MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2026 ME 105
Docket: BCD-23-442
Argued: September 11, 2024
Decided: November 3, 2026

Panel: STANFILL, C.J., and MEAD, LAWRENCE, DOUGLAS, JJ., and HUMPHREY, A.R.J.

JENNIFER L. OWEN

v.

TOWN AND COUNTRY FEDERAL CREDIT UNION

DOUGLAS, J.

[¶1] Jennifer L. Owen appeals from a judgment entered in the Business and Consumer Docket (*Duddy, J.*) after a jury trial in favor of Town and Country Federal Credit Union on her claims alleging disability discrimination and retaliation. Owen contends that the court abused its discretion by (1) ordering her to pay attorney fees and costs as a discovery sanction, and (2) excluding evidence of other former employees' discrimination claims against Town and Country. We affirm the judgment.

I. BACKGROUND

A. Owen's Employment by Town and Country

[¶2] The following facts are drawn from competent evidence admitted at trial, viewed in the light most favorable to the jury's verdict in favor of Town and Country. *See Sullivan v. Porter*, 2004 ME 134, ¶ 12, 861 A.2d 625.

[¶3] Town and Country hired Owen as a teller in 2012. The following year, Owen was diagnosed with breast cancer. Owen remained employed with Town and Country and received support from her employer during her treatment and recovery. Town and Country and its employees organized a bake sale, a yard sale, and other events to raise money to help her pay her medical expenses. Town and Country allowed other employees to donate paid time off to Owen during her treatment. By early 2014, Owen was cancer-free.

[¶4] In 2015, Owen was promoted to the position of assistant branch manager in one of Town and Country's South Portland branches. In this position, Owen was entrusted with managerial responsibilities in addition to working with members on loans.

[¶5] During the ensuing year, Owen's performance in the assistant manager position was unsatisfactory. Although the human resources manager responsible for Owen's evaluation, Betsy St. Pierre, had concerns, she was

willing to give Owen some leeway because Owen was still new to the position. However, instances of unsatisfactory performance and poor judgment persisted. For example, Owen shared her managerial password with an unauthorized employee; left the cash vault open overnight; refused to assist a teller whose cash drawer was short of the amount it was supposed to contain; was seen watching Netflix during work time; lost her vault key and failed to report the loss in a timely fashion; and made errors on several loans, including an error that prompted one member to consider closing her account.

[¶6] Town and Country asked Owen to step down as an assistant branch manager and take a position as a member services representative (MSR II), a position that involved primarily processing loans. Owen was also transferred to Town and Country's Scarborough branch.

[¶7] In early 2018, shortly after assuming the MSR II position, Owen received her 2017 performance evaluation. The evaluation noted "serious concerns" about Owen's performance in her new position. When informed of the concerns, Owen did not disagree, checked "agree" on the evaluation itself, and commented, "You can say I've had a couple misjudgments. I'm an independent thinker."

[¶8] Town and Country offered further job coaching after Owen received a written warning for repeated errors in early 2018. Her job performance did not improve.[1]

[¶9] In mid-October 2018, St. Pierre and Heather Savage, Town and Country's Vice President of Lending, met to discuss Owen's performance. They agreed that Owen's employment should be terminated but did not decide on a termination date. Approximately two weeks later, on October 25, 2018, Savage received a report that Owen was telling coworkers that she believed that she was about to be fired, which Owen had previously been warned not to do. St. Pierre and Savage went to the Scarborough branch that day and terminated Owen's employment.

[¶10] On the same day, October 25, 2018, Owen had a previously scheduled doctor's appointment concerning a wart on her arm, which she feared may be cancerous (although it was later determined to be benign). Neither St. Pierre nor Savage was aware of the October 25 doctor's appointment until after they had terminated Owen's employment.

[1] Examples of poor performance included making careless mistakes or exercising poor judgment in processing or documenting member loans, such as submitting an application for a home equity loan even though the applicant did not own the home to be used as collateral; providing a member with a different member's credit score, which was one hundred points lower, resulting in a higher interest rate for the member; causing delay in the loan application of a member who was experiencing serious financial hardship; and backdating a loan form to a different date than the date members signed.

B. Procedural History

[¶11] Owen first asserted discrimination by Town and Country in a demand letter in December 2018. She subsequently filed a charge of discrimination with the Maine Human Rights Commission in May 2019 and received a right-to-sue letter from the Commission in early January 2020. *See* 5 M.R.S. § 4612(6) (2020).[2]

[¶12] On September 4, 2020, Owen filed a complaint against Town and Country in the Superior Court, alleging disability discrimination and retaliation under the Maine Human Rights Act, 5 M.R.S. §§ 4572, 4633 (2018);[3] 5 M.R.S. § 4613 (2020).[4] In Count 1, Owen asserted that Town and Country had discriminated against her by terminating her employment due to a "history of cancer and the perceived recurrence of the cancer." In Count 2, Owen alleged that her employment was unlawfully terminated in retaliation for engaging in protected activity on October 25, 2018, namely "by requesting time to go to [a]

[2] This statute has since been amended. *See* P.L. 2023, ch. 255, § 1 (effective Oct. 25, 2023) (codified at 5 M.R.S. § 4612(6) (2026)).

[3] Because section 4572 has been amended since the time of the alleged discriminatory conduct, *see, e.g.*, P.L. 2025, ch. 269, § 1 (effective Sept. 24, 2025) (codified at 5 M.R.S. § 4572(1) (2026)), we cite the substantive statutes in effect at the time of the alleged conduct.

[4] Because section 4613 has been amended since Owen filed her complaint, *see* P.L. 2023, ch. 263, § 1 (effective Oct. 25, 2023) (codified at 5 M.R.S. § 4613(2)(B) (2026)), we cite the procedural statute as it existed at the time of the court proceedings.

medical appointment related to her medical disability." Town and Country filed a timely answer. *See* M.R. Civ. P. 12(a).

1. Town and Country's Discovery Requests

a. Initial Requests

[¶13] In November 2020, Town and Country served written discovery requests on Owen. Its request for production of documents included the following two enumerated requests:

> [Request No.] 5. Any and all communications, including without limitation text messages/SMS, instant messages, or e-mail messages, sent to you, or that you sent, either to, from, or in any way relating or referring to . . . Jessica Dunton [Walker] and/or Courtney McNulty . . . from January 1, 2016, through the present regarding your employment with or termination from [Town and Country] or any other employee of [Town and Country].
>
> [Request No.] 6. Any and all texts or e-mail messages sent to you, or that you sent, from Wednesday October 24 – through Sunday, October 31, 2018, pertaining to your employment with or termination from [Town and Country] or any other employee of [Town and Country].

The request instructed that it was continuing in nature, and that lost or destroyed documents (and contents) were to be identified in a written statement that identified the time of and reasons for the loss or destruction as well as any individuals with relevant knowledge of the documents or their

destruction. Town and Country also served interrogatories asking Owen to identify individuals with any knowledge of any facts related to her claims.

[¶14] In December 2020, Owen responded to the request for documents. Her response stated that there were no documents responsive to Request No. 5 (all communications with Walker and McNulty from January 1, 2016, to the present) and that she would produce documents responsive to Request No. 6 (all texts and emails from October 24 to October 31, 2018, pertaining to her employment). Owen's answers to interrogatories identified several individuals with knowledge of the facts and issues in this lawsuit, including Walker, who also was represented by Owen's counsel in connection with a discrimination claim Walker had brought against Town and Country after it terminated her employment.

[¶15] Owen did not produce any text messages or voicemails. She did not identify any documents that were destroyed or lost. Over the course of discovery, she did not supplement her responses to these document requests.

b. Depositions of Walker and Owen

[¶16] In January 2021, Town and Country deposed Walker and served her with a subpoena requesting production of all text messages sent to or received from Owen from January 1, 2016, onward relating to Town and

Country or any of its current or former employees. At her March 1, 2021, deposition, Walker testified that she did not have any responsive documents and had never texted Owen about Town and Country. She testified that she had referred Owen to her counsel and had spoken with Owen and counsel about the deposition but had not read Owen's charge of discrimination filed with the Maine Human Rights Commission, despite having notarized it.

[¶17] Town and Country took Owen's deposition on March 3, 2021. Owen testified that she and Walker spoke regularly by phone and by text message but denied discussing her lawsuit against Town and Country with Walker. Owen also testified that when searching for text messages responsive to Town and Country's first document request, she merely scanned her messages and did not thoroughly search because it would be "an astronomical task." She also testified that after she first spoke with her counsel, she had not deleted or destroyed any emails or texts that might be relevant to the suit.

c. Follow-up Requests; Second Owen Deposition

[¶18] In April 2021, Town and Country served a second document request on Owen again seeking (1) texts and other written communications and (2) copies of Owen's phone records. Owen objected to both requests and stated that she had no documents responsive to the latter. Town and County sought

court assistance in obtaining compliance with its discovery requests, *see* M.R. Civ. P. 26(g), and on June 3, 2021, the court ordered Owen to turn over her phone to Town and Country by June 18, 2021, so that text messages could be extracted.

[¶19] Owen failed to comply by the June 18 deadline. Town and Country moved for sanctions on July 21, 2021. The following day, July 22, 2021, Owen turned over her phone. An extraction from the phone produced hundreds of text messages between Owen and Walker, although none prior to January 11, 2020, which was four days after the date of the January 7, 2020, right-to-sue letter issued to Owen by the Maine Human Rights Commission. Several of the text messages included discussions between Owen and Walker about Owen's lawsuit and about Town and Country generally. These texts were responsive to earlier discovery requests.

[¶20] In light of this new information, Town and Country deposed Owen a second time on September 20, 2021. Owen testified that she regularly deletes voicemails and that her texts with Walker prior to January 11, 2020, were deleted or lost when she bought a new phone, although her phone bills show she obtained a new phone six months prior, in June 2019.

[¶21] In October 2021—after the close of discovery—Owen produced phone records from 2020 and 2021 that had been requested in April 2021. The phone records disclosed that Owen had spoken with Walker the night before Walker's deposition and immediately following the deposition. They also revealed that Owen had spoken with Walker during the lunch break of Owen's first deposition, during the evening after Owen's first deposition, and before and after Owen's second deposition.

