

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000522-MR

MICHAEL KARRINGTON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JOHN R. ADAMS, JUDGE  
ACTION NO. 99-CI-02302

PINE MEADOWS HEALTH CARE, INC.  
AND MARSHA CABLE

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: DYCHE, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. Michael Karrington (Karrington) appeals a judgment entered by the Fayette Circuit Court following a jury verdict in favor of Pine Meadows Health Care, Inc. (Pine Meadows), and Marsha Cable (Cable) (collectively Pine Meadows). We affirm.

Karrington filed a complaint on June 30, 1999, alleging discrimination in his place of employment based on race in violation of Kentucky Revised Statutes (KRS) Chapter 344, intentional infliction of emotional distress and negligent infliction of emotional distress. These claims were based upon his allegations concerning his treatment while employed at Pine

Meadows and under the administration of Cable. Karrington alleged that he was subjected to unequal terms, conditions, and privileges of employment because of his race, and that Pine Meadows maintained a pattern and practice of race discrimination against black employees by subjecting them to a work environment which was hostile towards blacks. He also alleged that Pine Meadows either negligently, deliberately, intentionally, recklessly, or grossly negligently encouraged, permitted, or allowed to exist a workplace environment which was hostile, intimidating, and discriminatory to him and other black employees. As a result of said actions, Karrington claimed he suffered loss of income, extreme mental anguish, distress, anxiety, embarrassment and humiliation. Karrington further claimed that Cable breached her duties to him and that her conduct reached the level of outrageous conduct towards him. He sought general, special and punitive damages to be determined by a jury of his peers.

Karrington specifically alleged various conduct by Cable and Pine Meadows which he claimed supported his complaint. The most serious claim is what he alleged lead to his termination. He stated in his complaint that "Cable ordered [him] to get down on his hands and knees to clean a floor when other white employees were not ordered to do so in such a degrading manner." Pine Meadows denied all Karrington's allegations and claimed he was terminated because he refused to assist in cleaning the floor in violation of company policy by refusing to perform assigned work duties.

On October 30, 2000, the trial court entered an order granting in part and denying in part Pine Meadows's summary judgment motion. The court granted the motion as to the element of a disparate wage between Karrington and other similarly situated employees finding there to be insufficient evidence to support this theory. The court also granted summary judgment as to Karrington's claim of intentional infliction of emotional distress finding that his KRS Chapter 344 claims were insufficient factually to establish the tort of outrage. The court further held that the claim of outrageous conduct was subsumed by Karrington's claim under KRS Chapter 344, relying on Grzyb v. Evans, Ky., 700 S.W.2d 399 (1985) and Rigazio v. Archdiocese of Louisville, Ky. App., 853 S.W.2d 295 (1993). Finally, in this order, the trial court found that there is no recognized claim in Kentucky for negligent infliction of emotional distress nor had Karrington presented any facts or law to support such a cause of action. This finding was based upon Kraft v. Rice, Ky., 671 S.W.2d 247 (1984) and Deutsch v. Shein, Ky., 597 S.W.2d 141 (1980).

As usual, there was a flurry of legal activity in the month proceeding the date set for trial. In response, the trial court entered several orders dealing with legal and evidentiary issues. On November 21, 2000, the court entered an order finding that Karrington was not entitled to proceed on his punitive damages claim and thus, granted Pine Meadows's motion to strike Karrington's claim for punitive damages. Thereafter, in an order signed November 22, 2000, the court ruled on various issues

raised by each party in motions in limine. A three (3) day jury trial followed on November 28, 29 and 30, 2000. After hearing the evidence, reviewing the exhibits and being properly instructed by the court, the jury returned a verdict finding that race was not a substantial and motivating factor in Pine Meadows's decision to terminate Karrington's employment, that Pine Meadows did not discriminate against him by subjecting him to unequal terms, conditions and privileges of employment because of his race, and that Karrington was not subjected to a racially hostile work environment. The trial court denied Karrington's motion for a new trial and this appeal followed.

On appeal, Karrington raises two issues. First, he contends the trial court erred by allowing Pine Meadows to introduce evidence at trial that was irrelevant and prejudicial. Under this issue, Karrington sets forth six (6) specific incidences where he believes that trial court permitted prejudicial and irrelevant evidence to be introduced. Karrington's claim of error is that the trial court denied him the opportunity to present all his evidence of disparate treatment as evidence of race discrimination. Karrington sets forth two (2) alleged incidences of this type of trial error.

There is some question as to whether Karrington is appealing the summary judgment in favor of Pine Meadows on the issue of wage disparity or merely the evidentiary rulings made by the trial court. In that neither Karrington's pre-hearing statement nor the arguments made in his brief address the summary judgment itself or the standard of review to be applied, we

believe this appeal most appropriately addresses only the evidentiary rulings and we proceed accordingly. See CR 76.03(8); Karem in Greentree Corp., Ky. App., 783 S.W.2d 78 (1990). This distinction is important as to the standard of review to be applied to this appeal and the issues presented. In Goodyear Tire and Rubber Co. v. Thompson, Ky., 11 S.W.3d 575, 577 (2000), our Supreme Court reaffirmed the proper standard of review of a trial court's evidentiary rulings to be abuse of discretion. Rulings as to relevancy and prejudice are tasks properly reserved to the sound discretion of the trial court, and an appellate court will not disturb such rulings unless there has been an abuse of discretion. Transit Authority of River City v. Vinson, Ky. App., 703 S.W.2d 482, 484 (1985). The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. Goodyear, 11 S.W.3d at 581 citing Commonwealth v. English, Ky., 993 S.W.2d 941, 945 (1999). We review the trial court's ruling in the case before us applying these standards.

Karrington's first issue on appeal deals with the court's permitting Pine Meadows to introduce his employee file. Karrington claims the evidence was irrelevant, prejudicial and hearsay. Karrington alleges the negative information in his personnel file was inadmissible in that the proffered evidence was not relevant and did not rebut his evidence of pretext. He also argues that allegations of sexual harassment were prejudicial and inflammatory, and were improperly utilized to attack his credibility and to convince the jury of his bad

character. Pine Meadows counters that the evidence contained in Karrington's employee file was properly admitted because it was used to rebut Karrington's evidence that the reason for his termination was merely pretext, was relevant to rebut Karrington's claim that he maintained a good work record, rebutted Karrington's claim that Cable was a racist who made false statements, that other allegedly comparable individuals were not similarly-situated employees, was not hearsay and, if all else failed, admissible under the business record exception.

Without going into great detail as to each of the numerous items contained in Karrington's personnel file, we believe the trial court did not err in permitting Pine Meadows to pursue, before the jury, negative information contained in his employee file. Despite Karrington's argument that Pine Meadows claimed it terminated him for one isolated incident and specifically for not following a supervisor's work order, it was Karrington who first made his work record relevant. Karrington painted the picture that he had a stellar work record during his five year employment at Pine Meadows and that Cable was a racist out to get him. In response, Pine Meadows merely placed his employment record, the good and the bad, before the jury and gave Karrington a full and complete opportunity to discuss and explain all the problems he had encountered during his employment. We believe the trial court properly considered each of Karrington's objections then judicially ruled on the admissibility of the evidence. We find no abuse of discretion by the trial court. We believe the jury was properly presented with necessary, relevant

and admissible testimony concerning Karrington's employment and his interactions with other employees, supervisors and employment policies of Pine Meadows.

Karrington's second argument is that he was denied a fair trial when the court ruled that evidence of disparate treatment was not admissible. He sets forth two arguments as to disparate treatment. First, he contends he was the victim of disparate wages. However, the trial court had entered summary judgment on October 30, 2000, prior to the trial date on Karrington's claim of disparate wages. That order stated, in part, "The Court shall sustain the [Summary Judgment] Motion as to the element of a disparate wage between [Karrington] and other similarly situated employees, and finds that based upon the representations of counsel and the record before the Court that there is insufficient evidence for [Karrington] to proceed on that theory." As previously stated, we do not believe Karrington has appealed the summary judgment. Instead, his argument centers on the failure of the trial court to permit him to introduce evidence which he believes would show Pine Meadows discriminated against him with respect to compensation. We disagree. First, the summary judgment entered as to this issue precludes such testimony. Second, a review of the evidence proffered by way of avowal clearly shows that the attempted to be compared employees were not similarly situated and that Karrington earned more than the compared to employees. Thus, he failed to present a prima facie case of wage discrimination. Evidence of such alleged disparate wages would thus be irrelevant and highly prejudicial.

See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1973); Turner v. Pendennis Club, Ky. App., 19 S.W.3d 117 (2000).

Karrington's second argument as to disparate treatment is that the trial court denied him the opportunity to introduce evidence of different treatment of white employees. Again, we note these evidentiary issues were carefully considered by the trial court and rejected as not being relevant or admissible. Contrary to Karrington's position that all conduct of a racial nature is admissible as evidence of discrimination [citing Jackson v. Quanex Corp., 191 F.3d 647 (6<sup>th</sup> Cir. 1999)], we believe it to be more accurate to state that admissible evidence must comply with the Kentucky Rules of Evidence (KRE). As such, the trial judge must review each statement and proffered exhibit to see if it complies with the KRE and is relevant, admissible evidence. The court did so in this case, and after having thoroughly reviewed the record and arguments of the parties, we find no abuse of discretion in its evidentiary rulings in this matter.

For the foregoing reasons, the judgment entered by the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR  
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