

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

DINA DELGRANDE, et al. : CIVIL
ACTION

v. :

TEMPLE UNIVERSITY : NO. 96-3878

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge
1997

August ,

I. INTRODUCTION

Plaintiffs, three former members of the women's crew team of Temple University, filed this action pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C.A. §§ 1681 et seq. Plaintiffs claim that while members of the crew program at the University, they were detrimentally affected by a hostile environment due to sexual harassment. The trial of this case commenced before a jury on June 30, 1997, and concluded with a verdict in favor of the University on July 7, 1997. In answer to the special interrogatories, the jury found that none of the plaintiffs "were subjected to a hostile environment because of sexual harassment while members of Temple University's Women's Crew Team." Accordingly, the jury did not reach the issue of whether Temple should be liable for failure to take remedial action to address the hostile environment.

Plaintiffs have filed a motion for new trial pursuant to Fed. R. Civ. P. 59. For the reasons that follow, the court will deny the motion.

II. DISCUSSION

A. Refusal to Amplify Instructions to the Jury

Plaintiffs raise one issue in support of their motion for a new trial. They assert that the court erred in refusing to give their proposed instructions which would have amplified the court's instructions on the elements required to prove a claim of sexual harassment. The court instructed the jury as follows on the plaintiffs' burden of proof:

The defendant, Temple University, is responsible or liable for the actions of employees of Temple University and/or plaintiffs' fellow students in plaintiffs' claim of sexual harassment if the plaintiffs prove each and every one of the following elements by a preponderance of the evidence. And there are five elements. I'm going to give them to you right now.

First, the plaintiffs must prove that the plaintiffs suffered from intentional discrimination because of their sex by the intentional conduct of employees of Temple University, and/or plaintiffs' fellow students, consisting of conduct of an unwelcome sexual motive.

Two, that the alleged conduct was pervasive and regular.

Three, the alleged conduct detrimentally affected the plaintiffs.

Four, the conduct would have detrimentally affected a reasonable person of the same sex in the plaintiffs' positions.

And, fifth, Temple University had actual or constructive knowledge about the existence of a sexually hostile environment and failed to take prompt and adequate remedial action.

(N.T., 7/7/97, at 1070-72.) The court then expounded upon each element. With respect to the fifth element, the court explained:

Finally, the plaintiffs must prove that Temple University knew or should have known of the harassment and failed to take prompt and adequate remedial action. That is, the plaintiffs must prove that the remedial action taken by Temple University was not reasonably calculated to end the harassment and prevent further harassment.

(Id. at 1073.)

Plaintiffs do not claim that the above instructions were erroneous. Nor did they pose any objection to the Interrogatories given to the jury. Instead, plaintiffs argue that the court should have elaborated on the fifth element by instructing the jury that knowledge of the coaches of Temple's crew teams of the

alleged sexual harassment must be imputed to Temple University.¹ The court refused the charge, telling plaintiffs' counsel that he could argue that point to the jury and the court would not "make the argument" for him. (N.T., 7/7/97, at 945.)

A trial court has broad discretion in ruling on points for charge. United States v. American Radiator & Standard Sanitary Corp., 433 F.2d 174, 199 (3d Cir. 1970), cert. denied, 401 U.S. 948 (1971). A litigant is not entitled to an instruction in the precise language and form requested. A trial judge can chose the language and form of the instructions so long as the instructions provided cover the requested instructions in substance. United States v. George, 625 F.2d 1081, 1087 (3d Cir. 1980); United States v. Blair, 456 F.2d 514, 520 (3d Cir. 1972). A trial judge is not required to repeat instructions "like a mantra". Trademark Research Corp. v. Maxwell Online, Inc., 995 F.2d 326, 341 (2d Cir. 1993). "If the charge as given is correct and sufficiently covers the case so that a

¹ Specifically, plaintiffs contend that the court should have given the jury their proposed instructions number 11 and 12 which read as follows:

JURY INSTRUCTION NO. 11

Temple is liable to the plaintiffs for unwelcome conduct of a sexual nature or based upon gender if you find that college employees below the administrative level, so long as they significantly controlled or influenced decisions which governed some aspect of the terms and conditions of plaintiffs' participation in university activities, knew of the conduct and failed to take prompt and adequate corrective steps.

JURY INSTRUCTION NO. 12

I instruct that Gerald Flood and Gavin White, coaches in the women's crew program, were employees of Temple, who significantly controlled or influenced decisions which governed aspects of the terms and conditions of plaintiffs' participation in university activities. Therefore, if you find that either Gerald Flood or Gavin White knew of unwelcome conduct of a sexual nature or based upon gender, and failed to take prompt and adequate protective action, then you must find defendant liable for the illegal conduct. As a matter of law, any knowledge of such illegal conduct on the part of Gerald Flood or Gavin White is to be considered the knowledge of Temple.

jury can intelligently determine the questions presented to it, the judgment will not be disturbed because further amplification is requested." Id. (quoting Oliveras v. United States Lines, Co., 318 F.2d 890, 892 (3d Cir. 1963)). As Judge Wisdom stated:

A litigant is entitled to have a trial judge advise the jury of his claims and theories of law, if, they are supported by the evidence and brought to the attention of the court. . . . The court is not required to give instructions in the language and form a litigant's lawyer fancies. The court has "considerable latitude in the choice of language used to convey to the jury in a clear and correct fashion the applicable law." (citation omitted). If the instruction as given sufficiently covers the case so that a jury can intelligently determine the questions presented, the judgment will not be disturbed because further amplification is refused.

