2021 IL App (1st) 192549-U
No. 1-19-2549
Order filed September 20, 2021

FIRST DIVISION



IN THE

APPELLATE COURT OF ILLINOIS

FIRST PARK DISTRICT

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| RICHARD PEAL,<br><br>Petitioner,<br><br>v.<br><br>ILLINOIS HUMAN RIGHTS COMMISSION And GLENVIEW PARK DISTRICT<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court Of Cook County. Law Division<br><br><br><br>The Honorable Patrick J. Sherlock, Judge Presiding. |

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Hyman and Justice Coghlan concurred in the judgment.

**ORDER**

¶ 1 *Held*: Where a complainant does not prove that a specific act of sexual harassment occurred within 180 days of the filing of the complaint, the Human Rights Commission lacks jurisdiction over the complaint. The Commission may award attorney fees against a litigant who destroys evidence, makes false statements, and continues litigating after the litigant should recognize the inability to prove that a specific act of sexual harassment occurred in the jurisdictional period.

¶ 2 Petitioner Richard Peal filed a claim with the Illinois Human Rights Commission (Commission), charging the Glenview Park District (Park District) with violating the Illinois

Human Rights Act (Act) (775 ILCS 5/2-101 et seq. (West 2006)) by failing to take reasonable measures to correct the sexual harassment Peal suffered. The Commission dismissed the claim for lack of jurisdiction and awarded the Park District attorney fees. On appeal, Peal argues that the Commission should have inferred that some of the harassing acts must have occurred in the jurisdictional period, and the Commission should not have awarded attorney fees. Because the Commission's findings of fact are not contrary to the manifest weight of the evidence and the findings support the Commission's decision, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Peal worked as a skating instructor for the Park District. In February 2004, Monica Serafin, who also worked for the Park District as a skating instructor, complained to the supervisor of the instructors that Peal sexually harassed her. Barbara Cremin, the Park District's Superintendent of Administrative Operations, met with Peal and some other employees on March 10, 2004, to address the allegations. After the meeting, the Park District issued Peal a formal warning and a "performance improvement plan."

¶ 5 Peal responded on March19, 2004, with a complaint to the Park District, alleging that several skating instructors, including Serafin and Cindy Lee, sexually harassed Peal. The Park District held a meeting with all the skating instructors on March 24, 2004, to stress the need for professional conduct by all staff members. The Park District distributed to the staff the Park District's sexual harassment policy. In May 2004 Peal complained to the Park District about the response to his allegations of harassment. Peal resigned in February 2006, and on March 14, 2006, he filed with the Illinois Human Rights Department (Department) a charge of discrimination and sexual harassment against the Park District.

¶ 6 While the Department's investigation proceeded, Peal filed a defamation complaint naming as defendants the Park District, Lee, and two other persons. The circuit court dismissed the defamation complaint with prejudice as a sanction for Peal's spoliation of evidence. The appellate court affirmed, finding Peal's testimony "patently untruthful" and concluding, "Peal's testimony and argument are factually baseless, legally meritless and worthy of the sanctions imposed by the trial court." *Peal v. Lee*, 403 Ill. App. 3d 197, 205 (2010).

¶ 7 The Park District moved to dismiss the sexual harassment claim, arguing the Commission lacked jurisdiction because none of the conduct forming the basis for the claim occurred within 180 days of the filing of the claim. See 775 ILCS 5/7A-102(A)(1) (West 2006); *Weatherly v. Illinois Human Rights Comm'n*, 338 Ill. App. 3d 433, 437-38 (2003). Peal's charge of sexual harassment echoed the allegations he made in the defamation complaint.

¶ 8 The Commission's administrative law judge heard testimony on the sexual harassment claim in 2009. Most of the testimony centered on activity in the small locker room the skating instructors shared. Peal testified that the instructors, almost all female, talked about sex constantly in ways that made Peal uncomfortable. Lee, who was divorced, spoke frequently about her dates and her sexual activities, bragging about her skill at oral sex. Peal testified that in fall 2005 and in early 2006, Lee said Peal probably had a small penis, and she called him a pedophile. Peal added that two other employees also accused him of pedophilia, and Serafin harassed him. He alleged that Serafin once put on her skates in the locker room, bending over directly in front him, exposing her thong underwear.

