

STATE OF MICHIGAN
COURT OF APPEALS

ROSEMARY ELAINE TOLBERT and ROBERT
WILLIAM CARL TOLBERT,

UNPUBLISHED
October 27, 1998

Plaintiffs-Appellees,

v

No. 198303
Genesee Circuit Court
LC No. 93-025993 NO

ROLAND BROCKRIEDE and BROCKRIEDE
DENTAL CLINIC,

Defendants-Appellants.

Before: Kelly, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

This case arises from a sexual harassment claim filed by plaintiffs¹ against defendants pursuant to the Michigan Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* Defendants appeal as of right from the trial court's order entering judgment on the jury verdict in favor of plaintiff Rosemary Tolbert.² We affirm.

First, defendants argue that the trial court abused its discretion in excluding various pieces of evidence at trial. We review a trial court's decision to admit or exclude evidence for abuse of discretion. *Davidson v Bugbee*, 227 Mich App 264, 266; 575 NW2d 574 (1997). However, in order to preserve an evidentiary issue for review, a party seeking admission of excluded evidence is obliged to make an offer of proof to provide the trial court with an adequate basis on which to make its ruling and to provide this Court with the information it needs to evaluate the claim of error. *In re Green Charitable Trust*, 172 Mich App 298, 329; 431 NW2d 492 (1988). In this case, defendants made an offer of proof with respect to only one of the trial court's decisions to exclude evidence. Thus, because defendants waived the remaining claims of alleged error by failing to preserve the lower court record with an offer of proof as to the proposed testimony, we decline to address those issues. MCR 7.210(A)(3); MRE 103(a)(2).

The remaining evidence that defendants claim the trial court improperly precluded the jury from hearing was testimony from both plaintiffs that they had engaged in illegal drug use during the time

plaintiff was employed by defendant. Although plaintiffs objected immediately to this line of questioning, defendants made an offer of proof as to their proposed testimony for the court's consideration. Both plaintiffs admitted that they had engaged in illicit drug use on a few occasions; however, it never occurred at Rosemary's place of employment or during work hours. Defendants apparently believed that the use of such evidence was permissible character evidence under MRE 404(b) and intended to use the testimony to establish that Rosemary was not the person that she portrayed herself to be. They argued that the exclusion of such evidence left the jury with an incomplete picture of Rosemary and her actions. The trial court found otherwise and held that plaintiffs' testimony had nothing to do with defendants or the precise event charged in the complaint. Accordingly, it sustained plaintiffs' objection and the evidence was excluded.

We initially note that while the issue was preserved, defendants have essentially abandoned this issue by failing to cite legal authority or analysis in support of their position. We are not obliged to search for authority to support a party's position on appeal, nor is it our responsibility to discover and rationalize the basis for the claims. MCR 7.212(C)(7); *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Nevertheless, we agree with the trial court that the use of such evidence was irrelevant and collateral. Moreover, given the remoteness of the conduct, and the fact that such activity never occurred at the workplace, any probative value of the evidence is outweighed by the highly prejudicial nature of the evidence. MRE 403. Nor do we find that the evidence would have been admissible as impeachment evidence under MRE 608 because the testimony did not relate to the character trait of truthfulness or untruthfulness as required by the rule.³ Thus, because the proffered evidence has no relevance to the issue to be resolved in this case, we conclude that the trial court's decision to exclude the evidence was not an abuse of discretion.

Defendants' next two arguments pertain to the trial court's award of attorney fees to plaintiff under the Civil Rights Act, MCL 37.2802; MSA 3.548(802), and the court's subsequent denial of costs and attorney fees to defendants under MCR 2.405. However, neither of these issue have been preserved for appeal because defendants failed to provide the transcripts of the hearing conducted on this matter, and thus, there is no lower court record for this Court to review. "Without the record of the trial court's ruling from the bench, it is simply not possible for us to determine whether the trial court abused its discretion or properly exercised it." *McLemore v Detroit Receiving Hosp & Univ Medical Center*, 196 Mich App 391, 401-402; 493 NW2d 441 (1992). Therefore, appellate review of these issues is precluded.

Affirmed.

/s/ Michael J. Kelly
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy

¹ Plaintiff Rosemary Tolbert alleged various claims including sexual harassment, constructive discharge, and other violations of the Civil Rights Act, MCL 37.2802; MSA 3.548(802). Her husband, plaintiff Robert Tolbert, also sued for mental anguish, humiliation, and loss of consortium.

² The jury awarded damages in the amount of \$7,000 to plaintiff Rosemary Tolbert; however, the jury determined that no cause of action existed with respect to plaintiff Robert Tolbert's claim.

³ Because defendants failed to cite a court rule, rule of evidence, or case law to support its argument that the evidence should be admitted, we presume that they intended to argue for admission under MRE 404(b) or MRE 608. However, as we indicated in the text, the evidence would not be admissible under either of these theories.