was the employee's filing of a workers' compensation claim.'

"Hatch v. NTW Inc., 35 So. 3d 623, 628 (Ala. Civ. App. 2009).

"'This Court identified in [Alabama Power Co. v. Aldridge], 854 So. 2d 554 (Ala. 2002),] certain factors that can be considered as circumstantial evidence of a causal connection between an employee's filing a workers' compensation claim and that employee's discharge[:]

""'1) knowledge of the compensation claim by those making the decision on termination, 2) expression of a negative attitude toward the employee's injured condition, 3) failure to adhere to

established company policy, 4) discriminatory treatment in comparison to similarly situated employees, 5) sudden changes in an employee's work performance evaluations following a workers' compensation claim, and 6) evidence that the stated reason for the discharge was false.'"

"854 So. 2d at 564-65 (quoting Chhim v. University of Houston, 76 S.W.3d 210, 218 (Tex. Ct. App. 2002)). Furthermore, we observed that "[m]any states also consider '[p]roximity in time between the filing of the workers' compensation claim and discharge' a persuasive factor in establishing a causal connection." Aldridge, 854 So. 2d at 565 (quoting Rebarchek v. Farmers Coop. Elevator & Mercantile Ass'n, 272 Kan. 546, 555, 35 P.3d 892, 899 (2001)).'

"Flint Constr. Co. [v. Hall], 904 So. 2d [236,] 248 [(Ala. 2004)]."

Ex parte Isbell, 153 So. 3d 8, 17-18 (Ala. 2013). "Once the plaintiff has established a prima facie case [of retaliatory discharge], the burden shifts to the defendant to present legitimate reasons for the plaintiff's discharge; if the defendant presents legitimate reasons the burden ... shift[s] back to the plaintiff to prove that the stated reasons are pretextual." Aldridge, 854 So. 2d at 567.

Envoy argues that Creagh failed to establish a prima facie case of retaliatory discharge because, it says, she failed to prove that her

employment was terminated solely on the basis of her worker's compensation claim. In support of that argument, Envoy contends that "the termination decision undisputedly was made by a ... decision-maker in another office, in a different department, in another state," i.e., Wilson, and that Wilson's email to Atkinson reflects that he made that decision based on his conclusion that Creagh had "falsified a medical document changing her work restrictions." Envoy's brief, pp. 19, 37. Envoy then notes that, under Alabama law, "if there is uncontradicted evidence of an independently sufficient basis for [an employee's] discharge then the defendant is entitled to judgment as a matter of law." Aldridge, 854 So. 2d at 568.

The problem with Envoy's argument is that it was not undisputed that Wilson made the decision to terminate Creagh's employment. Although there is some evidence to support such a finding, there is also evidence to support a finding that Atkinson made that decision. Specifically, Envoy stated in response to a discovery request that "[t]he plaintiff was terminated by Brigitte Atkinson" (emphasis added), and it was Atkinson who signed Creagh's termination letter. That evidence alone provided a basis upon which the jury could have found that

Atkinson made the decision to terminate Creagh's employment. Envoy attempts to minimize that evidence, arguing that Wilson's email to Atkinson was a "directive" to terminate Creagh's employment and that the mere fact that Atkinson signed and delivered the termination letter does not "elevate her to decision-maker." Envoy's reply brief, p. 8. In other words, Envoy contends that Atkinson was merely "carry[ing] out the termination as instructed" by Wilson. Id. However, that was an argument to make to the jury. The role of this Court is to consider the evidence in a light most favorable to Creagh, and, applying that standard, the fact that Envoy unequivocally stated in response to a discovery request that Creagh "was terminated by Brigitte Atkinson" provided a basis upon which the jury could have found that Atkinson made the decision to terminate Creagh's employment.

In addition, Envoy's own witness testified that Atkinson had "independent[] ... authority to terminate [an] employee" and that the "process would be to go through HR [to] ensure that everything is followed correctly." Likewise, Atkinson did not testify that she could not make the decision to discharge an employee but, instead, testified only that she had to "have HR's authorization in order to terminate an

employee." (Emphasis added.) Also, Envoy's job description for its HR employees states that they "provide counsel and recommendations to supervisors and managers in matters of employee conduct, performance, corrective and disciplinary action." (Emphasis added.) All of that evidence, when considered in a light most favorable to Creagh, supports a finding that Atkinson made the decision to terminate Creagh's employment and that HR merely authorized or signed-off on that decision. As the United States Court of Appeals for the Fourth Circuit has observed: "When a formal decisionmaker acts merely as a cat's paw for or rubber-stamps a decision, report, or recommendation actually made by a subordinate, it is not inconsistent to say that the subordinate is the actual decisionmaker or the one principally responsible for the contested employment decision" Hill v. Lockheed Martin Logistics Mgmt., Inc., 354 F.3d 277, 290 (4th Cir. 2004) (emphasis added), overruled in part on other grounds by Gross v. FBL Fin. Servs., Inc., 557 U.S. 167 (2009).

