

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KIA THOMAS,

Plaintiff,

v.

ENIS RAGLAND, in his official and
individual capacity; WISCONSIN
MUNICIPAL MUTUAL INSURANCE
COMPANY, a Wisconsin corporation;
and THE CITY OF MADISON, a
governmental entity,

Defendants.

ORDER

03-C-0343-C

A hearing was held in this case on August 16, 2004, before United States District Judge Barbara B. Crabb to consider motions in limine and other pretrial matters. Plaintiff was represented by Timothy Edwards and Kirt Posthuma; defendants were represented by Michael Modl and Joseph Copa.

At the outset, the parties agreed to move the trial to September 13, 2004, to accommodate counsel for defendants. Counsel expect the liability portion of the trial to take about three days.

The primary issue was the relevance of events in 2000. Plaintiff's position was that

she needed to introduce evidence of these events to support her claim that she had a reasonable belief that Selina Owens was being sexually harassed. Defendants argued that the reasonableness of plaintiff's belief was no longer an issue because the court had concluded as a matter of law that plaintiff had a reasonable basis for filing her complaint against defendant. I held that the 2000 events could not be discussed at trial. They are irrelevant to plaintiff's claim that defendant wanted to retaliate against her for her filing of two complaints in 2003. Also, because defendants have represented that they will not be arguing that plaintiff's ethics complaint contained false and reckless information, plaintiff has no need to go into the 2000 events to rebut such an argument.

I ruled also that plaintiff cannot testify that she filed her complaints to protect Owens or anyone else from sexual harassment. The complaints speak for themselves. Moreover, defendants agreed that they would not seek to introduce evidence about plaintiff's motive for filing the complaints.

Defendant will not be allowed to introduce evidence that Norman Davis reduced her job duties when he was her supervisor. If Davis testifies on other subjects, plaintiff will be allowed to attempt to impeach him by asking whether he failed to include one of his criminal convictions in his job application.

The following preliminary rulings of the magistrate judge were confirmed.

1. Plaintiff's first motion in limine to exclude the August 25, 2003 confidential report

of the investigation carried out by Paul Schwarzenbart for defendant City is GRANTED. (As a corollary, neither side may try to introduce Schwarzenbart's interview notes (plaintiff's trial exh. #100) at trial.)

2. Plaintiff's second motion in limine to permit the introduction of evidence concerning defendant's alleged retaliation against Donald Studesville is DENIED. The evidence would not be probative of defendant's intent to retaliate against plaintiff.

3. Plaintiff's third motion in limine to permit the introduction of evidence that defendant forwarded to city officials accusatory letters and emails regarding plaintiff while plaintiff was on sick leave, that defendant referred to plaintiff as a disgruntled employee and defendant's efforts to block plaintiff's reclassification request is DENIED. I dealt with these accusations in the summary judgment order.

4. Plaintiff's fourth motion in limine is DENIED as moot. Defendants do not intend to try to introduce their trial exhibit #620.

5. Plaintiff's fifth motion in limine to exclude the June 5, 2003 correspondence from Assistant City Attorney Larry O'Brien to plaintiff's counsel is DENIED on the condition that plaintiff's counsel's response to the letter comes in with it.

6. Plaintiff's sixth motion in limine to exclude defendants' trial exhibit #622 is DENIED as moot; defendants do not intend to introduce the exhibit.

7. Plaintiff's seventh motion in limine to exclude certain evidence (defendants'

exhibits ## 642 and 643) is GRANTED; plaintiff is barred from introducing her trial exhibits ## 83, 108 and 117.

8. Plaintiff's eighth motion in limine to exclude evidence that the Affirmative Action office was doing work for the NAACP under Kirbie Mack's supervision is GRANTED. Whether defendants may use any of this evidence for impeachment purposes is a question to be resolved at trial, if and when it becomes relevant. Defendants' counsel is to broach the subject with the court and plaintiff's counsel before venturing into the area.

9. Plaintiff's ninth motion in limine to exclude evidence of plaintiff's behavior and character while working under Norman Davis is GRANTED.

10. Plaintiff's tenth motion in limine to allow plaintiff to introduce evidence regarding Norman Davis's disciplinary history and prior criminal convictions is DENIED.

11. Defendants' first motion in limine to exclude evidence of events occurring in 2000 is GRANTED.

12. Defendants' second motion in limine to exclude evidence of alleged retaliatory acts or adverse employment actions that have been dismissed is GRANTED.

13. Defendants' third motion in limine to exclude evidence of defendant's appointment as interim director of the Affirmative Action Department is GRANTED.

14. Defendants' fourth motion in limine to exclude evidence of events post-dating the filing of this suit is GRANTED.

15. Defendants' fifth motion in limine to exclude evidence of an April 2003 telephone call and of defendants' failure to reclassify plaintiff's position is GRANTED. The parties may argue the relevance of the failure to reclassify plaintiff's position when we reach the damages phase of the trial.

16. Defendants' sixth motion in limine to exclude evidence of events at a WABPSE conference held during the week of April 21, 2003 is GRANTED.

17. Defendants' seventh motion in limine to exclude evidence of correspondence between counsel and between defendants' counsel and Equal Rights Division Investigator Herje is GRANTED.

18. Defendants' eighth motion in limine to exclude evidence of Norman Davis's failure to disclose all of his criminal convictions in his employment application is DENIED; plaintiff may use this evidence for impeachment purposes if Davis testifies at trial.

19. Defendants' ninth motion in limine to exclude references to 2000 events in plaintiff's medical records is GRANTED.

Now that I have had an occasion to review counsel's arguments on the issue of subpoenaing Mayor Cieslewicz, I will grant defendants' motion to quash the subpoena. Defendants do not deny that defendant City authorized an investigation into plaintiff's alleged misconduct. That admission is sufficient evidence to make the City liable if the jury determines that the investigation was undertaken for retaliatory motives. Having the mayor

testify would not change anything because he is not a named defendant.

Entered this 20th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge