

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

Civil Action

vs.

No. 16-225

SCOTT MEDICAL HEALTH CENTER, P.C.,

Defendant.

Transcript of MOTION HEARING proceedings recorded on
October 30, 2017, in the United States District Court,
Pittsburgh, Pennsylvania, before The Hon. Cathy Bisson,
United States District Judge

APPEARANCES:

For the Plaintiff:

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P R O C E E D I N G S

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(2:05 p.m.; in open court:)

THE COURT: Now is the time for the hearing on the motion for default judgment as to damages in United States Equal Employment Opportunity Commission versus Scott Medical Health Center, P.C., Civil Action 16-225.

Can counsel please identify themselves for the record?

MS. KANE: Deborah Kane on behalf of the EEOC.

MS. SELLERS: Catherine Sellers on behalf of the EEOC.

THE COURT: Just by way of background, the Court granted default judgment on the issue of liability only on September 14, 2017, after Scott Medical indicated that it would not hire new counsel to represent them in this case. Scott Medical had previously been informed that it could not proceed in this case without counsel.

Unsurprisingly then, Scott Medical does not appear today. Am I correct in that?

MS. KANE: You're correct, Your Honor. No one is here on behalf of Scott Medical.

THE COURT: The Court will proceed to the issue of damages in this case. The EEOC has waived its right to a jury trial; and therefore, the issue of damages will be

1 decided by me.

2 With that, Ms. Kane or Miss Sellers, whoever
3 intends to proceed, if you'd like to say something in
4 opening, you're free to do that, however you would like.

5 MS. KANE: Thank you, Your Honor. I don't think
6 we'll do a formal opening. I just wanted to give you an idea
7 of what we're going to be putting on as evidence.

8 We have three witnesses to testify live this
9 afternoon. We also have excerpts from the deposition
10 transcript of the deposition of Dr. Gary Hieronimus, who was
11 the owner of Scott Medical. We are happy to read that into
12 the record, Your Honor, or I could just provide you with a
13 copy for your review.

14 THE COURT: How long is the deposition?

15 MS. KANE: There's only a handful of pages, maybe
16 ten page total.

17 THE COURT: We'll read it into the record today.

18 MS. KANE: Okay. And in addition, we have done a
19 back pay calculation for the Court. We'll be putting on
20 evidence relating to wage loss through Mr. Massaro, but we
21 have gone ahead and done the calculation, which includes
22 pre-judgment interest, and I'm happy to give that to the
23 Court.

24 THE COURT: Okay. Do you want to pass that up?
25 And you intend to introduce this by way of a witness;

1 correct?

2 MS. KANE: The background facts that support the
3 calculation, Your Honor.

4 THE COURT: All right. In the Complaint, just to
5 be clear, there are a variety of pieces of damages sought,
6 back pay with pre-judgment interest, front pay, compensation
7 for such things as debt-related expenses, job search
8 expenses, medical expenses and the like, pain and suffering
9 and punitives as well as the Commission's costs. Is that
10 still the intention?

11 MS. KANE: What we're going to be seeking today,
12 Your Honor, is an award of back pay plus pre-judgment
13 interest, compensatory and punitive damages as well as a
14 permanent injunction, and I'm happy to talk about the details
15 of the injunction perhaps after we've got all the evidence in
16 play here.

17 THE COURT: All right. You can proceed.

18 MS. KANE: Thank you. Your Honor, we would call
19 Dale Massaro as our first witness.

20 (The witness was duly sworn.)

21 THE CLERK: Could you spell your name for the court
22 reporter?

23 THE WITNESS: It's D-a-l-e; last name,
24 M-a-s-s-a-r-o.

25 THE COURT: Mr. Massaro, if you could, once you sit

D. MASSARO - DIRECT

1 down, speak directly into that microphone. Get close in
2 there and right up on it. You can proceed.

3 MS. KANE: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MS. KANE:

6 Q. All right. Dale, you understand that you're here to
7 testify about your experiences working at Scott Medical
8 Health Center; correct?

9 A. Correct.

10 Q. Before we get into that, I just want to get into a
11 little bit of your background. Okay? Can you tell us where
12 you grew up?

13 A. Mahaffey, Pennsylvania.

14 THE COURT: And before we get to that, if I could,
15 I assume that Massaro is your married name; is that correct?

16 THE WITNESS: Yes.

17 MS. KANE: I was getting to that, Your Honor.

18 Thank you.

19 Q. Dale, could you tell us what was your name before you
20 married?

21 A. Baxley.

22 Q. And perhaps a little bit about Mahaffey, Pennsylvania.
23 What kind of place is that?

24 A. It's a rural area, small farm town area, a lot of
25 farms. Roughly about 3,000 people.

D. MASSARO - DIRECT

1 Q. And who were you living with when you were there in
2 Mahaffey, Pennsylvania?

3 A. My mother.

4 Q. And at some point I understand that you moved to the
5 Pittsburgh area; correct?

6 A. Correct.

7 Q. About when was that?

8 A. July 1, 2013.

9 Q. Before you moved to the Pittsburgh area, what were you
10 doing for a living when you were in Mahaffey?

11 A. I worked with individuals with intellectual
12 disabilities.

13 Q. And outside of work, were you involved in any kind of
14 activities? What kinds of things did you do for fun?

15 A. I was hanging out with a group of friends that I had
16 met that was down here in the Pittsburgh area, and we would
17 do bowling, pool parties, different things.

18 Q. And why was it that you decided to move down to the
19 Pittsburgh area?

20 A. When talking to my friends that I had met, they said
21 this was more of a liberal area to move to. But where I'm
22 from is more conservative.

23 Q. Why were you interesting in moving to a more liberal
24 area?

25 A. There's a lot more gay men around this area, like me,

D. MASSARO - DIRECT

1 and I had started dating my current husband, Tony -- or
2 Anthony, and I wanted to move down to be closer to him and
3 kind of be around more people like me.

