[Cite as *Thomas v. Columbia Sussex Corp.*, 2011-Ohio-17.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Charlotte L. Thomas,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-93 (C.P.C. No. 08CVH-01-233)
Columbia Sussex Corp., dba Courtyard by Marriottt et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on January 6, 2011

Law Offices of Russell A. Kelm, *Russell A. Kelm* and *Joanne Detrick*, for appellee.

Ogletree Deakins Nash Smoak & Stewart P.C., Thomas H. Barnard and *Sara E. Hutchins*, for appellants.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Defendant-appellant, Columbia Sussex Corporation ("Columbia Sussex"), appeals from the final judgment of the Franklin County Court of Common Pleas and its order denying its motion for judgment notwithstanding the verdict or motion for new trial. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} This is an age discrimination case brought by plaintiff-appellee, Charlotte L. Thomas ("Thomas"), under Ohio Revised Code Chapter 4112 against Columbia Sussex, Mike Baker, and Stan Clayton. Thomas alleged that she had been terminated in 2007

from her position as sales director for the Courtyard by Marriott Hotel near Hilliard, Ohio, because of her age, 67, and that she was replaced by a younger, less experienced employee aged 42.

{¶3} According to the evidence admitted at trial, Thomas had been the director of sales at the Holiday Inn Columbus since 2004. As a result of her successful performance, she received annual bonuses during her tenure at the hotel.

{¶4} In the year ending in 2006, the hotel was completely renovated to become a Courtyard by Marriott. Thomas remained in her job throughout that process. After the hotel became a Courtyard by Marriott, Thomas continued in her position and successfully increased sales. As part of her job, she helped where needed. Among other duties, she filled in for the person in charge of banquets and catering, Diana Gutknecht, when that person was absent. Thomas was unaware of anyone performing her duties when she was not available.

{¶5} In 2007, Thomas' immediate supervisor, Mike Baker, was under a great deal of pressure from Stan Clayton, vice president of operations, over the operation of the hotel. Clayton informed Baker that he needed to cut costs to bring the Columbus Courtyard by Marriott in line with the Harrisburg, PA Courtyard by Marriott. In Harrisburg, one person handled the duties of both the director of sales and the banquet and catering manager.

{¶6} In August 2007, Baker had a conversation with Clayton about the sales and catering aspect of the hotel. Clayton asked if he had met Thomas before, and Baker said, "I think I told him [he had] at a couple of the Christmas parties. 'Cause he hadn't been at the property for a while." (Tr. 632.) Clayton and Baker talked some more, and

Clayton asked, "is she that older woman?" (Tr. 633.) Baker said that "yes, she was an older woman." Id. Clayton did not ask any questions about Gutknecht other than her salary. Id.

{¶7} Prior to Thomas' termination, Baker pulled employee Patti Bible aside for a private conversation outside of the building. Bible was the employee Baker had designated to be a witness at Thomas' termination. According to Bible, Baker told Bible "they had told him that he wasn't going to have to let Charlotte go, but now they're telling her -- him that he had to let her go," and "[w]hat I remember him telling me was that he had to let the old one go -- the oldest one go." (Tr. 384.)

{¶8} When Baker told Thomas that he had to let her go, Thomas offered to take a pay cut. Bible, who was present as a witness, testified that Baker said "it's not that, that I gotta let you go. It's you they want gone." (Tr. 388.)

{¶9} Thomas' job was then given to Gutknecht, age 42.

{¶10} The case was tried before a jury in August 2009 and resulted in jury verdicts in favor of Thomas and against Columbia Sussex and Clayton. The jury found that Baker,[1] who was Thomas' direct supervisor, was not liable for age discrimination. Thomas was awarded compensatory damages of $140,164 and punitive damages of $280,328 (reduced by the trial court from the jury award of $300,000 in recognition of R.C. 2315.21). The trial court awarded attorney fees in the amount of $140,164 on December 31, 2009.

[1] Mike Baker represented himself at trial and is not a party to this appeal.

