

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 1901-F, AFSCME, AFL-CIO, Complainant,

vs.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION
and BROWN COUNTY, Respondents.**

Case No. 99-CV-1671

Decision No. 29094-D

OPINION OF CHAIRPERSON JAMES R. MEIER

The Court, in her decision in the above entitled matter on October 5, 2000, remanded the case to the Commission to explain in detail on what evidence it relied to determine that J.M. was not a credible witness, causing the Commission to reverse Examiner Finding of Fact 25 that J.B. recanted.

In compliance with the Court's order, I herewith submit the following which summarizes why I concluded that J.M. was not credible when she testified that J.B. recanted.

The record is replete with character testimony to the effect that J.M. is untruthful, as well as examples of J.M.'s testimony which conflicts with the facts and with the testimony of other witnesses, all as set forth in Commissioner Hahn's addendum.

I was aware of these opinions and contradictions when the Commission held its demeanor conference with the Examiner. Relative to the Examiner's demeanor opinion, the Examiner characterized J.M. as a liar. However, his decision suggested that since J.M. had been consistent regarding J.B.'s alleged recantation, her testimony in that regard was credible.

While I do not subscribe to the maxim "one lie – all lies" neither could I conclude that a liar ought to be believed only because of consistency.

Rather than conclude that J.M. was truthful about J.B.'s recantation even though she was untruthful about so much else, I considered what other evidence corroborated her testimony, if any, and what the other evidence shows about her knowledge and motivations.

Dec. No. 29094-D

The only corroborating fact supporting J.M.'s assertion regarding J.B.'s recantation is that they were in shelter care together for three days. Nothing else.

Relative to knowledge and motivation, in addition to J.M.'s stated dislike for J.B., Dorner testified that J.M. stated "Me and Miss Korth don't think he [M] could have done that." The phrasing of that statement caused me to be concerned that J.M. had reached an agreement with Ms. Korth about M's innocence, and the context of the statement caused me to wonder whether J.M. was on a mission to add others to the group of M supporters. It was only well after that that J.M. reported the alleged recantation. Why the delay if J.M. knew that even J.B. admitted it was false?

Finally, M's supporters withheld the information from the authorities, which caused me to wonder whether they were concerned that J.M.'s assertions wouldn't stand up to scrutiny.

I concluded the most likely explanation for J.M.'s testimony to be that she became aware of J.B.'s allegations regarding M from overhearing staff supportive of M and wanted to help the cause in order to gain attention, affection and influence with staff. I do not believe J.M. would approach J.B. as J.M. asserted in light of her dislike for him, or that J.B. would talk to her about whether M assaulted him.

Dated at Madison, Wisconsin this 15th day of December, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 1901-F, AFSCME, AFL-CIO, Complainant,

vs.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION
and BROWN COUNTY, Respondents.**

Case No. 99-CV-1671

Decision No. 29094-D

OPINION OF COMMISSIONER PAUL A. HAHN

The Court, in her decision in the above entitled matter on October 5, 2000, remanded the case to the Commission to explain in detail on what evidence it relied to determine that J.M. was not a credible witness, causing the Commission to reverse Examiner Finding of Fact 25 that J.B. recanted.

In compliance with the Court's order, I herewith respectfully submit the following which summarizes why I concluded that J.M. was not credible when she testified that J.B. recanted.

- Witness Barbara Doner, a Brown County Shelter Care employee, testified that J.M. was "very untruthful" and a "compulsive liar." (Tr. pg. 365).
- Witness Sonia Rodriguez-Korth, a Brown County Shelter Care employee, testified:

Q "I believe you testified you would have no way of knowing whether J.M.'s lying at some point in time. I mean, you can't tell every time she's lying or not?"

A "Right, yes."

Q "And you've had experience with her where she does tell lies?"

A "Yes."

(Tr. pgs. 926-927)

- Witness Jean Elliot, a Brown County Shelter Care employee, testified that J.M. admitted to stealing embroidery floss from J.M.'s grandmother. (Tr. pg. 503). Elliot further testified that J.M. lies, makes up stories and seeks constant attention. (Tr. pg. 510).
- Witness Sandra Dudley, a Brown County Shelter Care employee, testified: "I told her dishonesty disappointed me." This in regards to concealed matches. (Tr. pgs. 478-479)
- Testimony of J.M.
 - J.M. testified that she was present at the Shelter Care when J.B. allegedly threatened to get M fired. (Tr. 1041 and 1042) In fact, the record is clear that J.M. was not at the Shelter Care on April 16, 1995 when the alleged threat occurred. (Rx. 59 and Rx. 61)
 - J.M. testified that while with J.B. in Secure Detention at Brown County Jail, J.B. told her that M "sexually assaulted" him. (Tr. 412) I have doubts a boy who is described as being highly emotional would admit such a thing to J.M. and use those words.
 - J.M. testified that she did not like J.B. because J.B. was always trying to get J.M. and others in trouble. (Tr. 416 – 417) The admission that J.M. did not like J.B. raises the likelihood that she made up J.B.'s recant of his charge against M as getting even with J.B.
 - J.M testified that she hit J.B. at the end of their alleged argument in Secure Detention for no apparent reason other than substantiating her dislike of J.B. (Tr. 430)
 - J.M. testified that her alleged argument with J.B. in Secure Detention was loud enough that it should have been heard by two guards in an office only several feet away from where she and J.B. were sitting in the Secure Detention multi-purpose room. (Tr. 433-434)
 - Jailers Snortum and Mitchell, who were on duty at Secure Detention when J.M. alleges J.B. allegedly recanted his charge against M, testified that they heard no argument between J.M. and J.B. (Tr. 1014-1015 and Tr. 1265)
 - Jailer Snortum further testified that in reference to the alleged J.M./J.B. argument that she had no recollection of loud talking and that J.M. likes to be the center of attention. (Tr. 1265)
 - J.M. admits in her testimony that she left out parts of her interaction with J.B. in Secure Detention where she gave her affidavit of the incident to investigator Craig on August 27, 1996. (Cx. 3, Tr. 431, 450-451) J.M. in her testimony embellishes the interaction and argument.

- J.M.'s testimony, as verified by several Shelter Care employees who testified, was confused about who and when she told of J.B.'s alleged recanting of J.B.'s charge against M when she returned to Shelter Care. (Tr. 364, 475, 498 and 888 and Rx. 53, 54 and 63)

I also note that the Examiner found J.M. to be less than credible, and so states in his opinion, but finds her credible on her allegation that J.B. recanted his charge against M because J.M. never changed her story on this point. Given the aforementioned documentation from the record, I reached a different factual conclusion than the Examiner. It is no surprise to me that J.M., who professed a profound dislike of J.B., would stick to this key aspect of her story to get back at J.B. by helping M.

Dated at Madison, Wisconsin this 15th day of December, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

rb

29094-D