2. Town and Country's Motion to Dismiss and for Sanctions

[¶22] On October 29, 2021, Town and Country filed a motion to dismiss Owen's claims and for sanctions, asserting that Owen's "evasive, misleading, and less than forthcoming" conduct during discovery required it to "spen[d] countless hours and thousands of dollars trying to obtain discovery it has been entitled to all along." In light of the alleged deletion of electronic communications with a critical witness, Town and Country sought dismissal of the action, or, in the alternative, (1) the opportunity to offer evidence at trial concerning Owen's conduct during discovery, (2) an instruction to the jury that it may infer that documents destroyed contained information favorable to Town and Country and unfavorable to Owen (a so-called "adverse inference instruction"), and (3) an award of attorney fees and costs.

[¶23] After a hearing, the court issued an order on February 2, 2022, determining that Owen had failed to comply with Town and Country's proper discovery requests. The court found that Owen "led Town and Country . . . on an intentionally misleading, time consuming, and costly wild goose chase"; "did not disclose the deletion of the texts and emails despite Town and Country's specific request to identify relevant documents which had been lost or destroyed"; and "failed to provide the requested phone records, producing only records from 2020 and 2021 after the close of discovery despite Town and Country's timely request for [phone] records dating from 2016." The court further found that "Town and Country expended thousands of dollars in attorney fees pursuing evidence which Owen had a duty to disclose or describe in the case of destruction . . . ."

[¶24] Although the court declined to dismiss the complaint as requested, it concluded that sanctions were "clearly warranted" because "Owen acted in bad faith," the "evidence destroyed was important to Town and Country's defense," and Town and Country was "prejudiced by Owen's actions." It determined that "[a]ttorney fees [we]re warranted *both* as a remedial measure, and as a sanction designed to address Owen's conduct." (Emphasis added.) Owen was thus ordered to reimburse Town and Country for

> its reasonable attorney fees and costs (including any IT personnel costs) incurred in (i) filing and arguing this Motion and attendant briefs, (ii) pursuing discovery of Owen's text messages, electronic devices, and telephone records, and (iii) pursuing similar discovery with respect to Jessica Dunton Walker.

The court determined that an attorney fees award was "not by itself a sufficient sanction in this case," stating, "In order to cure the prejudice caused by Owen's conduct, at trial the Court will permit Town and Country to introduce evidence of the facts and circumstances relating to Owen's destruction of evidence." The court indicated that if "Town and Country establishe[d] a sufficient foundational showing," the court would "give the jury an adverse inference instruction."

3. Trial

[¶25] Trial was scheduled for October 2023. Before the trial, the parties filed several motions in limine. One of Town and Country's motions requested that Owen be precluded "from introducing any evidence or mentioning in the presence of the jury any allegations concerning discrimination, harassment or retaliation by [Town and Country] directed toward anyone other than [Owen] ('me too' evidence)." Town and Country filed the motion in anticipation of Owen calling Walker and another Town and Country employee, Courtney

McNulty,[5] as witnesses, and Town and Country maintained that such evidence was irrelevant to Owen's claim that she had faced discrimination because of her cancer or the perception that her cancer had returned. The court granted the motion, ruling that "[t]his is not a hostile workplace claim, and evidence of other employee's claims is both irrelevant and unduly prejudicial, and likely to confuse the jury."

[¶26] The court held a five-day jury trial from October 2-6, 2023. Owen testified and called three other witnesses, including Walker; Town and Country called three additional witnesses. Despite the court's ruling on the motion in limine barring "me too" testimony, on redirect examination of Owen during the third day of trial, her counsel elicited testimony that Walker had her own claim against Town and Country. The court found the prejudice to Town and Country was so apparent that it felt that a mistrial could be appropriate, though it did not declare one.

[¶27] As permitted by the court's February 2 order, Town and Country presented testimony and evidence concerning Owen's conduct during discovery and the allegation of spoliation. Owen testified that she was unaware that the deleted text messages were relevant to her claims and that, of the

[5] Owen ultimately did not call McNulty as a witness.

hundreds of pages of text messages belatedly extracted from her phones, none were relevant to her claims. Consequently, after the evidence closed, at the jury-instruction-charge conference, the court reconsidered its earlier ruling on the spoliation issue. Reflecting on the testimony and evidence at trial, the court stated:

> The problem is I don't think that there's any evidence showing that [Owen] knew of the documents' potential relevance to the claim. That's why I think now Town and Country falls down on this request for spoliation . . . .
>
> Now, if prejudice is necessary to be shown here, and I'm not sure that it is, I do not see any prejudice. [Owen] went on to explain, and again, in a manner that was not disputed, that whatever was on her phone that got deleted was in the like kind to what was on her phone that was produced. The material that was produced in like kind was innocuous.

The court therefore declined to give the jury an "adverse inference" instruction.

[¶28] Following deliberations, the jury returned a unanimous verdict in favor of Town and Country on all counts. After the jury was dismissed, Owen's counsel requested that the court reconsider its decision on imposing attorney fees and costs as a sanction, given the court's finding that the evidence presented at trial did not warrant an "adverse inference" instruction. The court denied the request and explained:

> [T]he sanction for [spoliation] specifically was the negative inference instruction which was not given. There was another

> whole piece of the discovery dispute related to how hard it was to get emails and texts, and so on and so forth with a financial award. I'm going to let that stand . . . even to the extent that any of the spoliation issue pertained to it. That piece was not put on to the jury.

