COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2000

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1009

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

EVELYN HOMMRICH,

PLAINTIFF-APPELLANT,

V.

BROWN COUNTY MENTAL HEALTH CENTER, MARK QUAM, JOSEPH VAN BEEK AND BROWN COUNTY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Brown County: WILLIAM C. GRIESBACH, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Evelyn Hommrich appeals a summary judgment dismissing her multicount complaint against Brown County, its mental health center, its human services director and the program coordinator for its intoxicated driver program. The trial court concluded that Hommrich's state law claims were

barred by WIS. STAT. § 893.80 (1997-98)[1] because she failed to give notice of claims; her Sherman Act and Clayton Act claims failed because she failed to establish substantial interference with interstate commerce; and her civil rights claims under 42 U.S.C. §§ 1983 and 1985 failed because she had no protected liberty or property interest. We affirm the judgment.

¶2 Hommrich owned and operated A Plus Recovery, a drug and alcohol treatment center. A Plus received certification from the Wisconsin Department of Health and Social Services and was added to a referral list maintained by Brown County in April 1990.[2] Because Hommrich was not a certified counselor, she was required to hire a certified counselor as an employee or a consultant to maintain her certification. Joseph Van Beek, a certified counselor, served as a consultant to A Plus until December 1993, when he and others terminated their employment with A Plus. One month later, the Niagara Branch of A Plus closed due to lack of personnel. The De Pere Branch remained open.

¶3 In January 1994, a "plan of correction" was filed with the Department based on a finding that Hommrich was engaged in counseling activities absent certification. On February 28, Hommrich stated in a letter that she would not involve herself in any clinical activities of A Plus. She transferred ownership of A Plus to other family members, but remained its director. Between January and July, referrals to A Plus dropped from six per month to zero. Hommrich alleges that the defendants conspired to steer referrals to Van Beek's

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[2] To the extent Hommrich challenges the delay in adding A Plus to the referral list, the statute of limitations precludes any recovery on that basis.

private agency, filed bogus complaints against A Plus and circulated defamatory information about Hommrich.

¶4 On November 10, 1994, Mark Quam, the county's human services director, wrote to A Plus stating that the agency was removed from the referral list because of a complaint that alleged Hommrich borrowed money from a client and breached confidentiality. Hommrich responded that she did not own A Plus and had not owned it since February 1994. On January 6, 1995, Quam indicated that A Plus was provisionally approved for six months as a service provider for intoxicated drivers and that it was placed back on the referral list. Hommrich alleges that she was compelled to sign an agreement that she would not associate with A Plus in order to have it returned to the referral list. However, after complying with Quam's demands and signing the agreement, she alleges that referrals remained blocked and A Plus was effectively driven out of business.

¶5 Hommrich's complaint alleges that the defendants deprived her of liberty and property interests without due process, violated her equal protection rights by penalizing her more severely than Van Beek after he was arrested for burglary, interfered with her freedom of association, defamed her, and violated the Sherman Act and the Clayton Act by blacklisting A Plus in an effort to acquire a monopoly over alcohol assessment and treatment.[3]

¶6 The trial court properly dismissed all of Hommrich's state claims because she did not comply with WIS. STAT. § 893.80(1)(b), which requires that she present an itemized statement of the relief sought to the county clerk.

[3] The complaint alleges numerous other state causes of action that will not be itemized here.

Hommrich cites numerous cases construing § 893.80(1)(a) which requires notice of the event giving rise to the claim, and allows recovery if actual notice was given and the defendants were not prejudiced. None of the cases she cites dispense with the requirement that she make a specific demand for compensation to the county clerk. Because the purpose of this requirement is to afford the governmental entity an opportunity to effect compromise without a lawsuit and to budget for settlement or litigation, the notice of claim must include a specific dollar amount and must be presented to the appropriate clerk. *See* ***Vanstone v. Town of Delafield***, 191 Wis. 2d 586, 593, 530 N.W.2d 16 (1995); ***DNR v. City of Waukesha***, 184 Wis. 2d 178, 199-200, 515 N.W.2d 888 (1994). While Hommrich wrote many letters to many officials complaining about her treatment, the record contains no evidence that she presented a claim to the county clerk for a specific dollar amount. Therefore, only Hommrich's federal causes of action survive.

¶7 The trial court properly dismissed Hommrich's Federal Anti-Trust claims under the Sherman Act and the Clayton Act. The Sherman Act, 15 U.S.C. § 1, prohibits combinations and conspiracies in restraint of trade or commerce "among the several states, or with foreign nations …." The Clayton Act, 15 U.S.C. § 15 provides a treble damage remedy to any person injured in his business or property by reason of anything forbidden in the anti-trust laws. The federal anti-trust laws apply only to restraints that substantially affect interstate commerce. *See* ***Gulf Oil Corp. v. Copp Paving Co.***, 419 U.S. 186, 195 (1974).

¶8 Hommrich correctly points out that the effect on interstate commerce may be "indirect" and may be based on wholly local acts. *See* ***Hospital Building Co. v. Trustees of The Rex Hospital***, 425 U.S. 738, 743 (1976); ***United States v. Employing Plasters Assoc.***, 347 U.S. 186, 189 (1954). However, the federal anti-trust laws should not be interpreted to afford remedies for all torts committed by or

against any person engaged in interstate commerce. *See* ***Hunt v. Crumboch***, 325 U.S. 821, 826 (1945). Hommrich must establish substantial interference with interstate or foreign commerce under the federal anti-trust laws.