{¶11} Columbia Sussex filed a motion for judgment notwithstanding the verdict or a new trial. The trial court appeared to deny both motions, and this appeal followed. On appeal, Columbia Sussex assigns the following as error:

> 1. The Trial Court committed reversible error when it admitted Patricia Bible's hearsay testimony that "they had told him that he had to get rid of somebody in * * * the sales office" and "what I remember [Baker] telling me was that he had to let the old one go -- the oldest one go."
>
> 2. The Trial Court erred in denying Appellants' Motion for Judgment Notwithstanding the Verdict after it refused to instruct the jury as to the proper legal elements in an age discrimination case, which ultimately allowed for the jury's verdict for Appellant on her age discrimination claim without support by sufficient evidence.
>
> 3. The Trial Court erred in denying Appellants' Motion for New Trial, after it refused to instruct the jury as to the proper legal elements in an age discrimination case, which caused an irregularity in the proceedings.
>
> 4. The Trial Court erred in denying Appellants' Motion for Judgment Notwithstanding the Verdict or For New Trial, because the jury's award of front pay to Appellant was not supported by sufficient evidence.
>
> 5. The Trial Court erred in denying Appellants' Motion for Judgment Notwithstanding the Verdict or For New Trial, because the jury's award of punitive damages to Appellant was not supported by sufficient evidence.

{¶12} As a threshold matter, the record is devoid of an order denying the motion for judgment notwithstanding the verdict and for a new trial. The motion was fully briefed, and the parties proceeded as if the motion had been denied. The only copy of the decision this court was able to view was an unsigned, and undated decision purportedly issued by the magistrate who presided over the trial. This was found attached to

Columbia Sussex's supplemental appendix, but cannot serve as a substitute for a journalized entry on the court's docket.

{¶13} However, a nunc pro tunc order entered by the trial court on July 12, 2010, incorporates the post trial motions into the final judgment entry. Any motions still pending at the time of appeal are deemed overruled, and therefore we shall address the merits of the appeal. *Maust v. Palmer* (1994), 94 Ohio App.3d 764, 769; *Savage v. Cody-Zeigler, Inc.*, 4th Dist. No. 06CA5, 2006-Ohio-2760, ¶25.

{¶14} Civ.R. 50(A)(4) sets forth the standard for granting a motion for a directed verdict, and the same standard applies to a motion for judgment notwithstanding the verdict:

> When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.

{¶15} As for a new trial, Civ.R. 59(A) provides that:

> A new trial may be granted to all or any of the parties and on all or part of the issues upon any of the following grounds:
>
> (1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court or magistrate, or abuse of discretion, by which an aggrieved party was prevented from having a fair trial;
>
> (2) Misconduct of the jury or prevailing party;
>
> (3) Accident or surprise which ordinary prudence could not have guarded against;
>
> (4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

> (5) Error in the amount of recovery, whether too large or too small, when the action is upon a contract or for the injury or detention of property;
>
> (6) The judgment is not sustained by the weight of the evidence; however, only one new trial may be granted on the weight of the evidence in the same case;
>
> (7) The judgment is contrary to law;
>
> (8) Newly discovered evidence, material for the party applying, which with reasonable diligence he could not have discovered and produced at trial;
>
> (9) Error of law occurring at the trial and brought to the attention of the trial court by the party making the application.

{¶16} At the appellate level, when the basis of the motion involves a question of law, the de novo standard of review applies, and when the basis of the motion involves the determination of an issue left to the trial court's discretion, the abuse of discretion standard applies. *Dragway 42, L.L.C. v. Kokosing Construction Co. Inc.*, 9th Dist. No. 09CA0073, 2010-Ohio-4657, ¶32. Grant or denial of motion for new trial is committed to the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. Civ.R. 59(A).

{¶17} In its first assignment of error, Columbia Sussex argues that direct evidence of age discrimination should have been excluded based on hearsay within hearsay or "double hearsay." Evid.R. 805 provides that: "Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules." Thomas argues that Baker's statement concerning "the old one" to Bible is not hearsay, as it is an admission of a party opponent. Evid.R. 801(D)(2)(d) provides in pertinent part:

> **(D) Statements which are not hearsay**. A statement is not hearsay if:
>
> ***(2) Admission by a party-opponent***. The statement is offered against a party and is * * * (d) a statement by the party's agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship * * *.

