Affirmed and Opinion filed April 20, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00688-CV

REGINALD L. GILFORD, Appellant

V.

PHIBRO ENERGY U.S.A., INC. , Appellee

On Appeal from the 56th District Court
Galveston County, Texas
Trial Court Cause No. 96CV0503

O P I N I O N

Reginald L. Gilford (Gilford) appeals *pro se* from a take-nothing judgment in his retaliatory discharge case against Phibro Energy USA, Inc., (Phibro), appellee. TEX. LAB. CODE ANN. § 451.001 (Vernon 1996 & Supp. 2000). In five points of error, appellant contends: (1) the trial court erred in failing to define "discrimination" in its jury charge; (2) the trial court erred in submitting an improper question No. 1 to the jury on appellant's retaliatory discharge claim; (3) & (4) the trial court erred in denying appellant's two requested jury instructions; and (5) appellant's trial counsel harmed appellant's case by testifying about Phibro's job offer. We affirm.

In our per curiam opinion of June 3, 1999, this court ordered that this appeal "will be considered based on the clerk's record and the partial reporter's record on file." As set out therein, that part of the trial reported by substitute court reporter, Darla J. Ralston, is missing due to appellant's failure to timely request its preparation and failure to pay, or arrange to pay, for the record. We held that appellant is barred on this appeal from asserting complaints concerning the incomplete record before this court. *See* TEX. R. APP. P. 34.6(f).

Appellant was injured in an accident at Phibro's plant, and he made a workers' compensation claim. Although appellant's physical injuries were minor, appellant also suffered post-traumatic stress disorder and depression. Appellant's psychiatrist notified Phibro that he could return to work indoors, in an enclosed office, but not work "directly on any machinery" or be "put next to valves or operating pipes where chemicals flow." Phibro sent Gilford a letter offering him an office job in compliance with his doctors' restrictions. The letter is missing from the partial record in this appeal, and was introduced into evidence as plaintiff's exhibit number 16. Appellant's trial counsel asked Bonnie Regini, Phibro's human resources manager, questions concerning the letter which he showed to her during his direct examination. In her answer to counsel's question, Ms. Regini agreed with counsel's statement that the letter stated, in pertinent part: "We will expect a reply by November 21 [1994] accepting or declining the job offer." Ms. Regini further stated that Gilford never contacted Phibro about the offer, and Gilford was terminated. Gilford then filed this suit claiming retaliatory discharge by Phibro because they discharged him after he made a workers' compensation claim. In their answer to question 1, the retaliation/discrimination question, the jury found that Phibro did not violate the workers' compensation law prohibiting discharge or discrimination against an employee by discharging Gilford after he filed a workers' compensation claim. *See* TEX. LAB. CODE ANN. § 451.001 (Vernon 1996 & Supp. 2000).

In point of error one, Gilford contends the trial court erred by not including a definition of "discrimination" in its jury charge to assist the jury in question number 1. During deliberations, the jury sent a note to the trial judge asking:

> Judge Venso. The Jury has a question in the charge, question 1. "The Texas Workers' Compensation Act provides that no person may discharge or in any manner discriminate. . . ." The question is: what does discrimination as used in this context mean?

The trial judge referred the jury to the charge which provided that words that vary from the "meaning commonly understood" would be given a "proper legal definition." As we understand appellant's complaint, the failure to *initially* define "discrimination" in the charge brought on this confusion and necessitated the jury's request for a definition.

Appellant has waived this contention because he did not request an instruction on the definition of "discrimination," did not submit a proposed instruction, nor did he object to the court's charge for failure to include such an instruction. To preserve error in the charge, the party must make objections to the defective submissions in the court's charge or submit requests for additional questions, definitions or instructions that are omitted from the charge. TEX. R. CIV. P. 272-274; *Flo Trend Systems, Inc. v. Allwaste, Inc.*, 948 S.W.2d 4, 10 (Tex.App.-Houston[14th Dist.] 1997, no pet.); *Biggs v. First Nat. Bank of Lubbock*, 808 S.W.2d 232, 236-37 (Tex.App.--El Paso 1991, writ denied). Where the record shows no objection to the charge nor the request of appropriate instructions and questions, any error in the form or substance of the charge as given was waived. *Flo Trend*, 948 S.W.2d at 10; *Biggs*, 808 S.W.2d at 237. We overrule appellant's point of error one.

In point two, appellant contends question 1 on retaliatory discharge was improperly worded and the trial court should have used the newer pattern jury charge PJC 107.5. The question as submitted by the trial court was:

> Did Phibro Energy U.S.A., Inc. discharge Reginald L. Gilford in violation of the Texas Workers' Compensation Act?
>
> The Texas Workers' Compensation Act provides that no person may discharge or in any manner discriminate against an employee because the employee has in good faith filed a claim, or instituted, or caused to instituted in good faith, any proceeding under the Texas Workers' Compensation Act.

