



IN THE COURT OF APPEALS OF IOWA

MARY VEACH,

Plaintiff-Appellant,

vs.

FEDERAL EXPRESS CORPORATION,
BOB HOOVER, IRENE PURCELL, BOB
ETCHELLS, CAROL WILLIAMS, and
MIKE KRETCHMER,

Defendants-Appellees.

Filed June 24, 1987

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86-1330

Appeal from the Iowa District Court for Polk County (58-33930), Harry Perkins, Judge.

Plaintiff sued her employer and several co-workers for the torts of slander and intentional infliction of emotional distress. **AFFIRMED.**

Thomas Mann, Jr., Des Moines, for plaintiff-appellant.

Randy Duncan and Hugh J. Cain of Duncan, Jones, Riley & Finley, Des Moines, for defendants-appellees.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

HAYDEN, J.

Plaintiff, Mary Veach, sued her employer, Federal Express, and several co-workers for the torts of slander and intentional infliction of emotional distress. The suit was tried to a jury, which returned a verdict for the defendants. From this decision plaintiff has appealed.

Plaintiff has been employed by defendant, Federal Express, since September of 1979. On April 7, 1983, she allegedly attacked defendant, Irene Purcell. Mrs. Purcell reported the attack to the senior manager, Bob Hoover, another defendant. As a result of the alleged attack, a meeting was held at which plaintiff related the occurrence to Mr. Hoover, the district manager, and several co-workers. At this meeting the question of whether plaintiff's actions related to her being a lesbian were raised. Also at this same time plaintiff was confronted with these allegations.

Plaintiff was suspended from work with pay and was reinstated after a short period of time. She was still employed by defendant, Federal Express, at the time of trial.

On August 7, 1986, plaintiff filed her petition, alleging slander and intentional infliction of emotional distress. Prior to trial both parties filed motions in limine and plaintiff filed a motion requesting the production for testimony of Merle Stowell. The court denied plaintiff's motions and allowed defendant's motion in limine. On August 4, 1986, the jury trial was begun. At the conclusion of all evidence plaintiff moved for a directed verdict; this motion was denied. The plaintiff strenuously objected to the court's instructions. After instructions, the case was submitted to the jury and on August 8, 1986, the jury returned a verdict in favor of defendants. From this plaintiff has appealed.

We note that our review of the trial court is limited to errors of law. Iowa R. App. P. 4. Therefore, this case is reviewed as tried in the court below.

Mosebach v. Blythe, 282 N.W.2d 755, 758 (Iowa 1979). If supported by substantial evidence and justified as a matter of law, the judgment will not be disturbed on appeal. Atlantic Veneer Corp. v. Sears, 232 N.W.2d 499, 502 (Iowa 1975); Iowa R. App. P. 14(f)(1). But the reviewing court is not bound by the trial court's determination of law. Mosebach, 282 N.W.2d at 759.

Plaintiff contends: (1) the trial court committed error when it denied her motion for court order to require defendants to produce for trial testimony of Merle Stowell; (2) the court erred in its rulings on plaintiff's motion in limine and admissibility of evidence; (3) the court committed reversible error in denying plaintiff's motion for directed verdict; and (4) the court erred by instructing the jury as to the slander claim.

I.

Initially we address plaintiff's contention the district court erred in denying her motion for a court order to require the defendants to produce the personnel director of Federal Express, Merle Stowell, as a witness. On July 29, 1986, plaintiff filed this motion, asserting Ms. Stowell's testimony could not be obtained voluntarily.

As already noted, plaintiff filed her motion for production of testimony on July 26, 1986; this action was in direct violation of a pretrial ruling. In an order filed July 7, 1986, the court ordered all discovery and pleadings closed by July 18, 1986, and all motions except in limine closed on the same date. This motion was filed six days prior to the trial date, which had been scheduled since February 19, 1986.

During the trial, in an in-chambers proceeding, plaintiff's counsel stated he had requested Ms. Stowell's presence at the trial. The court did not rule on this issue, rather it reaffirmed its prohibition of evidence relating to a conspiracy against plaintiff. Plaintiff's counsel did not request a ruling on this motion.