[¶29] Owen timely filed an appeal. M.R. App. 2B(c)(1).

II. DISCUSSION

[¶30] We consider two issues on appeal: (A) whether the court abused its discretion in imposing sanctions in the form of attorney fees and costs, even after Owen requested that the court withdraw those sanctions, and (B) whether the court erred or abused its discretion in excluding evidence that Town and Country had discriminated against other employees.

A. The Court did not abuse its discretion by ordering Owen to pay Town and Country's attorney fees and costs as a discovery sanction and rejecting Owen's request to withdraw the sanction following trial.

[¶31] We review the court's "imposition of sanctions for discovery violations for an abuse of discretion." *Harris v. Soley*, 2000 ME 150, ¶ 9, 756 A.2d 499. In fashioning the appropriate sanction under M.R. Civ. P. 37 for a party's failure to provide discovery, the trial court has considerable discretion, with the "only literal limitation" being "that the exercise of discretion must be 'just'." *Pelletier v. Pathiraja*, 519 A.2d 187, 190 (Me. 1986) (quoting M.R. Civ. P. 37(b)(2)). To determine "the scope of a sanction for discovery violations,

the trial court should consider the effect pretrial violations have on the adverse party and also evaluate the purpose the sanctions are to serve." *Est. of McCormick*, 2001 ME 24, ¶ 28, 765 A.2d 552 (quotation marks omitted); *see also Harris*, 2000 ME 150, ¶ 10, 756 A.2d 499 (noting that sanctions may serve to remedy the effects of noncompliance, to deter similar conduct by the offending party, or to penalize the noncompliant party). We "will not lightly overrule a trial court's discretionary determination" on discovery sanctions. *Est. of Galluzzo*, 615 A.2d 236, 239 (Me. 1992) (quotation marks omitted).

[¶32] Owen contends that after hearing evidence presented at trial, the court "recognized its error and reversed its earlier decision" that she was responsible for spoliation of evidence. She therefore contends that the court abused its discretion in maintaining the sanction even after finding that Owen committed no spoliation because the sanction of attorney fees and costs was based principally, if not solely, on the court's spoliation determination.

[¶33] Town and Country's motion for sanctions was based on several grounds: "spoliation of evidence, *misleading and/or untruthful statements under oath*, and *failure to comply with her discovery obligations*." (Emphasis added.) Town and Country demonstrated numerous instances in which Owen's deposition testimony was contradictory, obstructionist, and evasive. As a

result, Town and Country was forced to spend "countless hours and thousands of dollars trying to obtain discovery it [was] entitled to."

[¶34] Town and Country made its first request for the text messages on November 19, 2020, and it did not receive a single text message until July 22, 2021, nearly nine months later, after making multiple requests, seeking court intervention, and hiring IT personnel to extract the messages from Owen's phone. Despite even those efforts, Town and Country was not able to obtain any text messages sent before January 11, 2020.

[¶35] At trial, Owen's counsel asked the court to reconsider its decision requiring her to pay attorney fees and costs. As noted above, the court made clear that it ordered the payment of attorney fees and costs as a sanction due to Owen's discovery violations separate and apart from any claim of spoliation. *See supra* ¶ 28.

[¶36] The court did not abuse its discretion in imposing attorney fees and costs for Owen's other discovery violations. The court found that Owen (1) was inconsistent and misleading in her answers to interrogatories and deposition questions; and (2) was evasive and untruthful in responding to Town and Country's discovery requests, mostly with respect to emails and text messages, including her failure to inform Town and Country that she had, as the

court found, "deleted all messages between her and Walker . . . just four days after [she] received her right to sue letter."

[¶37] The record supports the court's finding that Owen failed to comply with the rules of discovery, caused additional expense and delay by her conduct, and failed to comply with the court order requiring her compliance. The court "acted well within the bounds of its discretion" when it ordered Owen to pay Town and Country's attorney fees and costs as a discovery sanction. *See Harris*, 2000 ME 150, ¶ 11, 756 A.2d 499 ("When the court has determined the facts without error and has understood the factors and law . . . , we defer to the trial court and will find an abuse of discretion only where the court makes a serious mistake . . . ." (quotation marks omitted)).

B. The court did not err or abuse its discretion by excluding evidence of alleged discriminatory treatment by Town and Country toward other former employees.

[¶38] Owen next argues that the court erred in precluding any testimony or exhibits referencing other former employees' discrimination claims against Town and Country, arguing that the evidence is relevant and its probative value is not outweighed by the danger of unfair prejudice.

[¶39] In a disability discrimination case, a plaintiff must prove as an element of her case that the defendant acted with discriminatory animus.

See Daniels v. Narraguagus Bay Health Care Facility, 2012 ME 80, ¶ 14, 45 A.3d 722. Rule 402 of the Maine Rules of Evidence provides that evidence that is not relevant is not admissible. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. M.R. Evid. 401. Relevant evidence, however, may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." M.R. Evid. 403.