{¶18} The trial court's discretion to admit or exclude evidence is broad "so long as such discretion is exercised in line with the rules of procedure and evidence." *Rigby v. Lake Cty.* (1991), 58 Ohio St.3d 269, 271. An appellate court reviewing the trial court's admission of evidence must limit its review to whether the lower court abused its discretion. Id. The term "abuse of discretion" connotes more than an error of law; it implies that the court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶19} We are not persuaded by Columbia Sussex's argument that the failure to identify the speaker was fatal to the admissibility of the statement. Baker's statement to Bible is not hearsay pursuant to Evid.R. 801(D)(2)(d) because he was an agent or employee of Columbia Sussex, and his statement concerned a matter within the scope of his agency and was made during the course of his relationship with the company. See *Holda v. Skilken Properties Co.* (Jan. 23, 1991), 5th Dist. No. CA-2768.

{¶20} Nevertheless, the original declarant who told Baker that he had to "let the old one go" is not specifically identified in the statement. A fair reading of the testimony allows for the reasonable inference that the statement is attributable to Clayton, a party opponent. See *Gallimore v. Children's Hosp. Med. Ctr.* (Feb. 26, 1992), 1st Dist. No. C-890808 (attribution by inference permissible when identity of declarant is otherwise supportable by reasonable inference).

{¶21} Baker, a reluctant witness, thought that he remembered telling Bible that Clayton told him to get rid of Thomas. He also admitted that he told Bible that he "was under advisement that it would be Charlotte [Thomas]" that would be terminated. (Tr. 673.) He knew Bible would realize that it was Clayton who directed him. (Tr. 657.) Baker further testified that Clayton had ordered him to get rid of one of the positions, and if Clayton had to come down to the hotel to do it, Baker would not like the result.

{¶22} We find that Baker's testimony sufficiently identifies Clayton as the original declarant. Clayton's statement is also an admission by a party opponent as defined in the Ohio Rules of Evidence as non-hearsay. Since both Baker and Clayton's statements fall within Evid.R. 801(D) as statements that are not hearsay, Columbia Sussex's argument with respect to Evid.R. 805 fails.

{¶23} The first assignment of error is overruled.

{¶24} In its second and third assignments of error, Columbia Sussex argues that the trial court failed to instruct the jury that a plaintiff must prove by a preponderance of the evidence that she was terminated because of her age. Columbia Sussex asked for an instruction that contained the language that age was the "but-for" cause for her termination.

{¶25} Our standard of review when it is claimed that improper jury instructions were given is to consider the jury charge as a whole, and determine whether the charge misled the jury in a manner affecting the complaining party's substantial rights. *Kokitka v. Ford Motor Company* (1995), 73 Ohio St.3d 89, 93.

{¶26} Columbia Sussex relies upon *Gross v. FBL Financial Servs., Inc.* (2009), 129 S.Ct. 2343, in support of its position that the court applied the wrong standard of

proof for an age discrimination case. *Gross* was a case brought under the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §621 et seq. The Supreme Court of Ohio has stated that the federal case law interpreting the ADEA is instructive in interpreting Ohio's state statutes against age discrimination. *Coryell v. Bank One Trust Co. N.A.,* 101 Ohio St.3d 175, 179, 2004-Ohio-723, ¶15.

{¶27} The issue before the court in *Gross* was whether a mixed-motive jury instruction is ever appropriate in an age discrimination case. In a mixed motive case the jury must decide if a plaintiff is entitled to damages if the treatment of the plaintiff was motivated by both a prohibited reason and a lawful reason. The burden shifts to the defendant to prove by a preponderance of evidence that it would have treated the plaintiff the same way even if the prohibited reason had played no role in the decision-making process. The court in *Gross* held that the burden of persuasion never shifts to the defendant in an alleged mixed motive case brought under the ADEA. *Gross* at 2352.

{¶28} This case, however, was not a mixed motive case. It was a straightforward discrimination case alleging disparate treatment in that Thomas contended that she was terminated because she was "the old one," and that the reasons proffered by Columbia Sussex were pretexts. It is clear from the evidence and the testimony that Thomas was contending that, but for her age, she would not have been fired. Or put another way, she claimed that age actually played a role in Columbia Sussex's decision-making process and had a determinative influence on the outcome.

