

[Cite as *Lester v. Dept. of Rehab. & Corr.*, 2022-Ohio-2729.]

ADRIENNE LESTER

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2018-01200JD

Judge Patrick E. Sheeran

DECISION

{¶1} Pursuant to Civ.R. 53(D)(3)(b), the parties separately filed objections to the magistrate’s November 24, 2021 decision. For the reasons set forth below, the Court **OVERRULES** the parties’ objections and adopts the magistrate’s decision as its own.

Standard of Review

{¶2} Civ.R. 53(D)(4)(b) provides that, “[w]hether or not objections are timely filed, a court may adopt or reject a magistrate’s decision in whole or in part, with or without modification.” However, when a party files objections to a magistrate’s decision, the court “shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues, and appropriately applied the law.” Civ.R. 53(D)(4)(d). In reviewing the objections, the court does not act as an appellate court but rather conducts “a de novo review of the facts and conclusions in the magistrate’s decision.” *Ramsey v. Ramsey*, 10th Dist. Franklin No. 13AP-840, 2014-Ohio-1921, ¶ 17 (internal citations omitted).

Background

{¶3} Plaintiff is employed with Defendant as a Quartermaster at Richland Correctional Institution (RiCI). After injuring herself at work in September 2016, Plaintiff took disability leave until April 2017. After returning to work, Plaintiff began having problems with a corrections officer, Scott Smith, who was responsible for security in the

quartermaster department, among other areas, of RiCI. There were several instances when Smith made tasteless comments to Plaintiff. Then, on August 15, 2017, Smith assaulted Plaintiff, threatened to rape her, and intentionally locked her in an enclosed area with inmates who had access to scissors, hammers, and other tools. While Major Mapp responded immediately when Plaintiff called for help regarding the situation, when he entered the quartermaster area and saw Plaintiff visibly upset, he told her that it was unacceptable to cry in front of inmates and stated: “you need to suck it up buttercup”. From this incident, Plaintiff experienced considerable fear and humiliation.

{¶4} Following the assault, Mapp placed Smith on relief duty such that he no longer worked in the quartermaster area with Plaintiff. However, Smith’s supervisor, Lieutenant Roque, had to subsequently order him to stay away after Plaintiff saw Smith near the quartermaster area several times for reasons not related to work. Additionally, while it did investigate the incident, Defendant neither made efforts to follow up with Plaintiff on the status of the investigation nor assure her that it would keep Smith away from her.

{¶5} During the investigation, Plaintiff experienced more fear and humiliation when Defendant brought her face-to-face with Smith for a mediation that was not held in accordance with departmental policy. Furthermore, Plaintiff made an Equal Employment Opportunity (EEO) discrimination complaint, which Defendant did not timely forward to its central office for investigation and, in response to the complaint, Defendant contended that Plaintiff was being “hyper-sensitive”. Because Defendant’s actions were not adequately addressing her concerns, Plaintiff filed a complaint with Ohio Civil Rights Commission (OCRC) that resulted in a conciliation agreement in which Defendant agreed to keep Smith separate from Plaintiff unless it was operationally necessary or in the event of an emergency. However, Defendant ultimately declined to discipline Smith for his actions on August 15, 2017.

{¶6} Following the conciliation agreement, Defendant gave Smith a position in the control room, which Plaintiff must walk past every day on her way into work and that job

gives Smith some level of control over Plaintiff's movements. Occasionally, Plaintiff must rely on Smith to unlock doors for her and be alone with him while he unlocks the doors, as well as having to hear Smith's voice over the public-address system every day when he announces mealtimes or count times.

{¶7} As a result, Plaintiff filed this complaint against Defendant. The case proceeded to trial before a magistrate on the issues of liability and damages. Based on the evidence presented at trial, the magistrate found that Plaintiff proved her claims of gender discrimination because Defendant did not reasonably respond. However, while the magistrate found that Smith did assault Plaintiff, the magistrate concluded that Defendant was not liable because Smith's actions were a departure from his employment and Defendant did not ratify his behavior. Further, despite finding that Smith did intentionally inflict emotional distress, the magistrate concluded that Defendant was not liable to Plaintiff because it did not ratify Smith's actions. Additionally, the magistrate found that Plaintiff did not prove her claims of retaliation. In recommending judgment in favor of Plaintiff, the magistrate awarded \$150,000 in compensatory damages and the \$25 filing fee.

