

IN THE OHIO COURT OF CLAIMS 2014 DEC -8 AM 8: 51

WILLIAM RUSSELL,)	CASE NO.: 2013-00138
)	
Plaintiff,)	
)	JUDGE PATRICK M. McGRATH
vs.)	MAGISTRATE HOLLY T. SHAVER
)	
CLEVELAND STATE UNIVERSITY,)	
)	
Defendant.)	
)	
STEVEN LISS,)	CASE NO.: 2013-00139
)	
Plaintiff,)	JUDGE PATRICK M. McGRATH
)	MAGISTRATE HOLLY T. SHAVER
vs.)	
)	
CLEVELAND STATE UNIVERSITY,)	
)	
Defendant.)	

ORIGINAL

**PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENDANT FROM
OFFERING EVIDENCE OR ARGUMENT RELATED TO SPECIFIC INSTANCES OF
ALLEGED CONCERNS OR PERFORMANCE**

Pursuant to Ohio Evid. R. 402 and 403, Plaintiffs William Russell and Steven Liss move this Court in limine to preclude Defendant Cleveland State University ("CSU") from introducing, eliciting testimony about, or otherwise referencing, specific instances of alleged concerns or performance because Defendant has testified that none of "those impact[ed] [CSU's] decision to terminate Steve Liss or Bill Russell."¹

It is anticipated that Defendant will present evidence or argument related to concerns with Plaintiffs' work performance or conduct as support for terminating Plaintiffs' employment.

¹ See Drnek Depo., pp. 248-249 (attached Exhibit A).

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Defendant, however, has admitted in the pleadings and in depositions that department restructuring was the only basis for Plaintiffs' termination from CSU.² They have further admitted that their purported "concerns" regarding Plaintiffs had no bearing on their termination.³

Accordingly, Defendant should be precluded from introducing evidence or argument that Plaintiffs' were terminated due to any specific instances of such "concerns."

I. LAW AND ARGUMENT

A. Evidence Related to Issues With Plaintiffs' Work Performance or Conduct Is Irrelevant to Any of the Claims or Defenses in this Case.

Ohio Rule of Evidence 402 prohibits the admission of irrelevant evidence. Ohio Rule of Evidence 402 provides that "[a]ll relevant evidence is admissible." Ohio Rule of Evidence 401 defines "relevant evidence" to mean: "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."

In this case, it is anticipated that Defendant will argue or attempt to establish that they purportedly had specific concerns regarding Plaintiffs' performance or conduct. Although Plaintiffs dispute such allegations, such evidence is irrelevant and does not tend to prove any Defendant admitted in its Motion for Summary Judgment that "Cleveland State has explained that [Plaintiffs] were terminated as a part of a restructuring of their department..." This is the only non-discriminatory, business reason given by Defendant for terminating Plaintiffs. It is further the basis of their seventh and eighth affirmative defenses.

In addition, Defendant admitted in discovery that negative issues related to Plaintiffs did not play a role in the termination decision. After discussing purported issues relating to Plaintiffs,

² *Id.*

³ *Id.*

Dr. James Michael Drnek, Dean of Students and the head of Plaintiffs' department at CSU, testified:

Q. Now, you talked about a variety of concerns relating to Steve and Bill today. And we've talked about a whole bunch of different issues which you believe are -- are negative instances. Did any of those impact your decision to terminate Steve Liss or Bill Russell?

A. No.

Q. Did any of those concerns impact CSU's decision not to rehire or to find new jobs for Steve Liss or Bill Russell?

A. No.⁴

Accordingly, evidence and argument related to Plaintiffs' conduct does not support any of the claims or defenses in this case, nor tend to make any fact of consequence to this action more or less probable. Therefore, Defendant should be precluded from introducing such evidence at trial.

B. Evidence Related to Issues With Plaintiffs' Work Performance or Conduct Is Prejudicial and Will Result in Undue Delay and a Protracted Trial.

Defendant would like to have a lengthy trial about irrelevant issues of newly-claimed concerns. None of which relate to CSU's decision to terminate Plaintiffs. Ohio Evid. Rule 403(A) bars evidence where its probative value is substantially outweighed by the danger of unfair prejudice. Moreover, Evid. Rule 403(B) permits a trial court to exclude evidence where its probative value is substantially outweighed by considerations of undue delay or needless presentation of cumulative evidence.

In this case, if Defendant is permitted to introduce irrelevant evidence related to alleged concerns, Plaintiffs will be severely prejudiced. Such claims have no bearing on this case and will only serve to obfuscate the issues that should be tried: specifically, whether Defendant discriminated and/or retaliated against Plaintiffs for an unlawful purpose(s). At this late stage,

⁴ See Drnek Depo., pp. 248-249 (attached Exhibit A).

