

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

JOSEPH HUSSEY : CIVIL ACTION
: :
v. : :
: :
CHASE MANHATTAN BANK, : :
ET AL. : NO. 02-7099

MEMORANDUM & ORDER

Surrick, J.

July 27, 2005

Presently before the Court is Defendants' Motion to Preclude Joseph Hussey's Attendance At Trial, Or In The Alternative, For A Protective Order (Doc. No. 51). For the following reasons Defendants' Motion will be denied.

Defendants seek to preclude Plaintiff from attending the trial based on an incident between Plaintiff and one of Defendants' witnesses that allegedly occurred in March, 2003. (*Id.* at 2-3.) Although the parties dispute the exact facts, according to a police report filed by Defendants, on March 5, 2003, Plaintiff returned to his former work location and threatened two of Defendants' employees, including Plaintiff's former supervisor, Greta Huegel, with bodily harm.¹ (*Id.* Ex. A.) Defendants contend that, because of this incident, Huegel would be intimidated by Plaintiff's presence in the courtroom while testifying at trial. (*Id.* at 4-5.)

Under Federal Rule of Evidence 611(a), a court may "exercise reasonable control" over a trial "to protect witnesses from intimidation or undue harassment." Fed. R. Evid. 611(a). This includes "the power to control a myriad of . . . circumstances surrounding the manner in which a

¹ In particular, according to the police report, Plaintiff threatened to shoot Huegel, his former manager, if he had a gun. (Doc. No. 51 Ex. A.)

witness may give testimony,” including situations where the “safety or health of a witness or others in the courtroom might be jeopardized by compelling testimony under normal conditions.” 28 Charles Alan Wright & Victor James Gold, *Federal Practice and Procedure* § 6164, at 350 (1990). A federal court also has the inherent power to control the conduct of the litigants who appear before them. *Hygenics Direct Co. v. Medline Indus.*, 33 Fed. App’x 621, 626 (3d Cir. 2002) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991)).

We recognize, however, that “[a] party to a lawsuit has a right to attend the trial absent an overwhelming reason to the contrary.” *Marks v. Mobil Oil Corp.*, 562 F. Supp. 759 (E.D. Pa. 1983); *see also* Fed. R. Evid. 615 (permitting a party to request the sequestration of regular witness, but not “a party who is a natural person”). The “[e]xclusion of persons who are parties would raise serious problems of confrontation and due process.” Fed. R. Evid. 615 advisory committee’s note.

The Plaintiff in this case is a former employee of Defendants who suffered a debilitating stroke in October, 1999. While the concerns of Defendants’ employees are not unreasonable, we believe that appropriate measures, including the presence of a United States Marshal in the courtroom, are sufficient to allay Defendants’ concerns. Accordingly, we see no need to exclude Plaintiff from trial.²

An appropriate Order follows:

²We note, however, that any misconduct by Plaintiff during trial will result in reconsideration of this decision.

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ORDER

AND NOW, this 27th day of July, 2005, upon consideration of Defendants' Motion To Preclude Joseph Hussey's Attendance At Trial, Or In The Alternative, For a Protective Order (Doc. No. 51), it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge