

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

JULIE M. ATWOOD,

Plaintiff,

v.

MISSION SUPPORT ALLIANCE, LLC,
STEVE YOUNG,

Defendants.

No. 15-2-01914-4

SECOND NOTICE OF APPEAL TO
THE COURT OF APPEALS,
DIVISION III

(Clerk's Action Required)


Defendants MISSION SUPPORT ALLIANCE, LLC and STEVE YOUNG, seek review by Division III of the Washington State Court of Appeals of the following orders:

1. Order Denying Defendants' and Plaintiff's Motions to Revise and Clarify Findings of Fact and Conclusions of Law, entered February 26, 2018, by Visiting Judge Doug Federspiel (Sub No. ___);

2. Order Granting in Part and Denying in Part Motions in Limine, entered February 15, 2018, by Visiting Judge Doug Federspiel (Sub No. 565);

Respectfully submitted this 9th day of March 2018.

YARMUTH WILSDON PLLC

By: 
Denise L. Ashbaugh, WSBA No. 28512
Cristin Kent Aragon, WSBA No. 39224
1420 Fifth Avenue, Suite 1400
Seattle, WA 98101
Telephone: 206.516.3800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Facsimile: 206.516.3888
Email: dashbaugh@yarmuth.com
caragon@yarmuth.com

*Attorneys for Defendants Mission Support
Alliance, LLC and Steve Young*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this date I served true and correct copies of the foregoing
3 document upon the following, at the addresses stated below, via the method of service
4 indicated:

5 John P. "Jack" Sheridan
6 The Sheridan Law Firm, P.S.
7 Hoge Building, Suite 1200
8 705 Second Avenue
9 Seattle, WA 98104
10 jack@sheridanlawfirm.com
11 mark@sheridanlawfirm.com
12 alea@sheridanlawfirm.com
13 john@sheridanlawfirm.com

- Via Email
- Via Federal Express
- Via Hand Delivery
- Via U.S. Mail

14 Dated: March 9, 2018 at Seattle, Washington.

15 
16 Suzette Barber, Legal Assistant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

JULIE M. ATWOOD,
Plaintiff,

v.
MISSION SUPPORT ALLIANCE, LLC,
STEVE YOUNG,
Defendants.

No. 15-2-01914-4

*PLAINTIFF'S
AND
L*

~~PROPOSED~~ ORDER DENYING
MSA'S MOTION TO REVISE AND
CLARIFY FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came before the Court on Mission Support Alliance, LLC's ("MSA")
Re-Noted Motion to Revise and Clarify Findings of Fact and Conclusions of Law
("Motion"). The Court has considered

- the Motion;
- the Declaration of Cristin Kent Aragon filed in support of the Motion with exhibits;
- Plaintiff's Response to Mission Support Alliance's Motion to Revise and Clarify Findings of Fact and Conclusions of Law (filed August 18, 2017);
- Declaration of John P. Sheridan in Support of Plaintiff's Response to Mission Support Alliance's Motion to Revise and Clarify Findings of Fact and Conclusions of Law (filed August 18, 2017); and
- The pleadings on file in this case.

1 Having considered all of these materials, the Court finds that its July 20, 2017 Order
2 Regarding Plaintiff's Second Amended Motion for Contempt and Sanctions Under CR 37
3 and CR 26(g) (the "Order") is hereby ~~revised and replaced with the following Order that~~ *AFFIRMED AND APPROVED IN ALL*
4 ~~may not be used in any way in the trial of this matter and which has~~ *RESPECTS. THAT ORDER HAS* no precedential value
5 against Mission Support Alliance and/or its outside counsel *→ IN AN OTHER CASE*
6 THIS MATTER came before the Court on Plaintiff's Second Amended Motion for *AND IS MENTIONED ONLY FOR PURPOSES OF THIS DISC. DISPUTR.*
7 Sanctions. The Court considered the following:

8 Plaintiff's Second Amended Motion for Sanctions under CR 37 and CR 26(g);

9 Plaintiff's Memorandum in Support of Second Amended Motion for Sanctions
10 under CR 37 and CR 26(g);

11 The Declaration of John P. Sheridan in Support of Plaintiff's Motion for Contempt
12 dated February 17, 2017 ("Sheridan Dec.");

