

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ROSA FUENTES SMITH, CARRY W. :
SMITH, and CHAUNTEL SMITH, : C.A. No. 03C-06-037 WLW
:
Plaintiffs, :
:
v. :
:
KEYSTONE INSURANCE COMPANY, :
AAA MID-ATLANTIC INSURANCE :
GROUP, :
:
Defendants. :

Submitted: March 17, 2005
Decided: November 10, 2005

ORDER

Upon Defendant's Motion in Limine to Exclude
Personnel Records. Granted.

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover,
Delaware; attorneys for the Plaintiffs.

William J. Cattie, III, Esquire of Rawle & Henderson, LLP, Wilmington, Delaware;
attorneys for the Defendants.

WITHAM, R.J.

Upon consideration of Defendant's motion in limine and the record before this Court, it appears to the Court that:

Defendant has filed a motion in limine seeking to exclude any evidence pertaining to the (1) criminal records of Mr. Anthony Mosley, (2) complaints by other customers against Mr. Mosley, and (3) complaints by and about Mr. Mosley's interactions with his co-workers. Defendant contends that such information is irrelevant and inadmissible under the applicable rules of evidence.

Plaintiffs contend that Mr. Mosley's personnel records as an agent for Defendant are relevant because they show Mr. Mosley's pattern of misconduct and are admissible because they fall within the business record exception. Plaintiffs contend that Defendant put Mr. Mosley's character directly at issue when it denied payment based upon the misrepresentation made on the insurance application. Plaintiffs also contend that Mr. Mosley's documented pattern of misconduct is "inextricably intertwined" to Defendant's allegations fo rescinding Plaintiffs' policy. In the alternative, Plaintiffs contend that each document is not used to prove or disprove Mr. Mosley's specific conduct directly, but rather the conduct of Defendant in rescinding the policy despite knowledge of his employee's pattern of conduct.

Discussion

Without actual knowledge of the contents of Mr. Mosley's personnel records, it is difficult to determine the admissibility of such records. Based upon the limited information before this Court, however, it does appear that Mr. Mosley's personnel

records would be inadmissible.

Mr. Mosley's personnel business records could be admissible under the business record exception of the hearsay rule pursuant to D.R.E. 803(6).¹ Plaintiffs are also correct in their contention that D.R.E. 405(b) allows specific instances of conduct to be used to prove character when the character of a person is the essential element of the charge, claim or defense. However, D.R.E. 405 governs acceptable methods of proving character which is contingent upon character evidence being admissible.² The admissibility of character evidence is governed by D.R.E. 404. Specifically, D.R.E. 404(b) provides:

(b) *Other crimes, wrongs or acts.* Evidence of other crimes, wrongs or acts is not admissible to prove the character of the person in order to show action of conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

¹ Depending on the purpose of the personnel records (i.e. to circumstantially prove that Mr. Mosley is responsible for the material misrepresentation), there might be a hearsay within hearsay problem. However, because the records are inadmissible for other reasons, it is unnecessary to decide this issue.

² D.R.E. 405. Methods of proving character

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim or defense, proof may also be made of specific instances of that person's conduct.

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Although Plaintiffs contend that Mr. Mosley's personnel files are offered to prove that Mr. Mosley may have had motive and opportunity to procure the insurance policy in light of the truthful information provided by Plaintiff Rosa Smith, it is unclear how prior complaints against Mr. Mosley demonstrate such motive and opportunity. Moreover, the potential danger that the jury would misuse such information to find that the Defendant has bad character and acted in conformity therewith substantially outweighs the probative value of such information. Similarly, Plaintiffs' contention that Mr. Mosley's criminal convictions for drug use are admissible to show motive, opportunity and intent since Mr. Mosley was employed solely on a commission basis must be rejected. Any probative value Mr. Mosley's criminal record may have to prove motive, intent and opportunity is substantially outweighed by the danger of unfair prejudice.

Plaintiffs' final argument is that Mr. Mosley's personnel file is not being offered to prove or disprove Mr. Mosley's conduct directly, but rather the conduct of the Defendant in rescinding Plaintiffs' policy despite knowing its agent's pattern of misconduct. Because this Court has already granted partial summary judgment in favor of Defendant with respect to Plaintiffs' bad faith claims and because the remaining claims are merely contractual, Defendant's knowledge of Mr. Mosley's previous misconduct is irrelevant. Even if Defendant's knowledge of Mr. Mosley's conduct was relevant, any probative value gained from such evidence is substantially outweighed by the danger of unfair prejudice to the Defendant.

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Accordingly, based upon the aforementioned reasons, Defendant's motion in limine to exclude Mr. Mosley's personnel records is *granted*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Order Distribution
File