Discussion

{¶8} Initially, the Court notes that the parties did not object to the magistrate's summary of the evidence from trial. While Defendant does take issue with the magistrate including in his decision reference to comments made by Defendant's counsel at trial, no such reference was included in the summary of the trial testimony. Upon independent review of the record, the Court finds no error with the magistrate's recitation of the evidence.

{¶9} Nevertheless, Plaintiff filed timely objections in which she argues that the magistrate erred in finding that (1) Defendant was not liable for Smith's assault; and (2) Defendant was not liable for Smith's intentional infliction of emotional distress. Defendant also filed timely objections in which it argues that the magistrate erred in finding that (1)

a lone threat of rape is sufficiently severe and pervasive enough to create a hostile work environment; (2) Defendant's response to Smith's actions was not reasonable; and (3) Plaintiff was entitled to \$150,000 in compensatory damages.

Plaintiff's Objections

{¶10} Plaintiff argues that the magistrate erred in finding that Defendant did not ratify Smith's actions and, therefore, concluding that Defendant could not be liable for Smith's assault or intentional infliction of emotional distress. Specifically, Plaintiff suggests that Defendant ratified Smith's actions because it failed to investigate and discipline Smith for closing the automatic-lock doors in the quartermaster area thereby endangering two female employees, including Plaintiff. The Court disagrees.

{¶11} It is well settled that an employer may expressly or impliedly ratify the acts of its employees performed beyond the scope of employment. See *Groner v. deLevie*, 10th Dist. Franklin No. 00AP-1244, 2001 Ohio App. LEXIS 1928, 27-28 (May 1, 2001). An employer ratifies an unauthorized act of an employee when it, with full knowledge of the facts, conducts itself in a way that manifests the intention to approve of the employee's earlier unauthorized act. *Id.* at 28. It remains unclear whether ratification can occur through an employer's silence or acquiescence. See *Lanning v. Brown*, 84 Ohio St. 385, 392, 95 N.E. 921 (1911) ("it seems to be the law that to confirm or ratify, one must have knowledge of the matter or transaction to be confirmed or ratified, and that silence or even acquiescence does not amount to such ratification."); *but see Campbell v. Hospitality Motor Inns. Inc.*, 24 Ohio St.3d 54, 58, 493 N.E.2d 239 (1986) (some evidence "could be viewed as demonstrating corporate ratification by silence * * *."). Nevertheless, it appears that "there are some situations where one would expect a principal to act, and thus the failure to act can be viewed as a manifestation of intent to ratify the agent's act." *Amato v. Heinika Ltd.*, 8th Dist. Cuyahoga No. 84479, 2005-Ohio-189, ¶ 6. Certainly "if a reasonable person could be expected to speak out against the unauthorized act[.]" then an employer ratifies an employee's unauthorized act where it is "fully informed of all the

material facts” and “either takes a position inconsistent with non-affirmance or retains the benefits of the act[.]” *Brooks v. Bell*, 1st Dist. Hamilton No. C-970548, 1998 Ohio App. LEXIS 1476, (Apr. 10, 1998).

{¶12} Upon de novo review, the Court finds the magistrate appropriately applied the law. Indeed, Defendant’s continued employment of Smith alone does not constitute ratification. See *Blaser v. BW-3*, 9th Dist. Lorain No. 98CA007054, 1999 Ohio App. LEXIS 2268, 17 (May 19, 1999). Additionally, Plaintiff has pointed to no authority requiring Defendant to discipline Smith for closing the automatic-lock door, which Plaintiff admitted she had the ability to unlock from the inside and she had keys with which she could unlock other doors through which she could have exited. Despite Plaintiff’s assertion that Defendant failed to investigate Smith’s conduct, the evidence demonstrates that Defendant did indeed investigate Plaintiff’s claims. While the Court recognizes that Defendant’s investigation had inadequacies, it cannot say that such indifference ratified Smith’s actions. Accordingly, the Court finds that Defendant neither ratified Smith’s assault nor his intentional infliction of emotional distress.