13 The Supplemental Declaration of John P. Sheridan in Support of Plaintiff's
14 Amended Motion for Contempt dated February 22, 2017 ("Supp'l Sheridan
15 Dec.");

16 The Second Supplemental Declaration of John P. Sheridan in Support of Plaintiff's
17 Second Amended Motion for Sanctions dated May 2, 2017 ("2nd Supp'l
18 Sheridan Dec.");

19 The Declaration of Mark W. Rose in Support of Plaintiff's Motion for Sanctions;

20 The Declaration of Julie Atwood in Support of Plaintiff's Motion for Sanctions;

21 The Fourth Supplemental Declaration of Christine Moreland;

22 Defendant's Response,

23 The Declaration of Denise Ashbaugh;

24 The Declaration of Cristin Kent Aragon;

25 The Declaration of Mark Beller;

26 The Declaration of Kathrine Bence;

ORDER DENYING MSA'S MOTION TO
REVISE AND CLARIFY FINDINGS OF FACT
AND CONCLUSIONS OF LAW – Page 2

THE SHERIDAN LAW FIRM, P.S.
Attorneys at Law
Hoge Building, Suite 1200
705 Second Avenue
Seattle, WA 98104
Tel: 206-381-5949 Fax: 206-447-9206

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

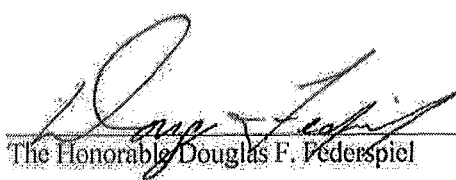
- The Declaration of Todd Beyers;
- The Declaration of Chris Jensen;
- The Declaration of Debbie Mariotti;
- The Declaration of Wendy Robbins;
- The Declaration of Julie Lindstrom;
- Plaintiff's Reply;
- The Reply Declaration of John P. Sheridan
- The Fifth Supplemental Declaration of Christine Moreland; and
- The Reply Declaration of Julie Atwood
- The records of these proceedings.

The Court has reviewed the defendants' proposed findings of fact and conclusions of law, and elects not to modify the findings regarding sanctions against MSA for discovery violations entered on July 20, 2017. Many of the defendant's proposed deletions would omit important facts supporting this Court's sanctions order, and in doing so, would undermine the order. See, for example, proposed deletion of most of paragraphs 24-39 (pertaining to MSA's efforts to quash the Fowler subpoena). Appendix 1 (red lines reflect the deletions) and Appendix 2 (showing additions and deletions in MSA's proposed findings). The findings of fact were fixed in time, and were based on the facts known to the parties and to the Court at the time the motion was argued. The case has now been tried to

a jury, and the outcome was based, at least in part, on evidence that was produced as a result of the sanction order. ^{AND/OR CONCLUSIONS} *IT'S FINDINGS ARE NOT TO BE USED FOR ANY PURPOSE IN ANY OTHER CASE WHATSOEVER.* No further action is required, and the motion is DENIED.


IT IS SO ORDERED.

Dated this 26 day of February, 2018.


The Honorable Douglas F. Federspiel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PRESENTED BY:
THE SHERIDAN LAW FIRM, P.S.


John P. Sheridan, WSBA # 21473
Mark W. Rose, WSBA # 41916
705 Second Avenue, Suite 1200
Seattle, WA 98104
jack@sheridanlawfirm.com
mark@sheridanlawfirm.com

Attorneys for Plaintiff

ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

JULIE M. ATWOOD,

Plaintiff,

v.

MISSION SUPPORT ALLIANCE, LLC,
STEVE YOUNG, an individual, and
DAVID RUSCITTO, an individual,

Defendants.

No. 15-2-01914-4

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS IN LIMINE TO EXCLUDE
WITNESS'S TESTIMONY & EXHIBITS
UNDER ER 404(b)

This matter came before the Court on Mission Support Alliance, LLC's¹ Motion in Limine to Exclude Evidence Pursuant to ER 404(b) (Signed September 5, 2017). MSA seeks the exclusion of various types of evidence as follows:

(1) The testimony of Sandra Fowler regarding claims of (i) gender discrimination (and retaliation for reporting) based on a difference in pay; (ii) hostile work environment; (iii) termination (and/or constructive discharge) based on gender discrimination; and (iv) testimony of complaints regarding other MSA employees against MSA;

(2) The testimony of Christine DeVere regarding retaliation, hostile work environment, and constructive discharge;

(3) The testimony of Jon Peschong regarding his complaints against Steve Young; and

¹ Mission Support Alliance, LLC (hereinafter "MSA") is not the only Defendant. Mr. Steve Young is also a Defendant represented by Yarmuth Wilsdon, PLLC, but for ease of reference, the Defendants may be referenced as solely MSA for ease of drafting.

