

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Rhonda Covert

Case No.: 2:08-CV-744

Plaintiff

Judge Graham

v.

Magistrate Judge Abel

Monroe County Department of Job and  
Family Services

Defendant.

ORDER

This matter is before the court on two motions in limine filed by the parties. Doc. 63, 64.

1. Evidence Relating to the Substance of the OCRC Charges and the Disposition of Those Charges

Defendant ("the Department") argues that the substance of the Ohio Civil Rights Commission ("OCRC") charges at issue in this case should not be entered into evidence because they are unfairly prejudicial and instead, the parties should simply stipulate to the fact that two OCRC charges were filed. Doc. 64. In the alternative, if this court does admit the substance of the charges into evidence, the Department argues that the disposition of those charges be entered into evidence as well. Doc. 64.

Plaintiff Covert filed two charges that are relevant in this case. On March 20, 2006, she filed a formal charge of discrimination with the OCRC ("March charge"), alleging that the Department "denied her equal pay due to consideration of her sex, female". Doc. 45, CM/ECF. Ex. No. 25, page 7. The March charge

was ultimately dismissed by the Equal Employment Opportunity Commission ("EEOC") on August 2, 2007 because the EEOC was "unable to conclude that the information obtained establishes violations of the statutes." Doc. 45, CM/ECF. Ex. No. 49, p. 4. Plaintiff later filed a second charge of discrimination on May 31, 2006 ("May charge"). Doc. 45, CM/ECF Ex. No. 26, p. 1. The May charge alleged that Covert's supervisors degraded and harassed female employees and expressed a desire to be "rid of the female employees." Doc. 45, CM/ECF Ex. No. 26, p. 1. The EEOC terminated its processing of the May charge and issued Covert a notice of right to sue on February 8, 2007. Doc. 45, CM/ECF. Ex. No. 49, p. 3.

The only claim remaining in this case is whether the Department's failure to promote Covert to supervisor on or about July 23, 2006 constituted unlawful retaliation for her filing of the March charge and the May charge. Doc. 67, p. 2. The filing of the charges and their general nature are relevant because plaintiff's claim of retaliation is based upon activity which she alleges was protected under Title VII of the Civil Rights Act of 1964 and Ohio Revised Code Chapter 4112. The substance of the two charges is relevant to the state of mind of the decision makers and whether they had a retaliatory animus toward Covert that motivated their decision not to promote her.

The Department argues that these charges are prejudicial. Any prejudice can be cured with a limiting instruction from this court that the charges are not to be considered for their truth, but rather to provide insight into the decision maker's state of mind. Thus, plaintiff may introduce into evidence at trial copies

of both the May charge and the March charge.

The dispositions of the charges, on the other hand, are not relevant to the decision makers state of mind because they occurred after the failure to promote occurred. The Department's citation to Fed. R. Evid. 106 is not well taken as fairness does not require the dispositions to be considered with the charges themselves. The Department's request to have the disposition of these charges entered into evidence is denied.

## 2. Evidence of Newspaper Articles and Smith Letters

Covert seeks to have two newspaper articles detailing the charges against the county (Doc. 45, Ex. 21, p. 31-32; Doc. 45, Ex. 21, p. 33) and two letters written by Vaughn Smith (hereinafter "Smith letters")(Doc. 45, Ex. 29, p. 1-4) to the county commissioners admitted into evidence. Doc. 63. Covert seeks to introduce both the newspaper articles and Smith letters to demonstrate Smith had a retaliatory animus against Covert when he failed to promote her to a position within the Department. Covert also seeks to introduce the Smith letters to impeach certain portions of Smith's testimony.

The two newspaper articles are admissible to show Smith's state of mind at the time the failure to promote occurred. Plaintiff argues that these articles embarrassed and angered Smith and thus he held a retaliatory animus toward Covert during the interview and selection process which took place shortly thereafter. This court agrees with Covert's assessment that the newspaper articles are relevant to show retaliatory animus and

thus, both will be admitted.

On January 2, 2007, Smith wrote two letters, one to County Commissioner Sonny Block and the second to the Monroe County Commissioners. Doc. 45, Ex. 29, p. 1-4. In the first letter, written to Sonny Block, Smith does not refer to Covert by name nor does he refer to her discrimination charges. Doc. 45, Ex. 29, p. 1. Thus, this letter is not relevant to show any retaliatory animus of Smith against Covert and is not admissible.

In the second letter, sent to the Monroe County Commissioners, Smith referred to the discrimination claims against him and the agency as "front page news in the County." Doc. 45, Ex. 29, p.3. He mentioned that Covert and others who filed the charges against him had gotten their "front page slander story." Doc. 45, Ex. 29, p.3. He stated that the discrimination claims against him were "fraudulent and with malice" (Doc. 45, Ex. 29, p.3) and that his "tarnished reputation should be restored" (Doc. 45, Ex. 29, p.3). This letter is relevant to demonstrate whether Smith harbored retaliatory animus against Covert. Even though this letter was written after the failure to promote occurred, it shows how Smith felt about the charge and is relevant to his state of mind regarding the charges against him at the time the failure to promote occurred.

The Department's argument that these materials constitute hearsay is not well taken. Neither the newspaper articles nor the Smith letter are being admitted for the truth of the matters asserted in them. Rather, they are being admitted to show Smith's state of mind at the time he failed to promote Covert. While the

Department has argued that the newspapers and the Smith letters are prejudicial, it has not stated why it believes this to be so. Thus court does not find either inherently prejudicial on their face.

This court reserves ruling until trial on the issue of whether any of this evidence will be admitted for impeachment purposes.

For the reasons stated above, this court denies the Department's motion in limine (Doc. 64) and grants in part and denies in part Covert's motion in limine (Doc. 63).

**It is so ORDERED.**

s/ James L. Graham  
JAMES L. GRAHAM  
United States District Judge

**DATE:** June 25, 2010

