14-0752 COPY

IN THE CIRCUIT COURT OF TAYLOR COUNTY, WEST VIRGINIA

MARTHA KNOTTS,
Plaintiff,

v.

GRAFTON CITY HOSPITAL,
Defendant.

ENTERED OF RECORD
JUL 08 2014
Civil ORDER BOOK
NO. 42 PAGE 741/51

CIVIL ACTION NO. 12-C-66
(Hon. Alan D. Moats, Judge)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court pursuant to a Motion for Summary Judgment filed by Defendant Grafton City Hospital ("Defendant," the "Hospital" or "GCH"). Upon consideration of the Motion, the Defendant's Memorandum in support thereof, and the Memorandum in opposition thereto filed by Plaintiff Martha Knotts ("Knotts" or "Plaintiff"), and after taking into account the positions of counsel advanced at oral argument on April 10, 2014, the Court issues the following Findings of Fact, Conclusions of Law and Order relative to the Motion:

FINDINGS OF FACT

A. The Plaintiff's Employment with GCH

1. The Plaintiff, Martha "Jeannie" Knotts, was hired as a housekeeper for GCH in 2005. It is undisputed that she was not involved in patient care. [Ex. A to Defendant's Motion for Summary Judgment, Knotts Deposition at p. 26].

2. The Plaintiff was 58 years old when she was hired by GCH. [*Id.* at p. 29].

B. April 2, 2012 Incidents

3. On April 2, 2012, Mrs. Knotts and a fellow housekeeper, Shane Ball, were working near the Emergency Department ("ED") at the Hospital when a nurse's aide, Debbie Hickman, brought a patient – Mrs. Green – over to the ED in a wheelchair from the Hospital's adjoining clinic. [Knotts Dep. at pp. 90-91].

4. At that time, the Plaintiff recognized Mrs. Green, since the Plaintiff's son-in-law is the nephew of Mrs. Green's husband. Mrs. Green also had lived with Mrs. Knotts' in her home as a young adult for approximately one year. [*Id.* at p. 74; Exhibit F to Plaintiff's Response, Green Deposition at p. 14].

5. Upon seeing Mrs. Green, the Plaintiff approached her and asked, "Are you okay? What's the problem?" [Knotts Dep. at p. 88].

6. Hospital ED nurse Brooke Davis ("Nurse Davis"), who was standing nearby, overheard the Plaintiff's inquiries to Mrs. Green. Upon hearing the Plaintiff's questions to Mrs. Green, Nurse Davis immediately made direct eye contact with the Plaintiff and admonished her, telling the Plaintiff that she was not allowed to ask a patient those things and should know better. [Ex. C to Defendant's Motion, Davis Deposition at p. 23].

7. Because the Plaintiff was not involved in patient care, soliciting protected health information in that context was a violation of the Hospital's confidentiality policy. [*Id.* at p. 48].

8. After she warned the Plaintiff, Nurse Davis escorted Mrs. Green into the ED and left her momentarily with Aide Hickman. [*Id.* at p. 23].

9. Thereafter, the Plaintiff promptly approached Mrs. Green's son, Cordale, in the public hallway with housekeeper Ball nearby and asked Mrs. Green's son what his mom was doing at the Hospital. Nurse Davis overheard this. [Knotts Dep. at pp. 93-94; Davis Dep. at p. 23].

10. Around the same time, Nurse Davis also witnessed the Plaintiff ask a member of the Emergency Medical Service personnel, "What are you doing? Where are you going, boy?" as that EMS technician was transporting a patient from GCH. [Knotts Dep. at pp. 97-98].

11. Nurse Davis memorialized all of her observations in an incident report on April 3, 2013, and thereafter hand delivered it to her boss, the Director of Nursing, Violet Shaw. [Davis Dep. at pp. 51, 61; Exhibit G to Defendant's Motion, Confidential Incident Report by Nurse Davis].

12. At the time Nurse Davis turned in the report, Tammy Barcus, the Hospital's Director of Patient Safety and Quality – and its HIPAA compliance officer – happened to be in the room with Mrs. Shaw and learned of the report. [Davis Dep. at p. 61].