{¶29} The ADEA states that it shall be unlawful for an employer to discharge an individual "because of" such individual's age. Id. at 2350, quoting 29 U.S.C. §623(a)(1). Ohio's statute also uses "because of" language. R.C. 4112.02(A). In *Gross,* the court

did not depart from the standard of proof for age discrimination claims. Instead, it quoted with approval *Hazen Paper Co. v. Biggins* (1993), 507 U.S. 604, 610, 113 S.Ct. 1701, for the well-established standard that the plaintiff's age must have "actually played a role in [the employer's decisionmaking] process and had a determinative influence on the outcome." (Emphasis omitted.) Id.; See *Gross* at 2350. The court indicated that the phrase "because of" or "by reason of" requires at least a showing of "but for" causation. Id. The court in *Gross* further explained what "but for" cause means, observing that "but for" causation encompasses the terms "based on," "by reason of" and "because of." Id. at 2350. The court then indicated that an act is not regarded as a cause if the event would have occurred without it. Id. *Gross* then, stands for the proposition that "but for" causation is required in a disparate treatment case under the ADEA, and that standard is equivalent to the well-established standard articulated in *Hazen Paper.*

{¶30} Assuming that *Gross* applies to this case, Columbia Sussex argues that the trial court should have given the following jury instruction that was requested by counsel:

> DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 11
>
> Plaintiff may prove her age discrimination case by direct or circumstantial evidence, or both. No matter how Plaintiff chooses to prove her case, Plaintiff must prove by a greater weight of the evidence that age was the "but-for" cause for her termination i.e., that Defendants let Plaintiff go because of her age."

(R. 99 at 12.)

{¶31} Declining to give the requested instructions, the trial court instructed the jury in pertinent part as follows:

> Now, plaintiff brings this action under Ohio civil rights laws that forbid discrimination in employment because of age. * * * Under Ohio law, it is unlawful for an employer to discriminate

> against any employee because of that employee's age, when the employee is in the protected group of being over age 40.
>
> Plaintiff claims that defendants discriminated against her by terminating her employment because of her age.
>
> * * *
>
> The employer claims that it acted for non-discriminatory reasons. In determining whether defendants discriminated against plaintiff on the basis of age, the question before you is not whether plaintiff was treated fairly or reasonably, but whether unlawful discrimination occurred. * * *
>
> * * *
>
> In order to prevail on her claims, plaintiff must prove by a greater weight of the evidence, in other words, a preponderance of the evidence, that the plaintiff's age was a determining factor for the unemployment - - for the employment action taken against her.
>
> Now, a determining factor means that plaintiff's age made a difference in defendants' employment decisions regarding the terms of plaintiff's employment. There may be more than one reason for defendants' decisions. Plaintiff is not required to prove that her age was the only reason.
>
> It is not a determining factor if the employee would have been treated the same and/or terminated regardless of her age. In other words, if plaintiff had been let go from her job without any consideration of her age, then a finding in favor of defendants should be made.

(Tr. 1155-57.)

{¶32} Taken as a whole, the instructions accurately stated the law, and adequately instructed the jury. The instructions made clear that the burden to prove discrimination based on age belonged to Thomas. The instructions informed the jury that they had to find that Columbia Sussex discriminated against Thomas *because of her age* and *on the basis of age*. The term "a determining factor" does not alter the burden of

proof set forth in *Hazen Paper* that the plaintiff's age must have "actually played a role in [the employer's decisionmaking] process and had a determinative influence on the outcome*".* Also, as discussed above, the terms "because of" and "on the basis of" are equivalent to "but for" causation under *Gross*. Therefore, the trial court was not required to use the exact phrase requested by Columbia Sussex when the *Gross* opinion clearly states that the terms used by the trial court are of equivalent value.

{¶33} Alternatively, Columbia Sussex asserts that there was no evidence that age factored into the decision to terminate Thomas. Columbia Sussex argues that it is entitled to a new trial pursuant to Civ.R. 59(A)(6) or judgment notwithstanding the verdict because the verdict was against the manifest weight of the evidence and contradicted its finding that Baker did not discriminate on the basis of age.

{¶34} We must not reverse a decision as being against the manifest weight of the evidence if some competent, credible evidence supports it. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶35} Here, we have direct evidence of age discrimination in Bible's testimony that Baker said that "they had told him that he wasn't going to have to let Charlotte go, but now they're telling her -- him that he had to let her go," and "what I remember him telling me was that he had to let the old one go --- the oldest one go." (Tr. 384.)