¶9 Hommrich's affidavit states that A Plus received approximately $15,000 per month from OWI clients. Sixty percent of its revenues were received from out-of-state insurance companies and clients, and about 40% of its supplies were purchased out of state. A Plus also received vocational rehabilitation funding for training and educating handicapped individuals from Wisconsin and Michigan. Twenty percent of its patients were from Michigan and its Niagara Branch serviced two counties in Michigan. Hommrich has not established any nexus between the allegedly illegal activities conducted by Brown County officials and the failure of her Niagara operation where most of A Plus's interstate activities occurred. Hommrich has established only minimal interstate commerce for her Brown County facility. She focuses on out-of-state education and training for her personnel and revenues derived from out-of-state insurance companies. If these minimal factors supported federal anti-trust jurisdiction, virtually any business would qualify.[4] The effect on interstate commerce described in Hommrich's supporting papers cannot be characterized as "substantial."

¶10 Hommrich's claims under 42 U.S.C. §§ 1983 and 1985 are based on her assertions that she has a protected liberty or property interest that was extinguished without due process, an equal protection claim based on differential

[4] In contrast, the hospital in ***Hospital Building Co. v. Trustees of The Rex Hospital***, 425 U.S. 738, 743 (1976), in addition to out-of-state patients and insurance revenues, spent more than $80,000 on supplies purchased out-of-state, paid a management fee based on gross receipts to its parent company, a Delaware corporation based in Georgia, and the unlawful acts interfered with a planned $4 million dollar expansion financed through out-of-state lenders. *See* ***id.*** at 741.

treatment afforded to Van Beek and freedom of association. We conclude that the trial court properly dismissed these claims because Hommrich has not established any violation of her constitutional rights.

¶11 Hommrich concedes that she has no property interest in referrals, although she claims a due process right to challenge her removal from the referral list. The trial court correctly concluded that Hommrich's due process rights depend on her establishing a legitimate property or liberty interest. To establish a property interest in referrals, Hommrich must establish more than an abstract need or desire for it. She must show a legal entitlement based on statutes or regulations containing "explicitly mandatory language" or some legally enforceable equivalent such as a mutually binding obligation. *See* ***Board of Regents v. Roth***, 408 U.S. 564, 577 (1972); ***Miller v. Crystal Lake Park District***, 47 F.3d, 865, 867 (7th Cir. 1995). No statute, regulation or contract required Brown County or its employees to place or maintain A Plus on the referral list throughout the time involved here. Hommrich's reliance on WIS. ADMIN. CODE § HSS.62(1)(a)[5] is misplaced. That rule was not designed to regulate or create procedures for determining which providers would be placed on the list. It is aimed at the clients' right to choose programs that fulfill their safety plan.

[5] Renumbered HFS 62.07(1):

> (1) CLIENT CHOICE OF PROGRAM PROVIDER. Clients shall be allowed to select providers of the programs included in their driver safety plans, based on the following considerations:
>
> (a) The client shall be shown a list of all county-approved public and private program providers in the board area, as well as other county-approved program providers close to where the client lives, who offer programs required to fulfill the driver safety plan;

¶12 Hommrich argues that she has a protected liberty interest in her professional reputation, and is therefore entitled to a hearing on any allegation of misconduct and the right to confront her accusers. A person has a protected liberty interest when either his or her good name, reputation, honor or integrity is at stake or when the governmental unit imposes a stigma or other disability that forecloses future employment opportunities. *See* ***Lashbrook v. Oerkfitz***, 65 F.3d 1339, 1348 (7th Cir. 1985). The trial court correctly concluded that the charges against Hommrich, that she breached confidentiality and borrowed money from a client, do not allege immorality, dishonesty, disloyalty or subversiveness. These charges do not rise to the level of magnitude necessary to constitute a protected liberty interest. *See* ***Hadley v. County of DuPage***, 715 F.2d 1238, 1245 (7th Cir. 1983). Mere injury to reputation is not protected by the constitution. *See* ***Weber v. City of Cedarburg***, 129 Wis. 2d 57, 73, 384 N.W.2d 333 (1986).

¶13 Hommrich has not established that the county imposed a stigma or other disability that foreclosed future employment opportunities. Hommrich may not bring an action against a governmental unit for stigmatizing her unless the governmental unit publicized its accusations. *See* ***Lashbrook*** at 1349. The removal of A Plus from the referral list was not made public by the county. Her supporting papers also fail to establish that any action by the county or its agents would make it "virtually impossible to find new employment in [her] field." *See* ***Ratliff v. City of Milwaukee***, 795 F.2d 612, 625 (7th Cir. 1986). Hommrich herself publicized the contents of the letter.

¶14 Hommrich's equal protection claims are based on the county's failure to take action against Van Beek after he was arrested for burglary. Hommrich's supporting papers do not provide any details regarding Van Beek's legal problems. Specifically, she does not establish that he committed any

infractions that directly relate to his relationship with his clients. The equal protection clause only requires that like cases be treated alike. The constitution does not require that things that are different in fact or opinion be treated as though they were the same. *See* ***Vacco v. Quill***, 521 U.S. 793, 799 (1997). Hommrich's supporting papers do not establish that the charges against her are comparable to those against Van Beek.

¶15 Finally, Hommrich argues that she was discriminated against in retaliation for her exercise of the protected constitutional rights of free speech, petition and association. Her citations to cases in which government contractors or employees faced discrimination due to their political activities are inapposite. Most of the alleged wrongdoing occurred before Hommrich began the protests that she alleges resulted in the retaliation. Hommrich agreed not to associate with A Plus, thus allowing A Plus to be reinstated to the referral list without having to wait for any adjudication regarding Hommrich's right to provide treatment. This compromise agreement should not be construed as a violation of Hommrich's First Amendment right to freedom of association. It is merely an agreement settling a controversy, not unilateral action by the defendants restricting her association with A Plus.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.