C. **GCH's Decision to Discharge the Plaintiff**

13. In response to getting Nurse Davis' report, Mrs. Barcus undertook an immediate investigation, and spoke with Nurse Davis about what happened. [Exhibit H to Defendant's Motion, Barcus Deposition at pp. 37-38].

14. In addition to reviewing the incidents on April 2, 2012, Nurse Davis indicated to Mrs. Barcus that she had spoken with the Plaintiff in the past about soliciting protected health information inappropriately from patients. [Davis Dep. at pp. 32-37; Barcus Dep. at p. 41].

15. Mrs. Barcus also spoke with Aide Hickman about what she witnessed, and Aide Hickman memorialized what happened in writing at Mrs. Barcus' request. [Hickman Dep. at pp. 38-40; Exhibit I to Defendant's Motion, Hickman Report].

16. As a part of her investigation, Mrs. Barcus also considered the training the Plaintiff had participated in at GCH related to patient confidentiality. [Barcus Dep. at p. 62].

17. The Plaintiff had received multiple trainings on patient confidentiality and HIPAA within the prior year. [Knotts Dep. at pp. 52-53. 60-69; Exhibit J to Defendant's Motion, May 4, 2011 Patient Confidentiality In-Service Sign-In Sheet; Exhibit K to Defendant's Motion, May 18, 2011, HIPAA In-Service Sign-In Sheet].

18. The Plaintiff additionally acknowledged signing a Confidentiality Statement when she first was employed, pledging under the penalty of termination not to talk about or discuss any events of patient care with anyone – unless in the line of treatment. [Knotts Dep. at pp. 44-45; Exhibit L to Defendant's Motion, GCH Confidentiality Statement].

19. Further, the Plaintiff's supervisor, Angela Rinck, had posted a memorandum in the housekeeping lunchroom on March 19, 2012 –two weeks prior to the incidents that led to the Plaintiff's discharge – which, among other things, reminded employees they had signed confidentiality statements stating they understood GCH's Confidentiality Policy and would not violate it. [Exhibit M to Defendant's Motion, Memo from Angel Rinck re: HIPAA Reminder].

20. Mrs. Barcus next pulled and reviewed the Hospital's confidentiality policy in conducting her investigation. [Barcus Dep. at pp. 57-58].

21. GCH Policy 1-109.1 on Confidentiality of Patient Information provides: "As an employee, your job may allow you access to medical records or other pertinent patient information considered to be confidential. You must not discuss patients or their visitors with anyone outside or inside the Hospital, other than in the course of the patient's care and treatment." [Exhibit N to Defendant's motion, GCH Policy 1-109.1].

22. GCH is required by HIPAA to develop – *and enforce* – policies that protect patient privacy and confidential health information. [Exhibit U to Defendant's Motion, Heindel Report, p. 6, *citing* 45 C.F.R. § 164.530(e)(2012)]

23. The Plaintiff admitted she had previously read GCH Policy 1-109.1 and understood that she could not discuss patient care issues unless she was involved in the provision of medical treatment. [Knotts Dep. at pp. 47, 51].

24. GCH's policy on discipline states that immediate termination is warranted for breaches of HIPAA/patient confidentiality. [Exhibit O to Defendant's Motion, GCH Policy 4-401.1].

25. Ultimately, considering the aforementioned facts, Mrs. Barcus recommended that the Plaintiff be discharged. [Barcus Dep. at pp. 59-60, 62-63, 65].

26. Thereafter, a meeting was held with the Hospital's Administrator, Pat Shaw, its Human Resources Manager, Missey Kimbrew, and the Hospital's Housekeeping supervisor, Angela Rinck, to discuss Mrs. Barcus' recommendation. [Barcus Dep. at pp. 78-80].

27. Mr. Shaw and Mrs. Kimbrew agreed with Mrs. Barcus' recommendation, although Ms. Rinck did not. [*Id.* at pp. 83-84].

28. Notwithstanding Ms. Rinck's opinion, the Hospital made the decision to terminate the Plaintiff, and did so on April 3, 2012. [Exhibit R to Defendant's Motion, Discharge Form].

