

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT E. WRIGHT, SR. : CIVIL ACTION  
: :  
v. : :  
: :  
MONTGOMERY COUNTY, et al. : NO. 96-4597

MEMORANDUM AND ORDER

HUTTON, J.

January 23, 2003

Presently before the Court is Plaintiff Robert E. Wright's Motion for a New Trial (Docket No. 286). For the reasons discussed below, Plaintiff's Motion is denied.

**I. BACKGROUND**

In this case, Plaintiff, Robert E. Wright, sued Defendants, Montgomery County, Pennsylvania and its County Commissioners, alleging that he was terminated from his position as Director of the Montgomery County Department of Housing Services as a result of employment discrimination. This case was tried before a jury, which ruled in favor of Defendants on June 4, 2002. By way of the instant motion, Plaintiff now seeks a new trial pursuant to Federal Rule of Civil Procedure 59.

## II. DISCUSSION

The parameters under which a new trial may be granted are set forth in Fed. R. Civ. P. 59. Rule 59(a) provides, in pertinent part, that:

[a] new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States . . . .

A motion for a new trial may be granted on several grounds, including findings that: (1) the trial court committed prejudicial errors of law; (2) there is newly discovered evidence; and (3) the verdict is against the weight of the evidence. 11 Wright, Miller & Kane, Federal Practice and Procedure Civil 2d, § 2805 (2d Ed. 1995). The decision to grant such a motion rests almost entirely in the discretion of the trial court. American Bearing Co. v. Litton Indus., Inc., 729 F.3d 943, 948 (3d Cir. 1984).

Although not entirely clear from his filings, Plaintiff appears to base his motion on the two grounds. First, he argues that this Court improperly excluded several of his witnesses and other evidence at the trial. Pl.'s Mot. at 1-8. Second, Plaintiff argues that the Court improperly invaded the province of the jury by making credibility determinations about certain witnesses. Pl.'s Supp. Mem. at 7-31. Each of these arguments is discussed in turn below.

### **A. Excluded Evidence**

First, Plaintiff cites numerous instances where the Court excluded witnesses or evidence proffered by him. Plaintiff claims that these rulings "prevented [him] from placing evidence before the jury which would permit them to infer discrimination by the defendants." Pl.'s Mem. at 5. For the reasons discussed below, Plaintiff's arguments must be rejected.

First, by his actions at trial, Plaintiff waived the right to object to any of the witnesses excluded by the Court. Walden v. Georgia-Pacific Corp., 126 F.3d 506, 519 (3d Cir. 1997). As Defendants properly point out, only definitive rulings on the record regarding the admission or exclusion of evidence may be reviewed for error. See Fed. R. Evid. 103(a). Two elements must exist for an evidentiary ruling to be considered definitive: (1) the party must make an offer of proof regarding the evidence and (2) the Court must make a final ruling deciding whether or not to admit the evidence. Id.; Walden, 126 F.3d at 519.

In this case, however, Plaintiff made no such offer of proof regarding the witnesses that he now claims were improperly excluded. On May 20, 2002, this Court issued a Memorandum and Order providing, in part, that certain of the parties' witnesses were preliminarily excluded on the grounds that the witnesses were either irrelevant, cumulative, or both. See Mem. and Order, May 20, 2002 (Docket No. 251). The Memorandum and Order specifically

states that the witnesses were excluded absent a renewed offer acceptable to the Court. Id. At trial, Plaintiff chose not make a renewed offer of proof for any other witnesses listed in the instant motion. Accordingly, he is barred from challenging these exclusions as error. Walden, 126 F.3d at 519 (“[W]here a district court makes a tentative in limine ruling excluding evidence, the exclusion of that evidence may only be challenged on appeal if the aggrieved party attempts to offer such evidence at trial.”) (emphasis in original).