[¶40] We review a trial court's determination of relevance for clear error. *State v. Buchanan,* 2007 ME 58, ¶ 8, 921 A.2d 159. This standard of review "is similar to a sufficiency of the evidence standard in that it asks if the trial court's ruling on evidentiary foundation is supported by or not inconsistent with the facts that appear in the record." *Id.* (quotation marks omitted). With respect to a trial court's weighing of the probative value of evidence against the risk of unfair prejudice, we review for an abuse of discretion. *State v. Michaud*, 2017 ME 170, ¶ 8, 168 A.3d 802.

[¶41] As relevant to this appeal, there are two different types of evidence that can be offered to show discriminatory animus. One type is "me too"

evidence—evidence that other individuals of the same protected class suffered adverse action by the employer—offered to demonstrate a discriminatory atmosphere or corporate state of mind. S*ee Cummings v. Standard Reg. Co.*, 265 F.3d 56, 63 (1st Cir. 2001) (explaining that "evidence of a discriminatory atmosphere may sometimes be relevant to showing the corporate state-of-mind at the time of the termination" if it is not too attenuated (quotation marks omitted)).[6] The other type is comparator evidence, where the plaintiff in a disparate treatment case introduces evidence that others similarly situated to her in all relevant respects apart from her protected-class status were treated *differently* by the employer, to show discriminatory animus based on the plaintiff's membership in the protected class. *Ray v. Ropes & Gray, LLP*, 799 F.3d 99, 114 (1st Cir. 2015). In other words, "me too" evidence is evidence that the employer has a practice of discriminating against a class of employees, as shown by other employees in the same protected class receiving the same negative treatment as the plaintiff, *see Dindinger v. Allsteel, Inc.*, 853 F.3d 414, 424 (8th Cir. 2017), and comparator evidence is evidence that other

[6] The Maine Human Rights Act was enacted "against the background of prior federal antidiscrimination statutes and a developing body of case law construing and applying those statutes." *Me. Hum. Rts. Comm'n v. City of Auburn*, 408 A.2d 1253, 1261 (Me. 1979) (footnote omitted). Thus, the "special rules developed by the federal courts" regarding the distinctions between "me too" and comparator evidence "provide a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *Id.* (quotation marks omitted).

employees who are not members of the same protected class were treated less harshly than the plaintiff, creating an inference of discrimination against the plaintiff as a member of the class, *see Gordon v. United Airlines, Inc.*, 246 F.3d 878, 890-91 (7th Cir. 2001).

[¶42] Town and Country referred to the evidence as "me too" evidence in its motion in limine. At trial and in the parties' briefs, however, they refer to both "me too" evidence and comparator evidence.[7] Regardless of how the evidence is characterized, the court did not abuse its discretion in excluding testimony from Walker and McNulty about Town and Country's treatment of them.

1. "Me Too" Evidence of Similar Treatment

[¶43] We turn first to the question of whether the court abused its discretion in excluding "me too" evidence that Walker and McNulty were similarly terminated by Town and Country to show a discriminatory state of mind. Because discrimination is "often subtle and pervasive, plaintiffs must be able to rely on circumstantial evidence to prove discriminatory intent." *Cummings*, 265 F.3d at 63. Evidence of the employer's prior incidents of

[7] Although both types of evidence involve the use of evidence of the employer's treatment of nonparties, they are different and are offered to draw two different inferences. *See Dindinger*, 853 F.3d at 425 n.5.

discrimination or a discriminatory atmosphere may sometimes be relevant to show an employer's state of mind, but such evidence does not in and of itself prove a claim of discrimination. *Id.*; *see also Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 388 (2008) (stating that "[t]he question whether evidence of discrimination by other supervisors is relevant" in a discrimination case "is fact based and depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case"). It does not hold true that "the relationship between the evidence offered to demonstrate institutional state-of-mind and the alleged discriminatory employment actions" will never be "too attenuated to support a trial judge's finding that such evidence is irrelevant." *Conway v. Electro Switch Corp*., 825 F.2d 593, 598 (1st Cir. 1987). The "me too" evidence "must be logically or reasonably tied to the decision made with respect to [the plaintiff]." *Griffin v. Finkbeiner*, 689 F.3d 584, 598 (6th Cir. 2012) (quotation marks omitted), *overruled in part on other grounds by*, *A. K. by & Through Kocher v. Durham Sch. Servs., L.P.*, 969 F.3d 625, 629 (6th Cir. 2020).

[¶44] Indeed, federal courts have vacated judgments when courts permitted other former employees to present irrelevant testimony about the circumstances of their own terminations. *See, e.g.*, *Haskell v. Kaman Corp.*, 743

