

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL BARBOUR,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF SOCIAL
SERVICES,

Defendant-Appellee.

UNPUBLISHED

August 23, 1996

No. 182669

LC No. 86-617935 CZ

Before: Taylor, P.J., and Markey and N.O. Holowka,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment entered pursuant to the jury's verdict in favor of defendant in this sexual harassment action. We affirm.

The first issue on appeal is whether the trial judge properly granted defendant's motion in limine to exclude any evidence that plaintiff was sexually harassed by coworkers or at his previous places of employment with the Department of Social Services. Plaintiff alleged that his coworkers, who, according to plaintiff, were both male and female homosexuals, harassed plaintiff about his sexual orientation in an attempt to "homosexualize" plaintiff.

In plaintiff's previous appeal before this Court, we held that plaintiff's harassment claims relative to his coworkers' attempts to homosexualize him were related to his sexual orientation and not to his sex. Accordingly, those claims were not covered under the Michigan Civil Rights Act. *Barbour v Michigan Department of Social Services*, 198 Mich App 183, 185; 497 NW2d 216 (1993). In the first appeal, this Court held that plaintiff could only maintain an action relative to specific instances wherein plaintiff's supervisor made homosexual advances upon him, i.e., from August 1984 through August 1985 while plaintiff was employed at the Westland DSS office. We found that these instances were directly related to plaintiff's status as a male and therefore were covered under the act. *Id.* at 185. Under the doctrine of the law of the case, the trial court was bound to follow this Court's ruling. *In re Loose*, 212 Mich App 648, 653; 538 NW2d 92 (1995). Based upon this Court's determination, any

* Circuit judge, sitting on the Court of Appeals by assignment.

evidence regarding harassment by plaintiff's coworkers or at his previous workplace would be irrelevant to plaintiff's claims of sexual harassment by his supervisor. This evidence would have no bearing on whether plaintiff's supervisor, at a different office, made sexual advances upon plaintiff. Therefore, under MRE 402, this irrelevant evidence was inadmissible. The trial court did not abuse its discretion by excluding this evidence. See *Foehr v Republic Automotive Parts, Inc*, 212 Mich App 663, 669; 538 NW2d 420 (1995).

Plaintiff also claims that the trial court abused its discretion by precluding plaintiff from eliciting testimony from defendant's expert and from Kornegger, the section manager at the DSS, regarding instances of harassment that related to plaintiff's psychological condition before his employment at the Westland DSS office in question. We disagree. Our review of the record reveals that defendant's expert did not testify regarding plaintiff's prior psychological treatment. The expert supported his diagnosis of plaintiff with references to the specific instances involving plaintiff's current supervisor. The testimony that plaintiff wished to elicit from the expert addressed instances involving plaintiff's coworkers at times prior to the time frame in question. As noted, any evidence of sexual harassment by plaintiff's past and present coworkers would be irrelevant and highly prejudicial. MRE 401, 403; see *Haberkorn v Chrysler Corp*, 210 Mich App 354, 361-362; 533 NW2d 373 (1995). Therefore, the trial court properly precluded plaintiff from eliciting testimony on cross examination which addressed matters concerning plaintiff's prior places of employment or plaintiff's coworkers' behavior in the workplace prior to his employment at the Westland DSS office.

In addition, the testimony from Kornegger, which plaintiff contends addressed issues precluded by the trial court's order in limine, was taken on cross examination. In light of Kornegger's testimony that plaintiff had relationship problems in prior workplaces, plaintiff argued that the door was opened to further testimony. The original testimony was elicited by plaintiff on cross-examination, however, not on direct examination. Therefore, the trial court did not abuse its discretion by precluding plaintiff from exacerbating the situation and eliciting additional improper testimony. Even assuming that the court's evidentiary ruling was erroneous, plaintiff has failed to establish that a substantial right was affected in order to merit reversal. Thus, any error was harmless. *Cook v Auto Club Ins Ass'n*, ___ Mich App ___ (Docket Nos. 174750, 176864, issued July 5, 1996), slip op at 3, citing MRE 103(a); *Gillam v Lloyd*, 172 Mich App 563, 588; 432 NW2d 356 (1988).

Affirmed.

/s/ Clifford W. Taylor

/s/ Jane E. Markey

/s/ Nick O. Holowka