4 Q. Okay. When you moved to Pittsburgh, where did you end
5 up living?

6 A. Monroeville.

7 Q. And who were you living with?

8 A. My mother.

9 Q. So she moved down with you?

10 A. Yes.

11 Q. And did you have a job lined up when you moved down
12 here?

13 A. No.

14 Q. And what did you do to try and find a job?

15 A. I was picking up the papers, the Pittsburgh
16 Post-Gazette and the Tribune Review, to look for a job.

17 Q. And what was the first job that you got when you moved
18 to Pittsburgh?

19 A. Scott Medical.

20 Q. And that's Scott Medical Health Center; is that right?

21 A. Correct.

22 Q. And how did you come to work for them?

23 A. I had saw an ad in the paper. They had a local 412
24 number. I had called it, and they had brought me in for an
25 interview.

D. MASSARO - DIRECT

1 Q. And do you remember who you interviewed with?

2 A. Mr. McClendon, Robert McClendon.

3 Q. And did he offer you a job?

4 A. Yes.

5 Q. What was the job that you --

6 A. It was a telemarketing job.

7 Q. And who was your manager or supervisor as a
8 telemarketer?

9 A. Rob McClendon.

10 Q. The same person who interviewed and hired you?

11 A. Correct.

12 Q. And what was your pay rate at Scott Medical?

13 A. Eleven dollars an hour.

14 Q. And what kind of hours did you work?

15 A. I worked Monday through Thursday 10 a.m. to 7 p.m. and
16 Friday from 10 a.m. to 2 p.m.

17 Q. And I want to talk just -- we already have -- as the
18 Judge indicated, she's entered a default judgment on
19 liability. So I don't want to spend too much time talking
20 about the details of what happened to you, but I do want to
21 get some of that on the record.

22 Can you explain to the Court, describe how you were
23 treated by Mr. McClendon when you were working at Scott
24 Medical?

25 A. Mr. McClendon was very verbally abusive towards me

D. MASSARO - DIRECT

1 working there. The first day that I did start working there,
2 he was going through like the -- what we had to read for a
3 script, and we had taken a break, and he had asked me,
4 well -- I can't understand how gay men have sex, and then he
5 wanted to ask me who was the butch and who was the bitch in
6 the relationship.

7 Q. And how did you feel about that when he said these
8 things to you?

9 A. I felt uneasy about it, but I didn't really think too
10 much of it at that time.

11 Q. And was there anything else that Mr. McClendon did
12 while you were still employed at Scott Medical?

13 A. Yes. On multiple occasions he had called me a faggot,
14 a fucking faggot, very verbally abusive to calling me that
15 name.

16 Q. And how did that affect you? How did you feel about
17 that?

18 A. I feel belittled, like I was below him, like I wasn't
19 at his equal. Like --

20 Q. Had you experienced that kind of verbal taunting
21 before in your life?

22 A. Not at a work place.

23 Q. But elsewhere?

24 A. My dad when I was younger, but --

25 Q. Okay. Did you tell anybody at Scott Medical about

D. MASSARO - DIRECT

1 what Mr. McClendon was saying to you?

2 A. Yes. I had called Dr. Hieronimus.

3 Q. Hieronimus?

4 A. Hieronimus. I'm sorry. I have a hard time saying his
5 name.

6 Q. Were you aware of whether the company had a sexual
7 harassment policy?

8 A. No.

9 MS. KANE: Your Honor, may I approach the witness?

10 THE COURT: Yes. You may.

11 Q. Dale, we've marked this document as Exhibit A, and
12 it's a two-page document. Could you take a look at that for
13 me, please?

14 A. Yes.

15 Q. Okay. And on the first page you see it says
16 Professional Conduct Policy and Prohibition Against
17 Harassment. Do you see that?

18 A. Correct.

19 Q. And on the second page there's a signature -- there
20 are two signatures. Do you recognize the first one?

21 A. Yes.

22 Q. Can you tell me, when you started working at Scott
23 Medical, did you undergo any kind of an orientation?

24 A. No.

25 Q. Do you have any memory of how your signature came to

D. MASSARO - DIRECT

1 be on this document?

2 A. When Mr. McClendon was giving me papers, he was just
3 giving it to me and having me sign them. He would never give
4 me a moment to read over to actually what I was signing.

5 Q. Did you get copies of any of the papers that he had
6 you sign?

7 A. No.

8 Q. You mentioned that you called him -- well, let me ask
9 you this. Did you receive any kind of training at all about
10 any harassment policy that the company had?

11 A. No.

12 Q. You said that you called Dr. Hieronimus. How did you
13 know to call him?

14 A. A couple of days -- well, before I had called him, I
15 had talked to a staff member that worked with me, and they
16 had suggested that they had called him to complain about Mr.
17 McClendon and suggested that I call him to talk about what
18 had happened to me.

19 Q. Okay. This person who said that they had called
20 Dr. Hieronimus about Mr. McClendon, what was that person
21 experiencing? What did they tell you?

22 A. He was verbally abusing them as well.

23 Q. When you talked to Dr. Hieronimus, what did you tell
24 him?

25 A. I explained to him the situation of what was going on.

D. MASSARO - DIRECT

1 I explained what Mr. McClendon had been calling me and, you
2 know, just roughly -- just explaining to him that this was a
3 harsh environment to work under.

4 Q. Did you specifically tell him that Mr. McClendon had
5 referred to you as a faggot?

6 A. Correct.

7 Q. And what was his response to you?

8 A. He told me that Mr. McClendon was just doing his job.

9 Q. Did he give you any indication that he was going to
10 speak to Mr. McClendon?

11 A. No.

12 Q. And what did you think after that conversation?

13 A. I didn't feel like I was a valued employee, that my
14 opinion didn't matter.

15 Q. Are you aware if anyone at Scott Medical did sit down
16 with Mr. McClendon and discuss the claims that you had made
17 about him harassing you?