D. <u>GCH's Grievance Procedure</u>

29. The Plaintiff subsequently participated in the Hospital's voluntary, non-union grievance procedure, under which an employee can file a 'grievance' if he/she disagrees with an employment decision, and perhaps, have it reconsidered or even overturned. [Barcus Dep. at pp. 100-01].

30. Step 1 of the grievance is handled by the employee's department head. For the Plaintiff, this was Angel Rinck. *Id.*

31. While Mrs. Rinck apparently disagreed with discharging the Plaintiff, she still prepared a written document which upheld the decision to terminate the Plaintiff over the violation of the Hospital's policy, citing the training and warnings the Plaintiff had been given. [Exhibit S to Defendant's motion, Step 1 Decision].

32. The Plaintiff appealed the decision. This appeal – at step 2 of the grievance process – goes to the department head's supervisor. In this case, that was the Administrator of the Hospital, Mr. Shaw. As Administrator, Mr. Shaw also presides, if necessary, over the third and final step of all grievances as Administrator. [Exhibit P to Defendant's Motion, Shaw Deposition at p. 113].

33. In addressing the grievance, Mr. Shaw interviewed the Plaintiff, Nurse Davis, Aide Hickman, and also spoke with the patient, Mrs. Green. [*Id.* at pp. 113-115].

34. During this process, the Plaintiff claimed that she has a hearing problem and never heard Nurse Davis tell her that what she did on the day in question was wrong or a policy violation. [*Id.* at p. 134].

35. At the conclusion of his review, and considering all the evidence, Mr. Shaw decided to uphold the Plaintiff's discharge. [Exhibit T to Defendant's Motion, Final Decision].

E. <u>Civil Action & Litigation</u>

36. On or about August 31, 2012, the Plaintiff filed the instant lawsuit, asserting a single claim for age discrimination under the West Virginia Human Rights Act, W.Va. Code § 5-11-1, *et seq.*

37. After the close of discovery, the Defendant filed a Motion for Summary Judgment on February 28, 2014, asserting that there is no genuine issue of material fact, and that GCH is entitled to judgment as a matter of law because the Plaintiff was unable to establish of *prima facie* case of age discrimination, but even if she did, the Hospital advanced a legitimate, non-discriminatory reason for the Plaintiff's termination, and the Plaintiff had insufficient evidence to establish that GCH's legitimate, non-discriminatory reason for her discharge is pretext.

38. On March 14, 2014, the Plaintiff served her Response to Defendant's Motion for Summary Judgment, to which the Defendant served a Reply on March 26, 2014.

39. On April 10, 2014, the Court heard oral argument from both parties on Defendant's Motion for Summary Judgment.

40. Following the April 10, 2014 hearing, the parties submitted supplemental filings to the Court on April 21, 2014, presenting their positions on the applicability of three additional cases cited by the Plaintiff at oral argument but not previously discussed in the parties' respective briefs.

CONCLUSIONS OF LAW

A. The Summary Judgment Standard

41. Rule 56(c) of the West Virginia Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

42. In advancing a Motion for Summary Judgment, it is not the defendant's burden "to negate the elements of claims on which [the plaintiff] would bear the burden at trial." Powderidge Unit Owners Ass'n v. Highland Props., Ltd., 196 W. Va. 692, 698-99, 474 S.E.2d 872, 878-79 (1996) (citation omitted).

43. Rather, it is the defendant's burden "only [to] point to the absence of evidence supporting [the plaintiff's] case." *Id.* at 699, 474 S.E.2d at 879 (internal quotations and citations omitted).

44. In opposing a Motion for Summary Judgment, a plaintiff "must identify specific facts in the record and articulate the precise manner in which that evidence supports [her] claims." Powderidge at 699, 474 S.E.2d at 879.

B. Age Discrimination Under the West Virginia Human Rights Act

45. In order to establish a *prima facie* case of discrimination, a plaintiff must offer proof that: (1) she is a member of a protected class; (2) the employer made an adverse decision concerning her; and (3) *but for* the Plaintiff's protected status, the adverse decision would not have been made. Syl. pt. 3, Conaway v. Eastern Associated Coal Corp., 178 W.Va. 164, 358 S.E.2d 423 (1986).

