

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

JILL WATERS : CIVIL ACTION
: :
: :
v. : :
: : NO. 03-CV-2909
: :
GENESIS HEALTH VENTURES, :
INC. :

SURRICK, J.

MAY 25, 2005

MEMORANDUM & ORDER

Presently before the Court is Defendant Genesis Health Ventures, Inc.’s Motion In Limine To Preclude Plaintiff Jill Waters From Offering Testimony And Evidence At Trial Regarding Skin Integrity Reports (Doc. Nos. 102, 113) and Plaintiff Jill Waters’s Response (Doc. No. 112). For the following reasons, Defendant’s Motion will be denied.

I. Factual Background

Plaintiff, a Caucasian female, was employed by Defendant for ten years until her employment was terminated on September 23, 2002. (Doc. No. 6 at 2, 5.) In June, 2002, Defendant hired Marvin Kirkland (“Kirkland”), an African-American male, as director of nursing. (Doc. No. 27 ¶ 13.) Kirkland supervised Plaintiff and other employees. The factors motivating Plaintiff’s termination from employment are in dispute. Plaintiff alleges that her discharge was due to Kirkland’s discriminatory animus. (*Id.* ¶¶ 16, 30.) Specifically, Plaintiff alleges reverse discrimination based upon race in violation of 42 U.S.C. § 1981. (Doc. No. 66 at

2.) Defendant claims that Plaintiff was dismissed for performance-related reasons.

Plaintiff seeks to offer evidence that Kirkland falsified a skin integrity report.¹ Plaintiff claims that Kirkland was later fired because he falsified this report and that he falsified the report in order to protect an African-American nurse. (Doc. No. 112 at 4.) Defendant asserts that Kirkland was not fired but resigned for his own personal reasons. Defendant files the instant Motion in Limine to preclude Plaintiff from offering testimony or evidence regarding skin integrity reports (Doc. No. 102 at 1) and to preclude Plaintiff from offering any disciplinary records pertaining to the incident wherein Kirkland allegedly falsified a report. (Doc. No. 113 at 1.)

II. Legal Standard

Federal Rule of Evidence 401 provides that evidence is relevant if it has “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.” Fed. R. Evid. 401. Federal Rule of Evidence 402 provides that “all relevant evidence is admissible.” Fed. R. Evid. 402. The Third Circuit has stated that ““Rule 401 does not raise a high standard,” *Hurley v. Atl. City Police Dep’t*, 174 F.3d 95, 109-10 (3d Cir. 1999) (quoting *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 782-83 (3d Cir. 1994)), observing that:

As noted in the Advisory Committee’s Note to Rule 401, “relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case.” Because the rule makes evidence relevant “if it has any tendency to prove a consequential fact, it follows that evidence is irrelevant only when it has no tendency to prove the fact.”

¹Skin integrity reports are descriptions of patients’ wounds. (Kruvczuk Dep. at 19.) Each wound has its own skin integrity report. (*Id.*)

Blancha v. Raymark Indus., 972 F.2d 507, 514 (3d Cir. 1992) (quoting Charles A. Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5166, at 74 n.47 (1978)).

Under Federal Rule of Evidence 403, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403. The Third Circuit has defined prejudice under Rule 403 as follows:

[T]he . . . prejudice against which the law guards [is] . . . unfair prejudice . . . prejudice of the sort which clouds impartial scrutiny and reasoned evaluation of the facts, which inhibits neutral application of principles of law to the facts as found. Prejudice does not simply mean damage to the opponent’s cause. If it did, most relevant evidence would be deemed “prejudicial.” However, the fact that probative evidence helps one side prove its case obviously is not ground for excluding it under Rule 403. Excluded evidence must be unfairly prejudicial, not just prejudicial.

Goodman v. Pa. Tpk. Comm’n, 293 F.3d 665, 670 (3d Cir. 2002) (citations omitted).

III. Discussion

Defendant asserts that evidence regarding the skin integrity reports at Defendant’s Crestview facility is irrelevant to the merits of this action. (Doc. No. 102 at 1.) Defendant also asserts that the prejudicial effect of this evidence would substantially outweigh any probative value. (*Id.*) Plaintiff responds that the skin integrity reports are relevant because they are evidence of Kirkland’s discriminatory animus and of the real reason for his termination from employment. (Doc. No. 112 at 3.) Further, Plaintiff responds that the probative value of the reports outweighs any prejudicial effect. (*Id.* at 5.)

Plaintiff contends that in September, 2003, Kirkland rewrote a skin integrity report for a

patient and had the African-American nurse responsible for examining the patient's wounds, Josette Rawls ("Rawls"), initial the report indicating that she had taken pressure wound measurements of a patient on August 20 and August 27, 2003, when she had not, in fact, done so. Plaintiff contends that Kirkland did this in order to protect the African-American nurse. (Doc. No. 112 at 4; Wilcox Dep. at 11-12, 17, 26, 49-50.) Plaintiff offers the deposition testimony of Cynthia Wilcox ("Wilcox"), a manager for Defendant, Dana Kruczuk ("Kruczuk"), a supervisor for Defendant, and Dawn Ranochak ("Ranochak"), assistant director of nursing for Defendant, in support of her assertions.

