

Case Dismissed Because of Witness Tampering

In *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772 (7th Cir. 2016), the Court found that witness tampering is the gravest judicial abuse that a litigant can commit, and thus it deserves a substantial sanction.

In *Ramirez*, the plaintiff filed a national origin employment discrimination and a retaliation claim under Title VII, and after three years of litigation the plaintiff had been unable to find witnesses who could corroborate his claims. Since the defendant did a great job of vigorously denying the claims, plaintiff's attorney was about to withdraw from the case. That's when plaintiff miraculously located three witnesses, all of whom were prior employees of the defendant. The three witnesses all gave substantially the same deposition testimony. Each witness claimed that they had witnessed defendant's managerial and supervisory staff treat plaintiff in a demeaning manner, and use derogatory terms with ethnic references. At some point, defendant determined it necessary to re-depose one of the witnesses. The witness sent a text message to plaintiff's attorney inquiring how much compensation he would receive once the case settles. Plaintiff's attorney had to notify defendant about the text message, who in turn informed that the same witness had contacted the defendant and offered to recant his testimony and testify on behalf of the defendant if he could get his job back.

An evidentiary hearing was held, at which the witness testified that the plaintiff had offered he and the other two witnesses money in exchange for their favorable testimonies. The witness further informed that the plaintiff and all the witnesses met a few times prior to giving deposition testimony to discuss what each would say. The witness stated that he accepted this offer because he was under dire financial strain at the time. Judge Zagel found the witness's testimony given at the evidentiary hearing to be credible, and he dismissed the case with prejudice finding clear and convincing evidence of witness tampering.

The Appellate Court did not address plaintiff's argument that the evidence presented at the evidentiary hearing did not rise to the level of clear and convincing. Instead, the Court overruled *Maynard v. Nygren*, 332 F.3d 462 (7th Cir. 2003), which held that clear and convincing evidence was required in order to dismiss a case as a sanction. In overruling *Maynard*, the Court provided extensive explanation based on Supreme Court precedent that the proper level of proof in civil cases is by a preponderance of the evidence. Therefore, in claims which are based on seeking monetary damages, which would require that plaintiff prove his claim by a preponderance of the evidence, that same evidentiary standing should apply to proving that a litigant in that action participated in improper conduct before the court.

When Unions are contemplating assisting Plaintiffs outside the labor context, they need to be informed of the merits of a case and how the case will be proven.

ASHER, GITTLER & D'ALBA, LTD.
200 West Jackson Boulevard, Suite 1900
Chicago, IL 60606 – 312.263.1500

© 2017 Asher, Gittler & D'Alba, Ltd.
All rights reserved.
Dated: March 24, 2017

This release informs you of items of interest in the field of labor relations. It is not intended to be used as legal advice or opinion.