¶ 9 Jeffrey Whalen, another skating instructor, testified that he saw Serafin bend over in front of Peal, and Peal responded, "nice thong." Whalen agreed with Peal that Lee often talked

about sex inappropriately. Whalen said that more than a year before Peal resigned, Whalen heard some of the Park District's employees refer to Peal as a molester. In December 2006, months after Peal filed his complaint, Whalen heard an employee call Peal a "pedo."

¶ 10 Andria Kelling, who left her position as a skating instructor for the Park District in 2003, testified that the instructors frequently talked about their sex lives in the locker room. She said Serafin sometimes dressed provocatively, and Lee sometimes called Peal a pervert.

¶ 11 Toni Friedland testified that Lee frequently talked about sex inappropriately. Friedland heard some skaters call Peal a molester, but she did not specifically recall any incidents between September 15, 2005, and March 14, 2006. Friedland testified that Peal sometimes participated in the inappropriate sexual banter.

¶ 12 Dr. Joann Moretti, who took skating lessons from Peal, testified that in 2005 and 2006 Peal told her that people including Lee continued to call him a molester, and the name calling severely affected his mental health.

¶ 13 Lee admitted that she sometimes talked with her coworkers about sex, but she never called Peal a molester, a pedophile, or a pervert, and she never said anything about the size of his penis. Other Park District employees said they never called Peal a molester, a pedophile, or a pervert, and they never heard others say such things of him.

¶ 14 Cremin testified that she investigated Peal's and Serafin's charges of harassment. Peal made no complaints about harassment between May 2004, when he complained about the resolution of his March 2004 charge, and February 2006, when he resigned.

¶ 15 The Administrative Law Judge (ALJ) discredited all of Peal's testimony. The ALJ found Peal's evidence did not prove any specific incidents of sexual harassment occurring in the

jurisdictional 180 days from September 15, 2005, to March 14, 2006. The ALJ recommended dismissal of Peal's claim for lack of jurisdiction.

¶ 16 The Park District petitioned for an award of $92,000 in attorney fees and costs, and the ALJ recommended an award of $76,987.50. The ALJ found: "By proffering so many lies in an effort to buttress his stale claim, Complainant has tacitly admitted that his claim is baseless on timeliness grounds. Prosecuting such an obviously baseless claim has consequences. Repeatedly lying under oath does, as well." The Commission adopted the administrative law judge's recommendations. Peal now appeals. See Ill. S. Ct. R. 335 (eff. July 1, 2017).

¶ 17 II. ANALYSIS

¶ 18 On appeal, Peal contends the Commission had jurisdiction, the Glenview Park District violated the Illinois Human Rights Act, the Commission should not have awarded attorney fees, and his petition for rehearing was timely.

¶ 19 The Commission lacks jurisdiction over a charge of a violation of the Act unless the claimant files the charge "[w]ithin 180 days after the date that a civil rights violation allegedly has been committed." 775 ILCS 5/7A-102(A)(1) (West 2006). The Act defines sexual harassment to include "any conduct of a sexual nature," which "has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." 775 ILCS 5/2-101(E) (West 2006). Here, the Commission found Peal failed to prove that any act of sexual harassment occurred in the jurisdictional period. The jurisdictional finding "is essentially a factual determination by the agency. Factual determinations of administrative agencies are considered *prima facie*

true and correct. They will be affirmed unless they are contrary to the manifest weight of the evidence." *Larrance v. Human Rights Comm'n*, 166 Ill. App. 3d 224, 232-33 (1988).

¶ 20 Claims of a hostile work environment generally rely on evidence of a series of events rather than a single event. *Sangamon County Sheriff's Department v. Illinois Human Rights Comm'n*, 233 Ill. 2d 125, 141-42 (2009). "Such a charge is timely as long as it is filed within 180 days of any act that is part of the hostile work environment. [Citations.] Provided that an act contributing to the claim occurs within 180 days of the filing date, a fact finder may consider all of the conduct that makes up the hostile environment claim." *Id* at 142.

¶ 21 Peal testified that several specific acts contributing to his claim occurred in the jurisdictional period. The Commission found all of Peal's testimony not credible. We see no grounds for disturbing the Commission's credibility determination. See *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009).