1 (4) Approximately 85 exhibits listed in the Defendants' Motion based on ER
2 404(b).

3 The Court GRANTS in part and DENIES in part the Defendants' Motions. The
4 Court finds and concludes as follows:

5 1) As a matter of law, the appropriate standard of proof, made through an "offer
6 of proof" for admission of evidence of a prior bad act(s) under ER 404(b) in civil cases is
7 "substantial evidence" which this Court deems to be an evidentiary burden lower than a
8 "preponderance of the evidence".

9 2) Offers of proof were made in this case by multiple methods, and
10 combinations thereof, including but not limited to the following: (i) a written offer of
11 proof², (ii) an oral offer of proof made by Plaintiff's counsel in oral argument(s); and (iii)
12 the sworn testimony of Ms. Fowler with cross-examination allowed within the scope of
13 direct examination. This Court found Ms. Fowler to be a credible witness on the stand
14 based on her answers and her demeanor as observed during her direct testimony and cross-
15 examination.

16 3) Prior to admitting evidence of prior "bad acts" under ER 404(b), in the
17 context of a civil case, if the proponents of the evidence persuade the Court that the
18 evidence does in fact meet the "substantial evidence" standard. If that burden is met, as a
19 matter of law, then the Court must identify why the evidence is being admitted, and if the
20 reason(s) set forth is probative and relevant to one or more issues in the case, the Court
21 must determine whether the relevance (ER 401/402) is outweighed by the prejudice to the
22 non-moving party under ER 403; i.e., is it unduly prejudicial when balances with its
23 relevance?
24

25 ² Plaintiff's Opposition to Defendants' Motion in Limine to Exclude Evidence Pursuant to ER 404(b);
26 Plaintiff's Opposition to Defendants' Motion in Limine to Exclude Sandra Fowler Testimony and Exhibits;
Plaintiff's Motions in Limine; and relevant portions (attachments) of the Declarations Supporting and
Opposing said Motions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Sandra Fowler

1. Plaintiff's offered several proposed categories of testimony of Ms. Fowler, former General Counsel of MSA. These included gender discrimination based on unequal pay, retaliation based on reporting of gender discrimination based upon unequal pay, discrimination based upon gender discrimination, hostile work environment, and retaliation for reporting complaints of illegal or improper conduct of superiors. There was also a question regarding whether Ms. Fowler could testify regarding other employees' complaints of a similar nature against MSA and its executives.

2. Ms. Fowler eventually resigned and filed an EEOC complaint alleging discrimination and retaliation, and asserted that she was constructively discharged.

3. Regarding the allegation that Ms. Fowler received less pay based upon her gender, Plaintiff's offer of proof did not meet the "substantial evidence" standard. Plaintiff's offer of proof did establish by both a substantial evidence and a preponderance of the evidence that Ms. Fowler did lodge complaints about her level of pay (the fact that she lodged the complaint appears to be undisputed) and suffered retaliation for said complaints. Ms. Fowler's complaints regarding different pay based upon gender are sufficiently closely related to be relevant to the issue of retaliation in the Plaintiff's case. The Court has provided MSA with the following option: any testimony by Ms. Fowler regarding her complaints about pay disparity will be subject to a limiting jury instruction advising the jury that Ms. Fowler's allegations of pay disparity is not being presented as evidence of actual pay disparity, but only for evidence of retaliation for making the complaints under ER 404(b). The probative value, even though prejudicial to MSA, is not unduly prejudicial in light of the relevance of that evidence to the Plaintiff's retaliation claims.

