Maine Superior Court **Abstract 145**

•Click on **Docket Number** to be linked directly to the decision.

APPEAL

Androscoggin AP-14-5- Kennedy **8 Pages** **6/24/15**
Asselin v. Maine Employment Insurance Commission
Order 80C

This matter is before the court on Petitioner Michael Asselin's Rule 80C appeal of the Maine Unemployment Insurance Commission's ("the Commission") decision to temporarily disqualify Mr. Asselin from receiving unemployment benefits pursuant to 26 M.R.S. § 1194(2). *See* 26 M.R.S. § 1194(8); 5 M.R.S. § 11001 *et seq.;* M.R. Civ. P. 80C. The Commission affirmed the Administrative Hearing Officer's finding the Petitioner to be temporarily disqualified from receiving unemployment benefits, because his termination was the result of misconduct related to his work.

The entry shall be: the Court finds no basis on which to overturn the Commission's decision finding that the employer demonstrated that the Petitioner's objective conduct manifested a disregard for a material interest of the employer, such that he was terminated for "misconduct" under 26 M.R.S. §§ 1043(32) and 1193(2). Even if this Court entertained the belief that an employee's single phone call to an employer that he will miss work for an indefinite time is sufficient to absolve the employee of "misconduct," this Court "may not substitute their judgment for that of the agency merely because the evidence could give rise to more than one result." *Gulick,* 452 A.2d at 1209. Accordingly, the Court affirms the Commission's conclusion that the Petitioner was discharged for misconduct related to his work.

Accordingly, the court orders that the appeal is **DISMISSED**. The decision of the Maine Unemployment Insurance Commission dated July 9, 20 14 is **UPHELD**.

Kennebec AP-15-01- Murphy **5 Pages** **7/6/15**
Breton et al. v. Mayhew, DHHS
Order on Respondents' Motion to Dismiss

Respondents Mary Mayhew-in her official capacity as Commissioner of the Maine Department of Health and Human Services-and the Maine Department of Health and Human services, Division of Licensing and Regulatory Services (collectively the "Respondents" or "Department") move to dismiss Count II for declaratory judgment and Count III for preliminary injunction or stay and permanent injunction of the Complaint and M.R. Civ. P. 80C Appeal of Petitioners Brian Breton, Hillary Lister, Brian King, and Mark Crockett (collectively, the "Petitioners"). The Department argues that Counts II and III of the Complaint fail to state any independent claims upon which relief may be granted and should be dismissed as duplicative of Petitioner's M.R. Civ. P. 80C appeal put forth in Count I.

In their opposition, Petitioners stipulate to dismiss Count II of the Complaint for declaratory judgment. This leaves Respondents motion to dismiss Count Ill for injunctive relief.

The entry shall be: Here, the parties do not dispute that Count III is premised on the same underlying facts as Count I. In addition, Count III's request for injunctive relief is also available under Count I. This is because Rule 80C and 5 M.R.S. § 11004 set out a specific path and procedure for Petitioners to seek injunctive relief in an administrative appeal. Putting this together, it is clear that Count III's request for injunctive relief is duplicative of-and seemingly preempted by-Count I's 80C appeal. Accordingly, the Court grants Respondents' motion to **DISMISS** Count III of the Complaint.

In conjunction with this ruling, the Court also declines to convert Count III into a motion for a stay pursuant to Rule 80C. This is because the Petitioners have not met the requirements of bringing such a motion. Indeed, while two out of the four Petitioners sent letters to the Department requesting a stay of implementation of the agency decision pursuant to 5 M.R.S. § 11004 and the Department wrote back denying said request, the Petitioners did not put forward an argument showing why their request for a stay should be **GRANTED**.

Accordingly, it is hereby ORDERED that Counts II and III of Petitioners' Complaint are **DISMISSED**.

CIVIL

Cumberland CV-13-310- Cole **7 Pages** **6/29/15**

Dickey v. Goldblatt

Order

Plaintiff Allison Dickey ("Dickey") brings this action against Jennifer and Douglas Goldblatt ("the Goldblatts") alleging claims for (1) defamation, (2) malicious prosecution, (3) breach of contract, (4) quantum meruit, (5) fraud, and (6) tortious interference with business relations. The Goldblatts answered and brought three counterclaims for (1) fraud, (2) conversion, and (3) punitive damages. Before the court is Defendants' special motion to dismiss counts 1, 2, and 6 of the complaint and Plaintiff's motion to dismiss Defendants' fraud counterclaim.

The entry shall be: The purposes of the anti-SLAPP statute would not be served by allowing the Goldblatts to move to dismiss half of Dickey's claims well over a year after commencement. The Goldblatts additionally fail to plead the fraud counterclaim with sufficient particularity. The claim is therefore **DISMISSED**.