¶ 22 Moretti testified that late in 2005 and in 2006 Peal told her that skating instructors from the Park District called Peal a molester. Moretti did not witness any of the name calling herself. We see no reason to find Peal's statements to Moretti any more credible than his testimony in court.

¶ 23 Peal contends that the evidence shows Lee and other skating instructors frequently discussed sex, and therefore, the trier of fact should conclude that during the jurisdictional periods Lee and others in the locker room, in Peal's hearing, discussed their sex lives. Peal then asks the court to take a further leap to conclude that the discussions sexually harassed Peal. "For sexual harassment to be actionable, it must be sufficiently severe or pervasive to alter the conditions of [the victim's] employment and create an abusive working

environment." (internal quotation marks omitted) *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 66 (1986). "In order to prevail on a hostile environment sexual harassment claim, a plaintiff must show that his or her work environment was both subjectively and objectively hostile." *Adusumilli v. City of Chicago*, 164 F.3d 353, 361 (7th Cir. 1998). "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." (internal quotation marks omitted) *Faragher v. City of Boca Raton*, 524 US 775, 788 (1998). The evidence of sexual talk among the instructors – talk in which Peal sometimes participated – does not show actionable intimidation, ridicule, and insult. See *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993).

¶ 24 Peal objects that the Commission failed to make specific findings regarding the credibility of witnesses other than Peal. "Unless a statute requires specific factual findings, an administrative agency is only required to provide a record and findings to permit orderly and efficient judicial review. [Citation]. If the testimony at the administrative hearing is preserved in the record, as in this case, a reviewing court has sufficient grounds to examine an agency determination and specific fact findings are not required." *Kimball Dawson, LLC v. City of Chicago Department of Zoning*, 369 Ill. App. 3d 780, 787 (2006). The lack of an express evaluation of each witness's credibility does not require reversal.

¶ 25 The Commission found that Peal failed to prove that an incident of sexual harassment occurred within 180 days of Peal filing his claim. The finding is not contrary to the manifest weight of the evidence. The Commission correctly concluded that it lacked jurisdiction to consider Peal's claim.

¶ 26 Next, Peal argues that the Commission erred by awarding attorney fees to the Park District. Section 8A-102(I)(5) of the Act provides:

> "A recommended order dismissing a complaint may include an award of reasonable attorney's fees in favor of the respondent against the complainant or the complainant's attorney, or both, if the hearing officer concludes that the complaint was frivolous, unreasonable or groundless or that the complainant continued to litigate after it became clearly so." 775 ILCS 5/8A-102(I)(5) (West 2006).

¶ 27 This court will not reverse the Commission's award of attorney fees unless the Commission abused its discretion. *Modine Manufacturing Co. v. Pollution Control Board*, 192 Ill. App. 3d 511, 519 (1989). "The question on review is not whether this court would decide upon a more lenient sanction were it to determine initially what discipline would be appropriate. [Citation.] Rather, this court is to determine whether in view of the circumstances presented, the Agency in opting for the particular sanction acted unreasonably or arbitrarily." *Id.*

¶ 28 Peal's false testimony and his deliberate destruction of evidence support the finding that Peal knew the Act barred his claim as untimely. "A false statement can be evidence of bad faith, if, for instance, there is other evidence in the record indicating that the statement was made for a harassing or frivolous purpose." *Longcrier v. HL-A Co.*, 595 F. Supp. 2d 1218, 1230 (S.D. Ala. 2008). We find the Commission did not abuse its discretion by awarding attorney fees to the Park District in this rare situation where Peal provided false statements and deliberately destroyed evidence.

¶ 29 III. CONCLUSION

¶ 30 Peal's spoliation of evidence and false testimony warranted the Commission's rejection of all of Peal's testimony as not credible. No other witness testified to a specific act of sexual harassment that occurred in the jurisdictional period. The evidence that discussions of sex continued during the jurisdictional period did not suffice to show sexual harassment. Thus, the evidence supported the Commission's decision to dismiss the claim for lack of jurisdiction. The Commission did not abuse its discretion by awarding attorney fees to the Park District. We affirm the Commission's judgment.

¶ 31 Affirmed.