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25-P-168

Appeals Court

TIMOTHY JANGL vs. SECRETARY OF THE EXECUTIVE OFFICE OF HEALTH
AND HUMAN SERVICES & another.¹

No. 25-P-168

Suffolk. January 8, 2026. - October 15, 2026.

Present: Desmond, D'Angelo, & Smyth, JJ.

Public Health, Immunization. Religion. Employment,
Discrimination. Anti-Discrimination Law, Religious
beliefs, Employment, Burden of proof. Practice, Civil,
Summary judgment, Affidavit. Witness, Expert. Evidence,
Expert opinion, Qualification of expert witness.

Civil action commenced in the Superior Court Department on
March 10, 2022.

The case was heard by Rosemary Connolly, J., on a motion
for summary judgment.

Peter Vickery for the plaintiff.
Jeffrey T. Collins, Special Assistant Attorney General, for
the defendants.

¹ Department of Children and Families.

SMYTH, J. By August 2021, the COVID-19 pandemic had claimed over 17,000 lives in Massachusetts.² To mitigate the spread and severity of the disease, then Governor Charles D. Baker issued Executive Order No. 595, requiring vaccination against COVID-19 for certain government employees, including the plaintiff, Timothy Jangl, a social worker employed by the Department of Children and Families (department). When the department denied Jangl's request for a religious exemption from the vaccination requirement, Jangl filed a complaint in the Superior Court against the defendants, the department and the Secretary of the Executive Office of Health and Human Services (EOHHS), alleging religious discrimination in violation of G. L. c. 151B, § 4 (1A). The questions before us on appeal are (1) whether the judge properly denied Jangl's motion to strike the affidavit of the defendants' medical expert, who testified to the dangers of COVID-19 and the effectiveness of vaccination, and (2) whether the judge properly granted summary judgment in favor of the defendants on the ground that accommodating Jangl's request would have imposed an undue hardship on the department. Because the defendants' expert was qualified to opine on these topics, and because the uncontroverted evidence in the summary

² See Massachusetts Department of Public Health, COVID-19 Raw Data -- August 2, 2021, <https://www.mass.gov/doc/covid-19-raw-data-august-2-2021/download>.

judgment record demonstrates that permitting Jangl to continue his work unvaccinated would have compromised the department's operations and jeopardized public health, we answer both questions in the affirmative.

1. Background. a. Facts. We summarize the material facts from the summary judgment record, see Banevicius v. Barnstable, 497 Mass. 585, 587 (2026), noting that, to the extent the plaintiff failed to controvert the defendants' statement of undisputed facts in compliance with Rule 9A(b)(5)(iii)(A) of the Rules of the Superior Court (2023), those facts are deemed admitted. See Dziamba v. Warner & Stackpole LLP, 56 Mass. App. Ct. 397, 400-401 (2002). These undisputed facts, supplemented by the record, are as follows.

In the fall of 2021, the plaintiff was employed by the department as a social worker, where his role involved regular and extensive face-to-face contact with children and families, coworkers, court personnel, and other members of the community. His work was plainly "not compatible with working exclusively from home." The plaintiff served nineteen families, and his responsibilities included visiting children and parents in their homes, accompanying children to various appointments, supervising parenting time, and attending court hearings. One of the children he served "had significant medical issues," requiring treatment for which the plaintiff sometimes

transported the child from western Massachusetts to Boston Children's Hospital and to other medical and service providers. One day per week, the plaintiff also acted as the duty worker for his unit, conducting emergency home visits and assisting in the removal of children from their homes as needed.

In August 2021, after having ceased most in-person functions in response to the COVID-19 pandemic, the department had begun a transition back to normal operations, implementing a policy requiring workers to be in the office at least two days per week. Around this same time, Governor Baker issued Executive Order No. 595, requiring all executive department employees in the Commonwealth to be vaccinated against COVID-19 as a condition of continued employment. See Executive Order No. 595 (Aug. 19, 2021), <https://www.mass.gov/executive-orders/no-595-implementing-a-requirement-for-covid-19-vaccination-for-the-commonwealths-executive-department-employees> [<https://perma.cc/C63E-JV6G>]. The order also required the human resources division of the Commonwealth to establish, and the department to implement, a written policy that included "a procedure to allow limited exemptions from the vaccination requirement where a reasonable accommodation can be reached for any employee . . . who is unwilling to receive COVID-19 vaccination due to a sincerely held religious belief." Id.

Shortly thereafter, the plaintiff sought a religious exemption from the vaccination requirement. The plaintiff requested that the department accommodate his religious beliefs by reducing his mandated time in the office and permitting him to continue working remotely; the plaintiff contended in his request, "I have performed all my work duties in the satisfactory range or above and have done well over the course of the past year and a half with minimal to no office time." As part of his reasonable accommodation request, the plaintiff also proposed wearing a mask "in all domains/environments that [his] job entail[ed]" and undergoing weekly testing for COVID-19.

The department and EOHHS officials reviewed the plaintiff's request pursuant to the established exemption process before denying it on the ground, among others, that, considering the plaintiff's duties and the comparatively weak protection from infection, hospitalization, and death offered by the plaintiff's proposed alternatives to vaccination, the plaintiff's religious beliefs could not be accommodated without undue hardship to the department. In October 2021, presented with the choice between receiving the COVID-19 vaccine and being terminated, the plaintiff opted to resign from his position.

b. Procedural history. After exhausting his administrative remedies, the plaintiff filed a complaint in the Superior Court, alleging that the department had discriminated

against him on the basis of his religion, in violation of G. L. c. 151B, § 4. In essence, the plaintiff argued that vaccination does not actually protect against COVID-19; consequently, "[a]ccommodating Plaintiff's religious observance and practice would not have imposed an undue hardship on Defendants."

