
IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 71-1488

CAROLYN HARNETT,
Plaintiff-Appellant,

v.

GEORGE A. ULETT, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Missouri

BRIEF

Of National Association of Social Workers, Inc.
as Amicus Curiae

MORRIS J. LEVIN
1125 Arcade Building
812 Olive Street
St. Louis, Missouri 63101
Attorney for National Association of Social
Workers, Inc.

DAVID SCRIBNER
50 Broadway
New York, New York 10004
General Counsel for National Association
of Social Workers, Inc.



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ISSUE PRESENTED BY AMICUS CURIAE

National Association of Social Workers, Inc. takes no position on the merits of the case. However, it submits that error was committed by the District Court in the exclusion of testimony by competent experts as to proper conduct in the performance of the duties of a professional social worker functioning at a state mental institution and the plaintiff's compliance with such a standard. It is urged by National Association of Social Workers, Inc., that both sides should have been permitted to present expert testimony of qualified social workers on these issues.

STATEMENT OF THE CASE

The Plaintiff was discharged from her employment as a probationary psychiatric social worker at the Malcolm Bliss Mental Health Center of the State of Missouri Division of Mental Health (Transcript, 455). She brought this civil action against the defendants, state employees, who were her superiors in the State of Missouri Division of Mental Diseases. She alleged that under color of state law the defendants had brought about her discharge from employment in violation of her rights under the Constitution of the United States.

As the case was tried in the District Court, the issue presented to the jury was whether the discharge of the plaintiff "occurred in reprisal for her acts which (the jury should find) to be her lawful exercise of her rights of free speech . . ." (Charge, Transcript 560-561). The defendants urged that the plaintiff was dismissed for her failure to use channels available and lack of maturity and judgment in her activities at the hospital (Summation of Defendants' Counsel, Transcript 543, 546). The plaintiff unsuccessfully sought to show through expert testimony that the very conduct of which the defendants complained was within the scope of plaintiff's duties and responsibilities as a psychiatric social worker at a mental hospital (Statements of Plaintiff's Counsel, Transcript 8, 48, 49, 50, 293, 294).

The District Court refused to allow the well qualified experts of the plaintiff to offer any testimony as to the proper standards of social work practice applicable to a psychiatric social worker such as the plaintiff and plaintiff's compliance with such standards (Transcript 40-50, 262-294, 332). The District Court adopted this view with regard to expert testimony even though two of defend-

ants' witnesses were also qualified to provide testimony in this area (Transcript 379-381, 445a-446), and the defendants had at their disposal for additional expert testimony the entire hierarchy of the State of Missouri Department of Mental Health. The reasons for the District Court's rejection of such testimony were lack of relevance and materiality; its admission would invade the province of the jury (Transcript 282-283, 292). However, the Court left it to the jury to decide whether the "plaintiff's discharge occurred in reprisal for acts which you (the jury) find to be her lawful exercise of her rights of free speech" (Charge, Transcript 560), having provided as guidance in making this determination only: "The expression of free speech, which the Federal Constitution thus secures and protects, is not an absolute and unqualified freedom or privilege to speak as one pleases at all times and under all circumstances; but is always subject to reasonable restraints" (Charge, Transcript 559).

ARGUMENT

Expert Testimony as to the Proper Standards of Social Work Practice for a Psychiatric Social Worker in a Mental Hospital and Plaintiff's Compliance With Such Standards Should Have Been Received From All Parties.

The Charge to the jury required them to decide whether the plaintiff's conduct was within the lawful exercise of her rights of free speech or whether it was proscribed by **reasonable** restraints (Supra, p. 3). In order to make this determination, the jury had to know something about the proper standards of social work practice for a psychiatric social worker in a mental hospital. In view of the availability of qualified experts to both sides, testimony as to whether or not plaintiff's conduct complied with such standards, aided by cross-examination, would have been helpful to the jury. In the context in which the issues were presented to the jury, such expert testimony would have been relevant and material.

It is no longer a permissible ground for the exclusion of expert testimony that its admission would invade the province of the jury. As a panel of this Court recently stated in **Northrop Architectural Sys. v. Lupton Mfg. Co.**, 437 F 2d, 889 at 891-892:

The rule of evidence that an expert may express an opinion on a subject even though the opinion embraces an ultimate issue to be decided by the trier of the facts, has long been recognized. This precept of evidence has now been codified in Rule 7-04 of the Rules of Evidence for the United States Courts and Magistrates, which have been approved by the Judicial Conference of the United States and are now pending before the United States Supreme Court for transmittal to the Congress.

Testimony by an expert which establishes a standard by which the conduct of a party is to be judged is admissible: **Daleiden v. Carborundum Company**, 438 F2d 1017 at 1023 (8th Cir. 1971).

The testimony of qualified experts should be received subject to the trier of the facts giving it such weight as it sees fit. **Owatoona v. Chicago, R.I. & Pacific R. Co.**, 450 F2d 87 at 92 (8th Cir. 1971).

CONCLUSION

For the reasons set forth above, *Amicus curiae*, National Association of Social Worker, Inc. respectfully urges this Honorable Court to remand this action for a new trial so that all the parties may present relevant testimony of qualified experts with respect to the proper standards of social work practice and plaintiff's compliance with such standards.

Respectfully submitted

MORRIS J. LEVIN

Attorney for National Association
of Social Workers, Inc.
1125 Arcade Building
812 Olive Street
St. Louis, Missouri 63101

DAVID SCRIBNER

General Counsel for National As-
sociation of Social Workers, Inc.
50 Broadway
New York, N. Y. 10004