Wilcox testified that she observed a skin integrity report being written which indicated for the first time on September 7, that there was a wound on a particular patient. (Wilcox Dep. at 17-18.) The report revealed that the patient's wound had not been examined earlier. (*Id.* at 26.) Later, Wilcox noticed that this skin integrity report was missing and reported this to Kruczuk, her supervisor. (*Id.* at 21.) Wilcox looked in the treatment book, which is where the report should have been attached, and discovered that the report was not in the binder. (*Id.* at 21-22.) At her deposition, Wilcox was shown a different skin integrity report reflecting that the wound had been examined on August 20, August 27, and September 7, 2003. (*Id.* at 13-16.) Wilcox recognized the handwriting on the report as being that of Kirkland and Rawls. (*Id.* at 14.) Wilcox testified that the wound examinations noted with the report for August 20 and August 27 were not on the original report and were added later. (*Id.* at 17-18.)

Kruczuk testified that Wilcox told her that the skin integrity report in the file differed from the original document placed in the file. (Kruczuk Dep. at 9-10.) Kruczuk testified that the subject wound was first discovered by another nurse on September 7 and that she, Kruczuk,

had reported this to Ranochak, the unit manager, shortly thereafter. (*Id.* at 12, 14.) Kruczuk also testified that Kirkland had permitted Rawls to work without a license. (*Id.* at 34.)

Ranochak testified that Wilcox advised her that a skin integrity report was missing. Ranochak knew that Kirkland had the missing skin integrity report at one point because Rawls had taken it to his office. (Ranochak Dep. at 14, 25.) Ranochak reported the missing skin integrity report to Carol McQuillan, Kirkland's supervisor. (*Id.* at 36.)

Federal Rule of Evidence 401 provides that evidence is relevant if it has “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.” Fed. R. Evid. 401. Federal Rule of Evidence 402 provides that “all relevant evidence is admissible.” Fed. R. Evid. 402. The Third Circuit has noted that “Rule 401 does not raise a high standard.” *Hurley*, 174 F.3d at 95, 109-10 (citation omitted). In addition, the Supreme Court has stated, “[a]ll courts have recognized that the question facing the triers of fact in discrimination cases is both sensitive and difficult. . . . There will seldom be ‘eyewitness’ testimony as to the employer’s mental processes.” *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716 (1983). “It is the rare situation when direct evidence of discrimination is readily available, thus victims of employment discrimination are permitted to establish their cases through inferential and circumstantial proof.” *Kline v. Tenn. Valley Auth.*, 128 F.3d 337, 348 (6th Cir. 1997). Therefore, “we must be mindful not to cripple a plaintiff’s ability to prove discrimination indirectly and circumstantially ‘by evidentiary rulings that keep out probative evidence because of crabbed notions of relevance. . . .’” *Robinson v. Runyon*, 149 F.3d 507, 513 (6th Cir. 1998) (citation omitted).

In the instant case, it seems clear that Kirkland's alleged falsification of the skin integrity report to hide a dereliction of duty of an African-American nurse is relevant circumstantial evidence of Kirkland's discriminatory intent in this reverse discrimination case. It is also relevant on the issue of just exactly how Kirkland's employment at Crestview ended.

Defendant argues that even if we find the skin integrity reports relevant, they should be excluded under Federal Rule of Evidence 403. (Doc. No. 102 at 2.) Under Rule 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. However, "[e]vidence should be excluded under Rule 403 only sparingly since the evidence excluded is concededly probative. The balance under the rule should be struck in favor of admissibility." *Blancha*, 972 F.2d at 516 (citations omitted). Plaintiff cites *Koloda v. General Motors Parts Division, General Motors Corp.*, 716 F.2d 373 (6th Cir. 1983), which indicates that:

In order to exclude evidence under Rule 403, it must be more than damaging to the adverse party; it must be *unfairly* prejudicial. In this regard it has been held: Of course, 'unfair prejudice' as used in Rule 403 is not to be equated with testimony simply adverse to the opposing party. Virtually all evidence is prejudicial or it isn't material. The prejudice must be unfair.

Koloda, 716 F.2d at 378 (citations omitted). Moreover, the Seventh Circuit in *Hunter v. Allis-Chalmers Corp.*, 797 F.2d 1417, 1423 (7th Cir. 1986), stated that:

[g]iven the difficulty of proving employment discrimination – the employer will deny it, and almost every worker has some deficiency on which the employer can plausibly blame the worker's troubles – a flat rule that evidence of other discriminatory acts by or attributable to the employer can never be admitted without violating Rule 403 would be unjustified.

Id.

Under all of the circumstances, we conclude that these skin integrity reports are more probative than prejudicial, given the recognized need for circumstantial evidence in race discrimination cases. They are also more probative than prejudicial on the issue of why Kirkland's employment at Defendant ended. Accordingly, we will permit evidence of the falsification of the skin integrity report and any related disciplinary infractions to be introduced at trial. However, at trial we will limit the evidence that will be admitted to avoid confusion and needless delay.

IV. Conclusion

For the foregoing reasons, Defendant's Motions In Limine To Preclude Plaintiff Jill Waters From Offering Testimony And Evidence At Trial Regarding Skin Integrity Reports (Doc. Nos. 102, 113) will be denied.

An appropriate Order follows.

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GENESIS HEALTH VENTURES,	:	
INC.	:	

ORDER

AND NOW, this 25th day of May, 2005, upon consideration of Defendant Genesis Health Ventures, Inc.'s Motion In Limine To Preclude Plaintiff Jill Waters From Offering Testimony And Evidence At Trial Regarding Skin Integrity Reports (Doc. Nos. 102, 113, No. 03-CV-2909) and Plaintiff's Response thereto, it is ORDERED that Defendant's Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge