

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Lenore T. Leavitt

v.

State of New Hampshire Banking Department

Docket No.: 04-C-379

ORDER ON PENDING MOTIONS

The within order addresses the three pending motions in this case, to wit, the plaintiff's Motion to Strike Expert dated February 7, 2006; the plaintiff's first Motion in Limine dated February 10, 2006; and the defendant's Motion in Limine dated February 13, 2006. The Court will address each motion in turn.

The defendant notified the plaintiff of its intent to call Julie Moore as an expert witness in the defense of this case. The plaintiff objects and has filed a Motion to Strike Expert. The plaintiff bases her motion on the fact that Ms. Moore's testimony is not proper expert testimony under the New Hampshire Rules of Evidence 702. That rule permits expert testimony when the issue in a case involves some scientific, technical or other specialized subject matter that the average juror would have no knowledge of. The purpose of permitting expert testimony is to assist the trier of fact to understand the evidence.

The plaintiff argues that all that is involved in this case is whether or not she was wrongfully terminated from her employment. She claims that there is nothing overly complicated or unusual about her employment situation such that an average juror would need expert assistance to understand either the facts or the law. She surmises

that the average juror has sufficient knowledge of the employer-employee relationship based upon their own work experience such that they do not require assistance from an expert in order to determine whether or not her termination was wrongful. The plaintiff suggests that all the defendant has done in this case is find someone with some employment credentials to do nothing more than parrot their own defenses to the plaintiff's claim. The plaintiff concludes that the expert witness adds nothing to this case and thus her testimony would be far more prejudicial than probative.

The State objects to the motion on the grounds that while the average juror may have some general knowledge of the employer-employee relationship, this case involves personnel management decisions which require some explanation. A juror may not know what the reasonable actions would be of a major employer with respect to its termination function. In other words, what may be reasonable for a company employing five people may be unreasonable for a company employing ten thousand people. The defendant claims that its expert would provide some general education as to reasonable business practices for a large employer and thus her testimony would be helpful to the jury. Obviously the jury in the exercise of its discretion could completely disregard said testimony if they did not feel that it was beneficial. Thus in the State's opinion the testimony of its expert falls into the category of weight rather than admissibility.

The Court finds that there is merit to some of the arguments of both parties. The average juror may not know what a large employer, such as the State of New Hampshire, should reasonably do when an employee complains about a hostile environment in the workplace. An expert could legitimately comment upon whether or

not an investigation should be done when such a complaint is made and also what the procedure for that investigation should be. Thus the Court can understand the benefit of an experts opinion on these limited issues.

What is disturbing about the defendant's expert's report is that in large part it is nothing more than a rubber stamping of each and every decision the defendant made in the termination of the plaintiff. Thus while educating a jury as to the proper procedures with respect to investigating complaints or doing personnel evaluations etc. might be helpful, it would be improper for the defendant's expert to in effect usurp the function of the jury by trumpeting the reasonableness of all of the defendant's actions in this case. The jury must decide whether or not the plaintiff was wrongfully terminated; that decision should be the jury's alone and the expert's opinion of that is something that is prejudicial and has no probative value. If a jury is given some guidance as to an appropriate method by which a company investigates and terminates an employee that is sufficient.

Thus while the court will not exclude the testimony of the defendant's expert in this case, it will restrict that testimony to general business practices without any personal opinions about the conduct of the defendant. In other words, questions such as was the defendant reasonable in terminating the plaintiff, or was the plaintiff a good employee, or did the defendant do anything wrong, or was the investigation reasonable, or does the plaintiff's case have merit, are not to be asked of the defendant's expert. So as to prevent a mistrial from occurring, State's counsel is instructed to discuss with the Court in detail the areas in which she is soliciting the expert's testimony so that those areas can be approved prior to the expert taking the stand.

The plaintiff has filed a Motion in Limine seeking to exclude from testimony at trial any evidence regarding the settlement offer by the defendant of employment in the Consumer Credit Department, as well as any details surrounding the relationship between the plaintiff and her step-daughter. In support of the motion the plaintiff claims that the former area of inquiry is precluded because it constitutes settlement discussions and the later area of inquiry is precluded because it has no bearing on any of the issues in this case.

The Court denies the motion for the following reasons. First, the so-called settlement offer was made at the time of the plaintiff's termination, well before this litigation commenced. Moreover it does have some probative value because it may tend to show that the bad faith which the plaintiff claims motivated the defendant to terminate her was not present given the fact that the head of her department offered to place her in another position without removing her completely from State service. In that regard the information is more probative than prejudicial. If the plaintiff feels that some type of curative instruction should be given when this testimony is elicited the Court will consider any instruction proposed.

With respect to the issue concerning the relationship between the plaintiff and her step-daughter, for purposes of liability that evidence has no probative value. However one of the plaintiff's claim for damages is that her alleged wrongful termination caused a great deal of emotional distress which manifested itself as shame, humiliation, embarrassment, anger, chagrin, disappointment and worry. The plaintiff also claims she suffered physical manifestations of this distress. Given the broadness of her claim, it is appropriate for the defendant to seek to uncover through evidence submitted to the

Jury other stressors in her life which could cause the physical manifestations she complains of. One of the plaintiff's outside stressors is allegedly brought on by the poor relationship that she had with her step-daughter. Thus for the limited purposes of causation and damages, the Court finds that some discreet inquiry into the other stressors in the plaintiff's life, such as the relationship with her step-daughter, is appropriate.


The defendant has filed a Motion in Limine seeking to have excluded from this trial any evidence regarding the alleged indictment of Kevin Hobbs; the perceived sexual relations between Ms. St. Pierre and Mr. Fleury, Mr. O'Connor, and Mr. Hobbs, and the suicide of Ms. St. Pierre's previous husband. The plaintiff agrees that the first and third subject matters are inappropriate to pursue in this case and thus she will not attempt to introduce any evidence with respect to these two issues. However the plaintiff claims that any alleged sexual relationship between Ms. St. Pierre and the three gentlemen referred to in the motion is relevant evidence and should not be excluded from the trial.

The Court agrees. However the issue is not whether or not Ms. St. Pierre actually had sexual relationships with one or all three of the men named in the motion. The issue is whether or not Ms. St. Pierre communicated the fact that she did have sexual relationships with these men to the plaintiff. If that communication was made then that would form a good faith basis on the part of the plaintiff to have felt that it would have been fruitless for her to complain about any problems she was having with Ms. St. Pierre to any of the men involved since one or all of them at one time were her supervisors. Thus while the plaintiff shall not be permitted to inquire as to whether or

not in fact Ms. St. Pierre actually had sexual relations with any or all of these men, the plaintiff will be permitted to ask Ms. St. Pierre if she imparted such information to the plaintiff at any time during her employment.

So Ordered.

July 19, 2006
Date


Kenneth R. McHugh
Presiding Justice