18 A. No.

19 Q. After you talked to Dr. Hieronimus, did Mr. McClendon
20 continue to harass you?

21 A. Yes.

22 Q. What kinds of things was he doing after you talked to
23 Dr. Hieronimus?

24 A. He continued to do the same things as calling me a
25 faggot and other --

D. MASSARO - DIRECT

1 Q. At some point your employment with Scott Medical came
2 to an end; is that right?

3 A. Correct.

4 Q. Can you explain the circumstances for us?

5 A. That day I had went to work. Mr. McClendon had called
6 me in the office and continued with his verbal abuse. And
7 then I had called my husband, which was my boyfriend at the
8 time, and explained to him the situation and asked him if it
9 would be okay for me to quit. And I had walked into Mr.
10 McClendon's office and told him I quit.

11 Q. And why was it that you quit?

12 A. I couldn't take the harassment any more.

13 Q. After you left Scott Medical, did you obtain other
14 employment?

15 A. Yes.

16 Q. And who did you get a job with?

17 A. PA Mentor.

18 Q. And what was your job with PA Mentor?

19 A. I worked there with people with intellectual
20 disabilities.

21 Q. When did you start working for PA Mentor?

22 A. September 15.

23 Q. And how much were you paid per hour?

24 A. \$10.25 an hour.

25 THE COURT: September 15 of what year?

D. MASSARO - DIRECT

1 THE WITNESS: 2013.

2 BY MS. KANE:

3 Q. Okay. So that was about a month after you left Scott
4 Medical?

5 A. Correct.

6 Q. And how long did you continue to work for PA Mentor?

7 A. I worked there until January of -- mid January of
8 2016.

9 Q. And did you ever receive any raises to your hourly
10 rate while you were there?

11 A. No.

12 Q. Who did you work for next after PA Mentor?

13 A. I went to Mainstay Life Services.

14 Q. And what did you do for Mainstay?

15 A. I worked with individuals with learning disabilities.

16 Q. How much were you paid by Mainstay?

17 A. \$11.50 an hour.

18 Q. And do you remember the day you started working for
19 them?

20 A. December 1, 2015.

21 Q. Were you working at both Mainstay and PA Mentor for --
22 at the same time for a brief period of time?

23 A. Yes.

24 Q. Dale, I've handed you what we've marked as Exhibit B,
25 and it's a four-page document. Can you take a look at that

D. MASSARO - DIRECT

1 and identify what those are for us, please?

2 A. Those are my W2 forms from PA Mentor and Mainstay Life
3 Services.

4 Q. Okay. And during this period of time from the time
5 that you left Scott Medical up until December 1 of 2015,
6 other than PA Mentor and Mainstay, did you earn any other
7 money from working?

8 A. No.

9 Q. Before you moved to Pittsburgh and went to work for
10 Scott Medical, can you describe for us what kind of person
11 you were?

12 A. I was a very outgoing person, very happy. I had lost
13 a bunch of weight. I was down to about 180 pounds before I
14 moved to Pittsburgh.

15 Q. You say you were very outgoing. What do you mean by
16 that?

17 A. Just very talkative to people. I liked to call myself
18 a social butterfly at that time.

19 Q. Other than working, did you do anything in your spare
20 time?

21 A. Yes.

22 Q. What kinds of things?

23 A. Just hanging out with friends that I had met in the
24 Pittsburgh area, like the bowling, the pool parties, little
25 get-togethers.

D. MASSARO - DIRECT

1 Q. How were you feeling about yourself and your life when
2 you decided to make the move to Pittsburgh?

3 A. Awesome about myself. I had started a new
4 relationship. I was making a new move to what I thought
5 would be a better area.

6 Q. And after working at Scott Medical, how would you
7 describe what you were like then?

8 A. I became very depressed after working at Scott
9 Medical. I began to eat a lot, and I began to gain a lot of
10 weight after leaving Scott Medical.

11 Q. Have you thought at all about why you became so
12 depressed after working at Scott Medical?

13 A. I just wasn't myself any more. I felt abused. I just
14 felt unfairly treated, and it just made me hate myself for
15 it.

16 Q. After -- and just talking about maybe a period of six
17 to eight months after leaving Scott Medical, how would you
18 describe your demeanor generally?

19 A. I basically stayed to myself. After I left Scott
20 Medical, I stayed in my room a lot, slept a lot. Sometimes
21 I'd stay awake a lot for a couple of days. Until I got the
22 job at PA Mentor, I would go to work. When I started working
23 there, I would come home, go to my room, just stay there. I
24 would go out with Tony every so often, but even that faded
25 back a little bit.

D. MASSARO - DIRECT

1 Q. You mentioned that you had lost a lot of weight before
2 you moved to Pittsburgh. Did that change at all after you
3 stopped working at Scott Medical?

4 A. Correct.

5 Q. How did it change?

6 A. I started to -- because I was eating so much, I
7 started to gain a lot of weight.

8 Q. How much would you say you had gained by the end of
9 2013?

10 A. Between 30 and 40 pounds.

11 Q. What happened to you at Scott Medical, did that have
12 any effect on your relationship with Tony?

13 A. Yes.

14 Q. How so?

15 A. I became very irritable with Tony. Whenever he would
16 call me, I would snap at him for very little reasons. At one
17 point we did split up for a little bit and then had gotten
18 back together.

19 Q. You mentioned that you felt very depressed. Did you
20 receive any kind of treatment, for instance, from a
21 therapist?

22 A. I went -- I had got -- I had gotten a number for a
23 therapist through work, and I had called them, and I was
24 talking to them on the phone.

25 Q. Was that through your employer's Employee Assistance

D. MASSARO - DIRECT

1 Program?

2 A. Correct.

3 Q. And what employer were you with at that time?

4 A. PA Mentor.

5 Q. Do you remember about when that was when you were
6 talking to the therapist?

7 A. I'd say between December and January.

8 Q. Was that of 2013?

9 A. 2014.

10 Q. Okay. And how often did you speak to the therapist on
11 the phone?

12 A. Once or twice a week.

13 THE COURT: And just to be clear, December -- well,
14 December to January, December of 2013 to January 2014?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 BY MS. KANE:

18 Q. And for about what period of time were you talking to
19 the therapist on the phone?

20 A. For a couple of months.

21 Q. Did you receive any other kind of treatment other than
22 talking to the therapist?

23 A. Yes. I eventually went to my doctor, Dr. Berkey, and
24 he had prescribed me Lexapro, which is for depression and
25 anxiety. And he had prescribed me Ativan as a PRN to help me

1 sleep.