F.2d 113, 121-22 (2d Cir. 1984) (holding that it was error to allow six former employees to testify about their terminations to provide a circumstantial basis for an inference that the company preferred younger employees); *Schrand v. Fed. Pac. Elec. Co.*, 851 F.2d 152, 155-56 (6th Cir. 1988) (holding that the trial court erred in admitting testimony by two former employees that they were told that they were fired because they were too old, because there was no evidence to establish that the alleged statements could "logically or reasonably be tied to the decision to terminate [the plaintiff]"), *overruled in part on other grounds by*, *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 615-16 (1993). Federal courts of appeals also tend to affirm evidentiary rulings to exclude "me too" evidence when the other employees' circumstances are too dissimilar to the plaintiffs. *See, e.g.*, *Hosse v. Sumner Cnty. Bd. of Ed.*, 776 F. App'x 902, 905-06 (6th Cir. 2019) (explaining that although both the plaintiff and another former employee received the same treatment, the "me too" evidence was not relevant because there were significant differences, such as different supervisors, differences in the jobs they held, and a two year gap between the employment decisions); *Quigley v. Winter*, 598 F.3d 938, 951 (8th Cir. 2010) (applying "me too" admissibility rules from employment law cases in a housing discrimination case and upholding a trial court's finding that another tenant's testimony about

alleged discrimination was too remote in time to be admissible). A handful of employees who testify about their terminations is insufficient to show a practice of discrimination if the circumstances surrounding their terminations were too dissimilar from the circumstances surrounding the plaintiff's termination; such evidence would not make it more probable that the plaintiff was terminated on a discriminatory basis. *See Haskell*, 743 F.2d at 121-22; M.R. Evid. 401(a).

[¶45] We conclude the trial court did not abuse its discretion in excluding Owen's proffered "me too" evidence. Walker would have testified that her employment was terminated when she was about to begin maternity leave, and McNulty would have testified that her employment was terminated shortly after requesting time off to care for her sick child. Both Walker and McNulty pursued claims against Town and Country related to their terminations. Owen contends that the circumstances of these other terminations were similar to hers and thus can establish Town and Country's discriminatory intent because they "all worked at the Scarborough branch, all had medical issues requiring potential medical leave, and all were fired by St. Pierre."

[¶46] Closer examination reveals, however, that there are material differences between McNulty's and Walker's circumstances and those of Owen that render the proffered "me too" evidence irrelevant. McNulty is not alleged to have had a disability at all—the time off was for her child. Walker had a completely different reason for needing leave—pregnancy.[8] Moreover, their termination by the same person—St. Pierre—offers little, if any, support to Owen's argument; St. Pierre is Town and Country's Human Resources Manager and would be involved in any termination process. Thus, the court did not err in finding Walker's and McNulty's situations to be too dissimilar to Owen's for evidence of their terminations to have meaningful probative value on whether Town and Country discriminated against her on the basis of a disability.

[¶47] Additionally, even if Walker's and McNulty's circumstances were not too attenuated for their testimony to have some probative value, the court did not abuse its discretion in excluding their proffered "me too" testimony under Rule 403. "Even when 'me too' evidence is relevant under Rule 401, the . . . court retains the discretion to exclude that evidence, under Rule 403, if

[8] Discrimination based on pregnancy is addressed in the Maine Human Rights Act as a form of sex discrimination, *see* 5 M.R.S. § 4572-A (2026), not as discrimination based on a disability, *see* 5 M.R.S. §§ 4553(7-A), 4553-A, 4572 (2026). Although disability may result from pregnancy, the statute states that it is not to be construed "to indicate or deem that a pregnancy-related condition necessarily constitutes a disability." *Id.* § 4572-A(2-A)(A), (3).

it is unduly prejudicial, confusing, misleading, or cumulative." *Adams v. Austal, U.S.A., L.L.C.*, 754 F.3d 1240, 1258 (11th Cir. 2014). Allowing Walker and McNulty to testify with respect to their own claims against Town and Country, which were completely unrelated to Owen's claim of discrimination based on a potential need for additional cancer treatment, would likely confuse the jury, prejudice Town and Country, and prolong what was already a five-day jury trial. *See Koster v. Trans World Airlines, Inc.,* 181 F.3d 24, 33 (1st Cir. 1999) (summarizing the trial court's order prohibiting plaintiff from calling six former employees because "such testimony was 'collateral,' and would require the court to examine 'the circumstances of each individual firing'"); *Ramos-Melendez v. Valdejully*, 960 F.2d 4, 6 (1st Cir. 1992) (affirming the magistrate's exclusion of testimony by other employees with pending employment discrimination suits "on the ground that for their testimony to be significant it would be necessary in effect to try their cases, as well as the plaintiff's"); *Haskell,* 743 F.2d at 121-22 (holding that the trial court erred in admitting the testimony of six former employees and stating that "even the strongest jury instructions could not have dulled the impact of a parade of witnesses, each recounting his contention that defendant had laid him off because of his age" (quotation marks omitted)).

[¶48] Had the court permitted Walker and McNulty to testify about the circumstances surrounding their terminations, Town and Country "would have been placed in a position of either presenting the justification for each witness's [termination], or of allowing the testimony to stand unrebutted." *See Moorhouse v. Boeing Co.*, 501 F. Supp. 390, 393 (E.D. Pa. 1980). The latter option "would have had an obvious prejudicial impact on the jury's consideration of [Owen's] case." *Id.* Under the former option, Town and Country "would have been forced, in effect, to try" Walker's and McNulty's claims within this case, thereby resulting in trials within a trial. *Id*.