{¶13} Consequently, the Court OVERRULES Plaintiff’s objections.

Defendant’s Objections

{¶14} Defendant argues that the magistrate erred in finding that an isolated threat of rape is severe and pervasive enough to create a hostile work environment. Specifically, Defendant suggests that a single threat of rape coupled with an immediate physical threat alone cannot alter the conditions of the victim’s employment without evidence of a touching or more medical evidence than was offered here. The Court disagrees.

{¶15} Initially, the Court notes that the authority on which Defendant relies is over twenty years old and, while informative, is not binding on this Court. Moreover, to conclude that a threat of rape coupled with an immediate physical threat of harm cannot facilitate sufficient anxiety and fear in a victim to amount to discriminatory changes in a victim’s work conditions, merely because it is an isolated incident without an unwanted

touching, would be a preposterous precedent. A completed rape or other unwanted touching is not required for this Court to conclude that an aggressor's actions are extreme enough to create a hostile work environment. Additionally, the magistrate found that the incident was sufficiently severe to satisfy the "severe or pervasive" requirement because "[t]he threat of being raped resulted in plaintiff being fearful, intimidated, and anxious, and * * * she feared for her safety not only at work, but at home as well because Smith knew where she lived." Additionally, Plaintiff not only sought relief for her psychological distress, but the physical manifestations of her fear were also observed by her supervisor. Upon de novo review of the record, the Court finds no basis to modify this conclusion.

{¶16} Additionally, Defendant argues that the magistrate erred in finding that it did not respond reasonably to Plaintiff's allegations of harassment. Specifically, Defendant suggests its response was reasonable because it promptly initiated an investigation, spoke with the appropriate individuals, followed up with the complainant, and reported the harassment to others in management. The Court disagrees.

{¶17} The magistrate found that Defendant did not respond reasonably for several reasons. While he acknowledged that Defendant promptly initiated an investigation, the magistrate found that Defendant did not keep Plaintiff apprised of the investigation's status or assure her that Smith would be required to stay away from her. Further, in attempt to resolve matters, Defendant held a mediation—outside of departmental policy—and misrepresented to Plaintiff how it would be conducted. This mediation only caused Plaintiff further anxiety and humiliation. Moreover, while the reason remains unclear, Defendant did not timely forward Plaintiff's EEO complaint for investigation. Then, Defendant allowed Smith to bid for and take a position in the control room, which allows him contact with Plaintiff and a level of control over her movements through RiCI. Such an allowance is neither a reasonable action nor an action performed in good faith considering the terms of the conciliation agreement. Upon independent review of the record, the Court finds that, under the circumstances, Defendant's actions were indeed

not reasonably calculated to end the harassment and, therefore, the magistrate appropriately applied the law.

{¶18} Defendant argues that the magistrate further erred in relying on statements of counsel when concluding that Defendant's response was not reasonable. Indeed, statements made by counsel in opening statements and closing arguments are not evidence. *State v. Frazier*, 73 Ohio St.3d 323, 338, 652 N.E.2d 1000 (1995). However, it is clear the magistrate did not give evidentiary weight to any such statements. Upon review, the magistrate's legal conclusions relied entirely on evidence presented at trial. The magistrate merely observed after the fact that "[e]ven at trial, it appeared that the seriousness of the matter was not appreciated * * *." To the extent the magistrate erred when including such an observation in his decision, it was harmless at best. There was plenty of evidence upon which the magistrate could conclude that Defendant's response was not reasonable and, therefore, the Court finds that the magistrate appropriately applied the law.

{¶19} Finally, Defendant argues that the magistrate's damages award is not supported by the evidence. Specifically, Defendant suggests that the magistrate's damages award is excessive considering the limited evidence regarding medical treatment and the lack of evidence regarding any economic damages. The Court disagrees.