2 Q. And what kind of doctor is Dr. Berkey?

3 A. He's a family physician.

4 Q. During the time that you started working at Scott
5 Medical and through the time when you left and roughly six to
6 eight months thereafter, was there anything else going on in
7 your life that caused you to feel stressed or depressed or
8 anxious?

9 A. Not at that time.

10 Q. All these things that we've been talking about, the
11 eating, the weight gain, the staying in your room, the
12 depression, irritability and the problems with your
13 relationship with Tony, do you attribute all of that to the
14 harassment that you were subjected to by Bob McClendon at
15 Scott Medical?

16 A. Yes.

17 MS. KANE: Those are all the questions for this
18 witness, Your Honor.

19 THE COURT: When did you start taking the Lexapro
20 and Ativan?

21 THE WITNESS: I think I started taking it in 2014,
22 but the records say 2015 that I started it.

23 THE COURT: Late 2014?

24 THE WITNESS: Beginning of 2014.

25 THE COURT: Okay. So you think you started taking

1 it at the beginning of 2014?

2 THE WITNESS: Correct.

3 THE COURT: But you're saying there's some records
4 that say you hadn't started until 2015?

5 THE WITNESS: Whenever I called the doctor after
6 the release, they said that there's no record of me taking
7 it. But I know I was taking it for a long time. I'm still
8 taking it now.

9 THE COURT: That was going to be my next question.

10 THE WITNESS: They don't have me on the Ativan any
11 more. They said that I'm fine without having it.

12 THE COURT: Had you ever been on these drugs
13 before?

14 THE WITNESS: No.

15 THE COURT: And just to be clear, when did you
16 start working at Scott Medical?

17 THE WITNESS: I started working there in July.

18 THE COURT: July of 2013?

19 THE WITNESS: Yes.

20 THE COURT: Do you know the date?

21 THE WITNESS: I'm not 100 percent sure on the date.

22 THE COURT: Do you have a date?

23 THE WITNESS: I believe it was the 19th, but I'm
24 not 100 percent sure.

25 MS. KANE: It says July 24, 2013.

A. MASSARO - DIRECT

1 THE WITNESS: Okay. July 24.

2 THE COURT: Does that sound correct?

3 THE WITNESS: That sounds correct, yes.

4 THE COURT: And your last day of work was what?

5 THE WITNESS: August 16.

6 THE COURT: And again, 2013?

7 THE WITNESS: Yes.

8 THE COURT: All right. Those are all my questions.

9 You can step down. The next witness?

10 MS. KANE: We would like to call Anthony Massaro.

11 Your Honor, just a bit of housekeeping, I would
12 like to move Exhibits A and B into the record.

13 THE COURT: They're admitted.

14 MR. IMHOF: Before we proceed, what was Exhibit B?

15 MS. KANE: B was the W2s.

16 MR. IMHOF: Thank you.

17 (The witness was duly sworn.)

18 THE COURT: If you could have a seat. Just state
19 and spell your name for the court reporter.

20 THE WITNESS: Anthony Massaro, A-n-t-h-o-n-y,
21 M-a-s-s-a-r-o.

22 THE COURT: Okay.

23 ANTHONY MASSARO, having been duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

A. MASSARO - DIRECT

1 BY MS. SELLERS:

2 Q. Thank you, Mr. Massaro. Tell us, where do you live?

3 A. I live in Clairton, Pennsylvania.

4 Q. How long have you lived in Clairton?

5 A. Pretty much all my life.

6 Q. Does anybody else live with you?

7 A. My husband, Dale, and his mother and our two children.

8 Q. And just so we're clear, your husband Dale is Dale

9 Massaro?

10 A. Correct.

11 Q. How long have you and Dale been married?

12 A. Two and a half years.

13 THE COURT: I'm going to ask you now to put that
14 mike in front of you, Miss Sellers. You can take it down
15 from there.

16 MS. SELLERS: All right.

17 BY MS. SELLERS:

18 Q. How old are your children?

19 A. Ten months and three months.

20 Q. Now, I'd like to talk a little bit more about your
21 relationship with Dale Massaro. How did you and Dale meet?

22 A. Dale and I met online on a dating site.

23 Q. When did you meet online?

24 A. March 2013.

25 Q. When did you start dating?

A. MASSARO - DIRECT

1 A. May of 2013.

2 Q. Now when you and Dale started dating, were you living
3 together in the same city?

4 A. No.

5 Q. Where was Dale living?

6 A. Dale was living in Mahaffey, Pennsylvania, and I was
7 living in Clairton, Pennsylvania.

8 Q. At some point did Dale move closer to where you were
9 living?

10 A. Yes. He moved to Monroeville in July of 2013.

11 Q. Thank you. How long had you and Dale been dating when
12 he moved to Monroeville?

13 A. About two months.

14 Q. Can you describe what your relationship was like with
15 Dale during those two months?

16 A. Just a typical relationship, you know, just starting
17 out. It was good.

18 Q. How often did you and Dale see each other?

19 A. About once a week.

20 Q. What kind of things would you do when you were
21 together?

22 A. A lot of social events. We had went to Gay Pride, you
23 know, dinners, movies, doing things with my family. We had
24 Sunday family dinners that he would go to when he was here.

25 Q. Did you have any contact with Dale when you weren't

A. MASSARO - DIRECT

1 physically together?

