STATE OF MICHIGAN

COURT OF CLAIMS

KRISTY KLENKE,

Plaintiff,

v

Case No. 23-000179-MZ

MICHIGAN DEPARTMENT OF CORRECTIONS,

Hon. Sima G. Patel

Defendant.
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OPINION AND ORDER ON MOTIONS IN LIMINE

Before the Court are the parties' motions in limine regarding the evidence to be presented at the upcoming trial. As explained in greater detail in this order, the Court DENIES the parties' motions to exclude the challenged evidence, although with some caveats.

I. LEGAL STANDARD

In any trial, relevant evidence is admissible unless it is otherwise precluded by the Constitution, the rules of evidence, or binding precedent. Irrelevant evidence is never admissible. MRE 402. Evidence is deemed relevant if: "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." MRE 401. The rules of evidence provide that even relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of one or more of the following:

unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." MRE 403.

II. EVIDENCE OF MARIO CUNNINGHAM'S WRONGDOING

Plaintiff alleges that her coworkers and supervisors discriminated against her because she filed an internal complaint and then a federal lawsuit against Mario Cunningham for sexual harassment and sexual discrimination during her time working at the Michigan Reformatory. The details of Cunningham's actions and his connections with her coworkers at the Ionia Correctional Facility are relevant to proving the motives and purposes of defendant's agents in discriminating against her, plaintiff contends.

Defendant contends that only the fact that the internal complaint at Michigan Reformatory and the federal lawsuit were filed is relevant, and not any details underlying those actions. Defendant has agreed to stipulate that plaintiff engaged in protected activity by filing internal complaints about Cunnigham's behavior and by filing the federal lawsuit. Plaintiff retorts that the evidence necessary to prove defendant's discriminatory motives goes far beyond the mere existence of her internal complaints and federal lawsuit, requiring consideration of the underlying facts. The Court agrees, to a point.

The Court DENIES defendant's motion to preclude evidence of Cunningham's wrongdoing in the current trial. Plaintiff's presentation of this evidence will be limited, however. The Court will not conduct a trial of plaintiff's claims against Cunningham within this trial. The Court also will not entertain unnecessarily lengthy testimony on the topic. Plaintiff's line of questioning should be limited to establishing the relationship between a witness and Cunningham, the extent of the witness's knowledge of the events leading to plaintiff's federal lawsuit, and

whether the witness's actions toward plaintiff were motivated by animus against plaintiff for the events involving Cunningham. The Court will consider any objections to specific questions at trial.

III. HOFF'S NOTATION BY PLAINTIFF'S NAME ON A SCHEDULE

Defendant contends that Nicholas Hoff's placement of the word "bitch" on a scheduling sheet next to plaintiff's name was inadmissible as a "stray remark."

In *Krohn v Sedgwick James of Mich, Inc*, 244 Mich App 289, 292; 624 NW2d 212 (2001), the Court of Appeals adopted the reasoning from a line of federal cases regarding the admissibility of "stray remarks." In employment discrimination cases, courts must consider the relevancy of "stray remarks" by considering:

> (1) Were the disputed remarks made by the decisionmaker or by an agent of the employer uninvolved in the challenged decision? (2) Were the disputed remarks isolated or part of a pattern of biased comments? (3) Were the disputed remarks made close in time or remote from the challenged decision? (4) Were the disputed remarks ambiguous or clearly reflective of discriminatory bias? [*Id*.]

Plaintiff raised claims for employment discrimination based on sex under three theories: disparate treatment, retaliation, and hostile work environment. The Court finds the subject evidence relevant and admissible, especially to establish her hostile work environment claim.

Hoff was an agent of defendant. Although he played no role in the employment decisions that plaintiff challenges, he did play a role in creating the hostile work environment plaintiff faced. Hoff's statement was not isolated; it was part of a larger pattern at the prison creating the hostile work environment. The comment was made close in time to plaintiff's constructive termination. Plaintiff was on FMLA leave due to stress from the discriminatory animus at work. Contrary to

defendant's argument, the fact that plaintiff was on FMLA leave at the time does not diminish the relevance of the evidence. At that point, plaintiff planned to return to work, and Hoff's statement was part of the continuing pattern that resulted in plaintiff feeling unable to return. Finally, the statement was not ambiguous and clearly reflected the discrimination against plaintiff at her place of employment.