Then there is the evidence regarding Envoy's investigation. As noted, the letter that Atkinson gave to Creagh on December 28, 2018 -- the same day that Wilson sent his email to Atkinson -- stated that Creagh

was "being suspended pending the outcome of an investigation into the documents [she] provided to [Envoy]." It was not until January 7, 2019 -- approximately 10 days later -- that Creagh was informed that her employment had been terminated. That evidence, when considered in a light most favorable to Creagh, supports a finding that Wilson's email to Atkinson was not a directive to terminate Creagh's employment and that, instead, that decision was made sometime later following further investigation, which, as noted, culminated in a termination letter signed only by Atkinson. Envoy correctly notes that one of its witnesses provided testimony indicating that the "investigation" was actually nothing more than "time for internal administrative tasks ... to be completed prior to the official termination date." Envoy's reply brief, p. 10. However, that testimony merely gave rise to a conflict in the evidence, and that conflict created a question of fact for the jury to resolve. Foster v. North Am. Bus Indus., Inc., 236 So. 3d 70, 78 (Ala. 2017). In resolving that factual dispute, the jury was tasked with determining how much credibility, if any, to give to the witnesses' testimony and thus was not required to believe Envoy's self-serving testimony regarding the investigation that occurred following Wilson's

email. See Tutor v. Sines, 380 So. 3d 1035, 1040 (Ala. 2023) (noting that a "witness's credibility is precisely the kind of question the jury must resolve").

The foregoing evidence, when considered in a light most favorable to Creagh, provided a substantial basis upon which the jury could have found that it was Atkinson -- not Wilson -- who made the decision to terminate Creagh's employment. That said, if the jury did make such a finding, then there was ample evidence to support a further finding that Atkinson was motivated solely by the fact that Creagh had filed a worker's compensation claim. First, Atkinson clearly had knowledge of that claim, and Creagh testified that her relationship with Atkinson had initially been friendly but that, following her injury, Atkinson became cold and even hostile toward her. According to Creagh, Atkinson's change in demeanor stemmed from her frustration with Creagh's inability to perform her normal duties without the assistance of other employees, which pulled those employees from their own duties. The evidence also indicated that Atkinson's frustration with Creagh's injury was exacerbated by the fact that, during this time, Atkinson was concerned about the efficiency of Envoy's operations at the Mobile

airport. Specifically, Creagh testified that Envoy was "short staffed" around that time and that, as a result, Atkinson was "threaten[ing] [employees'] jobs" and telling them that "[n]o one should be taking off work" "[no] matter what they have going on."

Then, according to Creagh, on December 3, 2018, Atkinson suggested that Envoy was no longer "a good fit" for Creagh, and, when Creagh told Atkinson that she wanted to continue working for Envoy, Atkinson said that she would "find a way to get rid of [Creagh]." (Emphasis added.) Significantly, Creagh testified that, during that conversation, Atkinson made no mention whatsoever of the altered note, despite the fact that Creagh had allegedly given it to her three days earlier and the fact that there was evidence indicating that Atkinson had "noticed the X's right away." That evidence supported Creagh's allegation that it was Atkinson who created the altered note after that conversation and then used it as subterfuge to accomplish her goal of "find[ing] a way to get rid of" Creagh, which was Creagh's theory of the case.¹ Indeed, the only possible conclusion from the evidence was that it

¹Creagh's counsel told the jury during his opening statement that "Atkinson altered [the November 30, 2018, return-to-work] note and

was either Atkinson or Creagh who created the altered note, which was a question only the jury could resolve. Foster, supra. Moreover, there was evidence that cast doubt on Atkinson's credibility -- namely, her stated reason for the termination of her own employment, which the evidence demonstrated was far from the complete truth. As we have already explained, such credibility determinations are solely within the province of the jury. Tutor, supra.

Two other facts also tend to support the conclusion that Atkinson terminated Creagh's employment based solely on Creagh's worker's compensation claim. First, Envoy terminated Creagh's employment on January 7, 2019 -- less than three months after her injury. This Court has previously determined that a similar period between the plaintiff's injury and the termination of his employment tended to support a prima facie case of retaliatory discharge. See Ex parte Isbell, 153 So. 3d at 18 (noting, in holding that the plaintiff had established a prima facie case of retaliatory discharge, that the plaintiff had been "fired approximately three months after filing his workers' compensation claim"). There was

blamed it on [Creagh]," and he reminded the jury during his closing statement that "Atkinson forge[d] the return-to-work slip."

also some evidence to support a finding that Envoy had previously discharged employees who had suffered on-the-job injuries. Specifically, Creagh testified that, when she reported her injury shortly after it occurred, her shift supervisor, Arthur, told her that "the last person who had reported getting hurt on the job was no longer there." A reasonable inference to draw from that statement, especially when it is considered in a light most favorable to Creagh, is that Envoy had previously discharged employees who had suffered on-the-job injuries. It is true that Arthur disputed making that statement, and arguably there are other ways to interpret the statement even if he did make it. However, we have already explained that our role is to consider the evidence in a light most favorable to Creagh and that conflicts in the evidence created a question of fact for the jury to resolve.