The Defendant's special motion to dismiss is hereby **DENIED** as untimely. The Plaintiffs cross-motion to dismiss Defendants' fraud counterclaim is **GRANTED**.

Cumberland CV-13-369- Warren **7 Pages** **6/29/15**

Desjardins v. Reynolds

Order

Before the court is a special motion to dismiss by defendant Michael Reynolds under Maine's anti-SLAPP statute, 14 M.R.S. § 556.

Plaintiff Dana Desjardins commenced this suit in the Maine Superior Court in August 2013. At that time it included section 1983 claims and a number of state law claims against Reynolds and co-defendant Donald Willard.

In September of2013 the case was removed to the U.S. District Court for the District of Maine, and defendants filed a motion to dismiss the section 1983 claims and a special anti-SLAPP motion to dismiss the state law tort claims. In a detailed order filed June 20, 2014, the federal court (Torresen, J.) dismissed the section 1983 claims and granted the defendants' anti-SLAPP motion. *Desjardins v. Willard,* Civil No. 2:13-cv-00338-NT, reported at 2014 U.S. Dist. LEXIS 84782.

The entry shall be: This court is not free to ignore Law Court precedent and will adhere to the law as stated in Schelling *v. Lindell* for two reasons. First, the majority opinion in *Nader I* did not express any reservations about the *Schelling* decision. It cited *Schelling* at least five times, *see* 2012 ME 57 ¶¶ 14-16, 18, and it emphasized in a footnote that the issue before it was different than the issue in *Schelling.* 2012 ME 57 ¶ 20 n.6. As a result, the court does not see any indication that the justices who joined the majority opinion in *Nader I* shared the doubts expressed by the concurring opinion as to the correctness of *Schelling.*

Second, the Legislature has the authority to modify the common law, and the Law Court appears to have concluded that it did so to the extent necessary to provide a remedy against so called SLAPP suits. *See Maietta Construction Inc. v. Wainwright,* 2004 ME 53¶ 10, 847 A.2d 1169. That aspect of the *Maietta* decision was not overruled in *Nader I.*

Whether *Schelling v. Lindell* should be reconsidered in light of the arguments expressed in the concurring opinion in *Nader I* and the question of whether the anti-SLAPP statute has resulted in the unintended consequences discussed in the concurring opinion, *see* 2012 ME 57¶ 45, are issues for the Law Court.

The special motion to dismiss filed by defendant Michael Reynolds pursuant to 14 M.R.S. § 556 is **GRANTED**, and the remaining claims in this case against Reynolds are **DISMISSED**.

Cumberland CV-14-123- Warren 16 Pages 6/22/15

Grubb v. Mercy Hospital

Order

Mercy's first motion seeks summary judgment on counts I and II of plaintiff Michelle Grubb's first amended complaint, which involve claims of employment discrimination based on an allegedly hostile work environment and alleged retaliation during the spring and summer of 2013.

Mercy's second motion seeks summary judgment on certain additional allegations asserted in Grubb's second amended complaint- filed while Mercy's first motion for summary judgment was pending - which contend that Grubb was also retaliated against because she was not selected for an open surgical assistant position in December 2014.

The entry shall be: Defendant's first motion for summary judgment is **GRANTED** with respect to the claims in the first amended complaint alleging hostile work environment and retaliation during 2013.

Defendant's second motion for summary judgment is **DENIED** as to plaintiffs additional claim of retaliation in her second amended complaint based on defendant's failure to hire plaintiff for a full time position in December 2014.

Cumberland CV-14-203- Warren **4 Pages** **7/1/15**

Davis v. Davis

Order

Before the court is a motion for summary judgment by defendants Wayne and Patricia Davis seeking dismissal of the claims brought against them by Bethany and George Davis in their individual capacities.

Bethany and George Davis are the parents of Abigail Davis, who according to the summary judgment record was 12 years old when her 17 year old cousin, Nicholas Davis, engaged in sexual intercourse with her on two occasions. On behalf of Abigail, Bethany and George Davis have sued Nicholas and his parents, defendants Wayne and Patricia Davis, for negligence and have sued Patricia Davis for negligent infliction of emotional distress (NIED).

The entry shall be: Bethany and George rely on several California decisions to support their claim that they are entitled to recover damages in their own right. Wayne and Patricia argue that those decisions are distinguishable. To the extent that those cases are not distinguishable, they do not represent the law in Maine.

Based on the summary judgment record, the court does not doubt that Bethany and George experienced considerable emotional distress. But if the parents in *Cameron* v. *Pepin* could not recover, the court cannot see how Bethany and George can recover here.

The motion by defendants Wayne and Patricia Davis for summary judgment dismissing the claims brought against them by Bethany and George Davis in their individual capacities is **GRANTED**. The claims brought by Bethany and George Davis on behalf of Abigail Davis remain to be tried.