4. Ms. Fowler's testimony about all of her complaints of gender discrimination (before, during or after Ms. Atwood's employment) and any alleged resulting retaliation are admissible under ER 404(b), as they were established by substantial evidence through the

1 offer of proof, and because the managers involved in the alleged discrimination and
2 retaliation were roughly the same high-level MSA core management team at the time of
3 Ms. Fowler's alleged constructive discharge in 2015 as were present in the adverse actions
4 allegedly taken against the plaintiff owing to gender discrimination and retaliation; thus the
5 probative value outweighs the prejudice.

6 5. Corporate culture comes through its key managers--those at the top. So,
7 regardless of whether the configuration of the individuals comprising the management is
8 identical as between the plaintiff and Ms. Fowler, it is MSA and its corporate culture, and
9 the cumulative effect of that corporate culture its key managers manifest upon their
10 subordinates that is relevant, probative evidence. I find that there is a substantial similarity
11 sufficient to allow this to be presented to the jury for the purpose of showing motive, plan,
12 intent and/or a pretext for discrimination over the Defendants' ER 404(b) objection.

13 6. Sandra Fowler may testify regarding the hostile work environment she
14 experienced allegedly based upon gender under the same analysis as set forth above.

15 7. However, any proposed testimony by Ms. Fowler regarding other
16 employee's complaints of discrimination or retaliation made by other MSA employees
17 during her employment as General Counsel for MSA is excluded on the grounds that it is
18 protected from disclosure by the attorney-client privilege, and fails to pass the initial
19 "substantial evidence" threshold of an ER 404(b) analysis. MSA has properly asserted the
20 attorney-client privilege throughout this litigation and not yet waived that privilege as it
21 pertains to Ms. Fowler's role as General Counsel.

22 **Christine DeVere (Moreland)**

23 Defendants seek exclusion of Ms. Christine DeVere's (now Moreland) testimony
24 regarding her complaints of harassment, retaliation, hostile work environment and
25 constructive discharge based on ER 404(b). After reviewing all the materials referenced
26 above, this Court concludes that there is not substantial evidence of any of the claims to

1 warrant consideration of presenting those to the jury and they are excluded under ER
2 404(b). The Court thus GRANTS Defendants' Motion as it pertains to Christine DeVere.
3 However, this does not preclude Christine DeVere from testifying regarding non-excluded
4 subject matters, such as what she did, said, or observed to the extent it is not precluded by
5 this Court's ruling(s).

6 **Mr. Jon Peschong**

7 The Defendants moved to exclude testimony regarding Jon Peschong's complaints
8 against Mr. Steve Young. The Plaintiff took the position in its briefing that this evidence is
9 irrelevant unless the Defendants opened the door to its relevance. The Parties agreed to that
10 resolution as it pertained to the Plaintiffs' Motion.

11 **The 85 Exhibits**

12 The Defendants identified 85 of the Plaintiff's exhibits and asked the Court to rule
13 on each one individually under their ER 404(b) objections. The Court took several days to
14 read each and rule on every identified exhibit. The Court ruled orally over the course of
15 two different mornings, and filed two separated handwritten pages reflecting the rulings.
16 (Copies of those are attached hereto and incorporated herein by reference.) These rulings
17 are preliminary in nature. The Court has repeatedly and clearly announced to the Parties
18 that these rulings are initial in nature and subject to either party asking to be heard on one of
19 more of the Court's rulings on any one or more of the exhibits in question. However,
20 absent a party raising an issue, the Court's rulings on these exhibits will stand.

21 **IT IS SO ORDERED.**

22 Dated this 19th day of September, 2017.

23
24 
25 The Honorable Douglas F. Federspiel
26 Superior Court Judge (visiting)

DAF

OTHER COMPLAINTS - TRIAL EXHIBITS

OK

NOT OK

17

29

DOO7222
ONLY THE LAST PAGE

← 30 →

THE REST, NO

46

65? MAY BE OK?

47

54, 55, 56, 57, 58, 59, 60

61-64, 66, 67

~~68~~, 68, 69, 70-78, 79-81

82, 83, 84, 86-90

85

91

? 92 - ?

CONT. M.I.L RE EXHIBITS

(IN)

OK

404(b)

DPT DLF

NOT OK

96

128

108

129

109

130

110

131

111

132

112

133

113

134

114

135

136

137

138

140

141 for purpose of
Voluntary Training

162 ~~162~~

163 OK

(400)

401

412