Given the foregoing evidence, this Court concludes that Creagh presented substantial evidence indicating that Envoy terminated her employment based solely on the fact that she had filed a worker's compensation claim. The burden then shifted to Envoy to "present [a] legitimate reason[] for [Creagh's] discharge." Aldridge, 854 So. 2d at 567. Envoy carried that burden by presenting evidence indicating that it

terminated Creagh's employment based on its conclusion that she had submitted the altered note to Atkinson. The burden then "shift[ed] back to [Creagh] to prove that the stated reason[] [was] pretextual," id. at 567 -- a burden that, Envoy says, Creagh failed to carry. We disagree. As we have already explained, there was evidence to support a finding that it was Atkinson who created the altered note and then used it as subterfuge to accomplish her goal of "find[ing] a way to get rid of" Creagh. Thus, the jury could have found that the altered note was not only a pretext for the termination of Creagh's employment but also one that Envoy fabricated.²

In arguing that Creagh failed to carry her burden of demonstrating pretext, Envoy relies almost exclusively on Coca-Cola Bottling Co. Consolidated v. Hollander, 885 So. 2d 125 (Ala. 2003), arguing that this case is "strikingly similar" to that one. Envoy's brief, p. 46. However, Hollander was not a decision by a majority of this Court and thus is not

²Envoy believes that it presented an independent and legitimate reason for the termination of Creagh's employment because, it says, regardless of Atkinson's reason for terminating Creagh's employment, Wilson's email to Atkinson indicated that his reason for terminating Creagh's employment was his belief that she had created the altered note. However, as we have already explained, the jury could have found that Wilson did not make the decision to terminate Creagh's employment.

binding precedent. Ex parte DBI, Inc., 23 So. 3d 635, 647 (Ala. 2009).

Regardless, we find Hollander to be distinguishable on the facts.

In Hollander, Louis Frank Hollander sued Coca-Cola Bottling Co. Consolidated ("CCBCC"), asserting a claim of retaliatory discharge. Hollander's theory of the case was that CCBCC had terminated his employment solely because he had filed a worker's compensation claim, but CCBCC presented evidence indicating that it had discharged Hollander for dishonesty. Specifically, CCBCC presented evidence indicating that Hollander had asked his doctor to backdate a work-release note, and, although Hollander disputed that allegation, the doctor's notes reflected that Hollander had made that request. Following a jury's verdict in Hollander's favor, CCBCC appealed, and this Court's main opinion concluded that a JML should have been entered in favor of CCBCC because CCBCC had an independent basis for terminating Hollander's employment. Hollander argued in response that CCBCC was not entitled to a JML because there was conflicting evidence as to whether he had requested the backdated work-release note, but the main opinion stated:

"[Even] if we accept everything that Hollander says as true, including that he never asked Dr. Nichols to backdate any

document, it still would not change the fact that CCBCC thought that, based on Dr. Nichols's note indicating that Hollander had asked him to backdate a work-release slip, dishonesty was a legitimate basis for firing Hollander and that an investigation would not have changed CCBCC's decision."

885 So. 2d at 132 (emphasis added). In this case, though, there was evidence to support a finding that Atkinson created the altered note. Thus, unlike the evidence in Hollander, the evidence in this case provided a basis upon which the jury could have found that the person who made the decision to terminate Creagh's employment knew that Creagh had not created the altered note.

In sum, Creagh made a prima facie showing that Envoy terminated her employment solely because she had filed a worker's compensation claim. Envoy then presented evidence indicating that it had a legitimate reason for discharging Creagh, and Creagh presented evidence indicating that Envoy's stated reason was pretextual. Thus, the trial court correctly concluded that the evidence created questions of fact for the jury to resolve, and the court therefore did not err by denying Envoy's motion for a JML. Accordingly, this argument does not entitle Envoy to relief.

II. Evidentiary Issues

Envoy argues that the trial court erred with respect to several evidentiary rulings, though most of its arguments challenge the admission of Plaintiff's Exhibit 155, which was Envoy's original answer to Interrogatory 14. We will address each of Envoy's arguments in turn, keeping in mind that evidentiary rulings are "generally left to the discretion of the trial court" and "will not be reversed except upon a clear showing of abuse of discretion." Ex parte Loggins, 771 So. 2d 1093, 1103 (Ala. 2000).

First, Envoy argues that the trial court erred by allowing Creagh to present the jury with "the incorrect response [to Interrogatory 14] and the forged verification signature," i.e., the forged signature page that purportedly contained Conerly's signature. Envoy's brief, p. 50 (emphasis in original). According to Envoy, it was unfairly prejudiced by the admission of the forged signature page because, it says, that evidence "pre-impeached Conerly before she took the witness stand," even though the evidence indicated that the signature was not Conerly's. Id. at 15. However, the version of Plaintiff's Exhibit 155 that was given to the jury did not contain the forged signature page, and, when Creagh's counsel suggested during closing arguments that Conerly had falsely sworn to

Envoy's original answer to Interrogatory 14, the trial court instructed the jury that Conerly "never submitted a response to Interrogatory 14 that was sworn to by her" -- an instruction that the jury is presumed to have followed. Black Warrior Elec. Membership Corp. v. McCarter, 115 So. 3d 158, 166 (Ala. 2012). Thus, for all that appears in the record, the jury never saw the forged signature page and, more importantly, did not consider Envoy's original answer to Interrogatory 14 to be the sworn response of Conerly.³ Accordingly, this argument does not entitle Envoy to relief.