2 A. Yes. I was on the phone with him or text messaging
3 throughout the day.

4 Q. Both texting and talking on the phone?

5 A. Yes. I talked to him at least once a day and text
6 messaged throughout the day.

7 Q. After those two months, how well did you know Dale?

8 A. I knew him pretty well.

9 Q. What was his personality like?

10 A. He was a very outgoing person, very sociable, a very
11 happy person, always willing to do something, wanting to
12 always do something.

13 Q. How would you describe the way Dale typically dressed
14 back then?

15 A. He dressed very nicely, very appropriately, always
16 made sure that he looked very good, always clean shaven,
17 always had his hair done.

18 Q. How serious was your relationship?

19 A. It was getting to that serious phase.

20 Q. Now, after Dale moved to Monroeville, how often did
21 you see him?

22 A. Pretty much every day.

23 Q. Why was it that you were able to see him so often?

24 A. I actually worked in Monroeville at the time. From
25 where I worked and to where he lived was only like a

A. MASSARO - DIRECT

1 five-minute drive.

2 Q. What was Dale's demeanor like when he first moved to
3 Monroeville?

4 A. Same as when I first met him, very outgoing, very
5 sociable, very happy person.

6 Q. Thank you. I would like to talk now about what
7 happened after Dale started working at Scott Medical. When
8 did Dale start working at Scott Medical?

9 A. July 2013.

10 Q. How long after he moved to Monroeville did he start
11 working there?

12 A. It was a few weeks.

13 Q. Now, did Dale ever talk to you about what his work was
14 like at Scott Medical, how he was being treated there?

15 A. Yes. He would tell me about the manager that he was
16 actually working for, calling him a faggot, asking him about
17 our relationship, who the top and the bottom was in the
18 relationship.

19 Q. How often did Dale talk to you about this manager's
20 comments?

21 A. A few times, on the phone and in person.

22 Q. What was Dale's demeanor like when he told you about
23 this manager's comments?

24 A. He was quite upset, and there was times that he was
25 actually physically crying when we were on the phone or if I

A. MASSARO - DIRECT

1 saw him in person when he talked about it.

2 Q. How often did you see Dale crying about his work at
3 Scott Medical?

4 A. A few times.

5 Q. Had you ever seen Dale cry about his work before he
6 started working at Scott Medical?

7 A. No.

8 Q. Did Dale ever tell you how his manager's comments made
9 him feel?

10 A. He said it made him very, very uncomfortable, upset.

11 Q. Now, besides crying, did you ever notice any changes
12 in Dale after he started working at Scott Medical?

13 A. Yes.

14 Q. What kind of changes did you notice?

15 A. I had started noticing that he became very withdrawn,
16 did not want to do any type of social things whatsoever. He
17 would basically stay in his room, really just did not want to
18 do anything. And he started seeming to become very
19 depressed.

20 Q. Anything else that you noticed?

21 A. His dress. He started not dressing the way he did
22 when I first met him. And he started overeating at that
23 time, too.

24 Q. When did this behavior start?

25 A. Soon after he started at Scott Medical.

A. MASSARO - DIRECT

1 Q. Now, you mentioned that you believed Dale was
2 depressed. Why is it you believe he was depressed?

3 A. He could see with him being withdrawn and not really
4 wanting to be out and meet socially with anybody. You could
5 physically see, you know, on his face that he just didn't
6 want to be with anybody, being very withdrawn.

7 Q. You mentioned that Dale started eating more. Was it
8 when he was working at Scott Medical that his eating habits
9 changed?

10 A. Yes.

11 Q. How exactly did his eating habits change?

12 A. He would start overeating. Some examples, like
13 Nutella, which is one of his favorite things, he would sit
14 and eat a whole jar of it at one sitting. Candy, he would
15 also do the same thing. If there was a bag of candy, instead
16 of eating one or two pieces, he would eat the whole bag and
17 then try to hide it, the fact that he actually ate it.

18 Q. How often did this happen?

19 A. Quite a few times.

20 Q. Had you ever seen Dale eat like this before he started
21 working at Scott Medical?

22 A. No.

23 Q. Did you ever have the occasion to observe whether
24 Dale's eating habits were affecting him emotionally?

25 A. Yes. It was actually making him depressed because he

A. MASSARO - DIRECT

1 was starting to gain weight.

2 Q. You mentioned that he started to gain weight. When
3 did you first start to notice that he was gaining weight?

4 A. Soon after he started with Scott Medical.

5 Q. About how much weight did Dale put on during the time
6 he was working at Scott Medical?

7 A. About ten to fifteen pounds.

8 Q. Did Dale continue gaining weight after he left Scott
9 Medical?

10 A. Yes.

11 Q. How much more weight did he put on?

12 A. About 50 to 60 pounds.

13 Q. And over what period of time after he left Scott
14 Medical did he put on that weight?

15 A. About six months.

16 Q. Why was this weight gain significant for Dale?

17 A. Dale had actually had a LAPAN surgery done prior to
18 him -- I think about a year prior to him actually moving down
19 here to actually lose the weight, and he actually lost a
20 significant amount of weight prior to him moving down here,
21 and that upset him to actually gain all this weight back.

22 Q. Now, you said that it upset Dale to gain all the
23 weight back. Did you observe any changes in his demeanor
24 based on the weight gain?

25 A. Yeah. He became a little bit more withdrawn. And he

A. MASSARO - DIRECT

1 would also -- as far as his dress was concerned, he would not
2 dress the way he used to dress. He would -- you know, he
3 would start dressing slovenly and start wearing actually
4 clothes that were bigger than what he would actually wear.
5 They were actually my clothes, to hide the actual fact that
6 he was gaining weight.

7 Q. When did he start changing the way he was dressing,
8 wearing the baggier clothes?

9 A. Soon after he started with Scott Medical.

10 Q. Did you notice any other changes about his physical
11 appearance besides the weight gain and dressing differently?

12 A. Yes. He would not shave for weeks on end. He used to
13 do his hair, made sure his hair always looked good, but he
14 had stopped doing that, too.