Error is not preserved for appeal when a motion is not ruled upon by the trial court and no request or demand for a ruling is made. Sullivan v. Chicago & Northwestern Transportation Co., 326 N.W.2d 320, 325 (Iowa 1982). "The burden of demanding a ruling rests with the party desiring it." Blunt, Ellis & Loewi, Inc. v. Igram, 319 N.W.2d 189, 195 (Iowa 1982).

No court ruling on this motion is found in the trial court papers and the source plaintiff directs us to fails to indicate either a request or a ruling on the motion. This question was not properly preserved for appeal.

Even if we assume plaintiff properly preserved this issue, we find the court's disallowance of this motion proper. Plaintiff had known for more than six months when the trial would occur. After the time for pretrial motions had been closed plaintiff filed this motion to produce. A pretrial order controls subsequent court action. City of Marion v. Weitenhagen, 361 N.W.2d 323, 326 (Iowa App. 1984). Trial courts have inherent power to enforce pretrial orders by appropriate sanctions. Fox v. Stanley J. How and Associates, Inc., 309 N.W.2d 520, 522 (Iowa App. 1981). As an appellate court we must carefully scrutinize the exercise of the trial court's discretion and confine its exercise to reasonable limits. Id.

Here the plaintiff violated an explicit pretrial order of the trial court' we find the court's not allowing the production of the witness an appropriate sanction.

II.

Plaintiff also contends the trial court committed reversible error in allowing defendant's motion in limine and denying her various evidentiary requests. We disagree.

Plaintiff attacks the court's decision on two motions in limine, one filed by each party. Prior to trial defendants filed a motion in limine asking the

court to preclude plaintiff from offering any evidence defendant had discriminated against her, and any evidence concerning the moral character of the named defendants. In her resistance plaintiff contested the preclusion of evidence relating to discrimination and conceded she did not anticipate the offering of any evidence relating to defendant's moral character. The trial court sustained the motion as it related to the moral character of the defendants. Plaintiff's counsel admits he initially agreed to this motion. However, at trial he attempted to bring in evidence relating to sexual conduct as it related to the work atmosphere. The trial court prohibited the allowance of this testimony. In other words, plaintiff contends the trial court attached too broad a scope to defendant's motion in limine and thereby excluded relevant evidence.

The function of a motion in limine is not only to exclude during the voir dire examination and opening statements, reference to anticipated evidence claimed to be objectionable because incompetent, irrelevant, immaterial or privileged but to also restrict opposing counsel in asking questions or making statements in offering such matters until the admissibility of the questionable evidence can be determined during the course of the trial by presenting to the court in the absence of the jury such evidence by offer and objection. Its objective is to control such matters in advance and thus avoid disclosing to the jury prejudicial material which may compel declaring a mistrial.

Twford v. Weber, 220 N.W.2d 919, 922-23 (Iowa 1974).

"The trial court has discretionary authority to exclude evidence when the probative value thereof is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury." Henkel v. R and S Bottling Co., 323 N.W.2d 185, 193 (Iowa 1982). Here the court, prior to trial, granted the motion in limine but only as it related to defendant's immoral conduct. The court also recognized the possibility of reconsidering the matter if it appeared to be material during trial. As mentioned during trial plaintiff attempted to introduce evidence of certain defendant's moral misconduct in order to show a particular work atmosphere. The court sustained defendant's

counsel's objection of irrelevance and prejudice. We will not interfere with the trial court's discretion unless the court abused its discretion. Id. We find the court's decision reasonable and therefore not an abuse of its discretion.

Plaintiff also contends the trial court erred in not allowing her motion in limine to preclude defendants from offering any evidence regarding any acts that might establish her as a lesbian. This was based on defendant, prior to trial, dismissing its affirmative defense of truth to the defamation count. Again this relates to the trial court's broad discretion in determining what is relevant. Plaintiff's alleged intentional infliction of emotional distress resulting from actions allegedly taken against her at the work place. One of the elements involved in this tort is the emotional distress suffered by plaintiff was due to defendant's outrageous conduct. This evidence was offered to show plaintiff's problems in the work place were due to her own actions, by conducting herself in an unprofessional manner. Again we conclude the court's actions were reasonable and not an abuse of discretion.

