

AIMEE HELWIG

v.

INTERCOAST CAREER INSTITUTE

Argued January 16, 2013

Decided January 29, 2013

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, GORMAN, and
JABAR, JJ.

MEMORANDUM OF DECISION

InterCoast Career Institute (InterCoast) appeals from a final judgment of the Superior Court (Cumberland County, *Wheeler, J.*) denying its post-trial motions. Although Aimee Helwig's complaint pleaded retaliation against her in her capacity as an employee, the parties consented to litigate the issue of retaliation against her in her capacity as a student. M.R. Civ. P. 15(b) ("When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings."); *Town of Orrington v. Pease*, 660 A.2d 919, 922 (Me. 1995) (finding that "the issue was properly tried by consent").

InterCoast disputes the jury's damages award; however, it did not preserve the issue of whether the Maine Human Rights Act authorizes a remedy for lost wages, compensatory, or punitive damages in education retaliation cases. *Thomas v. BFC Marine/Bath Fuel Co.*, 2004 ME 27, ¶ 5, 843 A.2d 3 (noting that an issue is not preserved if it is raised for the first time on appeal). Additionally, Helwig presented sufficient evidence for the jury to award lost wages, *Morissette v. Somes*, 2001 ME 152, ¶ 11, 782 A.2d 764 (refusing to disturb a damages award unless the award is baseless), and the trial court properly found that InterCoast failed to prove

that the punitive damages exceeded the applicable statutory damages cap, *Bisco v. S.D. Warren Co.*, 2006 ME 117, ¶ 11, 908 A.2d 625 (placing the burden of proving a statutory cap on the defendant).

Furthermore, the trial court did not abuse its discretion by allowing testimony from two of Helwig's fellow students at InterCoast. M.R. Evid. 404(b) (allowing evidence of prior wrongful acts offered to prove motive). Additionally, even if the trial court abused its discretion by refusing to admit evidence that InterCoast did not produce during discovery, but Helwig utilized for her own purposes during the trial, *see* M.R. Civ. P. 37(b)(2)(B) (excluding evidence based on discovery violations); *but see Conroy v. Abraham Chevrolet-Tampa, Inc.*, 375 F.3d 1228, 1232 (11th Cir. 2004) ("evidence which normally would be inadmissible is indeed admissible if the opposing party opens the door to that line of questioning"), the exclusion of this evidence is not a reversible error, *see Bennett v. Forman*, 675 A.2d 104, 106 (Me. 1996) (finding a reversible error only if "it is highly probable" that the failure to admit the evidence affected the judgment (quotation marks omitted)).

The entry is:

Judgment affirmed.

On the briefs:

Neil C. Evans, Esq., and Jens-Peter W. Bergen, Esq., Law Offices of Jens-Peter Bergen, Kennebunk, for appellant InterCoast Career Institute

Guy D. Loranger, Esq., Nichols, Webb & Loranger, P.A., Saco, for appellee Aimee Helwig

Philip J. Moss, Esq., Fisher & Phillips LLP, Portland, for amicus curiae Husson University

At oral argument:

Neil C. Evans, Esq., for appellant InterCoast Career Institute

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Cumberland County Superior Court docket number CV-2009-225
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