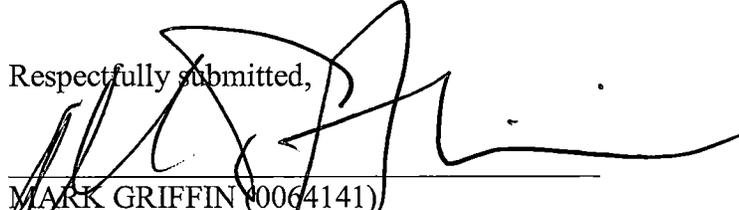
Defendant cannot introduce new reasons/arguments for terminating and/or not hiring Plaintiffs to buttress its case, as this will unfairly prejudice Plaintiff.

In addition, if such evidence is allowed, trial will be prolonged and will result in several mini-trials regarding the facts, events, and circumstances underlying alleged concerns or conduct issues. This will unnecessarily waste the Court's time and resources. Moreover, litigating such matters cannot be justified given the nonexistent probative value of such evidence.

II. CONCLUSION

For the reasons stated above, Plaintiffs respectfully move the Court for an Order *in limine* barring Defendant from offering irrelevant, prejudicial, and trial-prolonging evidence and argument related to issues of purported concerns with Plaintiffs' conduct for the purpose of justifying or supporting its termination decision. These alleged "concerns" were irrelevant to the employment decisions and should not be admitted.

Respectfully submitted,



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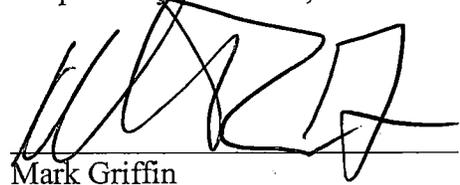
CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing was served via hand delivery, on this 8^h day of December 2014 to:

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Respectfully submitted,



Mark Griffin

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VIDEOTAPED DEPOSITION

OF

JAMES MICHAEL DRNEK

Thursday, September 25, 2014

Bakersfield, California



Reported by: Terri L. Haupt, CSR No. 6111

16:54:36 1 best I recall.

16:54:38 2 Q. Okay. You want to change my question. I'm
16:54:40 3 not asking you who managed the process.

16:54:42 4 It's true that Steve Liss wrote the first
16:54:45 5 reprimand, isn't it?

16:54:46 6 A. I don't remember.

16:54:46 7 Q. Okay. Do you have anything in writing
16:54:55 8 that -- that suggests that Steve did not handle that
16:54:58 9 improperly -- that Steve did not handle that
16:55:02 10 situation with Mary Myers properly?

16:55:03 11 A. No.

16:55:04 12 Q. And, in fact, even after that event with
16:55:07 13 Mary Myers you gave him a good recommendation and a
16:55:10 14 good review with respect to his ability to manage his
16:55:15 15 subordinates; right?

16:55:17 16 A. Yes.

16:55:17 17 Q. Now, you talked about a variety of concerns
16:55:23 18 relating to Steve and Bill today. And we've talked
16:55:29 19 about a whole bunch of different issues which you
16:55:32 20 believe are -- are negative instances.

16:55:34 21 Did any of those impact your decision to
16:55:36 22 terminate Steve Liss or Bill Russell?

16:55:39 23 A. No.

16:55:40 24 Q. Did any of those concerns impact CSU's
16:55:44 25 decision not to rehire or to find new jobs for Steve

16:55:47 1 Liss or

16:55:47 2 Bill Russell?

16:55:49 3 A. No. I -- you know, I think if Steve would
16:55:52 4 have come into the Skype interview for the Assistant
16:55:56 5 Dean job and had a kick-ass vision for Student
16:55:59 6 Engagement that he potentially could have got that
16:56:02 7 job.

16:56:04 8 Q. Now, you are the supervisor of Bob Bergman
16:56:11 9 -- right? -- indirectly?

16:56:13 10 He reports up to Willie who reports to you;
16:56:16 11 right?

16:56:16 12 A. That's correct, yes.

16:56:17 13 Q. Okay. And you named Bob Bergman as the head
16:56:22 14 of the Search Committee; correct?

16:56:26 15 A. Yes.

16:56:27 16 Q. Okay. And he is a manager, he's an
16:56:30 17 assistant dean; right?

16:56:30 18 A. He was the manager of the Student Center and
16:56:33 19 he became the Assistant Dean for Student
16:56:36 20 Organizations, right.

16:56:37 21 Q. Okay. The -- the position of Assistant Dean
16:56:41 22 is -- is higher than being a manager. It's one of
16:56:44 23 the reasons that you wanted to change that title?

16:56:45 24 A. You know, it's about at the same level.
16:56:48 25 It's just a -- it's a fancier title. It's a more