Second, Envoy makes the following argument regarding its original answer to Interrogatory 14:

"As an acknowledged mistake and a known forgery, it did not even cross the Rule 104 reliability threshold. Ala. R. Evid. 104. The response constituted inadmissible hearsay as it was not properly verified, containing a forgery. Ala. R. Evid. 801, [8]02.[⁴] Additionally, it had no 'tendency to make the

³Envoy contends that Creagh's counsel "showed the jury the version with Conerly's signature page multiple times, including in a blow-up at closing." Envoy's brief, p. 13. However, the record citations that Envoy has provided do not reflect that Creagh's counsel showed the jury the forged signature page, much less a "blow-up" of it, or even that counsel showed the jury any exhibit at all.

⁴Envoy actually cites Rule 102, Ala. R. Evid., rather than Rule 802, Ala. R. Evid., but, taken in context, it appears that this was a typographical error because Rule 102 does not address hearsay.

existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' Ala. R. Evid. 401. Envoy never changed its story about the reasons for Creagh's termination[;] rather its former counsel misrepresented the reason due to an admitted error."

Envoy's brief, pp. 51-52. The foregoing paragraph presents several single-sentence arguments, each of which is supported by nothing more than a citation to one or more of the Alabama Rules of Evidence without any further explanation as to why those rules barred the admission of Envoy's original answer to Interrogatory 14. In fact, with respect to three of the four rules it has cited, Envoy has not even bothered to quote the rules or to discuss their substance. In other words, Envoy has presented several single-sentence arguments that are supported by, at best, only a general principle of law. This Court has previously explained that such arguments do not comply with the requirements of Rule 28(a)(10), Ala. R. App. P., and are therefore deemed to be waived. See, e.g., Ex parte Borden, 60 So. 3d 940, 944 (Ala. 2007); and Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007) (holding that a "three-sentence argument" supported by only "a general proposition of law" did not comply with Rule 28(a)(10) and therefore would not be considered). See also Ex parte Riverfront, LLC, 129 So. 3d 1008, 1015 (Ala. 2013)

(plurality opinion) (refusing to consider an argument that was supported by only "general citations to the Alabama Rules of Civil Procedure"). Thus, we will not consider these arguments.⁵

Third, Envoy argues that its original answer to Interrogatory 14 was inadmissible pursuant to Rule 403, Ala. R. Evid., which provides that relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." In support of its argument, Envoy contends that "[t]he admission of [its original answer to Interrogatory 14] was disastrously prejudicial to Envoy, outweighing any possible relevance." Envoy's brief, p. 52. However, Rule 403 neither prohibits the admission of relevant evidence merely because it is prejudicial, even if the evidence is "disastrously prejudicial," nor prohibits the admission of relevant evidence merely because its probative value is "outweighed" by its prejudicial effect. Rather, Rule 403 prohibits the admission of relevant evidence if its probative value is substantially

⁵To be clear, we do not suggest that the Alabama Rules of Evidence cannot serve as the "authority" required by Rule 28(a)(10). After all, those rules are authoritative. However, to comply with Rule 28(a)(10), an appellant must do more than merely cite a rule of evidence in support of a single-sentence argument.

outweighed by the danger of unfair prejudice. As this Court has previously explained:

"Mere prejudice is not a basis for exclusion under Rule 403, because evidence can be harmful, yet not unfairly prejudicial. State v. Parker, 740 So. 2d 421 (Ala. Crim. App. 1996), reversed on other grounds, 740 So. 2d 432 (Ala. 1999). The proper test for determining whether relevant evidence has been properly excluded under Rule 403 is to determine whether 'its probative value is substantially outweighed by the danger of unfair prejudice.' ([First] [e]mphasis added.) McElroy's Alabama Evidence clarifies the Rule 403 standard by stating: 'This principle does not empower the trial judge to exclude evidence simply because it is prejudicial or because its prejudice outweighs its probative value. Rather, exclusion is merited only when the prejudice substantially outweighs the probative value.' Charles W. Gamble, McElroy's Alabama Evidence, § 21.01(4) (5th ed. 1996) (footnotes omitted) ([last] emphasis [in] original)."

Ex parte Vincent, 770 So. 2d 92, 95-96 (Ala. 1999) (some emphasis added). As noted, Envoy argues that the admission of its original answer to Interrogatory 14 was "disastrously prejudicial" and that the prejudice "outweigh[ed] any possible relevance." Envoy's brief, p. 52. Rule 403 makes clear, and Ex parte Vincent confirms, that, even if those allegations are true, they did not provide a basis for excluding Envoy's original answer to Interrogatory 14. Thus, this argument does not entitle Envoy to relief.