{¶20} Generally, "the appropriate measure of damages in a tort action is the amount which will compensate and make the plaintiff whole." *N. Coast Premier Soccer, LLC v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 12AP-589, 2013-Ohio-1677, ¶ 17. However, a party is not automatically entitled to an award of damages in an amount the party requests. *See White v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-927, 2013-Ohio-4208, ¶ 18. Although a court may consider "awards given in comparable cases as a point of reference," there is "no specific yardstick, or mathematical rule exists for determining pain and suffering." *Hohn v. Ohio Dept. of Mental Retardation &*

Developmental Disabilities, 10th Dist. Franklin No. 93AP-106, 1993 Ohio App. LEXIS 6023, 10-11 (Dec. 14, 1993). Accordingly, there is “no substitution for simple human evaluation” when determining damages. *Fantozzi v. Sandusky Cement Prods. Co.*, 64 Ohio St.3d 601, 612, 597 N.E.2d 474 (1992).

{¶21} In recommending judgment in favor of Plaintiff, the magistrate awarded her \$150,000.00 in compensatory damages. Defendant argues that the magistrate’s award is not supported by the evidence and is excessive in comparison to precedent both in harassment cases and in the Court of Claims generally. Upon de novo review, the Court finds no basis to modify the magistrate’s award of damages.

{¶22} As an initial matter, a trial court is not required to provide specific authority to support the reasonableness of a pain and suffering award because, ultimately, the court “must evaluate each case in light of its own particular facts.” *Hohn* at 10. While Defendant cites various cases in which the court awarded a lower amount for pain and suffering, the facts of those cases are not as ghastly as what Plaintiff experienced. Here, Smith threatened to rape Plaintiff and then, against standard practice, intentionally enclosed her in a room with inmates who had access to various tools that could be used as weapons. Upon responding to Plaintiff’s report of the incident, Mapp compounded Plaintiff’s distress by scolding her for her emotional response to the incident in front of inmates. Defendant then furthered Plaintiff’s humiliation when it brought her face-to-face with Smith in its misplaced attempt to mend their working relationship through a mediation held outside department policy.

{¶23} While the Court recognizes that there is limited medical evidence, the magistrate nevertheless found Plaintiff experienced “a great deal of anxiety and suffering.” Indeed, “placing a value on the emotional and psychological effect of sexual harassment is a difficult task and relevant caselaw provides little guidance in determining damages.” *Jones v. Ohio Veteran’s Home*, Ct. of Cl. No. 2002-03775, 2005-Ohio-3960, ¶ 11. Considering the evidence, the Court finds the magistrate properly evaluated

Plaintiff's damages. See *Siegel v. State*, 28 N.E.3d 612, 2015-Ohio-441, ¶ 12 (10th Dist.) (The trial court may "appropriately give weight to the magistrate's assessment of witness credibility in view of the magistrate's firsthand exposure to the evidence."). Accordingly, the Court finds that the magistrate was within the boundaries of proper discretion in determining Plaintiff's pain and suffering.

{¶24} Consequently, the Court OVERRULES Defendant's objections.

Conclusion

{¶25} For the reasons discussed above, the Court OVERRULES the parties' objections and adopts the magistrate's decision as its own. Judgment shall be rendered in favor of Plaintiff in the amount of \$150,000.00 plus the \$25.00 filing fee, for a total award of \$150,025.00. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK E. SHEERAN
Judge

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Plaintiff

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Defendant

Case No. 2018-01200JD

Judge Patrick E. Sheeran

JUDGMENT ENTRY

{¶26} For the reasons set forth in the decision filed concurrently herewith, the Court OVERRULES the parties' objections and adopts the magistrate's decision as its own. Judgment shall be rendered in favor of Plaintiff in the amount of \$150,000.00 plus the \$25.00 filing fee, for a total award of \$150,025.00. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK E. SHEERAN
Judge

Filed June 6, 2022
Sent to S.C. Reporter 8/8/22