15 Q. When did he stop shaving and doing his hair?

16 A. Again, like soon after starting Scott Medical.

17 Q. Now, you mentioned earlier that there were some
18 changes you noticed in Dale's sleeping habits?

19 A. Yes.

20 Q. Can you please describe how his sleeping habits
21 changed?

22 A. He would at times stay up overnight playing video
23 games and not sleep at all. And that wasn't something that
24 I've ever noticed him doing before.

25 Q. How often did you see him up all night playing video

A. MASSARO - DIRECT

1 games?

2 A. Quite often.

3 Q. And you had never seen him like this before?

4 A. No.

5 Q. During this time period, can you describe what your
6 social life was like with Dale?

7 A. Since he became so withdrawn, I mean we really hadn't
8 been doing very much at all. He had stopped going to like
9 family dinners and not really wanting to go out anywhere. He
10 just wanted to stay home.

11 Q. And what did Dale want to do instead of going out?

12 A. Either sit at home and play video games or sit and
13 watch movies in his room.

14 Q. Have you ever seen Dale like this before he started
15 working at Scott Medical?

16 A. No.

17 Q. Did you ever notice any changes in how Dale interacted
18 with you?

19 A. Yeah. He would actually start snapping at me over
20 little things. So we would argue quite often because of it,
21 and at one point we did actually break up because of it.

22 THE COURT: When was that?

23 THE WITNESS: It was between December and
24 January -- December 2013 and January of 2014.

25

1 BY MS. SELLERS:

2 Q. Now, all the things that we've talked about, the
3 changes you observed in Dale, both the depression, the
4 eating, the way he interacted with you, how did all of these
5 changes make you feel at the time?

6 A. It felt like a lot of times it was because of me. He
7 didn't really want to be around me. And that -- and I didn't
8 know how to actually help him through this. Because, you
9 know, depression is a very funny thing. And sometimes you
10 can help people, and sometimes you can't; and that was
11 actually bothering me a lot, that I couldn't help him.

12 Q. Did that have an effect on your relationship, your
13 feelings of how things were affecting Dale?

14 A. Yes.

15 MS. SELLERS: I have no further questions for this
16 witness, Your Honor.

17 THE COURT: When were you guys married?

18 THE WITNESS: 2015, June of 2015. June 5 of
19 2015 -- the 6th. June 6, 2015. Sorry. Too many dates in my
20 head.

21 THE COURT: 2015?

22 THE WITNESS: Yes.

23 THE COURT: Okay. You can step down. Any
24 additional witnesses?

25 MS. KANE: One more, Your Honor.

C. BAXLEY - DIRECT

1 THE COURT: Okay.

2 MS. KANE: We call Cynthia Baxley.

3 (The witness was duly sworn.)

4 THE CLERK: Could you spell your name for the court
5 reporter?

6 THE WITNESS: Cynthia, C-y-n-t-h-i-a, Baxley,
7 B-a-x-l-e-y.

8 CYNTHIA BAXLEY, having been duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. KANE:

12 Q. Miss Baxley, can you tell us how are you related to
13 Dale Massaro?

14 A. Dale's my son.

15 Q. And we're here to talk about what happened to him at
16 Scott Medical and thereafter, but I want to talk a little bit
17 first about the time before that.

18 Dale had told us that he grew up and was living in
19 Mahaffey, Pennsylvania, with you; is that right?

20 A. Yes. That's correct.

21 Q. And at some point he moved down to Pittsburgh;
22 correct?

23 A. Yes.

24 Q. And you came with him; right?

25 A. Yes.

C. BAXLEY - DIRECT

1 Q. Before the move to Pittsburgh, can you tell us, you
2 know, what was Dale like? What was his personality like?

3 A. He was really excited because he was starting to lose
4 weight. He was starting to make more friends in the
5 Pittsburgh area. So I know that he was coming here often to
6 do like different events.

7 Q. And when you moved to Pittsburgh with him, at some
8 point he got a job with Scott Medical; right?

9 A. Yes.

10 Q. And you were aware that he was working at that
11 particular company?

12 A. Yes.

13 Q. After he started working there, what did you observe
14 about Dale?

15 A. Many times when he would come home, he would be very
16 frustrated. There was a couple times when he would come home
17 where he was crying.

18 Q. Did he tell you or explain to you why he was
19 frustrated or why he was upset?

20 A. He told me one incident where his supervisor had
21 called him a faggot.

22 Q. And did you observe any changes in him, for instance,
23 physical changes?

24 A. Yeah. He was starting to withdraw to his room a lot
25 more. He wasn't participating with his friends like out at

C. BAXLEY - DIRECT

1 the activities. He wasn't going out any longer with his
2 friends.

3 Q. And did you notice anything -- we've heard both Tony
4 Massaro and Dale testify about weight gain. Did you observe
5 anything there?

6 A. Yes. He started eating like excessively, like
7 eating -- not sleeping. He started gaining a lot of weight.

8 Q. And you obviously knew him his entire life; right?

9 A. Yes.

10 Q. And he testified that he had spoken to a therapist for
11 some time and also had been prescribed some medications. Had
12 he ever been treated for any kind of depression or anxiety
13 before --

14 A. No.

15 Q. -- after he left Scott Medical?

16 A. No.

17 Q. Did you observe any other changes to Dale after he was
18 working at Scott Medical and when he stopped working there?

19 A. He started -- like I said, he started withdrawing,
20 started eating excessively. He was gaining a lot of weight,
21 withdrawn, wouldn't participate, very little. He even
22 started withdrawing from like hanging out with Tony and
23 Tony's family. He started withdrawing. He basically was in
24 his room.

25 Q. Okay. Were you aware of anything else going on in

1 Dale's life that might have contributed to these feelings and
2 these changes that you observed?

3 A. No, not that I'm aware of.

4 MS. KANE: That's all I have, Your Honor.

5 THE COURT: Thank you, Miss Baxley. Okay.

6 Anything else?

7 MS. KANE: Yes, Your Honor. We'll read in these
8 brief excerpts from the deposition.

9 THE COURT: All right.

10 MS. KANE: Would you like to have a copy?

11 THE COURT: Sure.

12 MS. KANE: Your Honor, we'll be reading from
13 excerpts from the deposition of Gary T. Hieronimus, spelled
14 H-i-e-r-o-n-i-m-u-s, which was taken in this case on
15 March 13, 2017. And Ron Phillips will be reading the part of
16 Dr. Hieronimus.

