

THE MARK O. HATFIELD
COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. IX, No. 13, July 7, 2003

Announcement

The FBA extends an invitation to all practitioners to a Summer Reception Honoring the National FBA Executive Committee this Friday, July 18, from 4:30-6:30 p.m. on the Ninth Floor Terrace of the Mark O. Hatfield United States Courthouse.

Please RSVP to Diane Allen at (503) 227-5631 ext. 328 or by e-mail to diane@chernofflaw.com

Criminal Law

After having found that officers had probable cause to arrest a defendant and that warrantless searches of her person and automobile were justified as searches incident to that arrest, Judge Anna J. Brown held that a subsequent consent to search her residence was impermissibly coercive. The defendant had been asked several times for consent to search her residence and had denied these requests; after becoming upset over the removal of her children, one officer asked her again for consent to search her apartment. The officer told her that if she declined consent, they would seek to obtain a search warrant, the

process would take several hours, and she would be detained at the scene in the van until the warrant was ultimately obtained. Judge Brown noted that the officer's caution was misleading because they could have obtained a telephonic warrant much more quickly. Examining the totality of the circumstances, the court determined that the defendant's consent was involuntary and that the fruits of the search of his apartment would be suppressed. United States v. Solano, CV 02-114-BR (Opinion, June 17, 2003).

AUSA: Greg Nyhus
Defense: Nancy Bergeson

Personal Jurisdiction

An Oregon resident filed an action against his Washington employer claiming that he was injured by reason of defendant's negligent operation of a vessel while on the Bering Sea. Judge Janice M. Stewart granted a defense motion to dismiss for lack of personal jurisdiction. The court concluded that defendant had insufficient forum

related contacts to justify either general or specific jurisdiction; the only connection between the action and Oregon was the plaintiff's residency. Judge Stewart noted that the defendant did not seek out the plaintiff in this forum and that defendant's only contacts with plaintiff in Oregon were due to plaintiff's unilateral activity. Any inconvenience plaintiff might encounter was insufficient to overcome a Washington forum selection clause in a Crew Member Agreement. Barnard v. Pacific Longline Co., LLC, CV 03-152-ST (May 8, 2003; Adopted by Judge Jones, June 6, 2003).

Plaintiff's Counsel:

Richard A. Crews

Defense Counsel:

Craig C. Murphy (Local)

M A former school psychologist hired by the Department of Defense (DOD) to work in Japan filed an action claiming that she was terminated in retaliation for filing administrative complaints and a civil action in Oregon against another former employer, the BIA. However, all of the DOD's

2 The Courthouse News

allegedly wrongful actions occurred in Oregon and the BIA was not a party to the instant case. Judge Janice M. Stewart held that under Title VII's venue provision, there was no basis for jurisdiction in Oregon and that transfer to the Eastern District of Virginia, defendant's principle office, was appropriate. Spicer v. Rumsfeld, CV 03-1-ST (Findings and Recommendation April 14, 2003, Adopted by Order of Judge Robert E. Jones, June 6, 2003).

Plaintiff's Counsel:

William R. Goode

Defense Counsel:

Judith D. Kobbervig

Discovery

Plaintiff and defendant operated under a "cattle care" agreement whereby plaintiff maintained cattle on defendant's property for a monthly fee. Plaintiff terminated the agreement and the parties disputed the final accounting; defendant filed an agricultural lien against plaintiff's own cattle and plaintiff threatened civil action. The parties ultimately entered into a settlement agreement. Defendant assumed that the settlement would serve as a release of all claims. However, the language of the settlement agreement did not release all claims and plaintiff fully intended to pursue statutory and common law wage and hour claims following the

settlement. When plaintiff filed the subsequent civil action, defendant argued that plaintiff should be estopped by the settlement. Defendant sought a court order to compel plaintiff to answer questions about his communications with his attorney relative to the settlement agreement. Defendant argued that the attorney-client privilege should not apply under the crime-fraud exception.

Judge Janice M. Stewart held that there was insufficient proof of an actual fraud to justify setting aside the privilege. The court noted that although the defendant may have expected a complete settlement of all claims, a careful reading of the agreement itself would have dispelled that misconception. The court also noted that there was no special relationship between the parties which might have given rise to a duty by the plaintiff to ensure that the defendant understood that plaintiff would, in fact, pursue additional claims in a separate civil action. Accordingly, the court denied defendant's motion to compel. Smith v. Woodward, CV 02-547-ST (Opinion, May 15, 2003).

Plaintiff's Counsel:

Roxanne L. Farra

Defense Counsel:

Gregory P. Lynch

Employment

Plaintiff claimed that she was terminated in retaliation for reporting unsafe work conditions and patient abuse in violation of the Oregon Safe Employment Act (OSEA). Plaintiff had suggested to her former employer that Psych Unit staff members should have personal safety devices to call for assistance in case of emergency. Defendants moved for summary judgment claiming that plaintiff's statements did not fall within the ambit of OSEA and that there was no causal connection between plaintiff's statements and her termination.

Judge Janice M. Stewart denied the summary judgment motion finding that plaintiff had exercised a right afforded by OSEA. The court also found sufficient evidence raising an inference of retaliatory motive. Judge Stewart noted that the individual with the alleged retaliatory motive played a "pivotal" role in plaintiff's discipline. Spencer v. Healthmont of Oregon, LLC, CV 01-1589-ST (Opinion, May 13, 2003).

Plaintiff's Counsel:

Timothy C. Bennett

Defense Counsel:

Caroline R. Guest