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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

KAISER FOUNDATION HEALTH
PLAN, INC., et al.

Petitioners,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

JOSEPH NOBLES,

Real Party in Interest.

E055563

(Super.Ct.No. RIC1106594)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. John Vineyard,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition granted.

Nixon Peabody, Seth L. Neulight, Ellen M. Papadakis and Tzaddi S. Thompson
for Petitioners.

No appearance for Respondent.

Law Office of Richard A. Stavin, Richard A. Stavin; Law Office of Mark D. Licker and Mark D. Licker for Real Party in Interest.

INTRODUCTION

In this matter, we have reviewed the petition and the opposition filed by real party in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

DISCUSSION

“Me too” evidence is evidence from other “similarly situated” employees of a defendant who claim that they too were discriminated against by the employer for the same reason. In turn, “similarly situated” means that the other employee engaged in the same conduct without any mitigating or distinguishing circumstance. (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 172.)

The trial court was correct insofar as it concluded that “similarly situated” does not necessarily mean that this other employee had the same supervisor. Real party in interest argues that petitioners confuse “me too” claims with “similarly situated” employees. They describe “me too” claims as being employees also with the same disability and “similarly situated” as those accused of having violated the same policy, in this case, workplace violence. However, we find that this distinction is of no assistance. Rather, the relevance and admissibility of such evidence depends on several factors, including how closely the circumstances and theory of the case resemble plaintiff’s.

(Johnson v. United Cerebral Palsy/Spastic Children's Foundation (2009) 173

Cal.App.4th 740, 767.) The nonparties must be alleging discrimination by the employer and whether their evidence is admissible depends on whether the circumstances were sufficiently similar. (*Id.* at pp. 766-767.)

We must conclude that the trial court's order for discovery is overbroad and unduly burdensome. While we recognize that relevance for discovery purposes is broader than relevance in determining admissibility, we have to keep in mind what real party in interest's purpose is. He is alleging that the individuals involved in the decision to fire him used workplace violence as a pretext. Real party in interest was employed by a unit that is governed by the human resources department's (HR) policies and overseen by HR personnel separate from those in Kaiser's care-delivery operations. Therefore, it does not appear that information regarding similar claims that arose at a Kaiser hospital in Sacramento, for example, would be sufficiently similar to real party in interest's situation.

The meaning of "similarly situated" will vary with the facts and theories in a particular case. (*Hawn v. Exec. Jet Mgmt.* (9th. 2010) 615 F.3d 1151, 1157.) Even at the discovery stage, at a minimum, the "me too" evidence should relate to actions by decision makers within the same chain of command. (*Sallis v. Univ. of Minn.* (8th Cir. 2005) 408 F.3d 470, 478 [affirming limit of discovery to department in which plaintiff worked where the allegations focused on the supervisors in that department].) Unless real party in interest shows that others outside this chain of command were involved in the decision to fire him, discovery should be limited to that pertaining to the facility and HR

department where real party in interest was employed. The trial court opined that if discovery were so limited, then only real party in interest's complaint would be disclosed. So be it.

Thus, the trial court abused its discretion in ordering overbroad and burdensome discovery.

DISPOSITION

Accordingly, the petition for writ of mandate is granted. Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to vacate its order granting real party in interest's motion to compel further responses, and to enter a new order limiting discovery in accordance with the views expressed herein.

Petitioners are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

Petitioners to recover their costs. The previously ordered stay is lifted.

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Acting P. J.

We concur:

HOLLENHORST

J.

McKINSTER

J.