

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

APRIL LYNN BOLDS : CIVIL ACTION  
 :  
 v. :  
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 SPORTS CENTER ASSOCIATES, L.P., :  
 THE SPORTING CLUB & CLUB SPORTS :  
 INT'L, MITCH MADAY, & JOHN SATIR : NO. 98-2980

MEMORANDUM and ORDER

Norma L. Shapiro, J.

January 20, 1999

Plaintiff April Bolds ("Bolds") moves this court to reconsider its Order of November 4, 1998, granting in part and denying in part defendants' motion to dismiss. For the reasons stated below, plaintiff's motion will be denied.

BACKGROUND

Bolds worked for Sports Center Associates, L.P., ("S.C.A.") and The Sporting Club from July 1994, to October, 1996. Bolds alleges that in 1996 one of her supervisors, Mitch Maday ("Maday"), made continual sexual advances towards her, including offensive touchings.<sup>1</sup> Bolds complained to both Maday and John Satir ("Satir"), her supervisors, about the advances on a number of occasions. Satir and Maday did nothing to remedy the situation; instead, she was terminated.

Bolds filed this action against her previous employers, S.C.A., The Sporting Club, Maday, and Satir, and alleged sexual

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<sup>1</sup> One such allegation is that Maday "placed his index finger into the fly of Plaintiff's jeans onto her vagina." Compl. ¶ 18.

harassment in violation of Title VII and the Pennsylvania Human Relations Act ("PHRA"), intentional infliction of emotional distress, battery, and negligence. In an Order of November 4, 1998, this court granted defendants' motion to dismiss plaintiff's claims for intentional infliction of emotional distress and negligence without opinion.

This court exercised supplemental jurisdiction over the state law claims because they "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. §1367(a). Plaintiff's claims arise from the same events occurring during her employment by S.C.A. and The Sporting Club. The motion to dismiss the claims for intentional infliction of emotional distress and negligence was granted on the merits and not for lack of supplemental jurisdiction.

## **DISCUSSION**

### **I. Timeliness**

The Local Rules of Civil Procedure require that "[m]otions for reconsideration or reargument shall be served and filed within ten (10) days after the entry of judgment, order, or decree concerned." Local Rule Civ. P. 7.1(g). The Order dismissing three of plaintiff's claims was entered on November 4, 1998. Plaintiff filed her motion for reconsideration on November

23, 1998, twelve business days after the order was entered. Plaintiff's motion was not timely.

## **II. Reconsideration**

### **A. Standard of Review**

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." Continental Casualty Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995).

A court should reconsider a decision only "when there has been an intervening change in the controlling law, when new evidence has become available, or when there is a need to correct a clear error or prevent manifest injustice." NL Industries, Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n. 8 (3d Cir. 1995); Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). "A motion for reconsideration is ... not properly grounded on a request that a court rethink a decision it has already made." Tobin v. General Elec. Co., No. 95-4003, 1998 WL 31875, at \*1 (E.D. Pa. Jan. 27, 1998).

**B. Intentional Infliction of Emotional Distress**

Plaintiff argues the court improperly dismissed her claim for intentional infliction of emotional distress because the conduct of defendants was outrageous and extreme. Plaintiff argues in her motion to reconsider that the claim is viable because the advances complained of "can clearly be defined as outrageous," based upon the criminal definition of "indecent assault." Pl's Memorandum at 2.<sup>2</sup>

Since this court dismissed the claim, the Pennsylvania Supreme Court has addressed a similar issue. See Hoy v. Angelone, 720 A.2d 745 (Pa. 1998). In Hoy, the Pennsylvania Supreme Court affirmed a judgment n.o.v. on a jury award for intentional infliction of emotional distress. It recognized that it is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery. See id. at 754. Tortious or criminal intent is not enough to state a cause of action for intentional infliction of emotional distress; "only the most egregious conduct" is sufficient for recovery. See id. In Hoy, there was no claim of retaliation as here, and the court recognized retaliation as a weighty factor but only one of a number of factors in assessing whether an action states a viable

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<sup>2</sup> All references to "Pl's Memorandum" refer to the memorandum in support of plaintiff's motion for reconsideration unless otherwise specified.

claim for intentional infliction of emotional distress was stated. See id.

"[S]exual harassment is highly offensive and unacceptable conduct," id., but Title VII seeks to rectify such offense, and the offensive nature of the conduct is relevant to damages, including punitive damages, under Title VII. The conduct alleged here, even including the retaliation alleged, was, if proved, highly offensive and unacceptable conduct "not so extremely outrageous ... that would allow for recovery under this most limited of torts." Id.

This court originally relied upon Fye v. Central Transp. Inc., 409 A.2d 2, 4 (Pa. 1979) ("when the statutory procedure [of the PHRA] is invoked, it is exclusive"), Bruffett v. Warner Communications, Inc., 692 F.2d 910, 915 (3d Cir. 1982) (Employees may either seek relief under the PHRA or pursue other remedies), and Bonham v. Dresser Indus., Inc., 569 F.2d 187, 195 (3d Cir. 1978) (PHRA "provide[s] the exclusive state remedy for vindication of the right to be free from discrimination"). Hoy implicitly sanctioned a claim for intentional infliction of emotional distress in addition to a PHRA claim in some extreme circumstances not present here. Plaintiff asserts no argument why this court should no longer follow Fye, Bruffett, and Bonham.

### **C. Negligence**

Plaintiff also argues the court should not have dismissed

her negligence claim because she "clearly sets for an [sic] cause of action." Pl's Memorandum at 2. Plaintiff does not explain why the complaint sets forth such a cause of action, nor authority supporting the claim. The court considered the viability of the claim and dismissed it. Plaintiff's negligence claim is preempted by both the Worker's Compensation Act, 77 Pa. Con. Stat. Ann. § 481(a), and the PHRA. See Fye, 409 A.2d at 4; Bruffett, 692 F.2d at 915; Bonham, 569 F.2d at 195; Coney v. Pepsi Cola Bottling Co., 1997 WL 299434 (E.D. Pa. 1997)(citing Murray v. Commercial Union Ins. Co., 782 F.2d 432, 437 (3d Cir. 1986)).

#### **CONCLUSION**

Plaintiff's motion to reconsider the dismissal of these claims was not timely. Her motion does not present new evidence requiring reconsideration. See Harsco Corp., 779 F.2d at 909. Plaintiff has asserted no argument that show a "manifest injustice" worthy of reconsideration. See NL Industries, 65 F.3d at 324 n. 8. Plaintiff's motion for reconsideration will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 20th day of January, 1999, upon consideration of plaintiff's motion for reconsideration, defendants' response thereto, and in accordance with the attached Memorandum, it is hereby **ORDERED** that plaintiff's motion for reconsideration is **DENIED**.

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Norma L. Shapiro, J.