2. Comparator Evidence of Disparate Treatment

[¶49] Next we address Owen's argument that the court should have allowed Owen to question witnesses about the differing discipline they received for similar mistakes, which could have raised an inference of disability discrimination. *See Conward v. Cambridge Sch. Comm.*, 171 F.3d 12, 20 (1st Cir. 1999). As previously stated, in a disparate treatment case, a plaintiff may introduce evidence that "others similarly situated to [her] in all relevant respects were treated differently by the employer." *Kosereis*, 331 F.3d at 214 (quoting *Conward*, 171 F.3d at 20). "[W]hile the plaintiff's case and the comparison cases that [she] advances need not be perfect replicas, they must

closely resemble one another in respect to relevant facts and circumstances." *Conward*, 171 F.3d at 20. "Reasonableness is the touchstone" of this inquiry, *id.*, and a court should ask "whether a prudent person, looking objectively at the incidents, would think them roughly equivalent and the protagonists similarly situated." *Ray*, 799 F.3d at 114 (quotation marks omitted).

[¶50] "It follows that an employee claiming differential treatment must show that those with whom she seeks to be compared 'engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.'" *Trahan v. Wayfair Maine, LLC*, 957 F.3d 54, 62 (1st Cir. 2020) (quoting *Perkins v. Brigham & Women's Hosp.*, 78 F.3d 747, 751 (1st Cir. 1996)). The "decisions to admit or exclude such evidence always demand careful balancing" under Rule 403 for "any prejudicial effects." *Cummings*, 265 F.3d at 64; *see also Gaudette v. Mainely Media, LLC*, 2023 ME 36, ¶ 10, 296 A.3d 923 ("A trial court has broad discretion in weighing the probative value of relevant evidence against the danger of unfair prejudice.").

[¶51] Although the analysis for determining whether comparator evidence is relevant is slightly different from the inquiry for whether "me too"

evidence is relevant, we look to many of the same facts.[9] Here, Walker and McNulty may have been similar to Owen in needing leave from work, but all three were treated the same—*not* differently—and courts have found comparator evidence to be relevant to rebut a pretextual reason for the adverse action where individuals in a protected class are treated *differently* from their colleagues outside of their protected class. *See Gordon*, 246 F.3d at 888, 890-91 (holding that there was a genuine issue of material fact on summary judgment when an African American pilot was terminated for deviating from his flight schedule without authorization, whereas white employees were punished less harshly for the same exact conduct); *Lynn v. Deaconess Med. Ctr.-W. Campus*, 160 F.3d 484, 487-89 (8th Cir. 1998) (vacating a summary judgment based on comparator evidence that the employer disciplined female nurses less severely for conduct that was more egregious than that of the plaintiff, who was a male nurse), *abrogated on other grounds by*, *Torgerson v. City of Rochester,* 643 F.3d 1031 (8th Cir. 2011) (en banc).

[¶52] Thus, although evidence that employees who did not have a medical disability were retained or disciplined *less harshly* than Owen may be

[9] As previously explained, the inquiry under Rule 401 for "me too" evidence is not whether witnesses are similarly situated in all aspects to the plaintiff but rather how closely related the evidence is to the plaintiff's circumstances and theory of the case. *See Dindinger*, 853 F.3d at 425 n.5; *Sprint/United Mgmt. Co.*, 552 U.S. at 386.

relevant to show disparate treatment and disability discrimination, Walker and McNulty were treated the same way as Owen—their employment was terminated. In these circumstances, the trial court appropriately allowed Owen to ask questions about mistakes made by other employees who were not terminated by Town and Country but also appropriately precluded comparator evidence given Town and Country's *similar* treatment of Walker, McNulty, and Owen.

C. Town and Country did not "open the door" to "me too" evidence.

[¶53] Finally, Owen contends that the court erred in concluding that Town and Country did not open the door to presentation of "me too" evidence when it (1) elicited testimony from St. Pierre about Town and Country's efforts to support employees with disabilities such as cancer, (2) questioned witnesses about Owen's mistakes on the job and the discipline she received for these mistakes, and (3) introduced exhibits that contained references to Walker and to Town and Country's alleged discriminatory conduct against another former employee.

[¶54] We review the trial court's determination for an abuse of discretion. *See State v. Hall*, 2017 ME 210, ¶ 18, 172 A.3d 467. Here, the trial court allowed Owen the opportunity to present limited rebuttal evidence that

was appropriate and proportional to the scope of the evidence presented by Town and Country.

[¶55] The "opening the door" doctrine comprises two doctrines governing the admissibility of evidence, as explained by the New Hampshire Supreme Court:

> The first . . . doctrine [is] 'curative admissibility,' [which] arises when inadmissible prejudicial evidence has been erroneously admitted by one party, and the opposing party seeks to introduce other evidence to counter the prejudice. The second[,] . . . [the] doctrine of 'specific contradiction,' applies more broadly to situations in which a party introduces admissible evidence that creates *a misleading advantage for that party*, and the opposing party is then permitted to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage.

State v. Roman, 313 A.3d 823, 827 (N.H. 2023) (citation omitted) (emphasis added); *see also Hall*, 2017 ME 210, ¶ 19, 172 A.3d 467 (stating that when a party elicits, on either direct or cross-examination, testimony related to excluded evidence "and the testimony . . . is inconsistent with [that] excluded evidence or affects the credibility of the [opposing party's] case," a court may permit the opposing party to conduct "limited questioning for the purpose of responding" to the inconsistency).