In a related argument, Envoy contends that the trial court "deprived [it] of any ability to defend itself or explain an interrogatory response that was solely the fault of Envoy's previous counsel." Envoy's brief, p. 52. See also id. at 50-51 ("The [trial] court ... err[ed] by blocking Envoy from offering any evidence of how the incorrect response came about ... and how Envoy had no responsibility."). In other words, Envoy argues that the trial court prohibited it from presenting any evidence indicating, or even from arguing, that Fox alone was responsible for the original answer to Interrogatory 14 and that Fox's mistake therefore should not be attributed to Envoy. However, even if we ignore the fact that Envoy's argument is not supported by any authority, the record citations that Envoy has provided (R. 295-316) do not support its argument.⁶

That part of the transcript to which Envoy cites, which occurred mid-trial, is the first record of any discussion among the trial court and the parties regarding Interrogatory 14. During that discussion, the

⁶Envoy relies on Rule 403 in support of this argument. However, although Rule 403 might have provided a basis for excluding Envoy's original answer to Interrogatory 14, that rule has no bearing on whether the trial court erred by allegedly prohibiting Envoy from presenting its own evidence in response.

primary issue was whether Creagh would be allowed to present Envoy's original answer to Interrogatory 14 with the forged signature page or would be required to present the answer with a blank signature page, and the trial court ruled that Creagh could present the forged signature page and admitted it into evidence (though the court later removed it from evidence). Following that ruling, Envoy's counsel told the trial court that she was "going to want to put in the two times that [Fox] tried to clear it up," i.e., to correct his mistake, and the court explained that counsel could present Envoy's amended answer to Interrogatory 14. However, at no point during that discussion did Envoy's counsel ask that she be allowed to present any other evidence. Consistent with its ruling, the trial court admitted Envoy's amended answer to Interrogatory 14, which stated that Creagh had been discharged for "falsifying documents," and Envoy's counsel argued during closing arguments that Envoy had "answered the interrogatory wrong once and then corrected it." Envoy's counsel did not argue that Fox alone was responsible for that mistake, but the record citations that Envoy has provided do not indicate that the trial court prohibited counsel from making such an argument.

As we noted earlier, it is evident that the trial court made some pretrial rulings regarding the admissibility of Envoy's original answer to Interrogatory 14, which might have included the rulings that Envoy says the court made. However, as Envoy concedes, those rulings are not contained in the record, and it is well settled that "[t]his Court's appellate review is restricted to the record on appeal" and that we "cannot consider any evidence or contention that is not supported by the record." Green v. Ingram, 794 So. 2d 1070, 1072 (Ala. 2001). That said, it is clear from this part of the transcript that the trial court was concerned about opening the door to collateral issues concerning Fox -- namely, that Fox might have been responsible for the forged signature page and that Envoy had sued him in a separate action. However, there is no indication that the trial court prohibited Envoy's counsel from making the simple argument that Fox alone was to blame for the original answer to Interrogatory 14, which in and of itself would not have opened the door to such collateral issues.⁷

⁷At one point during the discussion, Envoy's counsel complained that the trial court had prohibited her from "defend[ing] against" the forged signature page, which she believed would cast doubt on Conerly's credibility. That statement, which counsel did not elaborate on, does not indicate that the trial court had prohibited Envoy's counsel from

In short, Envoy argues that the trial court prohibited it from attempting to prove or even from arguing that Fox alone was to blame for the original answer to Interrogatory 14, but Envoy has not demonstrated that the court actually did prohibit it from presenting such evidence or making such an argument. "This Court will not place a trial court '""in error on matters which the record reveals it neither ruled upon nor was presented the opportunity to rule upon.'""' A.W. ex rel. Hogeland v. Wood, 57 So. 3d 751, 759 (Ala. 2010) (emphasis and citations omitted). Thus, this argument does not entitle Envoy to relief.

Fourth, Envoy argues that the trial court erred by "letting Creagh's counsel, via the De La Paz deposition, read direct quotations from certain post-termination employee complaints against [Atkinson] even after granting Envoy's motions to exclude those complaints." Envoy's brief, p. 53 (emphasis in original). According to Envoy, those employee complaints "were lodged in 2022, years after the 2019 events" that gave rise to this case, and it alleges that Creagh presented that evidence "as proof of Atkinson's bad character and her alleged malicious motive

attempting to convince the jury that Envoy was not responsible for the original answer to Interrogatory 14.

toward Creagh." Id. Thus, Envoy argues that the "direct quotations" from De La Paz's deposition were inadmissible under Rule 404, Ala. R. Evid., which generally prohibits character evidence that is presented for the purpose of proving action in conformity therewith.