17 THE COURT: And I think you simply provided me the
18 excerpts here, not the full transcript?

19 MS. KANE: That's right.

20 THE COURT: All right.

21 BY MS. KANE:

22 Q. The first page, question: What is your title at Scott
23 Medical Health Center?

24 A. Executive director.

25 Q. Are you also considered the Chief Executive Officer?

1 A. Yes, President. Treasurer also of the corporation.

2 Q. You anticipated my next question.

3 A. Okay.

4 Q. Who are the other officers for the corporation, in
5 other words, a Secretary or any Vice-Presidents?

6 A. The Vice-President and Secretary is my wife, Linda,
7 L-i-n-d-a.

8 Q. Any other officers of the corporation?

9 A. No other officers, but Dr. Joseph Hakas, Sr., M.D., is
10 a ten percent nonequity shareholder of stock, which is
11 required by Pennsylvania law, as a chiropractor, cannot
12 solely own a medical corporation.

13 Q. So he is a nonvoting member or shareholder?

14 A. Correct.

15 Q. Other than Dr. Hakas, who are the other shareholders
16 of the corporation?

17 A. Myself, 90 percent shareholder.

18 MS. KANE: The next excerpt is on page 13.

19 Q. Question: How many employees does Scott Medical
20 Health Center have right now?

21 A. In the range of 30 part-time and fulltime, maybe 22
22 fulltime.

23 MS. KANE: And Mr. Saul interjects.

24 Q. Can we just clarify that? Was that 22 included in the
25 30?

1 A. Yes.

2 Q. So 22 fulltime, and the rest are part-time?

3 A. Yes, somewhere in that neighborhood. It could be 35.
4 It changes.

5 Q. And how many locations does Scott Medical Health
6 Center have right now?

7 A. I have the main office where we do our physical
8 therapy types of treatments and also do medical weight loss.
9 And I have a second location in Wexford where I rent space
10 from my daughter's husband to provide medical services for
11 his chiropractic practice. And I have a third location in
12 Murrysville, which is just a weight loss service center.

13 Q. And when you say the number of employees is in the
14 range of 30 to 35, is that inclusive of all three locations?

15 A. Yes.

16 MS. KANE: And then we go to page 48.

17 Q. You've been handed what's been marked as Exhibit 11 to
18 your deposition --

19 MS. KANE: Your Honor, Exhibit 11 is included in
20 the packet.

21 Q. -- and it is a three-page document bearing Bates
22 numbers B00090 to 92. Do you have that in front of you?

23 A. Yes.

24 Q. And at the top of the first page it's entitled, quote,
25 "Professional Conduct Policy and Prohibition Against

1 Harassment," end quote. Do you see that?

2 A. Yes.

3 Q. And then there's some handwriting on the side, quote,
4 "58-1," end quote, and if we look back to the table of
5 contents for the personal handbook, the employee handbook,
6 58-1 -- this is on page 2 of the table of contents -- it says
7 "Harassment Policy, 1/1/98." Do you see that?

8 A. Yes.

9 Q. And if we look at the last page of Exhibit 11, on the
10 bottom there, there is a date, 11/19/2013. Do you see that?

11 A. Yes.

12 Q. So would this be a revision to the company's
13 harassment policy?

14 A. The bottom of the form where it says, quote, "Forms/
15 Harassment," end quote, and "11/19/13," something was changed
16 with the policy. I'm not sure what it was, but that was the
17 date that -- maybe it wasn't changed, but maybe it was
18 reprinted, and that's an internal date that the
19 transcriptionist would use whenever she retyped a form.

20 Q. Do you know who drafted this particular policy?

21 A. No. I do not.

22 Q. Going back to the first page of this policy, the first
23 paragraph there starting with the sentence, quote, "In
24 addition," dot, dot, dot, end quote, it's about the fourth
25 sentence in, it says, quote, "Harassment for any

1 discriminatory reason such as race, sex, national origin,
2 disability, sexual orientation, age or religion is prohibited
3 by state and federal laws and may subject the company and/or
4 the individual harasser to liability for any such unlawful
5 conduct." Do you see that?

6 A. Yes.

7 Q. Were you aware of the legal prohibitions against
8 harassment in the work place at the time this policy was
9 printed out in November 2013?

10 A. Yes.

11 Q. Were you aware of those laws prior to November of
12 2013?

13 A. Yes.

14 Q. When did you first become aware of legal prohibitions
15 of harassment in the work place?

16 A. Early on in my career as part of, you know, training
17 related -- as you started hiring employees, I would attend
18 seminars on how to stay compliant.

19 MS. KANE: Then on page 51.

20 Q. You've been handed what's been marked as Exhibit 12 to
21 your deposition. It's a two-page document Bates numbered
22 B00171 to B00172. Do you have that in front of you?

23 A. Yes.

24 Q. And again, the title at the top is the same as what
25 was Exhibit 11, "Professional Conduct Policy and Prohibition

1 Against Harassment." Do you see that?

2 A. Yes.

3 Q. This one is signed by what I believe is Robert
4 McClendon's signature on the second page. Do you see that?

5 A. Yes.

6 Q. And there is a date there, January 2, 2007; correct?

7 A. Yes.

8 Q. Is that also Linda Bladel's signature?

9 A. Yes.

10 Q. The form itself doesn't have a date, but would you
11 agree that this was the harassment policy that was in effect
12 in 2007?

13 A. Yes.

14 Q. And again, if you look at the first paragraph on the
15 first page, it appears to be pretty much identical to that
16 paragraph, the first paragraph of Exhibit 11. And again, if
17 we look at about the fourth sentence in, it begins, "In
18 addition, harassment for any discriminatory reason such as
19 race, sex, national origin, disability, sexual orientation,
20 age or religion is prohibited by state and federal laws and
21 may subject the company and/or the individual harasser to
22 liability for any such unlawful conduct." Do you see that?