Accordingly, the Court DENIES defendant's motion to preclude this evidence and imposes no limitation on its admission.

IV. PLAINTIFF'S MARCH 24, 2021 DISCIPLINARY REPORT

On March 24, 2021, plaintiff was disciplined by her supervisor at the Michigan Reformatory. Defendant identified the discipline report as evidence it intends to present at trial. Plaintiff argues that this report is irrelevant and highly prejudicial, requiring its exclusion.

Defendant retorts that it intends to introduce the March 24, 2021 discipline report for a very limited purpose. Specifically, plaintiff alleged that when the Michigan Reformatory closed and its employees transferred, her November 21, 2022 request to be transferred somewhere other than Ionia Correctional Facility was denied for a discriminatory purpose. Defendant asserts that MDOC Policy Directive 02.03.100 and DOM 2022-20R render an employee ineligible for a transfer when they have an active discipline report. These policies, defendant contends, prevented plaintiff from being transferred at her request until March 24, 2023. The evidence, defendant argues, is relevant to establish a nondiscriminatory purpose in denying plaintiff's transfer request.

The Court agrees with defendant that the existence of plaintiff's March 24, 2021 disciplinary report is relevant to explain the denial of her November 21, 2022 transfer request.

Accordingly, the Court DENIES plaintiff's motion to exclude this evidence. However, presentation of this evidence is limited to rebutting a claim at trial that the denial of plaintiff's transfer request was based on discriminatory animus. The contents of the disciplinary report are irrelevant to the matters before the Court and the parties will be limited to presenting evidence that the disciplinary report existed and was the cause of the denial of plaintiff's transfer request.

V. REASON FOR DEBOER'S TERMINATION

During discovery, plaintiff presented an affidavit from Beth DeBoer who worked at the Ionia Correctional Facility with plaintiff. In that affidavit, DeBoer attested that John Jaramillo commented about plaintiff's federal lawsuit and made many negative comments about plaintiff's character, relationship with inmates, and alleged preference for African American men. DeBoer signed the affidavit less than three weeks after defendant terminated her employment. DeBoer was terminated "due to her close relationship with a Level 2 prisoner" at Ionia.

Plaintiff moves to exclude from evidence the reason for DeBoer's termination. Defendant contends that it is not attempting to present the evidence just to show that DeBoer was a disgruntled employee, but also to establish that she has a reputation for an untruthful character. For example, defendant notes, the investigation against DeBoer revealed that she made two phone calls to the prisoner's mother and lied about it. Defendant further posits that the evidence is admissible to establish DeBoer's motive in swearing an affidavit when she did, i.e., as retaliation for being terminated by Jaramillo.

MRE 404(a)(1) states, "Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." However, MRE 404(a)(3) permits the admission of "[e]vidence of a witness's character" under

other rules of evidence. Relevant to this matter, MRE 608 permits evidence of a witness's character for truthfulness or untruthfulness as follows:

> (a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
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> (b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
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> (1) the witness; or
>
> (2) another witness whose character the witness being cross-examined has testified about.
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> By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

MRE 404(b)(2) further provides that evidence of "other crimes, wrongs, or acts" are admissible, if material, "or another purpose, such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident."

In the event DeBoer takes the stand at trial, her credibility will be an issue for the Court's consideration. On cross-examination of DeBoer, defense counsel is permitted to test her veracity. For example, defense counsel could inquire if DeBoer had ever lied to an employer during a disciplinary investigation. If DeBoer makes a denial, defense counsel could raise the specific instance in the investigative report concluding that she had been untruthful under MRE 608(b)(1).

Further, defense counsel is permitted by MRE 404(b)(2) to use the fact of DeBoer's termination to establish that DeBoer had a motive to swear her affidavit and to be either untruthful or exaggerate her position. Details regarding the reason for her termination could be relevant and admissible depending on the course of DeBoer's testimony.

Accordingly, the Court DENIES plaintiff's motion to preclude evidence regarding the reason for DeBoer's testimony. The Court will entertain objections if raised at trial.

IT IS SO ORDERED. This is not a final order.

Date: March 5, 2026

Sima G. Patel
Judge, Court of Claims