However, Envoy has not identified the "direct quotations" from De La Paz's deposition that were allegedly inadmissible, and "'it is not the duty of [this Court] to search the record for evidence to support [Envoy's] contention of error.'" Island Girl Outfitters, LLC v. Allied Dev. of Alabama, LLC, 427 So. 3d 962, 966 (Ala. 2025) (citation omitted). Envoy has therefore waived this argument for failure to comply with Rule 28(a)(10). See Keaton v. State, 375 So. 3d 44, 108 (Ala. Crim. App. 2021) (holding that an argument that the trial court had erroneously admitted "'many irrelevant, inadmissible, and prejudicial assertions'" did not comply with Rule 28(a)(10) because the defendant "d[id] not identify [the] allegedly inadmissible comments"). Furthermore, the trial court admitted into evidence the termination letter that De La Paz gave to Atkinson, and that letter references the specifics of several complaints that Atkinson's inferiors had made against her in 2022. Envoy does not argue that the trial court erred by admitting that letter, and it is well

settled that the erroneous admission of cumulative evidence is harmless error. Ex parte Phillips, 287 So. 3d 1179, 1209 (Ala. 2018). Thus, for those reasons, this argument does not entitle Envoy to relief.

Fifth, Envoy argues that the trial court erred by "allow[ing] Creagh's counsel to repeatedly question Envoy's witnesses about whether Creagh was deprived of her constitutional right to 'due process' prior to her termination." Envoy's brief, p. 53. To be clear, Envoy points to only two such questions, which, it says, "carried the very misleading implication that [it] owed an additional duty to Creagh," even though "few propositions are better established than ... that employees can be 'terminated for any reason or, even for no reason at all.'" Id., pp. 53-54 (quoting Hoffman-La Roche, Inc. v. Campbell, 512 So. 2d 725, 727 (Ala. 1987)). However, Envoy did not object to one of the questions, and, "[w]hen an appellant 'fail[s] to make a timely objection, there is nothing for this Court to review.'" Ware v. Timmons, 954 So. 2d 545, 558 (Ala. 2006) (citation omitted). As for the other question, the only objection Envoy raised at trial was "relevance," which is not the argument it has raised on appeal. It is well settled that "[t]he statement of specific grounds of objection waives all grounds not specified, and the trial court

will not be put in error on grounds not assigned at trial.'" Ex parte Coulliette, 857 So. 2d 793, 794 (Ala. 2003) (citation omitted). Thus, this argument does not entitle Envoy to relief.

III. Damages

We come now to the issue of damages. Envoy argues that both the compensatory damages and the punitive damages are excessive, and it sets forth various arguments in support of its contention that this Court must therefore order a remittitur of those damages. As noted, Envoy raised these arguments in its postjudgment motion, and, following a hearing, the trial court denied that motion in a written order that states: "Defendant's Motion for Renewed [JML] and Alternative Motion for a New Trial is hereby DENIED." (Capitalization in original.)

In Daniels v. East Alabama Paving, Inc., 740 So. 2d 1033 (Ala. 1999), this Court stated:

"We have ... recognized that the trial judge is better positioned [than this Court] to decide whether [a jury's] verdict is ... flawed. He has the advantage of observing all of the parties to the trial -- plaintiff and defendant and their respective attorneys, as well as the jury and its reaction to all of the others. There are many facets of a trial that can never be captured in a record, so that the appellate courts are at a special disadvantage when they are called upon to review trial court action in this sensitive area, although increasingly they are required to do so. Therefore, it is not only appropriate,

but indeed our duty, to require the trial courts to reflect in the record the reasons for interfering with a jury verdict, or refusing to do so, on grounds of excessiveness of the damages.'"

740 So. 2d at 1043-44 (quoting Hammond v. City of Gadsden, 493 So. 2d 1374, 1378-79 (Ala. 1986)) (emphasis omitted). Thus, when a trial court does not provide its reasons for granting or denying a motion for a remittitur, it is not uncommon for this Court to remand the case for the trial court to provide written findings to support its ruling. See, e.g., Love v. Johnson, 775 So. 2d 127, 127 (Ala. 2000) ("We remand this case for the trial court to enter an order stating the reasons supporting its denial of the motion for a remittitur."); Hammond v. City of Gadsden, 493 So. 2d 1374, 1379 (Ala. 1986) (noting that requiring the trial court to "state for the record the factors considered" in granting or denying a motion for a remittitur serves to assist this Court in "discharg[ing] fairly its role of review"); and Winn-Dixie of Montgomery, Inc. v. Colburn, 709 So. 2d 1222, 1226 (Ala. 1998) (same).

In this case, the trial court did not provide its reasons for denying Envoy's motion for a remittitur of the damages that the jury awarded; instead, the court simply denied Envoy's motion without comment. Thus, we remand the case with instructions for that court to provide written

findings in support of its refusal to remit both the compensatory damages and the punitive damages. The trial court shall file a return to remand with this Court within 28 days of the date of this opinion.

Conclusion

Envoy has not demonstrated that the trial court erred in denying its motion for a judgment as a matter of law or that the court erred in any of its evidentiary rulings. Thus, we affirm the judgment of the trial court insofar as it holds Envoy liable for Creagh's harm. However, we remand the case to the trial court with instructions for that court to provide written findings in support of its refusal to remit both the compensatory damages and the punitive damages. The trial court shall file a return to remand with this Court within 28 days of the date of this opinion.

