

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY AT LEXINGTON
CIVIL ACTION NO. 04-86-KSF

AMY E. HERRINGTON

PLAINTIFF

vs.

AMENDED COMPLAINT

BAPTIST HEALTHCARE SYSTEM, INC.;
JANET NORTON; PHILLIP KUBOW; LYNETTE WALKER;
TODD JONES

DEFENDANTS

Plaintiff Amy E. Herrington for her Amended Complaint against defendants Baptist Healthcare System, Inc., Janet Norton, Phillip Kubow, Lynette Walker and Todd Jones states as follows:

I

Nature of the Case

1. This is an action pursuant to 42 U.S.C. §§ 1985(2, 3) and 1988 seeking recovery of lost wages and benefits, damages for diminished future earning capacity, compensatory and punitive damages, costs, attorney's fees and litigation expenses arising from the injuries to plaintiff's person and property caused by the unlawful and conspiratorial actions of defendants to deter plaintiff by intimidation and threat from testifying freely, fully and truthfully in a matter pending before the United States District Court for the Southern District of Ohio.

II

Jurisdiction and Venue

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, and venue is proper herein pursuant to 28 U.S.C. §1391(b), because the claims arose in this judicial district.

III

Parties

3. Amy E. Herrington is a female citizen of the United States. She currently resides in Scott County, Kentucky.

4. Defendant Baptist Healthcare System, Inc., (BHS) is a Kentucky corporation and does business under the assumed name of Central Baptist Hospital (CBH) in Fayette County, Kentucky.

5. Defendant Janet Norton is the General Counsel for BHS.

6. Defendant Phillip Kubow is the vice-president of human resources for BHS at CBH.

7. Defendant Lynette Walker is the human resources manager for BHS at CBH.

8. Defendant Todd Jones is the executive for patient safety and compliance for BHS at CBH.

IV

Facts Giving Rise to Lawsuit

7. Herrington began employment for BHS at CBH as a registered nurse in August 2000.

8. Herrington's employment with BHS was terminated on or about March 5, 2003.

9. Prior to March 5, 2003, Herrington had been identified as an expert witness on behalf of the plaintiff in that matter styled Poynter v. University Hospital, et al, Civil Action No. 00-962, U.S. District Court for the Southern District of Ohio at Cincinnati.

10. Defendants became aware that Herrington had been identified as an expert witness on behalf of the plaintiff in the Poynter case prior to March 4, 2003.

11. Defendants became aware that Herrington had been identified as an expert witness on behalf of the plaintiff via e-mails from the defense counsel in the Poynter case complaining about the testimony of Herrington and that of another nurse, Kim Mobley, employed at CBH. A copy of these e-mails are attached hereto and marked collectively "Ex. A."

12. Defendants conspired to and did knowingly use intimidation and threats and also engaged in misleading conduct toward Herrington with the intent to influence or prevent her testimony in the Poynter case and/or to cause or induce Herrington to withhold her testimony from the Poynter case within the meanings and in violation of 18 U.S.C § 1512(b) and 18 U.S.C. § 371.

13. Defendants conspired to deter Herrington by intimidation and threat from testifying freely, fully and truthfully in the Poynter case.

14. Defendants conspired to induce or cause Herrington's absence from any trial in the Poynter case by offering or promising her a thing of value - her continued employment - in consideration for her withdrawal from the Poynter case and agreement not to testify at trial in violation of 18 U.S.C. §201(c)(2).

15. In furtherance of defendants' unlawful conspiracy, Herrington was informed by letter dated February 28, 2003, a copy of which is attached hereto as "Ex. B," that her continued employment by BHS was conditioned upon her agreeing to remove herself as a witness in the Poynter case and any other case in which she had been engaged as an expert witness.

16. Defendants intended and expected Herrington to understand from the February 28, 2003, letter that she should withhold her testimony and terminate immediately any and all involvement she had in any matter as an expert witness including Poynter.

17. Defendants intended and expected Herrington to understand from the February 28, 2003, letter that she agree to withhold her testimony and terminate any and all involvement as

an expert witness prior to resuming her work at Central Baptist Hospital.

18. Defendants intended and expected Herrington to understand from the February 28, 2003, letter that she take whatever steps were necessary to withhold her testimony and get out of having to testify in any matter where she had been engaged as an expert witness.

19. Defendants intended and expected Herrington to understand from the February 28, 2003, letter that she take all the aforementioned steps to withhold her testimony and terminate her involvement and make the aforementioned agreement in order to remain employed by BHS.

20. The threat to Herrington's continued employment was made by defendants with the intention of deterring her from testifying freely, fully and truthfully as a witness in the Poynter case as well as other cases.

21. The offer of continued employment to Herrington made by defendants was a promise of a thing of value made in consideration for Herrington's agreement to absent herself from any trial in the Poynter case.

22. Herrington responded to the February 28, 2003 letter that complying with defendants' demand "would lead to contempt of court and [she] would personally face legal ramification and

potential risks to my nursing license." A copy of Herrington's reply is attached hereto and marked "Ex. C."

23. Defendants confirmed by letter dated March 7, 2003, that their conspiracy had left Herrington with "the option of removing yourself from these outside activities and continuing employment at Central Baptist and you declined to do so." A copy of this letter is attached hereto and marked "Ex.D."

24. Defendant BHS intentionally and willfully took overt actions in furtherance of defendants' conspiracy to knowingly use intimidation and threats and also engaged in misleading conduct toward Herrington with the intent to influence or prevent her testimony in the Poynter case and/or induce Herrington to withhold her testimony from the Poynter case and did same to deter Herrington from testifying freely, fully and truthfully as a witness in the Poynter case.

25. Defendant BHS intentionally and willfully took overt actions in furtherance of defendants' conspiracy to obtain Herrington's absence from any trial in the Poynter case by promising her a thing of value in consideration for her promise to be so absent.

26. Defendant Norton intentionally and willfully took overt actions in furtherance of defendants' conspiracy to knowingly use intimidation and threats and also engaged in misleading conduct toward Herrington with the intent to

influence or prevent her testimony in the Poynter case and/or induce Herrington to withhold her testimony from the Poynter case and did same to deter Herrington from testifying freely, fully and truthfully as a witness in the Poynter case.

27. Defendant Norton intentionally and willfully took overt actions in furtherance of defendants' conspiracy to obtain Herrington's absence from any trial in the Poynter case by promising her a thing of value in consideration for her promise to be so absent.

28. Defendant Kubow intentionally and willfully took overt actions in furtherance of defendants' conspiracy to knowingly use intimidation and threats and also engaged in misleading conduct toward Herrington with the intent to influence or prevent her testimony in the Poynter case and/or induce Herrington to withhold her testimony from the Poynter case and did same to deter Herrington from testifying freely, fully and truthfully as a witness in the Poynter case.

29. Defendant Kubow intentionally and willfully took overt actions in furtherance of defendants' conspiracy to obtain Herrington's absence from any trial in the Poynter case by promising her a thing of value in consideration for her promise to be so absent.

30. Defendant Walker intentionally and willfully took overt actions in furtherance of defendants' conspiracy to

knowingly use intimidation and threats and also engaged in misleading conduct toward Herrington with the intent to influence or prevent her testimony in the Poynter case and/or induce Herrington to withhold her testimony from the Poynter case and did same to deter Herrington from testifying freely, fully and truthfully as a witness in the Poynter case.

31. Defendant Walker intentionally and willfully took overt actions in furtherance of defendants' conspiracy to obtain Herrington's absence from any trial in the Poynter case by promising her a thing of value in consideration for her promise to be so absent.

32. Defendant Jones intentionally and willfully took overt actions in furtherance of defendants' conspiracy to knowingly use intimidation and threats and also engaged in misleading conduct toward Herrington with the intent to influence or prevent her testimony in the Poynter case and/or induce Herrington to withhold her testimony from the Poynter case and did same to deter Herrington from testifying freely, fully and truthfully as a witness in the Poynter case.

33. Defendant Jones intentionally and willfully took overt actions in furtherance of defendants' conspiracy to obtain Herrington's absence from any trial in the Poynter case by promising her a thing of value in consideration for her promise to be so absent.

34. Defendants' actions to deter Herrington by threat, force or intimidation from testifying as a witness in the Poynter case was reviewed by the United States District Court for the Southern District of Ohio at Cincinnati and resulted in that court issuing the Order attached hereto and marked "Ex. E."

35. As a direct and proximate result of defendants' wrongful conduct and their actions in furtherance of an unlawful conspiracy, Herrington has suffered, is suffering, and is reasonably certain to suffer in the future, injury to her person and property including loss of income and other employment benefits, emotional distress and mental anguish and diminishment and impairment to her future earning capacity and other damages.

36. Defendants' actions were taken in reckless and wanton disregard for Herrington's rights.

V

CAUSES OF ACTION

Count 1 - 42 U.S.C. - 1985(2)

30. Herrington incorporates paragraphs 1 through 29 of this Complaint as if fully set forth herein.

31. Herrington has suffered injury to her person and property as a direct and proximate result of defendants' actions in furtherance of their conspiracy in violation of 42 U.S.C. §1985(2).

VI

DEMAND FOR RELIEF

WHEREFORE, Herrington demands as follows:

(1) that the Court enter a judgment against defendants awarding her monetary and compensatory damages in such fair amount as the jury determines at trial to be warranted by the evidence;

(2) that the Court enter a judgment against defendants awarding her punitive damages in such amount as the jury fairly assesses against defendants to punish their wanton and intentional misconduct, their attempts to obstruct justice and to deter repetition of same;

(3) that the Court enter a judgment against defendants awarding her costs herein expended pursuant to Federal Rule of Civil Procedure 54;

(4) that the Court enter a judgment against defendants awarding her attorney's fees and litigation expenses pursuant to Federal Rule of Civil Procedure 54 and 42 U.S.C. §1988;

(5) that her causes of action herein be tried by jury;
and,

(6) that she be granted all such other relief as she is entitled.

DEMAND FOR JURY TRIAL

Plaintiff demands pursuant to Fed.R.Civ.Pro 38 trial by jury on all issues herein so triable.

ROBERT L. ABELL
271 W. Short St., Suite 500
PO Box 983
Lexington, KY 40588-0983
859-254-7076
Attorney for Plaintiff

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Amended Complaint was mailed, postage pre-paid this ____ day of March 2004, to the following:

Raymond C. Haley, III
Woodward, Hobson & Fulton
2500 National City Tower
Louisville, KY 40202

Attorney for Plaintiff