

STATE OF MICHIGAN
COURT OF APPEALS

MARCIE TERWILLIGER,

Plaintiff–Appellant,

UNPUBLISHED
June 7, 1996

v

No. 176694
LC No. 93-833-CL

EATON COUNTY, EATON COUNTY SHERIFF
DEPARTMENT and EATON COUNTY SHERIFF,

Defendants–Appellees.

Before: Hoekstra, P.J., and Michael J. Kelly and J.M. Graves, Jr.,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment in favor of defendants in this gender discrimination suit. Plaintiff’s claim was based on common law and the Elliot-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.541(101) *et seq.* We affirm.

Plaintiff was employed by defendants as a corrections officer at the county jail. She alleged that both as a probationary employee and as a permanent employee she suffered disparate treatment in comparison with treatment given male corrections officers. Specifically, she claimed that she was disciplined for behavior similar to that of male corrections officers who were not disciplined, that her performance was evaluated differently from that of male corrections officers and that she suffered practical jokes and harassment based on her gender. Eventually plaintiff resigned.

Plaintiff first argues that the trial court erred in refusing to dismiss a juror for cause. We disagree. Here, the juror in question stated that she believed that police officers were possibly more credible than common citizens. However, because the trial court twice asked her if she could follow an instruction to weigh all testimony equally and she twice said yes, the trial court’s decision to deny plaintiff’s challenge for cause was not without justification or excuse. Therefore, there was no abuse of discretion. *Jalaba v Borovoy*, 206 Mich App 17, 23; 520 NW2d 349 (1994). *Cleary v The Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1994).

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

Plaintiff next claims that the trial court committed error in five of its evidentiary rulings. We disagree. Plaintiff first claims that the trial court erroneously barred plaintiff's testimony that she was given cigarettes that coworkers said had been in a condom. The trial court properly barred her testimony regarding what her coworkers said based on hearsay grounds, MRE 801, and properly barred her testimony regarding where the cigarettes had been on grounds of lack of personal knowledge. MRE 602. There was no abuse of discretion. *Cleary*, 203 Mich App 210 (citations omitted).

Plaintiff next claims that the trial court erroneously barred her testimony regarding another female corrections officer who was also subject to harassment. However, the trial court did not exclude the evidence but only required plaintiff to identify the officer of whom she was speaking. Thirdly, plaintiff claims that the trial court erroneously barred testimony by her superior officer that a memorandum containing plaintiff's confidential medical information was found in a public work area. However, plaintiff's superior officer would have testified that he learned of this situation from another corrections officer. The trial court therefore correctly excluded it as hearsay. MRE 801. Fourth, plaintiff claims that the trial court erroneously admitted evidence of her mother's alcoholism, over a relevancy objection. However, the trial court did not abuse its discretion because plaintiff was her mother's primary caretaker and conceivably her perceptions could have been altered by emotional problems arising from her mother's alcoholism. Finally, plaintiff claims that the trial court erroneously admitted evidence regarding a personal injury settlement she received, again over a relevancy objection. Because mitigation of damages was a required element of plaintiff's action, *Rasheed v Chrysler Corp*, 445 Mich 109, 124; 517 NW2d 19 (1994), the trial court did not abuse its discretion in ruling that this testimony was relevant to that issue and therefore admissible; questions regarding other sources of income could well make mitigation of damages more or less probable. *Dacon v Transue*, 441 Mich 315; 490 NW2d 369 (1992).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly

/s/ James M. Graves, Jr.