23 A. Yes.

24 Q. Would you agree that that's the same as the previous
25 policy?

1 A. Yes.

2 MS. KANE: And further down on that page, this is
3 relating to Exhibit 13.

4 Q. You've been handed what's been marked as Exhibit 13 to
5 your deposition, which is, again, another two-page document
6 Bates numbered B00247 to B00248, and it appears to be another
7 copy of the same policy that was Exhibit 12, except that the
8 date that it's signed is a different date. Do you see that?

9 A. Yes.

10 Q. And it appears to me that that was signed on
11 January 3, 2011?

12 A. Yes.

13 Q. And is that, again, Robert McClendon's signature?

14 A. Yes.

15 Q. I understand that Mr. McClendon sort of worked for you
16 and then left and then came back and might have left again
17 and then came back; correct?

18 A. Yes.

19 Q. Is that consistent with your recollection that he came
20 back to work with you for a second or third time sometime in
21 January 2011?

22 A. Yes, it is.

23 Q. So he was required to sign the harassment policy form
24 again when he rejoined the company?

25 A. Yes.

1 Q. So it would be safe to say that this policy in its
2 form in Exhibit 13 was the policy that was in effect in 2011?

3 A. Yes.

4 Q. When people were hired at Scott Medical in 2013, what
5 was the procedure for getting them on board as new employees?
6 Who was responsible for that?

7 A. At that time it was the supervisor of the department.
8 So if I had somebody that was applying for the insurance
9 department, then it would be the supervisor for the insurance
10 department. So as part of all the supervisors' training,
11 there was --

12 MS. KANE: That part wasn't supposed to be
13 highlighted. We can skip that part.

14 THE WITNESS: Okay.

15 MS. KANE: Page 57.

16 Q. Did you, yourself, ever have occasion to sit down with
17 Robert McClendon and give him any kind of training as to the
18 implementation of the company's harassment policy?

19 A. Personally, no.

20 Q. Do you know if anybody else ever sat down with him and
21 had a discussion with him as to the implementation of the
22 harassment policy?

23 A. I'm sure he was updated when he came back and was
24 hired, but I don't know who would have done it.

25 MS. KANE: And on page 62.

1 Q. When did Bob McClendon first become employed by you?

2 A. Oh, I think the records show, what, 2007? That's
3 probably accurate, I would think.

4 Q. And what was his position?

5 A. He was hired as a telemarketing supervisor.

6 Q. And I understand that there were -- I believe there
7 were at least two times when he stopped working for you;
8 correct?

9 A. I think it was one, and then he came back.

10 Q. And for all the times that he was employed by Scott
11 Medical, he was the telemarketing supervisor?

12 A. Yes.

13 Q. Or telemarketing manager?

14 A. Correct.

15 Q. And what was his job? What were his responsibilities?

16 A. Hire, train cold call telemarketers.

17 MS. KANE: That's it, Your Honor.

18 THE COURT: Okay. Thank you. Anything more?

19 MS. KANE: No other witnesses, Your Honor, and no
20 other documents to submit, although I do have a proposed
21 order, which contains some language that we are asking the
22 Court to enter as far as injunctive relief. Would you like
23 me to pass that up to you? I can also E-mail it to --

24 THE COURT: Well, I think you should file it if you
25 have a proposed order.

1 MS. KANE: Okay. We will do that.

2 THE COURT: With respect to the back pay
3 calculation, am I correct that you do not have at this
4 juncture any W2 information from Scott Medical?

5 MS. KANE: The W2s that were entered as Exhibit B,
6 Your Honor.

7 THE COURT: Okay. I see PA Mentor --

8 MS. KANE: Oh, from Scott Medical, I do not have
9 one for that, but I can provide the Court with some
10 information. Mr. Massaro testified that he learned \$11 an
11 hour.

12 THE COURT: Right. I see that.

13 MS. KANE: And his schedule was 38 hours a week.

14 THE COURT: Okay. I would like something more
15 precise with respect to the earnings at Scott Medical at the
16 time.

17 MS. KANE: Sure.

18 THE COURT: And you can file that as a separate
19 exhibit, a supplemental Exhibit 2 after the hearing today.

20 I know that there was an interest in getting this
21 done fairly quickly in light of the other proceedings. At
22 this juncture, the Court will take under advisement
23 everything it's heard here today and await that additional
24 material.

25 Let me ask you how quickly you think you could

1 file -- assuming that you get from Deb in fairly short order
2 a transcript -- how quickly you could file proposed findings
3 of fact and conclusions of law?

4 MS. KANE: End of next week?

5 THE COURT: That's assuming Deb can get her
6 transcript.

7 MS. KANE: It probably would take less than a week
8 once we get the transcript, Your Honor.

9 THE COURT: Okay. So why don't we say -- today is
10 the 30th -- on or before the 6th of November? That's a week
11 from today. Do you want to say the 13th?

12 MS. KANE: That's probably safer.

13 THE COURT: All right. On or before November 13,
14 proposed findings of fact and conclusions of law, and the
15 Court will make every effort to turn that around in short
16 order.

17 We'll issue an order with those specific
18 guidelines, but just to give you a heads up, I will be
19 requiring a Word version of that document as well. And I'll
20 ask that you E-mail that to the Court at our external E-mail
21 address, which will be in the order.

22 Anything else for the good of the order here today?

23 MS. KANE: Nothing further, Your Honor.

24 THE COURT: Okay. Well, it was good meeting
25 everyone; and once I get that information, I'll get back to

1 you in short order.

2 MS. KANE: Thank you.

3 THE COURT: Court is in recess.

4 (Proceedings were concluded at 3:10 p.m.)

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C E R T I F I C A T E

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S/Deborah Rowe _____

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Certified Realtime Reporter

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