Finally, plaintiff contends the trial court committed reversible error in making certain evidentiary rulings. During the trial she tried to offer evidence that the allegations of lesbianism were motivated by co-worker ill-will and malice. The trial court felt such evidence was immaterial and irrelevant, and would be confusing to the jury. The court, in a later objection, concluded the probative value of the testimony was exceeded by its possible prejudicial effect. The court found plaintiff's theory of a conspiracy against her was not supported by any other testimony or evidence and no foundation had been established to allow a conspiracy based theory to be presented to the jury. We again find the trial court's evidentiary ruling within the realm of its discretion.

Plaintiff argues the court erred in allowing defendants to present evidence of her previous employment record. Plaintiff objected on the grounds of relevancy and was overruled. Again this evidence was relevant to show the unprofessional nature of her past employment conduct. The trial court committed no reversible error in allowing this testimony.

III.

At the conclusion of all evidence plaintiff moved for a directed verdict on her claim for slander. The trial court denied her motion and she contends this denial was reversible error.

When considering a motion for directed verdict, if reasonable minds could differ on an issue under the evidence presented, it is properly submitted to the jury. Kurth v. Van Horn, 380 N.W.2d 693, 695 (Iowa 1986). We consider the evidence in a light most favorable to the party against whom the motion is directed. Id.

The trial court concluded a qualified privilege was appropriate in the present case; whether this decision was justified will be decided in the next issue. Qualified privilege protects only statements made without actual malice. Vinson v. Linn-Marr Community School District, 360 N.W.2d 108, 116 (Iowa 1984).

When considering the evidence presented in a light most favorable to the defendants, we find reasonable minds could differ as to whether plaintiffs established actual malice. We conclude the trial court did not error in denying plaintiff's motion for directed verdict.

IV.

Finally, the plaintiff contends the trial court erred in ruling defendants were entitled to the defense of qualified privilege and, therefore, plaintiff was required to prove defendants acted with actual malice.

It is for the trial court to decide as a matter of law whether the affirmative defense of qualified privilege is available for the communication in question.

Brown v. First National Bank of Mason City, 193 N.W.2d 547, 552 (Iowa 1972).

The court in Brown cited the following regarding qualified privilege:

A qualified or conditionally privileged communication is one made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a right or duty, if made to a person having a corresponding interest or duty on a privileged occasion and in a manner and under circumstances fairly warranted by the occasion and duty, right, or interest. The essential elements thereof are good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty. The transmitter must have an interest or duty in the subject matter, and the addressee must have a corresponding interest or duty, but such duty may be moral or social, rather than a legal one. The defense of qualified privilege does not extend to a publication to the general public. . . .

193 N.W.2d at 552.

From a careful review of the record we find defendants fulfilled their burden and presented evidence to support the court's conclusion a qualified privilege existed. the allegedly slanderous comment was made during an employee/employer meeting regarding plaintiff's actions towards a fellow worker. We find sufficient evidence in the record to support the trial court finding as a matter of law a qualified privilege existed.

A qualified privilege protects only statements made without actual malice. Vinson, 360 N.W.2d at 116. "Actual malice requires proof that the statement was made with malice in fact, ill-will, or wrongful motive." Id. at 117. The court was correct, upon finding as a matter of law the existence of a qualified privilege, in instructing on actual malice.

The trial court has a duty to instruct with reasonable fullness on pleaded issues which have supportive evidence. Hoekstra v. Farm Mutual Insurance

Co., 382 N.W.2d 100, 107 (Iowa 1986); Wiedenfeld v. Chicago and North Western Transportation Co., 252 N.W.2d 691, 695 (Iowa 1977). All jury instructions must be read together, not piecemeal, as in artificial isolation. Wiedenfeld, 252 N.W.2d at 698. With these principles in mind, we find the trial court's instruction incorporated the correct principles of law. The record presented to the trial court was sufficient to justify submission of the issues of qualified privilege, actual malice, and scope of employment.

AFFIRMED.