46. Assuming a plaintiff presents evidence sufficient to set forth a *prima facie* case of discrimination, summary judgment is still appropriate if the defendant can articulate a legitimate and non-discriminatory rationale for the adverse decision, and the plaintiff is unable to show that the defendant's proffered reason is a pretext for discrimination. Conaway, 178 W. Va. at 171, 358 S.E.2d at 430; Mereish v. Walker, 359 F.3d 330, 335 (4th Cir. 2004) (stating that a defendant "must merely articulate a justification that is 'legally sufficient to justify a judgment' in his favor."). The defendant is not required to persuade the Court that the proffered reason was the actual motivation for its decision. *Id.*

47. Applied here, the Court's task is not to discern if the Hospital's decision was prudent or factually correct, but whether a reasonable fact finder could infer that GHC's proffered reason masks a decision based on an illicit factor, *i.e.*, age. Skaggs v. Elk Run Coal, Inc., 198 W. Va. 51, 74, 479 S.E.2d 561, 584 (1996). If the Plaintiff cannot show that the rationale given for her discharge is pretext, her claim must fail. *See* Mingo County Equal Opportunity Council v. State Human Rights Comm'n, 180 W. Va. 240, 245, 376 S.E.2d 134, 139 (1988).

48. In this case, the Defendant does not dispute that the Plaintiff is a member of the protected age class or that her discharge was an adverse employment decision; thus, the

threshold issue is whether the Plaintiff can establish that but for her age, she would not have been discharged, *i.e.*, element 3 of the *prima facie* case.

C. The Plaintiff is Unable to Establish that But For Her Age, She Would Not Have Been Discharged From Her Employment At GCH

49. To satisfy her burden as to this third element, the Plaintiff is required to show some evidence which sufficiently links her age to the Hospital's decision to discharge her, "so as to give rise to an inference that [this adverse] employment decision was based on an illegal discriminatory criterion." *See* Conway 178 W. Va. at 170-71, 358 S.E.2d at 429-30.

50. In an attempt to satisfy her burden in this regard, the Plaintiff primarily seeks to use "comparator" evidence by pointing to four individuals – Dr. David Bender, Diane Settler Painter, Sherry Lepka, and Timothy Setler – whom she believes to have engaged in far more egregious behavior, but still received more lenient treatment by GCH.

51. At the outset, the Court concludes that GCH's treatment of Mr. Setler fails to provide an inference of age discrimination because Mr. Setler's alleged conduct had nothing to do with any alleged violation of patient privacy and confidentiality, but instead had to do with a completely unrelated criminal charge.

52. Likewise, GCH's alleged lenient treatment of the remaining three individuals – Dr. Bender, Ms. Painter, and Ms. Lepka – fails to provide an inference of age discrimination because each of these three individuals is within the protected class, *i.e.*, age forty or older. Therefore, they are not appropriate "comparators" for purpose of proving age discrimination under this Court's well-established *per curiam* opinion in Young v. Bellofram Corp., 227 W.Va. 53, 705 S.E.2d 560 (2010). In Young, the West Virginia Supreme Court of Appeals Court held

that a co-employee who was over the age of 40 and, therefore, also a member of the same protected age class as a plaintiff, was not a proper comparator to provide an inference of age discrimination under the WVHRA.

53. Other than relying upon comparator evidence to try and prove her *prima facie* case, the Plaintiff also argued that an inference of age discrimination existed because she was replaced in her job after she was discharged by one of two individuals – one of whom was 12 years younger and the other who was 24 years younger. However, even if true, because both these individuals are also in the protected class, *i.e.*, age forty or older, their replacement of the Plaintiff also fails to offer any sufficient inference of age discrimination for the same reasons.

54. Thus, the Court concludes that the Plaintiff is unable to establish element 3 of her *prima facie* case.

D. The Plaintiff is Unable to Establish that GCH'S Legitimate, Non-Discriminatory Reason for Her Discharge is Pretext

55. Even assuming that the Plaintiff sufficiently established a *prima facie* case of age discrimination, her claim, nevertheless fails as a matter of law.

