STATE OF MICHIGAN

COURT OF APPEALS

SHEILA BROWN-GRIFFIN and OLIVER WAYNE GRIFFIN,

Plaintiffs/Counter-Defendants-Appellees,

v

GORDON FAASSE, MID MICHIGAN HEARING AID COMPANY, INC., and MIRACLE EAR, d/b/a MICHIGAN HEARING AID CO., INC.,

Defendants/Counter-Plaintiffs-Appellants.

UNPUBLISHED
July 23, 2002

No. 227718
Kent Circuit Court
LC No. 97-007095-NZ

Before: Wilder, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

In this suit for sexual harassment, defendants appeal from a jury verdict in favor of plaintiff Sheila Brown-Griffin[1] in the amount of $325,000. We affirm.

Defendants first take issue with the admission of the testimony of four experts who they allege improperly bolstered Sheila's credibility by testifying that her post-incident emotional and behavioral reactions were consistent with those of a sexual abuse victim. However, defendants failed to preserve this issue for review by objecting on the same grounds they assert on appeal. MRE 103(a)(1); *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 637; 601 NW2d 160 (1999). In any event, the evidence was admissible. See *McCalla v Ellis*, 180 Mich App 372, 384; 446 NW2d 904 (1989) (expert witnesses may properly testify concerning characteristics normally found in sexually abused persons).

Defendants next argue that evidence of four complaints previously filed by other individuals against defendant Faasse alleging sexual harassment was improperly admitted. Defendants characterize this evidence as improper bad acts evidence violative of MRE 404(b).

[1] The jury did not find for plaintiff Oliver Wayne Griffin, whose claims were derivative in nature.

We disagree. Our Supreme Court set forth the standard for admitting bad acts evidence in *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993):

> First, that the evidence be offered for a proper purpose under Rule 404(b); second that it be relevant under Rule 402 as enforced through Rule 104(b); third that the probative value of the evidence is not substantially outweighed by unfair prejudice; fourth, that the trial court may, upon request, provide a limiting instruction to the jury.

It is not questioned by either party that the purpose for admitting this evidence, i.e., impeachment, is a proper purpose under *VanderVliet.* The essence of defendants' argument is that the evidence, in the form of mere complaints, is not relevant because it does not prove that the alleged bad acts occurred. However, the evidence was not offered for that purpose. Rather, it was offered to rebut testimony that no employee of defendant Faasse ever objected to his conduct and to impeach defendant Faasse, who testified that he had been sued for sexual harassment only once before. Because the evidence was relevant for those purposes, the trial court did not abuse its discretion in admitting the evidence. See *Barcume v City of Flint*, 819 F Supp 631, 643-644 (ED Mich, 1993).

Finally, defendants assert that the trial court abused its discretion by admitting evidence of a settlement offer. Evidence of an attempt to compromise a claim that was disputed as to validity or amount is not admissible to prove liability for the claim. MRE 408; *Arnold v Darczy*, 208 Mich App 638, 640; 528 NW2d 199 (1995).

Plaintiffs offered evidence of the proposed settlement offer to negate defendants' contention that Sheila consented to sexual intercourse during her employment with defendants. Defendants assert on appeal that negating defendants' theory that Sheila consented to having sexual intercourse is equivalent to establishing liability for plaintiffs' sexual harassment claim. We agree. The issue of consent is inextricably intertwined with whether sexual advances were unwanted and admitting this evidence inevitably helped plaintiffs establish liability. Accordingly, the trial court abused its discretion by admitting evidence of the settlement offer.

However, simply because we find that the trial court abused its discretion in admitting such evidence does not require us to reverse the jury's verdict and remand for a new trial. An error in the admission of evidence is not grounds for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order unless refusal to take such action appears to the court to be inconsistent with substantial justice. MCR 2.613(A); *Merrow v Bofferding*, 458 Mich 617, 634; 581 NW2d 696 (1998).

In light of all the evidence supporting the jury's conclusion that the sexual encounter was not consensual, we regard the error in admitting evidence of the settlement offer as harmless. Significant evidence, independent from the admission of the settlement offer, supports the jury's finding. Sheila's doctor, Dr. Libra, testified that he did not believe that Sheila would have engaged in an affair, as such behavior was unlike her. Moreover, all of plaintiffs' experts, who were for the most part unchallenged on cross-examination by defense counsel, testified that Sheila's behavior after the alleged incident was consistent with her having been sexually abused, as plaintiffs alleged. As discussed above, plaintiffs also provided the complaints of four other people who alleged sexual harassment by defendant Faasse. The jury also heard testimony from

several witnesses who related other improper comments by defendant Faasse to support plaintiffs' claim of a hostile work environment. On the other hand, defendants' evidence to prove that the sexual encounter with Sheila was consensual came largely through Faasse's own self-serving testimony. We further note that defendants themselves used evidence of the settlement offer in an attempt to show how sympathetic defendant Faasse was toward Sheila and/or that plaintiffs were acting extortionately. In light of this record, we do not conclude that the improper ruling on the motion in limine resulted in a judgment against defendants that was inconsistent with substantial justice or in derogation of any substantial right.

We affirm.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra