

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

DIANNE GRAHAM : CIVIL ACTION  
v. :  
TOLTZIS COMMUNICATIONS, INC., et al. : NO. 98-6269

**MEMORANDUM AND ORDER**

FULLAM, Sr.J. APRIL , 2000

Defendants in this action have moved to strike plaintiff's demand for a jury trial of her claim of pregnancy discrimination in violation of the Pennsylvania Human Relations Act (PHRA), 43 P.S. §951 *et seq.*, in light of the recent decision of the Pennsylvania Supreme Court in Wertz v. Chapman Twp., 741 A.2d 1272 (Pa. 1999). In Wertz, the Court held that neither the PHRA nor the Pennsylvania constitution provides a right to a jury trial for claims arising under that statute. (It is undisputed that plaintiff has a right to a jury trial of her Title VII claim.)

Courts in this district have long predicted that the Pennsylvania Supreme Court would find that the state legislature intended to make a jury trial available under the PHRA. *See Wertz*, 741 A.2d at 1277 (citing cases). Although it is now evident that this prediction was incorrect insofar as Pennsylvania law is concerned, the right to a jury trial in federal court is a matter of federal law. *See Simler v. Conner*, 372 U.S. 221, 222 (1963). In an action in federal

court for money damages pursuant to the PHRA, a plaintiff has an independent right, guaranteed by the Seventh Amendment of the United States Constitution, to a trial by jury. *See* Lubin v. American Packaging Corp., 760 F. Supp. 450 (E.D. Pa. 1991); Galeone v. American Packaging Corp., 764 F. Supp. 349 (E.D. Pa. 1991). The Supreme Court of Pennsylvania does not have the power to alter this outcome; nor did it purport to do so. *See* Wertz, 1278-79 & n.5.

An Order follows.

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**ORDER**

AND NOW, this            day of April, 2000, IT IS ORDERED that defendants' motion to strike plaintiff's jury demand in connection with her claim pursuant to the Pennsylvania Human Relations Act (PHRA) is DENIED.

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Fullam, Sr.J.