AFFIRMED IN PART AND REMANDED WITH INSTRUCTIONS.

Stewart, C.J., and Bryan, Mendheim, and McCool, JJ., and Minor, Special Justice,* concur.

Sellers, J., dissents, with opinion, which Parker, J., joins.

Cook, J., dissents, with opinion, which Wise, J., joins.

Shaw, J., recuses himself.

*Judge Richard Minor of the Alabama Court of Criminal Appeals was appointed to serve as a Special Justice in regard to this appeal.

SELLERS, Justice (dissenting).

I respectfully dissent. The evidence in this case clearly indicates that Envoy Air, Inc., did not terminate Jada Creagh's employment solely because she had filed a worker's compensation claim for an on-the-job injury. See § 25-5-11.1, Ala. Code 1975 ("No employee shall be terminated by an employer solely because the employee has instituted or maintained any action against an employer to recover workers' compensation benefits."). At issue here is a medical note that Creagh provided to her supervisor regarding her work restrictions following her injury. Envoy ultimately determined that the medical note had been altered, and it terminated Creagh's employment. Creagh claims that she presented a prima facie case of retaliatory discharge because, she says, her supervisor was the person who altered the medical note and then used it as subterfuge to have her employment terminated. But this claim was merely conjecture. And, even if Creagh presented a prima facie case of retaliatory discharge, it is clear that Envoy provided evidence of an independent, nonretaliatory reason for the termination. See Alabama Power Co. v. Aldridge, 854 So. 2d 554, 567 (Ala. 2002) ("Once the plaintiff has established a prima facie case [of retaliatory discharge], the burden

shifts to the defendant to present legitimate reasons for the plaintiff's discharge; if the defendant presents legitimate reasons the burden would shift back to the plaintiff to prove that the stated reasons are pretextual."). Here, Creagh gave a medical note to her supervisor, who believed that the note contained suspicious markings. The supervisor conveyed her suspicions to a worker's compensation analyst at Envoy, who, in turn, obtained the original medical note from Creagh's doctor. The worker's compensation analyst determined that there was a notable discrepancy between the original medical note and the one that Creagh had provided to her supervisor. The worker's compensation analyst shared her findings with other members of the company's human-resources ("HR") team. Creagh was thereafter given an opportunity to explain the discrepancy and provided a response. After considering that response, Johnathan Wilson, an HR employee stationed in Dallas, Texas, sent Creagh's supervisor an email stating that Creagh had not "provided sufficient reason as to why the two documents [were] different"; that the "resulting conclusion is that the document [at issue] was altered after leaving the Doctor's office, and prior to being turned in to Envoy"; and that the "altering of official documentation is considered a violation of

Envoy Guiding Principles and Business Ethics." Importantly, the email directed that the supervisor "suspend [Creagh] immediately, and proceed with off-boarding based upon the above determination." It is clear from Wilson's email that he was the person who directed that Creagh be suspended and ultimately discharged, or off-boarded from her employment at Envoy. Creagh neither offered evidence to dispute the authenticity or substance of Wilson's email nor offered any evidence to indicate that Wilson had any reason to retaliate against her or that he had any knowledge that the supervisor may have altered the medical note. As explained in Aldridge, "if there is uncontradicted evidence of an independently sufficient basis for the discharge then the defendant is entitled to a judgment as a matter of law." 854 So. 2d at 568. Because Creagh did not demonstrate that the stated reason for the termination -- providing an altered medical note -- was pretextual, the jury verdict cannot stand. Thus, I would reverse the judgment based on that verdict and remand the cause to the Mobile Circuit Court with instructions for that court to enter a judgment as a matter of law in favor of Envoy.

Parker, J., concurs.

COOK, Justice (dissenting).

I respectfully dissent. Alabama's wrongful-termination statute is perhaps one of the strictest in the country and differs substantially from federal employment statutes. It requires that, to recover damages, an employee must prove that she was terminated "solely because" she filed a workers' compensation action. § 25.5.11.1, Ala. Code 1975 (emphasis added).

The word "solely" in the statute is not surplusage. As our Court has recognized, many states' statutes omit that limitation and "require less, merely calling for a causal connection between the claim for workers' compensation benefits and the discharge." Alabama Power Co. v. Aldridge, 854 So. 2d 554, 564 (Ala. 2002) (citing other states' statutes that highlight that the claim must be only a cause and not the sole cause of the termination).

To determine whether a plaintiff was terminated "solely because" she filed a workers' compensation action, we must identify who the decisionmaker was because the circumstantial factors that might show a causal connection between an employee's filing a workers' compensation claim and that employee's termination turn on the state of mind and

actions of the person or persons who actually decided to terminate the employee at issue. See Aldridge, 854 So. 2d at 564-65 (quoting Chhim v. University of Houston, 76 S.W.3d 210, 218 (Tex. App. 2002)) (listing the following factors: "'1) knowledge of the compensation claim by those making the decision on termination, 2) expression of a negative attitude toward the employee's injured condition, 3) failure to adhere to established company policy, 4) discriminatory treatment in comparison to similarly situated employees, 5) sudden changes in an employee's work performance evaluations following a workers' compensation claim, and 6) evidence that the stated reason for the discharge was false'"). The first factor expressly refers to the decisionmaker, and the remaining factors likewise make sense only when evaluated from the perspective of the individual or individuals who made the termination decision.

