STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0831

Heidi Weber,
Respondent,

vs.

Minnesota School of Business, Inc.
d/b/a Globe University,
Appellant.

Filed December 15, 2014
Affirmed
Reilly, Judge

Washington County District Court
File No. 82-CV-12-2797

Clayton D. Halunen, Susan M. Coler, Ross D. Stadheim, Halunen & Associates, Minneapolis, Minnesota; and

Clifford M. Greene, Greene Espel PLLP, Minneapolis, Minnesota (for respondent)

Matthew E. Damon, Veena A. Iyer, Jeremy D. Robb, Nilan Johnson Lewis PA, Minneapolis, Minnesota; and

Eric J. Magnuson, Robins, Kaplan, Miller & Ciresi L.L.P., Minneapolis, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Smith, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

Appellant employer challenges a judgment entered in favor of respondent employee following a jury trial on a claim of violation of Minnesota's whistleblower statute. Appellant argues that the district court erred by denying appellant's motion for judgment as a matter of law because respondent did not prove that she was discharged for engaging in protected conduct. Appellant also argues that the district court abused its discretion by denying appellant's motion for a new trial based on an erroneous evidentiary ruling and attorney misconduct during closing argument. Because the district court did not err by denying the motion for judgment as a matter of law and did not abuse its discretion by denying the motion for a new trial, we affirm.

FACTS

Appellant Minnesota School of Business, Inc., doing business as Globe University (Globe), consists of several campuses that offer various education programs, including a medical assistant (MA) program. Through the MA program, students develop skills to work with patients and medical professionals and to provide healthcare services. Students are required to apply their skills through an externship in a medical setting before completing the MA program.

Respondent Heidi Weber was employed as the network dean of the MA program from January 2010 until her employment was terminated in April 2011. Weber led and managed the MA program. While holding that position, Weber became concerned with several aspects of the MA program and the way in which information about Globe and

the MA program was communicated to students. These concerns involved the accreditation of the MA program, criminal background checks, MA externships, job placement statistics, and the transferability of academic credits earned from Globe. Weber began to believe that Globe was acting illegally by misleading and deceiving students in various ways. She raised her concerns to her immediate supervisor and to other coworkers but believed that she was not being listened to or taken seriously.

In March 2011, Weber met with Globe's provost and discussed with him the issues that she had identified. She told him that Globe was misleading students in ways that were deceptive, deceitful, and illegal. Weber met with Globe's vice president of corporate operations in April 2011, repeated her concerns to him, and told him that Globe was violating the law. Weber attended three meetings with Globe employees later that month. The issues that she had identified were discussed during these meetings, and she repeated her belief that Globe was engaging in illegal activity. Weber's employment was terminated a few days after the final meeting.

Weber commenced this lawsuit, alleging that Globe violated Minnesota's whistleblower statute, Minn. Stat. § 181.932 (2012), by terminating her employment. A jury trial was held in August 2013, and the jury found that Weber made a good faith report to Globe of a violation or suspected violation of a law, rule, or regulation and that her report played a part in the termination of her employment. The jury awarded damages for past and future embarrassment and emotional distress and past and future loss of wages and employee benefits. Globe moved for judgment as a matter of law, and the district court denied the motion. Globe then moved for a new trial, arguing that the

district court permitted inadmissible and prejudicial testimony during trial and that Weber's attorney made improper and prejudicial statements during his closing argument. The district court also denied that motion, and Globe appealed.

D E C I S I O N

I.

Globe challenges the district court's denial of its motion for judgment as a matter of law. A grant of judgment as a matter of law is appropriate

> only in those unequivocal cases where (1) in the light of the evidence as a whole, it would clearly be the duty of the [district] court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the law applicable to the case.

Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd., 711 N.W.2d 811, 816 (Minn. 2006) (quotation omitted); *see also Diesen v. Hessburg*, 455 N.W.2d 446, 452 (Minn. 1990) (stating that judgment as a matter of law may be granted if "the evidence is practically conclusive against the verdict and reasonable minds can reach only one conclusion") (quotation omitted). The denial of a motion for judgment as a matter of law is reviewed de novo. *Navarre v. S. Washington Cnty. Sch.*, 652 N.W.2d 9, 21 (Minn. 2002). "The district court must be affirmed[] if, in considering the evidence in the record in the light most favorable to the prevailing party, there is any competent evidence reasonably tending to sustain the verdict." *Id.* (quotation omitted).