{¶36} At the time of her termination, Thomas was 67 years old, and she was replaced by an employee more than 20 years younger. Thomas had more experience in the hotel and hospitality business, she had more management experience, and she had more tenure with Columbia Sussex than the younger employee. Thomas had handled

reporting for the banquet and catering manager, Gutknecht, and in fact, was performing that duty on the very evening she was terminated.

{¶37} Later, on September 29, 2007, Rebecca Starrett, age 30, was hired and was moved to assist Gutknecht with sales. Starret sat at Gutknecht's old desk, and Gutknecht sat at Thomas' former desk.

{¶38} Columbia Sussex directs us to testimony that supports the theory of the case it argued to the jury, but the jury was not required to accept their witnesses' testimony or their version of events as credible. In an age discrimination action brought under Ohio law, it was within the jury's province not to believe Columbia Sussex's proffered reason for Thomas' termination and, accordingly, the jury could infer from all the facts and circumstances that the employer's termination action was discriminatory

{¶39} There was competent, credible evidence to support the jury's verdict.

{¶40} The second and third assignments of error are overruled.

{¶41} In its fourth and fifth assignments of error, Columbia Sussex attacks the damages awarded to Thomas. Specifically, the jury awarded Thomas $35,000 in front pay as part of its award. Columbia Sussex argues that amount was against the manifest weight of the evidence. After her termination, Thomas found a comparable job at the same salary. Therefore, Columbia Sussex argues that there could be no reasonable certainty that Thomas deserved an award of front pay to make her whole. Columbia Sussex further argues that the jury's award of front pay was for a bonus that she was not eligible for because she was not employed at the hotel at the end of the year 2007.

{¶42} The jury rejected Thomas' contract claim that she was entitled to a bonus. However, the award of front pay is consistent with a finding that, had she not been

discriminated against on the basis of age, she would have been entitled to receive a bonus consistent with past years that was based on performance. Therefore, the jury's award of front pay was supported by sufficient evidence.

{¶43} Columbia Sussex also attacks the award of punitive damages on the grounds that Thomas failed to establish by clear and convincing evidence that it acted with a conscious disregard of her rights.

{¶44} Punitive damages may only be awarded upon a finding of actual malice. Actual malice is defined as "(1) that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge, or (2) a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." *Preston v. Murty* (1987), 32 Ohio St.3d 334, syllabus. Malice may be inferred from conduct. *Detling v. Chockley* (1982), 70 Ohio St.2d 134, overruled on other grounds, *Cabe v. Lunich* (1994), 70 Ohio St.3d 598. A conscious disregard of the right not to be subject to age discrimination is sufficient to allow the award of punitive damages. *Atkinson v. International Technegroup, Inc.* (1995), 106 Ohio App.3d 349, 362-63.

{¶45} Clayton's statement to get rid of the old one demonstrates such conscious disregard. There was also evidence of a lack of training or awareness of age discrimination issues at the managerial and corporate level. Human resources was not involved in the termination process. In fact, the company never took any steps to ensure there was no age discrimination going on with respect to Thomas. The employee handbook referenced the "Age Discrimination Act" not the ADEA or Ohio laws. Baker

either never received any training in age discrimination or failed to recall any such training.

{¶46} The jury also heard testimony from which they could have logically inferred that Columbia Sussex put forth pretextual explanations for its conduct. Columbia Sussex gave Thomas substantial year-end bonuses while she worked there, but at trial, her former manager testified that her performance was poor. Columbia Sussex advanced the explanation that it was Thomas' higher salary that motivated the decision. However, when Thomas begged to keep her job and offered to take a pay cut, Baker informed her that it was she they wanted gone.

{¶47} Thomas presented sufficient evidence to warrant an award of punitive damages as she proved that Columbia Sussex terminated her employment with a conscious disregard for her rights.

{¶48} The fourth and fifth assignments of error are overruled.

{¶49} Based on the foregoing, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT, J., dissents.
SADLER, J., concurs separately.

BRYANT, J., dissenting.

{¶50} Because this court lacks jurisdiction to consider the appeal of defendant-appellant, Columbia Sussex Corp., I dissent and would dismiss the appeal as premature.

