

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
Docket No. CV-2003-115
AAM - PLAN - 2/17/05

RICHARD SABO,)
Plaintiff,)
)
v.)
)
ST. JOSEPH HOSPITAL,)
Defendant.)

ORDER

APR 20 2005

ORDER

FILED & ENTERED
SUPERIOR COURT
MAR 17 2005
PENOBSCOT COUNTY

Defendant moves for summary judgment on the Plaintiff's Complaint. The facts are well established and do not need to be repeated here.

Plaintiff brings his claim pursuant to the Maine Whistleblower Protection Act (WPA) and the Maine Human Rights Act (MHRA). The facts suggest that the Plaintiff was a vocal and consistent complainer who frequently voiced dissatisfaction regarding health and safety conditions in the Sterile Processing Department. The parties seem to agree that complaints about health and safety followed by the termination of the complaining employee's employment bring the case within the ambit of the WPA. However, Defendant asserts that the Plaintiff was terminated because of repeated inappropriate communications, not the content of the communications. In addition, it is asserted that Plaintiff violated Defendant's employment policy by discussing a co-employee's medical condition (despite the fact that she may have waived any of her rights to confidentiality by discussing her condition with Plaintiff).

In response, Plaintiff argues that the reasons given in support of his termination are pretextual and that the Defendant fired him because of his alleged whistle blowing.

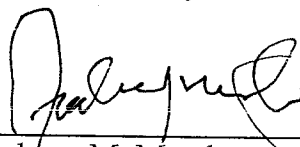
The parties agree that this matter is governed by the well established burden-shifting procedure established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and the pretext analysis noted in *Doyle v. Human Services*, 2003 ME 61, 824 A.2d 48. This court cannot conclude, as a matter of law, that no rational trier of fact could find that the Plaintiff was, in fact, terminated because of his whistleblower activities. For this reason, the Defendant's Motion for Summary Judgment on this points is denied.

Defendant moves for summary judgment on the issue of compensatory and punitive damages. In regard to any damages available only upon a showing of malice or ill will, the Motion for Summary Judgment is taken under advisement. Counsel shall make no mention of punitive damages during opening statements or during the evidence unless specifically approved by the court. Defendant may renew the motion (in the form of a Rule 50 motion) at any appropriate point in the future.

Accordingly, the docket entry shall be: Defendant's Motion for Summary Judgment is granted in part and remains under advisement in part.

The Clerk may incorporate this Order upon the docket by reference.

Dated: March 17, 2005

A handwritten signature in black ink, appearing to read "Andrew M. Mead", written over a horizontal line.

Andrew M. Mead
JUSTICE, MAINE SUPERIOR COURT

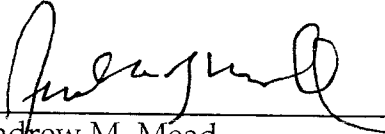
Secondly, Plaintiff asserts that a female employee in his department apparently suffered some manner of knee injury (she was seen wearing a knee brace) and was assigned to office work while he remained on the job in the Sterile Processing Department while he had his problems with his knee. He suggests that he has been the victim of disparate treatment. However, the record is devoid of any details of the woman's medical records or restrictions. Without proof of her medical condition, the Plaintiff simply cannot make out a case of gender-based disparate treatment. Accordingly, the Defendant's Motion is granted on the claim of gender-based discrimination.

Defendant moves for summary judgment on the issue of compensatory and punitive damages. In regard to any damages available only upon a showing of malice or ill will, the Motion for Summary Judgment is taken under advisement. Counsel shall make no mention of punitive damages during opening statements or during the evidence unless specifically approved by the court. Defendant may renew the motion (in the form of a Rule 50 motion) at any appropriate point in the future.

Accordingly, the docket entry shall be: Defendant's Motion for Summary Judgment is granted in part and remains under advisement in part.

The Clerk may incorporate this Order upon the docket by reference.

Dated: March 17, 2005



Andrew M. Mead
JUSTICE, MAINE SUPERIOR COURT

03/18/2005

MAINE JUDICIAL INFORMATION SYSTEM
PENOBSCOT COUNTY SUPERIOR COURT
CASE PARTY ADDRESS BOOK

ksmith
mjxxi048

RICHARD T SABO ET AL VS ST JOSEPH HOSPITAL

UTN:AOCSSr -2003-0062288

CASE #:BANSC-CV-2003-00115

RICHARD T. SABO

PL

ATTY GREIF, ARTHUR Tel# (207) 947-2223

ATTY ADDR:82 COLUMBIA ST PO BOX 2339 BANGOR ME 04402-2339

MARSHALL E. JENSEN

PL

ATTY GREIF, ARTHUR Tel# (207) 947-2223

ATTY ADDR:82 COLUMBIA ST PO BOX 2339 BANGOR ME 04402-2339

ST JOSEPH HOSPITAL

DEF

ATTY MCGUIRE, FRANK T. Tel# (207) 947-4501

ATTY ADDR:84 HARLOW ST PO BOX 1401 BANGOR ME 04402-1401

M=More, Space = Exit:M

Select the EXIT KEY for page selection line.

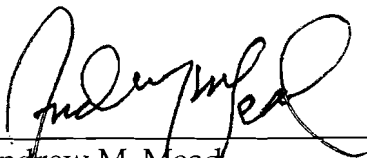
allowed the parties to explore the issue before the court entered a final judgment upon this point. The parties have taken the deposition of Dr. West and his opinions appear in the record.

The court is satisfied that Dr. West is consciously and affirmatively not willing to certify that the Plaintiff's earlier ligamentous problems constituted a substantial disability at any point in time. He allows that the Plaintiff may have been substantially limited in kneeling, crawling and squatting for several months prior and subsequent to the surgery, but a "substantial limitation" on certain physical maneuvers does not equate to a "substantial disability" for the purposes of the statute. In the absence of a physician's certification of a substantial disability (or facts suggesting a disability as otherwise provided in 5 MRSA §4553(7-A), the Plaintiff has failed to establish the necessary prima facie showing of a qualifying disability. As such, the Defendant is entitled to judgment as a matter of law on Count III of the Complaint.

Accordingly, the docket entry shall be: Defendant's Motion for Summary Judgment is granted with regard to Count III of the Complaint.

The Clerk may incorporate this Order upon the docket by reference.

Dated: October 11, 2005



Andrew M. Mead
JUSTICE, MAINE SUPERIOR COURT

10/13/2005

MAINE JUDICIAL INFORMATION SYSTEM
PENOBSCOT COUNTY SUPERIOR COURT
PAGE A - ATTORNEY BY CASE VIEW

ksmith
mjxxi013

RICHARD T SABO ET AL VS ST JOSEPH HOSPITAL

UTN:AOCsr -2003-0062288

CASE #:BANSC-CV-2003-00115

SEL VD	REPRESENTATION TYPE	DATE
01 0000002551 ATTORNEY:GREIF, ARTHUR ADDR:82 COLUMBIA ST PO BOX 2339 BANGOR ME 04402-2339 F FOR:RICHARD T SABO F FOR:MARSHALL E JENSEN	PL PL	RTND 06/26/2003 RTND 06/26/2003
02 0000002247 ATTORNEY:MCGUIRE, FRANK T ADDR:84 HARLOW ST PO BOX 1401 BANGOR ME 04402-1401 F FOR:ST JOSEPH HOSPITAL	DEF	RTND 10/27/2003

Enter Option: A=Add, B+Sel=Browse, M=More, R+Sel=RltnEdit:

Select the EXIT KEY for page selection line.