Delancey v. Motichek Towing Service, Inc., 427 F.2d 897, 902 (5th Cir. 1970).

A trial judge "should not needlessly repeat statements respecting theories or defenses if the effect is argumentative or tends to mislead or influence a jury." Tribble v. Westinghouse Electric Corp., 669 F.2d 1193, 1197 (8th Cir. 1982) (quoting Halladay v. Verschoor, 381 F.2d 100, 113 (8th Cir. 1967)), cert. denied, 460 U.S. 1080 (1983). Furthermore, a court should "avoid giving undue emphasis or prominence to a particular issue or theory." Id. A court should also refuse a requested instruction which invades the province of the jury by commanding what the jury must do rather than advising what it might. Bowles v. Goebel, 151 F.2d 671, 674 (8th Cir. 1945).

Applying the above principles, the court did not err in refusing plaintiffs' request to amplify its jury instructions on the requirement that Temple must know or should have known of the harassment. The instructions given by the court were sufficient so that a jury would be able to intelligently decide the issue of whether Temple was aware of the alleged sexual harassment and whether it failed to take appropriate action. Further amplification was not necessary. Moreover, the instructions requested by plaintiffs were argumentative

and would have unfairly influenced the jury to the detriment of the University.² The proposed instruction commanded the jury to find that coaches Gerald Flood and Gavin White "significantly controlled or influenced decisions which governed aspects of the terms and conditions of plaintiffs' participation in university activities." See supra note 1. However, this issue was a disputed one, which was for the jury to decide. For example, defendant presented testimony to establish that the coaches did not control the renewal of the athletic scholarships that Temple had given to the plaintiffs. See N.T., 7/3/97, at 670-72. This evidence put into question plaintiffs' testimony that they feared the coaches would cause their scholarships to be terminated if they pressed their complaints of sexual harassment.

Furthermore, the proposed instructions also commanded the jury to find Temple liable if the two coaches knew of the sexual harassment and failed to take remedial action. See supra note 1. However, Temple could only be held liable if it were negligent for failure to investigate and remediate. See Bouton v. BMW of North America, Inc., 29 F.3d 103, 107 (3d Cir. 1994). One of Temple's many defenses to plaintiffs' complaint was that it acted reasonably in that it had established a zero tolerance policy on sexual harassment and had established detailed procedures whereby a student could file a complaint of sexual harassment. At trial, Temple maintained that the plaintiffs never utilized these

² Our Court of Appeals stated:

In jury trials the trial judge should be cautious and circumspect in his language and conduct before the jury. He must be fair to both sides, and the extent to which he may go in comments and remarks during the trial is governed by the fundamental principle that nothing should be said or done by him which will prejudice the rights of the parties litigant.

Sleek v. J.C. Penney, Co., 324 F.2d 467, 478-79 (3d Cir. 1963)(citation omitted).

grievance procedures despite being aware of them. Temple further contended that the plaintiffs' alleged complaints to the coaches did not satisfy the plaintiffs' obligations to exhaust the established grievance procedures. Accordingly, had the court instructed the jury as plaintiffs requested, the court would have taken from the jury Temple's defense that Temple acted reasonably in establishing and relying upon the grievance procedure; that the plaintiffs did not fully comply with that procedure; and, therefore, Temple should not be liable for the failure to investigate and remediate.

The issues of Temple's knowledge and the reasonableness of its actions were for the jury alone to decide, not for the court. Plaintiffs' counsel was permitted to argue to the jury the various contentions contained in his clients' requested jury instructions. This court did not err in refusing to put its imprimatur on these arguments by instructing the jury as requested by plaintiffs.

B. Harmless Error

Even if this court erred in refusing to give the plaintiffs' requested jury instructions, this court still could not grant a new trial. Error in jury instructions warrants a new trial only if the court is persuaded, based on the record as a whole, that the error was prejudicial; if the charging error would not have changed the trial result, a new trial cannot be granted. Fed. R. Civ. P. 61; Terminate Control Corp. v. Horowitz, 28 F.3d 1335, 1345-46 (2d Cir. 1994).

Here, in its answer to the interrogatories, the jury found that none of the plaintiffs had proven by a preponderance of the evidence that they were subjected to a sexually hostile environment. Thus, the jury never reached the issue of the liability of Temple for failure to investigate and remediate. Accordingly, the jury's verdict renders moot the plaintiffs' claim of error as to the

sufficiency of the court's jury instruction on the requirement that Temple must know of the hostile environment before it can be

held liable. See Trademark Research Corp., 995 F.2d at 341. The alleged error, therefore, was harmless and the motion for new trial must be denied.

An appropriate order follows.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

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ORDER

AND NOW, this day of August, 1997, upon consideration of the
plaintiffs' motion for a new trial, and the defendant's response thereto, it is hereby

ORDERED

that the motion is **DENIED** for the reasons set forth in the accompanying
Memorandum of Decision.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge