STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. AND-23-310

HELEN CRABTREE,
Plaintiff-Appellant

v.

CENTRAL MAINE MEDICAL CENTER,
Defendant-Appellee

ON APPEAL FROM THE ANDROSCOGGIN COUNTY SUPERIOR COURT

REPLY BRIEF FOR APPELLANT

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INTRODUCTION

Appellant, Helen Crabtree, submits this reply brief to respond to some of the new factual assertions and arguments raised in the Brief of Appellee Central Maine Medical Center.[1]

ARGUMENT

A. New Factual Assertions

1. CMMC's claim that "Crabtree was willing to finance a $46,000 master's degree in diplomacy and international relations," (Red Br. 3, n. 4), mischaracterizes the record. Rather, Helen testified that she would have applied for scholarships to pay for the program had she not decided to defer enrollment in it. (Tr. 228:9-21.)

2. CMMC's assertion that Helen "testified that she paid Hebrew course costs, which she was not willing to do for a local CNA training program," (Red Br. 6), is misleading. Helen testified that she received a complete scholarship for the Hebrew courses other than some initial out-of-pocket expenses. (Tr. 224:16-225:14.)

3. CMMC's statement that "[a]fter her part-time hostess position in May/June of 2021, Crabtree made no job search attempts through the date of trial,"

[1] Appellant's position with respect to the other factual assertions and arguments raised in CMMC's brief that are important to this appeal are covered in the Brief for Appellant.

(Red Br. 8), is unsupported by the record. (Tr. 205:24-206:10.) Rather, Helen testified that she had not worked during that timeframe, not that she had made no job search attempts. (Tr. 205:24-206:10.)

4. Similarly unsupported is CMMC's assertion that "[a]lthough she was only enrolled at Wildwood part-time up through the time of trial, she did not search for jobs in the intervening period." (Red Br. 8, n. 10.) The portion of the trial transcript it cited does not address whether Helen searched for jobs. (Tr. 14:25-16:2.)

B. New Arguments

1. Proposed "Stopped Serious Searches" Exception

CMMC's attempt to graft another exception onto the substantially equivalent jobs requirement goes nowhere. (Red Br. 12.) The First Circuit's blanket exclusion from lost wage recovery applies only if the plaintiff "made no effort to secure suitable employment." *Quint v. A.E. Staley Mfg. Co.*, 172 F.3d 1, 16 (1st Cir. 1999) (emphasis added). That is markedly different from CMMC's suggested "stopped serious searches" standard, even if there were one.[2]

[2] Although stopping searches altogether is the same as making no effort, stopping *serious* searches necessarily involves making some effort. A stopped serious searches exception would thus blur the line between the exception and the rule and thereby undue the rule. The rule is that an employer only proves failure to mitigate if substantially equivalent jobs were available *and* plaintiff failed to use reasonably diligent job search efforts. *Quint v. A.E. Staley Mfg. Co*., 172 F.3d at 15. The exception applies if plaintiff made no effort to secure suitable employment and withdrew from the work force entirely. *Id.* at 16. Because there is no clear difference between stopping serious searches and lacking reasonable diligence, using it as a blanket exception would circumvent the rule.

But no case has recognized such a standard, not even in the single case CMMC cites as support for it, *Currier v. United Techs. Corp.*, 326 F.Supp. 2d 145 (D.Me. 2004).[3] Rather, in that case the court instructed the jury that it could not award lost wages for any period that it found that the plaintiff, Mr. Currier, "withdrew from the labor market." *Id.* at 158 (emphasis added). At trial, Mr. Currier had testified that "'any serious searches' for work stopped once he received Social Security." *Id.* at 157. Although there was conflicting testimony at trial, based on Currier's admission the court found that "[t]he jury could have concluded that Currier withdrew from the labor market or retired on some date prior to trial, and awarded less back pay than Currier sought for that reason." *Id.* at 158. The court thus did not adopt a new standard, but instead found that a jury could reasonably infer from the plaintiff's admission that he had stopped looking for work altogether for at least part of the time at issue. Here, Helen certainly offered no similar testimony to Currier's admission that he stopped serious job searches, other than acknowledging that she did not look for work during the isolated times that she was enrolled in the Hebrew language immersion courses. (Blue Br. 8-11.)

[3] In the other case CMMC cited, *Webber v. International Paper Company*, 307 F.Supp.2d 119 (D.Me. 2004), the court held an evidentiary hearing and declined to award lost wages only for the period during which plaintiff had not sought any jobs. *Id.* at 127. The court otherwise required a showing of substantially equivalent jobs because, although plaintiff's "job search does not present a paragon of diligence, it is not disputed that he did make a minimal effort to obtain alternate employment." *Id.*

Currier therefore does not support an inference that Helen withdrew from the workforce altogether from October 2017 until the time of trial as CMMC suggests.

2. Claimed Substantially Equivalent Jobs

CMMC claims that the Superior Court determined that substantially equivalent job opportunities existed "based upon stipulated facts about the favorable healthcare job market in the region," (Red Br. 15), but it omits that the stipulated facts the court mentioned addressed job opportunities in 2016, which was at least a year before the timeframe at issue on appeal here. (App. 16-17, 109 ¶¶ 33-34.) The stipulated facts therefore offer no support for a finding of substantially equivalent jobs from October 2017 forward.

CMMC also inaccurately claims that "the Superior Court further found that there were substantially equivalent Earn While You learn CNA programs at other hospitals within an hour commute of Lewiston." (Red Br. 15.) Rather than finding that the other briefly mentioned Earn While You Learn programs were "substantially equivalent," the court found that "[t]he details of those other programs were not specified at trial." (App. 16.)

Finally, CMMC speculates that the Superior Court "reasonably deduced" that other Earn While You Learn programs were similar to CMMC's, (Red Br. 16), but the Superior Court did not do so, instead noting the absence of details concerning those programs. (App. 16.)

Dated: March 5, 2024 /s/ John P. Gause

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CERTIFICATE OF SERVICE

I, John P. Gause, hereby certify that two copies of the Reply Brief of Appellant Helen Crabtree are being served upon counsel at the addresses set forth below by email on March 5, 2024, and first-class mail, postage prepaid on March 5, 2024:

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