56. Because GCH articulated a legitimate non-discriminatory reason for the Plaintiff's discharge, *i.e.*, her conduct on April 2, 2012 violated the Hospital's Confidentiality Policy and HIPAA, the burden shifts to the Plaintiff to show that GCH's proffered reason is merely pretext. *See* syl. pt. 2, Powell v. Wyoming Cablevision, Inc., 184 W.Va. 700, 403 S.E.2d 717 (1991); syl. pt. 4, Birthisel v. Tri-Cities Health Services Corp., 188 W.Va. 371, 424 S.E.2d 606 (1992).

57. In her effort to demonstrate pretext, the Plaintiff argues that her conduct did not actually violate the policy she was accused of violating, and that members of GCH's management do not understand HIPAA or the Confidentiality Policy.

58. Such evidence, however, fails to establish pretext, as the Court's task in this regard is not to discern if the Hospital's decision was factually correct or prudent, but whether a reasonable fact-finder could infer that GHC's proffered reason masks a decision based on an illicit factor, *i.e.*, age. Skaggs v. Elk Run Coal, Inc., 198 W. Va. 51, 74, 479 S.E.2d 561, 584 (1996). In this case, I conclude that no reasonable fact-finder could draw such an inference from the evidence.

59. Therefore, the Court concludes that, even if the Plaintiff could establish a *prima facie* case of age discrimination, the Defendant has provided a non-discriminatory reason for her discharge, and the Plaintiff lacks sufficient evidence that the Defendant's reason for her discharge is pretext.

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED:

The Court **GRANTS** Defendant Grafton City Hospital's motion for summary judgment and **ORDERS** that the Plaintiff's claim against GCH be **DISMISSED**, with prejudice.

The Plaintiff's objections to this Order are noted and preserved.

The Clerk is directed to enter this Order on the docket and send a certified copy to the following counsel of record:

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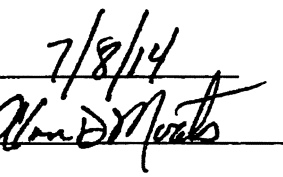
Counsel for Plaintiff

A TRUE COPY FROM THE RECORD
ATTEST: VONDA M. RENEMAN
CLERK OF THE CIRCUIT COURT OF TAYLOR COUNTY, WEST VIRGINIA
BY: Harley West, Deputy

ENTER: 7/8/14



Hon. Alan D. Moats, Circuit Judge

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JUL 08 2014

Civil ORDER BOOK

NO. 42 PAGE 739/40

MARTHA KNOTTS,
Plaintiff,

vs.

CASE NO. 12-C-66
Judge Alan D. Moats

GRAFTON CITY HOSPITAL,
Defendant.

ORDER DENYING MOTION TO ALTER OR AMEND ORDER

The Plaintiff in this matter has moved the Court to reconsider its previous May 7, 2014 in regards to a finding regarding whether the Defendant's reason for firing the Plaintiff was a pretext. In support of the Motion, the Plaintiff has attached a video posted by the Defendant to the website youtube.com, which depicts employees of Grafton City Hospital and residents at the long term care facility dancing and lip syncing to the song "Happy." The Plaintiff argues that this video violates HIIPA in such a way that Plaintiff's alleged conduct was benign by comparison, and thus the Defendant's proffered legitimate, nondiscriminatory reason for firing the Plaintiff should be determined to be a mere pretext.

The Court has considered the matter, and the Court does not believe that the proffered video is relevant to the instant case, and as such, finds that there is no reason to alter or amend the previously entered Order. Therefore, the Court hereby **ORDERS** that the Defendant's Motion to Alter or Amend the May 7, 2014 Order is hereby **DENIED.**

JUL 11 2014

The Clerk shall transmit certified copies of this order to all counsel of record and to the Defendant.

ENTER: 7/8/14

Alan D. Moats

JUDGE

A TRUE COPY FROM THE RECORD

ATTEST: VONDA M. RENEMAN
CLERK OF THE CIRCUIT COURT OF TAYLOR COUNTY, WEST VIRGINIA

BY: Hailey West, Deputy