Globe claims judgment as a matter of law was appropriate because Weber failed to establish the elements of a whistleblower claim. Under Minnesota's whistleblower statute, an employer may not discharge an employee because "the employee, . . . in good

faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official." Minn. Stat. § 181.932, subd. 1(1). To prove that an employer violated this statute, an employee must show statutorily protected conduct by the employee, an adverse employment action by the employer, and a causal connection between the two. *Coursolle v. EMC Ins. Grp., Inc.*, 794 N.W.2d 652, 657 (Minn. App. 2011), *review denied* (Minn. Apr. 19, 2011).

A. A Violation or Suspected Violation of Law

To be protected under the whistleblower statute, an employee must have reported "a violation or suspected violation of any federal or state law or rule adopted pursuant to law." Minn. Stat. § 181.932, subd. 1(1). When making the report, the employee need not identify the specific law or rule that is allegedly violated. *Kratzer v. Welsh Cos., LLC*, 771 N.W.2d 14, 19 (Minn. 2009). But the supreme court has rejected the argument that whether a violation of law actually occurred is immaterial as long as the employer's conduct seemed, in the eyes of the employee, to be a violation of law. *See id.* at 21-22. An employee cannot succeed with a whistleblower claim unless the reported employer conduct, if proven, would actually constitute a violation of a law or rule adopted pursuant to law. *Id.* at 22-23 (citing *Abraham v. Cnty. Of Hennepin*, 639 N.W.2d 342, 355 (Minn. 2002)) (stating that "a mere report of behavior that is problematic or even reprehensible, but not a violation of the law, is not protected").

At trial, Weber claimed that she reported conduct by Globe that violated two Minnesota consumer-protection statutes. Under the Minnesota Deceptive Trade Practices

Act, "[a] person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person," among other things, "causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services," "represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," or "engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." Minn. Stat. § 325D.44, subd. 1(2), (5), (13) (2012). Under the Minnesota False Statement in Advertisement Act, one is guilty of a misdemeanor if, with intent to sell something to the public, one

> makes, publishes, disseminates, circulates, or places before the public, . . . in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement . . . contain[ing] any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading . . . .

Minn. Stat. § 325F.67 (2012).

Weber identified five areas in which she believed that Globe was violating the law: the accreditation of the MA program, criminal background checks, MA externships, job placement statistics, and the transferability of academic credits. As discussed below, we hold that misrepresentations allegedly made by Globe about job placement statistics and the transferability of credits constitute violations of law. We hold that Weber's concerns about program accreditation, criminal background checks, and externships do not raise violations of law.

1. Job Placement Statistics

While working as network dean, Weber became concerned that Globe was utilizing inaccurate statistics regarding the number of Globe students able to secure employment after graduating. She testified that Globe used job placement statistics that were significantly incorrect, even after she brought the issue to the attention of other Globe employees. She further testified that the inaccurate statistics were used by admissions workers to market to students and that students were led to believe that they were sure to get a job after graduating with an education from Globe. J.S.C., another former employee of Globe, and M.B., a former student of Globe, also testified that admissions workers used inaccurate job placement statistics to market to students.

This issue involves alleged conduct by Globe that, if proven, would constitute a violation of law. *See* Minn. Stat. § 325D.44, subd. 1(5) (stating that it is a deceptive trade practice to represent that services have benefits that they do not have). The use of inaccurate job placement statistics to market to students could induce students to attend Globe and pay for a Globe education based on a belief that they were assured, or had a certain likelihood, of obtaining employment after graduating with an education from Globe. Based on the evidence presented at trial, the jury could find that Globe's alleged use of inaccurate job placement statistics when marketing to students was misleading and a violation of law.

