

Court of Claims of Ohio

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ANGELA PEACHOCK

Case No. 2005-10535

Plaintiff

Judge J. Craig Wright

v.

ENTRY OF DISMISSAL

NORTHCOAST BEHAVIORAL HEALTH
CENTER

Defendant

{¶1} This matter came before the court for an evidentiary hearing pursuant to R.C. 2743.02(F) to determine whether Mohamed Momen, M.D. is entitled to personal immunity under R.C. 9.86. Plaintiff alleges in her amended complaint that she suffered emotional distress as the result of inappropriate conduct and sexual harassment directed toward her by Dr. Momen. Plaintiff maintains that Dr. Momen's acts were intentional and malicious and that he acted outside the course and scope of his employment duties with defendant.

{¶2} R.C. 9.86 states as follows: "Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner."

{¶3} At the hearing, plaintiff, a licensed practical nurse, testified that she has been employed at Northcoast Behavioral Health Center (NCBH) for approximately three years and that she is assigned to one of the psychiatric units. Dr. Momen is a psychiatrist and he is also employed at NCBH. According to plaintiff, Dr. Momen began to spend more time in her presence beginning in November 2004. Dr. Momen allegedly followed plaintiff to the

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restroom while she was at work and also followed her to her car on numerous occasions after her shift had ended. Plaintiff further testified that Dr. Momen had tried to kiss her on three separate occasions, that he had called her at work and asked her to dine with him, and that he had once grabbed her and placed his hand on her breast. Plaintiff maintained that the last of these acts occurred in February 2005.

{¶4} Plaintiff admitted that she did not report the alleged harassment to her supervisor nor did she initiate any formal complaint against Dr. Momen at NCBH despite her knowledge that NCBH had a policy in place to address sexual harassment complaints. Plaintiff further acknowledged that she was informed during orientation classes to report any instances of sexual harassment to a supervisor. Plaintiff testified that she shared her concerns about Dr. Momen's behavior with her husband and at least two co-workers; however, plaintiff did not present any other testimony to corroborate her accusations.

{¶5} Dr. Momen testified that he has worked as a staff psychiatrist for over three years. Dr. Momen emphatically denied that he had ever acted inappropriately towards plaintiff and insisted that he had not engaged in any of the alleged misconduct described by plaintiff. According to Dr. Momen, he was required to remain in the building when he was on duty and if he left the building for any reason, it was necessary for him to notify someone about where he was going and then to sign out and back in on a log book. Dr. Momen thus specifically denied escorting plaintiff to her car. In addition, he declared that each of plaintiff's allegations was untrue and he expressed shock and dismay that plaintiff accused him of such behavior. Dr. Yechoor, Medical Director of NCBH, also testified on behalf of Dr. Momen. Dr. Yechoor stated that he is Dr. Momen's supervisor, that he has evaluated Dr. Momen since June 2004, that they interact on a near daily basis, and that he has never received complaints about Dr. Momen from any other female employee.

{¶6} The court notes that a determination of whether an employee acted within the scope of his employment is a question of fact. See *Tschantz v. Ferguson* (1989), 49 Ohio App.3d 9; *Oye v. The Ohio State Univ.*, Franklin App. No. 02AP-1362, 2003-Ohio-5944. In

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Oye, the Tenth District Court of Appeals ruled that a state employee was not acting in the course and scope of his employment and was not entitled to personal immunity when he admittedly engaged in the alleged verbal misconduct and that such acts did not further the employer's business. Indeed, the state employee did not deny that he had engaged in the behavior as described; rather, he responded that his conduct was meant to be, inter alia, a form of humor which was either misunderstood or misinterpreted by plaintiff. The Tenth District Court of Appeals referenced this issue when it noted that the "Court of Claims' statement that 'the comments made by Mr. Johnson were certainly boorish and at times noisome,' indicates that the court, at least generally, viewed [Ms. Oye's] allegations of inappropriate comments as credible." Id. at ¶12.

{¶7} The facts in this case differ significantly from the evidence presented in Oye. In the instant case, Dr. Momen testified that the conduct alleged by plaintiff never occurred. Upon review of all the evidence submitted¹ and after considering the credibility of the witnesses who testified as well as the arguments of counsel, the court found that plaintiff failed to prove, by a preponderance of the evidence, that Dr. Momen committed the acts alleged by plaintiff. As such, plaintiff failed to prove that Dr. Momen acted with malicious purpose, in bad faith, or in a wanton or reckless manner toward plaintiff. The court also found that plaintiff presented insufficient evidence to show that Dr. Momen acted outside the scope of his employment with defendant during any interactions regarding plaintiff that are at issue in this case. Consequently, Dr. Momen is entitled to personal immunity pursuant to R.C. 2743.02(F) and 9.86, and the courts of common pleas do not have jurisdiction over civil actions against him based upon the conduct alleged in this case.

{¶8} In addition, since plaintiff's amended complaint in this matter was filed for the sole purpose of obtaining a determination from this court as to Dr. Momen's civil immunity,

¹ At the hearing, plaintiff offered three exhibits into evidence; defendant objected to exhibits 2 and 3. Although the court found them to be of little value in determining the immunity issue presented, Plaintiff's Exhibits 1, 2, and 3 are hereby admitted.

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and there are no other claims against defendant asserted herein, this action is, sua sponte, DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the record.

J. CRAIG WRIGHT
Judge

cc:

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SJM/cmd

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