

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
DOCKET NO. BCD-CV-2016-30

HEIDI J. WEST, PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
JESSE PURVES, et al.,)

Plaintiffs,)

v.)

SEAN HUSSEY,)

Defendant

ORDER ON MOTIONS IN LIMINE

In the lead up to trial, both parties have filed Motions in Limine. On Tuesday, April 16, 2019, a hearing was held on all of the Motions. Plaintiff was represented by attorney Sue Driscoll, Esq. Defendant was represented by attorneys Dan Mitchell, Esq. and Zach Brandwein, Esq. During the hearing, the Court put several of its rulings on the record. The Court took other issues under advisement. The Court now issues this Order to capture in one place, at least in abbreviated form, its rulings on the Motions.

With regard to Plaintiff's Motions, the Court decides as follows:

1. Statements of Jesse Purves. As explained on the record, Counsel agreed that Jesse Purves (and in the wake of his death, the Estate) is not an individual party to this action. Accordingly, by agreement of the parties, the Court dismisses Jesse Purves (and therefore the Estate) as an individual party to this action.¹ As this case comes on for trial, the only Plaintiff is Jesse Purves & Associates Wealth Management, LLC (the "LLC"). Any statements

¹ This dismissal does not, in and of itself, affect Plaintiff's ability to call Heidi West as a witness, and the Court reserves for trial any ruling on calling Ms. West as a witness.

of Mr. Purves offered at trial will thus be subject to the requirements of M.R. Evid. 804(b)(1)-(4), unless Defendant offers the statements against the LLC and establishes that Mr. Purves made the statements in a representative capacity that satisfies the requirements of Rule 801(d)(2)(A)-(E). In this latter case, the statements constitute admissions of the LLC, are not hearsay, and Rule 804(b) does not apply. See Uebelhack Equip., Inc. v. Garrett Bros., Inc., 408 N.E.2d 136, 137-138 (App. Ct. Ind. 1980).

2. Use of Criminal History. As discussed on the record, but reserving final decision until the context becomes better understood at the trial, the Court will likely allow in evidence of Mr. Purves' OUI conviction under Rule 404(b) as relevant to causation. The Court will not permit the proffered evidence of arrests without convictions, or of convictions dating from the early 1990s.

With regard to Defendant's Motions, Court decides as follows:

1. The Estate is Not to be Described as a Party. For the reasons discussed above and at the hearing, counsel agree the Estate is not a party to the case, and should not be described as a party.

2. Julie Perrino is Not to Be Identified as the Widow of Jesse Purvis. Counsel agree Ms. Perrino is not the widow of Mr. Purvis and will not be described as such at trial.

3. Reference to the Children of Jesse Purvis. Brief mention of the children of Mr. Purvis is permissible, but Plaintiff is cautioned against any lengthy testimony regarding the children designed to amplify the sympathy factor.

4. Reference to Mr. Hussey's Alleged Extramarital Affair. Plaintiff is not permitted to refer to or inquire about Mr. Hussey's alleged extramarital affair under Rule 608(a) or (b). The weight of authority is that the existence of an extramarital affair does not go to character

for truthfulness or untruthfulness. State v. Moses, 143 N.H. 461, 464-65, 726 A.2d 250, 253 (1999)(although immoral, adultery does not relate directly to truthfulness); State v. Bell, 512 S.W.3d 167, 196 (Tenn. 2015)(an extramarital affair, in and of itself, is not necessarily probative of truthfulness). Further, the probative value of any Rule 608 reference to the alleged extramarital affair would be substantially outweighed by its danger of unfair prejudice. M.R. Evid. 403. The Court reserves for trial any decision about whether the alleged affair comes in under Rule 404(b), and Plaintiff's counsel must check with the Court at side bar or otherwise outside the presence of the jury to discuss the issue before asking any questions regarding the alleged affair.

5. Referee's Testimony and Reports. Both sides want the Referee from the divorce case, Mark Stickney, to testify. It is reported that Mr. Stickney does not object, provided a date and time certain are designated for his testimony. Counsel agree the testimony will occur during Plaintiff's case. The divorce case was not sealed (only one motion in the divorce case was sealed, and that motion does not appear to relate to Mr. Stickney). Accordingly, Mr. Stickney is ordered to appear to testify during Plaintiff's case, on a specific date and time arranged by counsel. Counsel are discussing whether to allow into evidence certain agreed portions of Mr. Stickney's referee reports. If counsel can agree, the Court will allow those agreed-upon portions into evidence. If counsel cannot agree, the reports will be excluded as hearsay.

6. Request to Sequester Julie Perrino. Counsel agree that Ms. Perrino is a member of the LLC. As a member of the LLC, Mr. Perrino fits within the scope of an officer or employee under Rule 615(b). Accordingly, if the LLC selects Ms. Perrino to be its representative at trial, Ms. Perrino will not be sequestered.

7. Late Produced Documents. For the reasons discussed on the record, the Court excludes the documents described in attorney Mitchell's letter dated April, 2019, unless those documents were timely produced during the discovery period. The Court reserves for trial, ruling on whether the documents can be used to refresh recollection or for impeachment purposes.

So Ordered.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order by reference on the docket for this case.

Dated: April 17, 2019

_____/s_____
Michael A. Duddy
Judge, Business and Consumer Docket