2. Transferability of Credits

While Weber worked at Globe, she began to believe that students were being misled about the transferability of academic credits earned from Globe. Globe credits

were recognized by only a few career, technical, and vocational schools, but Weber testified that admissions workers told students that Globe was a great place to start their education and did not tell them about the limited transferability of Globe credits. M.B. testified that, before she enrolled at Globe, an admissions worker told her that credits earned from Globe would transfer to any other school, a statement that she later discovered was false.

This issue involves alleged conduct by Globe that, if proven, would constitute a violation of law. *See* Minn. Stat. § 325D.44, subd. 1(5) (stating that it is a deceptive trade practice to represent that services have approval, characteristics, uses, or benefits that they do not have). Misleading students as to the transferability of credits earned from Globe could induce them to attend Globe and pay for a Globe education based on a belief that they would be able to transfer those credits to continue their education at a different institution. Based on the evidence presented at trial, the jury could find that statements allegedly made by admissions workers about the transferability of Globe credits were misleading and a violation of law.

3. Program Accreditation

While Weber was employed as network dean of the MA program, Globe took steps to change the accrediting body for the program from the Commission on Accreditation of Allied Health Education Programs to the Accrediting Bureau of Health Education Schools (ABHES). Weber considered ABHES to be an inferior accrediting body and believed that the change in accreditation would negatively impact students' education and ability to become employed as MAs. She became concerned when Globe

did not inform students that it was applying for and working toward the accreditation change. She believed that students had a right to know that Globe planned to change accreditors before they enrolled in the MA program when the change would impact their education and employment prospects.

Weber claims that Globe's failure to inform students about the planned change in accreditation of the MA program was illegal. But she does not contend that Globe made an actual misrepresentation about the MA program's accreditation.[1] Weber's concern about the change in accreditation of the MA program does not raise a violation of law that would support a whistleblower claim.

4. Criminal Background Checks

While working at Globe, Weber became concerned that students in the MA program were not being adequately informed that a felony conviction could prevent them from obtaining employment as MAs. Although materials that Globe distributed to

[1] Further, the ABHES accreditation manual, which was admitted at trial, prohibits a program from referring to ABHES accreditation before the program is ABHES accredited. The relevant portion of the manual states:

> No reference to ABHES accreditation can be made in reference to any program prior to final action by ABHES granting inclusion of a program within an institution's current grant of accreditation or the granting of programmatic accreditation. Institutions or programs in the initial application stage, either for accreditation or a substantive change . . . may not make any reference to ABHES accreditation.

Although Weber contends that this paragraph merely prevents a program from falsely claiming that it is accredited by ABHES, the language of the paragraph prohibits any reference to ABHES accreditation before accreditation is finalized.

students informed them that a felony conviction could impact their employability and that future employers could do criminal background investigations, Weber considered these materials inadequate because they were not targeted specifically to MA students. And she believed that admissions workers minimized the impact of a felony conviction or failed to address the issue at all when speaking with students. Weber and her coworkers drafted new language for an MA program admissions form. This language informed students that a felony conviction could prevent them from becoming employed as MAs and from being eligible to take an MA certification examination. The language also informed students that Globe would conduct criminal background checks before placing them in externships and that a student with a felony conviction within the past seven years would be ineligible for an externship and completion of the MA program.

Weber believed that Globe should conduct criminal background checks on students as they begin the MA program. Globe's policy was to conduct criminal background checks on students immediately before they were placed into externships, which occurred toward the end of the MA program. Weber believed that students were not adequately notified about the impact of a felony conviction on their education until this point, and she claims that this late notification was illegal. But the evidence shows that Globe students were informed in writing that a felony conviction could impact their education and employment prospects, and Globe's policy of conducting criminal background checks on students immediately before placing them into externships did not violate the law. Weber's concern about this issue does not raise a violation of law that would support a whistleblower claim.

5. Externships

Globe experienced a shortage of externship opportunities for its MA students during the time that Weber worked as network dean. Students were required to participate in externships before completing the MA program and were told that Globe would provide those externships. Globe offered some students free gas cards or textbooks in exchange for participation in externships that were a significant distance from campus, but students instead chose to delay their completion of the MA program by one academic quarter. All of the students in the MA program eventually received an externship placement.