[¶56] The "opening the door" doctrine essentially allows a party to introduce evidence that may otherwise be inadmissible to "clear up any false

impression created" by the opposing party's questioning. *Hall*, 2017 ME 210, ¶ 21, 172 A.3d 467. This "requires careful weighing of the unfairness of allowing one party's objectionable evidence to remain unanswered against the danger of compounding the problem with further inadmissible and potentially prejudicial testimony." *Nieves-Villanueva v. Soto-Rivera*, 133 F.3d 92, 102 (1st Cir. 1997); *see also State v. James*, 677 A.2d 734, 742 (N.J. 1996) ("The 'opening the door' rule has its limitations. For example, evidence is still subject to exclusion where a court finds that the probative value of otherwise inadmissible responsive evidence is substantially outweighed by the risk of . . . undue prejudice, confusion of issues, or misleading the jury . . . ."') (quotation marks omitted); *Coppage v. State*, 826 N.W.2d 320, 328 (N.D. 2013) ("When [a party] has opened the door, the court must also consider, under [Rule] 403, whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." (quotation marks omitted)). In other words, even when the door has been opened, it "does not permit all evidence to 'pass through' because the doctrine is intended to prevent prejudice and is not to be subverted into a vehicle for the introduction of prejudice." *Roman*, 313 A.3d at 827.

[¶57] Owen claims that Town and Country opened the door by allowing St. Pierre to testify about Town and Country's past treatment of its employees with disabilities, including Owen herself during her treatment, and that by reading its antidiscrimination policy verbatim, Town and Country created a misleading advantage that would require introduction of previously excluded evidence. We do not agree that this evidence created a misleading advantage. It is unclear how the recitation of boilerplate language from the policy would confuse or mislead a jury; the testimony did not suggest that Town and Country had never previously discriminated against anyone, and none of the evidence had anything to do with Walker or McNulty. Therefore, it was within the court's discretion to deny the admission of the "me too" evidence.

[¶58] Moreover, even if the door was opened, the relief sought by Owen—to introduce her "me too" evidence—is inappropriate given the highly prejudicial effect of such evidence and its minimal probative value. The court could have allowed only "*limited* questioning for the purpose of responding" to St. Pierre's testimony, *see Hall*, 2017 ME 210, ¶ 19, 172 A.3d 467 (emphasis added), which would not extend to "trials within a trial" regarding Walker's and McNulty's employment and termination.

[¶59] Nor did Town and Country open the door to comparator evidence when it questioned Owen about her performance issues and her disciplinary record. Indeed, when Town and Country attempted to question Crystal Cromer, an underwriter for Town and Country whom Owen had worked with frequently, about how she would "compare the frequency and severity of Ms. Owen's lending error with those of the other lenders that [she] worked with," Owen objected. She contended that it was unfair to "cabin" her comparator evidence and, at the same time, allow Town and Country to compare Owen's mistakes to those of other employees. The court agreed, stating, "[W]e're not putting on trial Town and Country's 100 employees," and it thereby barred Town and Country from comparing Owen's disciplinary record with those of other employees. Had the court allowed Town and Country to ask questions comparing Owen's performance to the performance of other employees, Town and Country would have opened the door to comparator evidence, but the court did not allow it. Nothing about Town and Country's questions concerning Owen's poor job performance can be categorized as misleading. Thus, the court did not abuse its discretion.

[¶60] Owen argues that Town and Country opened the door to "me too" evidence when it offered exhibits showing that Walker and Owen worked

together for a time at the Saco Branch and describing another former employee's termination.[10] Contrary to Owen's claims, the trial court did not abuse its discretion in determining that the door was not opened. The objectionable content was not conveyed to the jury in witness testimony, and Town and Country offered—before the court submitted the exhibits to the jury—to redact any portions referencing information that had been excluded by the trial court. Owen declined the offer of redaction and cannot now claim that she was prejudiced by her own decision not to have Town and Country redact the potentially prejudicial portions. *See State v. Hanson*, 2026 ME 96, ¶ 24, ---A.3d --- ("We do not review claims of error that result from a party's choice of trial strategy." (quotation marks omitted)).

III. CONCLUSION

[¶61] We therefore affirm the trial court's judgment ordering Owen to pay Town and Country's attorney fees and costs incurred as a result of Owen's violations of the court's discovery orders. We also are not persuaded that the

[10] Defendant's Exhibit 14 stated that Walker and Owen had "worked together at Saco for a while." Exhibit 36 is Owen's response to Town and Country's first set of interrogatories, which asked whether any party had "made any admission of fault or liability" with respect to Owen's claim. Owen responded that "Leanne Duley told [Owen] that Amber Brinson, a branch manager in South Portland, told [Duley] that Betsy St. Pierre told [Brinson] to make . . . Duley's life a 'living hell' so [Duley] would resign."

trial court committed evidentiary errors warranting a new trial and therefore affirm the judgment in favor of Town and Country on Owen's claims.

The entry is:

Judgment affirmed.

Guy D. Loranger, Esq., and Danielle Quinlan, Esq. (orally), Law Office of Guy D. Loranger, Old Orchard Beach, for appellant Jennifer Owen

Peter A. Hale, Esq. (orally), and Katherine E. Cleary, Esq., Pierce Atwood LLP, Portland, for appellee Town & Country Federal Credit Union

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