Creagh contends that her supervisor and manager, Brigitte Atkinson, made the decision to terminate her. Envoy insists, however, that Dallas-based human-resources ("HR") representative Johnathan Wilson made that decision.

Envoy highlights a string of contemporaneous emails that display the timeline and decision process for Creagh's firing. Those emails show

that Atkinson told Valerie Conerly about the note and that Conerly then emailed members of Envoy's HR team to loop them in. They opined that altering medical notes is something that usually leads the HR team to separate an employee, and David Barrera, a member of the HR team, instructed Atkinson to conduct an interview with Creagh.

Atkinson later emailed Envoy's HR team with the details of that interview. Shortly after, Wilson detailed his findings that Creagh's reasons were insufficient and instructed Atkinson: "Please suspend the employee immediately, and proceed with off-boarding based upon the above determination." (Emphasis added.)

RE: Jada Creagh



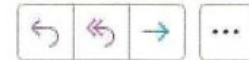
Wilson, Johnathan

To: Conerly, Valerie; Atkinson, Brigitte

Cc: Barrera, David; Warren-Murrell, Bridgette



159-13528



12/28/2018

Brigitte,

Per our conversation, the employee has now been provided the opportunity to speak to the discrepancy between the document that she provided and the document that was provided by the Doctors office. The employee has not provided sufficient reason as to why the two documents are different. The resulting conclusion is that the document was altered after leaving the Doctor's office, and prior to being turned in to Envoy. The altering of official documentation is considered a violation of Envoy Guiding Principles and Business Ethics. Specifically the Guiding Principles says, "We conduct ourselves with the highest standards of honesty, integrity and fairness – obeying all the laws of the communities in which we work or do business. We must all understand and comply with our business ethics policies."

Please suspend the employee immediately, and proceed with off-boarding based upon the above determination.

R/S,

JW

In my view, that un rebutted email, contemporaneous with Creagh's firing, is the linchpin in this case. After reviewing the doctor's note, Wilson instructed Atkinson: "Please suspend the employee immediately, and proceed with off-boarding" The directive was unequivocal. Wilson did not merely recommend termination; he ordered it. Nothing in the instruction left Atkinson discretion as to whether Creagh should be fired. And the only reasoning given was not that Creagh had a workers' compensation claim and had to be let go, but that Creagh's explanation for the inconsistent doctor's notes was insufficient. For Wilson, that was

enough. He required Creagh's termination.

Moreover, it is undisputed that Wilson had a neutral reason for his decision to terminate -- the provision of an altered doctor's note. And, no argument was made that Wilson acted solely because of the workers' compensation claim.

The main opinion takes the position that there was sufficient evidence for the jury to conclude, instead, that Atkinson decided to terminate Creagh's employment, that she took steps to do so, and that she was motivated by the filing of the workers' compensation claim. However, in my view, we do not need to decide whether Atkinson had some involvement in the termination decision, because there is still not sufficient evidence indicating that Atkinson was the only decisionmaker.

The main opinion responds to this argument by citing one case from the United States Court of Appeals for the Fourth Circuit -- Hill v. Lockheed Martin Logistics Mgmt., Inc., 354 F.3d 277 (4th Cir. 2004). Hill involved a termination suit that was brought under Title VII of the Civil Rights Act and under the Age Discrimination in Employment Act ("the ADEA"), see 29 U.S.C.A. §§ 621 to 634.

Alabama's wrongful-termination statute is materially different

from the federal law being analyzed in Hill. For example, while our law says that the reason for firing must be the sole cause of the termination, the Fourth Circuit Court of Appeals in Hill explains that a plaintiff bringing a claim under Title VII or the ADEA "need not demonstrate that the prohibited characteristic was the sole motivating factor to prevail, so long as it was a motivating factor." Id. at 284 (emphasis added). The difference in the applicable statutes is critical here.

The Alabama Legislature made an intentional decision to require that the decision to terminate be "solely because" of the filing of a workers' compensation claim. It is striking that Hill -- the only case cited by the majority in support of its conclusion that there was sufficient evidence indicating that Atkinson was the sole decisionmaker -- expressly rejects the "sole motivating factor" test -- a test that the Alabama Legislature expressly codified.

Thus, even assuming that Atkinson also played a role -- whether a large or a more significant one -- in the decisionmaking framework, we still have Wilson making his own determination. For that reason, Creagh did not meet her burden of showing that her workers' compensation claim was the only cause as Alabama law demands. As a result, her retaliatory-

discharge claim ought to fail, and we should reverse the trial court's order denying Envoy's motion for a judgment as a matter of law and instruct it to enter judgment in favor of Envoy.

Wise, J., concurs.