Weber contends that the way in which Globe handled the externship shortage was illegal. The evidence shows that Globe did provide MA students with externships, even if the externship locations were some distance away from campus, and that students chose to delay their completion of the MA program rather than travel to those locations. Weber argues that ABHES accreditation standards require externship locations to be within a certain distance of a campus, but these standards are not laws. Weber's concern about the externships does not raise a violation of law that would support a whistleblower claim.

B. A Good Faith Report

To be protected under the whistleblower statute, an employee must have made a good faith report of the violation or suspected violation of law to the employer, a governmental body, or law enforcement. Minn. Stat. § 181.932, subd. 1(1). The term "report" as used in the whistleblower statute has been defined as "to make or present an

often official, formal, or regular account of" or "to relate or tell about; present." *Gee v. Minn. State Colls. & Univs.*, 700 N.W.2d 548, 555 (Minn. App. 2005). A report is made in good faith if the employee's purpose in making the report is to expose an illegality. *Obst v. Microtron, Inc.*, 614 N.W.2d 196, 202 (Minn. 2000).

At trial, Weber testified about all of the concerns that she had with Globe and the MA program. She testified that she presented all of those concerns in detail to Globe's provost and vice president of corporate operations in March and April 2011. She stated that she told them that Globe was misleading students and that its actions were illegal. Weber testified that she reported her concerns because Globe was violating the law, students were being misled, and she was worried that Globe would be sued.

Globe argues that Weber's discussions with the provost and the vice president of corporate operations cannot be considered reports under the whistleblower statute because at least some of the issues that she raised had been previously identified by Globe. A good faith report is one "made for the purpose of blowing the whistle, i.e., to expose an illegality." *Id.* But "the whistleblower statute does not require an employer to be ignorant of a suspected violation before an employee makes a report." *Rothmeier v. Inv. Advisers, Inc.*, 556 N.W.2d 590, 593 (Minn. App. 1996), *review denied* (Minn. Feb. 26, 1997). In any event, Globe points to no evidence indicating that it knew or had been told before Weber's reports that it was acting illegally.

Globe also argues that the discussions cannot be considered reports under the whistleblower statute because identifying issues within the MA program was a part of Weber's job duties. The supreme court has declined to recognize a blanket job-duties

exception to the definition of a report under the whistleblower statute. *See Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 226-27 (Minn. 2010) (plurality opinion) (stating that the statute "does not contain any limiting language that supports [a] blanket job duties exception" and rejecting the proposition that "an employee does not engage in protected conduct under the [statute] if the employee makes a report in fulfillment of the duties of his or her job") (quotation omitted). The *Kidwell* court stated that an employee's job duties are relevant to determining whether the employee has engaged in protected whistleblower conduct because "[a]n employee cannot be said to have 'blown the whistle' when the employee's report is made because it is the employee's job to investigate and report wrongdoing." *Id.* at 227-28. But even when it is the employee's job to investigate and report wrongdoing, the employee may still have engaged in protected whistleblower conduct if a report is made "outside normal channels, because the employee believes that the normal chain of command is unresponsive." *Id.* at 228.

Even assuming Weber's job duties included investigating and reporting wrongdoing within the MA program or Globe, Weber testified that she went outside of the normal chain of command by reporting to Globe's provost and vice president of corporate operations because she believed that her direct supervisor and other coworkers were not listening to her or taking the concerns that she raised seriously. The evidence presented at trial supports the jury's finding that Weber made a good faith report of a violation or suspected violation of law to her employer.

C. Termination of Employment Caused by the Report

To succeed with a claim of violation of the whistleblower statute, an employee must prove that the employer took adverse employment action and that there was a causal connection between the employee's report and the adverse action. *Coursolle*, 794 N.W.2d at 657. The causal connection may be demonstrated "by circumstantial evidence that justifies an inference of retaliatory motive." *Cokley v. City of Otsego*, 623 N.W.2d 625, 632-33 (Minn. App. 2001) (noting that an inference of retaliation must be "reasonably supported by the available evidence; sheer speculation is not enough" and that "[c]lose proximity" between a report and a termination decision may support an inference of retaliation) (quotation omitted), *review denied* (Minn. May 15, 2001).