In Walden, the plaintiffs in a Title VII case sought to introduce two statements by the plaintiffs’ supervisors. Id. at 516. The trial court held an in limine pretrial evidentiary hearing and issued a tentative ruling that the statements would be excluded. Id. On appeal, the plaintiffs sought to challenge the trial court’s exclusion of the statements. Id. The Third Circuit held that the tentative exclusion of evidence by a trial court could only be challenged on appeal if the aggrieved party attempted to offer such evidence at trial. Id. at 520 (holding that, because plaintiffs failed to make such an offer of proof, trial court’s decision was only subject to review for plain error).

Similarly, in this case, the Court issued a tentative ruling excluding some of Plaintiff’s evidence. At trial, Plaintiff did not attempt to offer the evidence in question. See June 3, 2002

Tr. at 6. Accordingly, under Walden, Plaintiff waived his right to challenge the Court's ruling on this evidence.

**B. Witness Testimony**

In his filings, Plaintiff also challenges the manner in which the Court excluded certain witnesses. Pl.'s Supp. Mem. at 7. Specifically, Plaintiff challenges these rulings in two ways. First, he argues that the Court improperly prevented three trial witnesses from testifying on certain allegedly relevant issues. Id. at 13-21. Second, he argues that the Court improperly invaded the province of the jury by altogether excluding the testimony of certain witnesses based on the credibility of those witnesses. Id. at 21-31. For the reasons discussed below, these arguments must also be rejected.

First, Plaintiff claims that the Court improperly prevented three witnesses - Mario Mele, Richard Buckman, and Joseph Hoeffel - from testifying about certain issues at the trial. Id. at 13-21. Initially, this Court notes that the decision to admit or exclude proffered evidence lies in the discretion of the trial court. Buskirk v. Apollo Metals, 307 F.3d 160, 174 (3d Cir. 2002) (citing Abrams v. Lightolier, Inc., 50 F.3d 1204, 1213 (3d Cir. 1995)). When the trial court applies the proper standard, its decisions are reviewed only for abuse of discretion. Abrams, 50 F.3d at 1213. Under Federal Rules of Evidence 401 and 402, only relevant evidence is admissible. Upon examining Plaintiffs' challenge to the

excluded testimony by Mele, Buckman, and Hoeffel, the Court finds that the testimony Plaintiff seeks to offer is irrelevant to the his claim.

Second, Plaintiff contends that this Court improperly precluded several witnesses from testifying at his trial. Pl.'s Supp. Mem. at 21. Plaintiff claims that the Court improperly invaded the province of the jury by basing its ruling on the witnesses' credibility. Id. Curiously, in the same part of his Memorandum, Plaintiff admits that the Court precluded this testimony "based on [the Court's] own determination that the testimony was not relevant or [was] cumulative." Id.

Under the Federal Rules of Evidence 401-403, this precisely describes the Court's role in deciding whether to admit evidence. Federal Rule Evidence 401 defines relevancy. Federal Rule of Evidence 402 states that irrelevant evidence is not admissible. Finally, Federal Rule of Evidence 403 allows the court, in its discretion, to exclude evidence that is prejudicial, confusing, or cumulative.

As Plaintiff himself admits, the Court properly precluded this testimony based on the grounds that is was either cumulative or prejudicial. Accordingly, Plaintiff's motion is denied as to this claim.

### III. CONCLUSION

In the instant motion, Plaintiff moves for a new trial on two grounds. First, he argues that the Court improperly excluded certain evidence. Because Plaintiff failed to offer this evidence at trial, this argument is rejected. Second, Plaintiff argues that this Court erred in excluding certain witness testimony and in precluding other witnesses from testifying at all. Because the Court based these decisions on proper grounds, this argument is also rejected. Accordingly, Plaintiff's motion is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 23<sup>rd</sup> day of January, 2003, upon consideration of Plaintiff Robert E. Wright's Motion for a New Trial (Docket No. 286), IT IS HEREBY ORDERED that Plaintiff's Motion is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.