{¶51} Following the jury verdict in favor of plaintiff-appellee, Charlotte Thomas, defendant filed timely motions for a new trial and judgment notwithstanding the verdict. The trial court referred the motions to the magistrate who, on the parties' agreement, had

tried the underlying case. The record contains no signed decision from the magistrate, does not indicate a magistrate's decision was forwarded to the parties, and does not reflect the trial court adopted it. Accordingly, despite whatever the magistrate did in attempting to resolve the motions, the court did not comply with the procedure set forth in Civ.R. 53. Thus, to the extent the efforts of the magistrate are the basis for considering the motions resolved, they not only fall short of the requirements of Civ.R. 53 but also deprive the parties of the opportunity to object while nonetheless burdening them with the repercussions of failing to object.

{¶52} Even if we could assume the trial court de-referenced the motions to decide them itself, the record still presents procedural problems. The entry does not purport to decide the motions, but instead, in speaking of its "rulings" on the post-trial motions, apparently refers to what the court believes were earlier rulings on the motions. Contrary to the court's entry, the record contains no such rulings.

{¶53} Finally, I disagree with the majority to the extent it deems the motions implicitly overruled. Generally, as to motions to strike, motions for continuance or other such motions, "a motion that is outstanding at the time judgment is entered is presumed to have been overruled." *Allied Erecting & Dismantling Company, Inc. v. Youngstown*, 7th Dist. No. 00 CA 225, 2003-Ohio-330, ¶12, citing *Solon v. Solon Baptist Temple, Inc.* (1982), 8 Ohio App.3d 347, 351-52. The general rule, however, does not apply to a pending motion filed under Civ.R. 50(B) or Civ.R. 59, as such motions affect the jurisdiction of the court on appeal.

{¶54} App.R. 4(B)(2) states that "[i]n a civil case * * * if a party files a timely motion for judgment under Civ.R. 50(B), a new trial under Civ.R. 59(B), vacating or modifying a

judgment by an objection to a magistrate's decision under Civ.R. 53(D)(4)(e)(i) or (ii), * * * the time for filing a notice of appeal begins to run as to all parties when the order disposing of the motion is entered." Where the record is devoid of a "dispositive judgment entry" concerning the motion for judgment notwithstanding the verdict or new trial, the motion "is still technically pending, and the appeal time has never begun to run. Therefore, th[e] court does not have jurisdiction to hear th[e] appeal as it is premature." *Broberg v. Hsu*, 11th Dist. No. 2005-T-0081, 2005-Ohio-5115, ¶10. Accordingly, such post-trial motions may not be deemed implicitly denied, because they potentially vacate a judgment, grant a new trial and determine the date from which the time for appeal begins to run. Similarly, in the absence of rulings in the record, a court's reference to its rulings on such motions is insufficient, leaving the parties to speculate about the date the time for appeal begins to run.

{¶55} Until the trial court rules on the motions, we lack jurisdiction to consider the appeal. *In re Estate of Olivito*, 7th Dist. No. 01 JE 20, 2002-Ohio-2790, ¶9. Because the trial court has not ruled on the motions, I would dismiss defendant's appeal for lack of jurisdiction.

SADLER, J., concurring separately.

{¶56} While I agree with the ultimate result of this appeal, I write separate to clarify a number of points. First, I disagree with the position of the dissent that we lack jurisdiction to review this matter. Nor do I believe it is necessary for us to consider whether the post-trial motion for judgment notwithstanding the verdict or, alternatively, for a new trial can or should be deemed to have been implicitly overruled. Although the trial

court's nunc pro tunc judgment entry filed on July 12, 2010 did not specifically refer to the motion for judgment notwithstanding the verdict or, alternatively, for a new trial, it did reference "rulings on the post-trial motions." In my view, this reference, combined with the court's entry of judgment in an amount consistent with the jury's award, shows that the trial court did, in fact, overrule the motion for judgment notwithstanding the verdict or, in the alternative, for a new trial.

{¶57} With regard to the fourth assignment of error, I disagree with paragraph 43 of the lead opinion, which states that "appellee is entitled to receive a bonus consistent with past years that was based on performance." This is contrary to the directed verdict rendered in favor of appellant by the trial court which found that the award of bonuses were too speculative to be included in an award of front pay. However, notwithstanding the bonus issue, I agree the jury's award of front pay was supported by sufficient evidence.

{¶58} I concur with the remaining assignments of error, and thus, respectfully concur in the judgment.

_____