It is undisputed that Globe terminated Weber's employment in April 2011 and that this qualifies as adverse employment action under the whistleblower statute. *See* Minn. Stat. § 181.932, subd. 1. Globe contends that Weber's employment was terminated due to her lack of leadership of the MA program. The jury heard testimony that Globe employees had concerns about Weber's job performance. But the jury also heard Weber testify that, when she met with Globe's provost and expressed her concerns to him, he stated that she "need[ed] to learn when to shut [her] mouth to get along, otherwise [her] job could be in jeopardy." Weber also testified that her employment was terminated just days after a meeting with Globe employees where her concerns were discussed and that she was told that the termination had nothing to do with her job performance. And Weber received a favorable job-performance review the month before her employment

was terminated. The evidence presented at trial supports the jury's finding that the termination of Weber's employment was caused by her report.

In conclusion, the evidence supports the jury's findings that Weber reported a violation or suspected violation of law by Globe, that she made a report in good faith to Globe, and that her report caused the termination of her employment. Because the jury's verdict is not contrary to the evidence as a whole or to the law applicable to this case, the district court did not err by denying Globe's motion for judgment as a matter of law.

II.

Globe challenges the district court's denial of its motion for a new trial. Globe argues that a new trial is warranted because inadmissible and prejudicial testimony was presented at trial and because Weber's attorney made improper and prejudicial statements during his closing argument. The decision whether to grant a new trial lies within the discretion of the district court and will not be disturbed absent a clear abuse of that discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

A. Testimony of J.S.C. and M.B.

Before trial, Globe moved for exclusion of the testimony of two potential witnesses, J.S.C. and M.B. The district court denied that motion and permitted the witnesses to testify at trial. In denying Globe's motion for a new trial, the district court stated that the witnesses' testimony was relevant and probative of matters at issue in the case. Relevant evidence is "evidence having any tendency to make the 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." Minn. R. Evid. 401. Although relevant evidence is generally admissible, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. R. Evid. 402, 403. "The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted).

J.S.C. was a former network dean of Globe's business program. She testified that, while employed by Globe, she and Weber discussed many of Weber's concerns about Globe and the MA program. She further testified that Weber made complaints about Globe to its provost in March 2011. This testimony was relevant to the issue of whether Weber made a good faith report of a violation or suspected violation of law, and the testimony was not unfairly prejudicial.

J.S.C. also testified that her employment was terminated after she reported illegal conduct by Globe and that she filed a whistleblower claim against Globe. She testified that one of her complaints was that admissions workers used inaccurate job placement statistics. This testimony was relevant to the issue of a causal connection in that it tended to demonstrate that, when employees reported violations of law by Globe, the result was termination of their employment. Although Globe contends that the jury could have viewed this testimony as a reflection on Globe's character, the probative value of the

testimony was not substantially outweighed by the danger of unfair prejudice. The district court did not abuse its discretion by permitting J.S.C. to testify.

M.B. was a former student of Globe's paralegal program who testified that she spoke with an admissions worker before enrolling at Globe. She testified that the admissions worker told her that Globe had a 98% employment placement rate for its graduates and that credits earned from Globe would transfer to any other school. M.B. further testified that these statements influenced her decision to attend Globe and that she later learned that both of the statements were false. M.B. had never met or spoken with Weber before the trial, and therefore Weber could not have reported M.B.'s particular complaints about Globe. But M.B.'s testimony was relevant to whether Globe was misleading students in the ways that Weber was hearing from students and reported. This testimony was not unfairly prejudicial, and the district court did not abuse its discretion by permitting M.B. to testify or by denying a new trial due to the testimony of J.S.C. and M.B.