This contention is without merit because appellant's counsel requested this question as the proper proposed question for the jury charge. The trial court granted appellant's request and included the question in its charge. Parties may not invite error by requesting an issue and then objecting to its submission. See *General Chemical Corp. v. De La Lastra*, 852 S.W.2d 916, 920 (Tex. 1993), *cert. dismissed*, 114 S.Ct. 490 (1994); *Daily v. Wheat*, 681 S.W.2d 747, 754 (Tex.App.--Houston [14th Dist.] 1984,

writ ref'd n.r.e.); *City of Amarillo v. Langley*, 651 S.W.2d 906, 914 (Tex.App.--Amarillo 1983, no writ). We overrule appellant's point of error two.

In points three and four, appellant contends that the trial court erred in denying two requested instructions, as follow:

> Proposed Instruction No. 1:
>
> In a suit involving retaliation under the Texas Workers' Compensation Act, the plaintiff in a suit has the burden of establishing a causal link between the firing and the employee's claim for workers' compensation benefits. Once the link has been established the employer must rebut legitimate reason behind the discharge.
>
> Proposed Instruction No. 2:
>
> The statute provides that an employer may not use the filing of a Workers' Compensation claim as a reason to discharge or otherwise discriminate against an employee even if there are other reasons. In other words, a worker is not required to prove that he was discharged or discriminated [against] solely because of the worker's compensation claim.

Explanatory instructions should be submitted when in the sole discretion of the trial judge they will help the jurors understand the meaning and effect of the law and the presumptions the law creates. *Hamblet v. Coveney*, 714 S.W.2d 126, 129 (Tex.App.--Houston [1st Dist.] 1986, writ ref'd. n.r.e.). A trial court's refusal will not be overturned on appeal unless the court abused its discretion. *Magro v. Ragsdale Bros., Inc.*, 721 S.W.2d 832, 836 (Tex.1986). No abuse of discretion is shown unless the requested instructions were so necessary to enable the jury to render properly a verdict that the court's refusal probably did cause rendition of an improper verdict. *Harris County v. Bruyneel*, 787 S.W.2d 92, 94 (Tex.App.--Houston [14th Dist.] 1990, no writ); *Steinberger v. Archer County*, 621 S.W.2d 838, 841 (Tex.App.--Fort Worth 1981, no writ).

Upon the general principle that a proper jury instruction is one that assists the jury and is legally correct, a trial court may personalize or individualize a charge to the facts of the case so the jury can more easily understand the law. *U.S. Sporting Products, Inc. v. Johnny Stewart Game Calls, Inc.*, 865 S.W.2d 214, 220 (Tex.App.--Waco 1993, writ denied). Trial courts also are given considerably more

discretion in submitting instructions and definitions than in submitting questions. *Harris v. Harris*, 765 S.W.2d 798, 801 (Tex.App.--Houston [14th Dist.] 1989, writ denied); *Houston Nat'l Bank v. Biber*, 613 S.W.2d 771, 776 (Tex.Civ.App.--Houston [14th Dist.] 1981, writ ref'd n.r.e.). *See also Ishin Speed Sport, Inc. v. Rutherford*, 933 S.W.2d 343, 349-350 (Tex.App.-Fort Worth 1996, no writ).

As concerns instruction one, addressed under point of error four, appellant argues that the instruction was necessary because there was sufficient circumstantial evidence to establish causal links between his termination and his filing a workers' compensation claim. He offers his conclusions and fact summations to support this contention without citing to the record where this evidence can be found. He does not offer any authority to support this contention. As we understand appellant's claim, he contends the trial court should have allowed instruction number one on causal links because the "overwhelming" amount of evidence showed causal links between his termination and workers' compensation claim. Appellant makes no argument and furnishes no authority to demonstrate how the trial court's refusal to include this instruction would be an abuse of discretion. "No abuse of discretion is shown unless the requested instructions were so necessary to enable the jury to render properly a verdict that the court's refusal probably did cause rendition of an improper verdict." *Ishin Speed Sport*, 933 S.W.2d at 349. Appellant has waived this contention.

As to instruction two, under point three, appellant argues that the instruction would have helped the jury better understand his case. Appellant again offers only his conclusions as to how he thinks this instruction would have helped him, but cites no authority and furnishes no valid argument to support his contention that the trial court abused its discretion in refusing the requested instruction. Points three and four are inadequately briefed and are waived. TEX. R. APP. P. 38.1(h); *Ishin Speed Sport*, 933 S.W.2d at 349. We overrule appellant's points of error three and four.

In point five, appellant contends his trial counsel took the stand and testified that he spoke to a Phibro employee, Sally Glazener, who said appellant had accepted the job offer made by Phibro. He asserts that his trial counsel "lied blatantly" "putting a negative on the case." Appellant further cites other instances of incompetence by his trial counsel that damaged his case. Appellant cites no authority to support his conclusory argument, and cites no places in the record where the alleged incompetence

occurred. Point five is inadequately briefed and is waived. TEX. R. APP. P. 38.1(h); *Ishin Speed Sport,* 933 S.W.2d at 349. We overrule appellant's point of error five.

We affirm the judgment of the trial court.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed April 20, 2000.

Panel consists of Justices Cannon, Draughn, and Lee.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Bill Cannon, Joe L. Draughn, and Norman Lee sitting by assignment.