Cumberland CV-14-336- Cole **16 Pages** **6/30/15**

Pelletier v. Lewiston Auburn Water Pollution Control et al.

Order on Motion to Dismiss

Plaintiff Michael Pelletier is an employee of defendant Lewiston Auburn Water Pollution Control Authority. He alleges that he was never told he could join the Maine Public Employees Retirement System ("MPERS") plan and that defendants intentionally concealed from him the fact that he could become a member since he began working in 1999. Mr. Pelletier brings seven counts: fraud and conspiracy to commit fraud (count I); breach of contract (count II); due process violation under 42 U.S.C. § 1983 (count ill); administrative review under M.R. Civ. P. *BOB* (count IV); wages earned claim under 26 M.R.S. § 626-A (count V); *quantum meruit* (count VI); and equitable estoppel (count VII). Defendants have moved to dismiss all counts. For the following reasons, the motion is granted in part and denied in part.

The entry shall be: Mr. Pelletier has alleged sufficient facts to state a claim for fraud and extend the statute of limitations on his other claims. He has also stated a claim for breach of contract as a third-party beneficiary and a section 1983 claim for violation of his procedural due process rights. Mr. Pelletier's other claims fail as a matter of law and must be dismissed.

Defendants' motion to dismiss is **DEMIED** as to counts I, II, and III of the complaint;

Plaintiff is **BARRED** from recovering money damages under count I of the complaint;

Defendants' motion to dismiss is **GRANTED** as to the counts IV, V, VI, and VII.

Cumberland CV-15-104- Warren **4 Pages** **6/22/15**

Salleh v. Travelers Casualty Insurance Co., et al.

Order

Before the court is a motion by defendant Michals Insurance Agency Inc. to set aside the default entered against it on March 27, 2015.

On March 27, 2015, two days after the expiration of the 20 day time limit for the filing of a responsive pleading, plaintiff sought an entry of default and a default judgment against the Michals Agency. A default was entered, but the court declined to enter a default judgment, concluding that a hearing was required.

The entry shall be: The motion by defendant Michals Insurance Agency Inc. to set aside the default entered on March 27, 2015 and to file a late answer is **GRANTED**.

CRIMINAL

Kennebec CR-14-013- Marden **3 Pages** **6/9/15**

State v. White

Order

Before the court is Defendant's omnibus motion to suppress evidence. His attorney challenges the arrest of the Defendant and subsequent search for failure on the part of the State to produce the warrant issued by the State of New York as supported by probable cause. Defendant also challenges the identification of the Defendant by what he characterizes as a suggestive "show up."

The entry shall be: State's Motion to Reopen Evidence in the hearing on Defendant's Motion to Suppress conducted November 4, 2014, is **GRANTED**.

REAL ESTATE

Cumberland RE-11-599- Warren **8 Pages** **7/6/15**

Bank of America v. Mahoney, et al.

Order on Post-Judgment Motions

Before the Court are defendant Katherine Mahoney's motion for relief from judgment pursuant to M.R.Civ.P. 60(b)(4), (5), and (6) and plaintiff Bank of America's request to extend the deadline for holding a sale of the property pursuant to 14 M.R.S. § 6323(3). The court entered a judgment of foreclosure and sale in the Bank's favor on March 14, 2014, following a hearing on the Bank's complaint. Mahoney was present and represented by counsel at the hearing, and both she and the Bank submitted extensive post-hearing briefs.

The entry shall be: The court concludes that the Bank's motion to extend the deadline for holding the foreclosure sale should be granted. *See United States v. Harriman,* 851 F.Supp.2d 190, 194-95 (D. Me. 2010). However, in light of the scant justification for the Bank's delay, the Bank shall be precluded from seeking any deficiency judgment from Katherine or Michael Mahoney.

Defendant Katherine Mahoney's motion for relief from judgment is **DENIED**. Plaintiff Bank of America's motion to extend the deadline for the sale of the property is **GRANTED** but the Bank is precluded from seeking a deficiency judgment.

York RE-14-47- O'Neil **2 Pages** **6/29/15**

Brackett et al. v. Thorne et al.

Order

At issue in this case is whether or not a valid settlement agreement has been reached between the parties which should be enforced, or whether the matter should remain on the trial list.

The entry shall be: Accordingly, this Court orders that this matter be set for a two hour evidentiary hearing on the issue of whether or not a settlement agreement was reached, and what the parties intent was with respect to any disputed elements of that settlement agreement, including whether or not those provisions in dispute were stand alone provisions, or whether or not they materially affected whether the entire case had settled.

Ten days prior to that hearing any party wishing to enforce the settlement agreement shall submit electronically to the Clerk an e-mail version of a proposed judgment, which includes the language requested in the proposed judgment as well as the statutory language required by 14 M.R.S. §2401.