B. Closing Argument

Before trial, Weber moved to amend the complaint to include a request for punitive damages, and the district court denied that motion. During his closing argument, Weber's attorney stated:

> I think what jurors don't recognize is the power that you have. You have the ability, collectively, to change corporate conduct. You have more power than the president of the United States, [C]ongress, you have more power than the pope to make and effectuate change. You have that power because you can hold this company accountable to what it did . . . for what it did to Heidi Weber. And this may seem crazy,

> but . . . Ms. Weber told you that they make $36 million a year on her program, $36 million a year.
>
> . . . .
>
> So you could do this. You could make a difference. You could make a real difference. You could, by your verdict, change the way every for-profit and career school does business because if you come back with a large verdict for Ms. Weber, I would submit that it will be on the front of newspapers, in the media around the country, for decades.

Globe's attorney objected to these statements, stating that Weber's attorney was urging the jury to award punitive damages. In response, the district court stated: "I will instruct the jury to consider the arguments in the spirit of a closing argument and anything said by the attorneys, of course, is not evidence."

Weber's attorney then continued:

> Now this is not a punitive damages case so you cannot award a sum of money to punish Globe, but what you can do is award a sum of money to hold them accountable and you can do it in the form of emotional distress to Ms. Weber. And if you come back with a number that is significant, and I'm going to tell you, suggest, and of course it's your call, but this would change the way companies do business. And I'm serious, $36 million. On August 13, 2013, there will be discussion around the country, I'd submit, that you changed the way for-profit colleges do business and they would all step back and think twice. You have that power to do that if you have the courage.

The district court then told the jury: "[D]uring the final arguments the attorneys aim to do many things and of course this is not a punitive damages trial and you should disregard, you know, any statements that have to do with publicity or any type of punishment." In denying Globe's motion for a new trial, the district court stated that it gave the jury

curative instructions, that the jury instructions made clear that the purpose of any damages awarded must be to compensate Weber for loss sustained as a result of Globe's misconduct, and that there was no evidence that the jury awarded punitive damages.

The decision whether to grant a new trial due to attorney misconduct rests within the discretion of the district court. *Johnson v. Washington Cnty.*, 518 N.W.2d 594, 600 (Minn. 1994). A party is entitled to a new trial due to attorney misconduct only if the misconduct caused prejudice. *Id.* The district court judge "is present during the trial and is best positioned to determine whether or not an attorney's misconduct has prejudiced the jury." *Id.* at 601. A district court's denial of a new trial "will be reversed only upon a clear showing of abuse of discretion or if the improper comments prejudiced [the appealing party] to such an extent that allowing the result to stand would be unjust." *State Farm Fire & Cas. Co. v. Short*, 459 N.W.2d 111, 114 (Minn. 1990); *see also Wild v. Rarig*, 302 Minn. 419, 433, 234 N.W.2d 775, 785-86 (1975) ("If the [district] court instructed the jury to disregard the improper remarks or arguments, a new trial will rarely be granted by [the appellate] court.").

The statements made by Weber's attorney during his closing argument constituted attorney misconduct. The statements urged the jury to award damages beyond what would compensate Weber for past and future embarrassment and emotional distress and past and future loss of wages and employee benefits, the damages that the jury instructions and special-verdict form directed the jury to consider. The statements instead invited the jury to award damages to make an example, change the conduct of for-profit educational institutions, and create publicity. These statements were inappropriate

when the district court had denied Weber's motion to include a request for an award of punitive damages.

The inappropriate statements, however, did not prejudice Globe. The district court told the jury that the statements were made "in the spirit of a closing argument" and that "this is not a punitive damages trial and you should disregard . . . any statements that have to do with publicity or any type of punishment." We assume that the jury followed the district court's instruction. *State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). The jury instructions and the special-verdict form instructed the jury as to the types of damages that could be awarded. The jury awarded $36,000 for past embarrassment and emotional distress and $36,000 for future embarrassment and emotional distress. These amounts reflect that the jury listened to the district court's basic curative instruction and did not award the punitive damages that Weber's attorney advocated, unlike the jury in *Vanskike v. ACF Indus., Inc.* *See* 665 F.2d 188, 201 (8th Cir. 1981) (reversing and remanding for a new trial on damages where the jury clearly awarded excessive damages after an improper punitive-damages argument). The district court was in the best position to determine the prejudicial effect of the misconduct during the closing argument, and we hold that the district court did not abuse its discretion by denying a new trial due to attorney misconduct.

Affirmed.