The defendants moved for summary judgment, attaching to their motion a statement of undisputed material facts and several affidavits, including one from Dr. Lawrence Madoff, the medical director of the bureau of infectious disease and laboratory sciences at the Massachusetts Department of Public Health (bureau). In his affidavit, Dr. Madoff attested to the dangers of COVID-19 and the safety and effectiveness of vaccination against the disease. The plaintiff opposed summary judgment and moved to strike Dr. Madoff's affidavit, arguing that Dr. Madoff was unqualified to testify to the efficacy of COVID-19 vaccines. In particular, the plaintiff argued that Dr. Madoff's opinion was not based on sufficient facts or data, was not the product of reliable principles and methods, and did not reflect a reliable application of the principles and methods to the facts of the case. The plaintiff complained that Dr. Madoff had not himself conducted any research regarding the vaccines and that his opinion relied entirely on studies, some of which failed to reflect the most recent figures on COVID-19 vaccination and infection. However, the plaintiff offered no

supporting declarations or expert evidence to refute Dr. Madoff's opinion, and he did not request a hearing to challenge the reliability of its underlying methodology.

A judge of the Superior Court granted summary judgment in favor of the defendants, accepting the plaintiff's religious beliefs as true and sincerely held, but concluding that allowing the requested vaccine exemption would have imposed an undue hardship on the department. In the same memorandum of decision and order, the judge denied the plaintiff's motion to strike, finding that "Dr. Madoff [had] set out his qualifications and a sufficient basis for his opinions."

2. Discussion. a. Motion to strike. The plaintiff first argues that the judge should have allowed his motion to strike Dr. Madoff's affidavit on the basis that Dr. Madoff was unqualified to give an opinion as to the effectiveness of vaccination against COVID-19. At the summary judgment stage, Mass. R. Civ. P. 56 (e), 365 Mass. 824 (1974), requires litigants "to proffer facts that would be admissible in evidence. This requirement applies to proffered expert opinions as well" Abdulky v. Lubin & Meyer, P.C., 102 Mass. App. Ct. 441, 453 (2023), cert. denied, 144 S. Ct. 806 (2024). The same standard applies to the admissibility of expert opinion on summary judgment and at trial. See id. In both instances, the judge takes on the role of "gatekeeper." Commonwealth v.

Lanigan, 419 Mass. 15, 26 (1994). "The crucial issue, in determining whether a witness is qualified to give an expert opinion, is whether the witness has sufficient education, training, experience and familiarity with the subject matter of the testimony" (quotations and citation omitted). McLaughlin v. Selectmen of Amherst, 422 Mass. 359, 361-362 (1996). Although "[a] medical expert need not be a specialist in the area concerned," such testimony is "particularly appropriate" where his or her "expertise [is] in the very field at issue." Letch v. Daniels, 401 Mass. 65, 68, 69 (1987).

In this case, Dr. Madoff averred in his affidavit that he was board certified in internal medicine and infectious diseases, a professor of medicine at the University of Massachusetts Chan Medical School, a fellow of the Infectious Disease Society of America, and the medical director of the same bureau that administered the Massachusetts COVID-19 vaccine program. As the medical director of the bureau, Dr. Madoff provided consultation, supervision, and guidance "in disease recognition, investigation and control, as well as interpretation and application of policies and procedures" in these subject areas. Given Dr. Madoff's extensive experience in infectious diseases, in addition to his familiarity with the Commonwealth's vaccination efforts in response to the COVID-19

pandemic, the judge had a more than adequate basis to determine that Dr. Madoff was qualified as an expert.

The plaintiff also challenges the admissibility of the content of Dr. Madoff's affidavit. As a threshold matter, insofar as the plaintiff argues that the methodology underlying Dr. Madoff's opinion is unreliable, that issue has been waived. See Commonwealth v. Wilkerson, 486 Mass. 159, 172 (2020) ("Where a defendant does not request a Daubert-Lanigan hearing to challenge the general scientific reliability of the methodology prior to trial, the issue is waived on appeal").³ See also Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 592-595 (1993); Commonwealth v. Lanigan, 419 Mass. 15, 24-26 (1994). That the case was resolved at the summary judgment stage does not relieve the plaintiff of his responsibility to seek a

³ The plaintiff did challenge Dr. Madoff's methodology in his motion to strike. He did not, however, request a hearing, or indeed, cite at any point to Lanigan or its progeny. There is no substitute for an express Daubert-Lanigan motion. See Commonwealth v. Murphy, 59 Mass. App. Ct. 571, 575-576 (2003) (arguments regarding scientific reliability of expert's conclusions do not constitute proper request for Lanigan hearing). See also Commonwealth v. Davis, 487 Mass. 448, 458 n.12 (2021), S.C., 491 Mass. 1011 (2023), quoting Commonwealth v. Sparks, 433 Mass. 654, 659 (2001) (to preserve objection to reliability of expert's scientific methodology, objecting party must "[a]t a minimum" file appropriate motion "stating the grounds for the objections and request a hearing"). The plaintiff made no such motion before the Superior Court, and furthermore, he does not now argue that he was entitled to a hearing on the reliability of Dr. Madoff's scientific methodology. The issue, therefore, has been waived.

Daubert-Lanigan hearing. See DeRosa v. Lenox Farms Ltd. Partnership, 104 Mass. App. Ct. 510, 515 (2024); Molly A. v. Commissioner of the Dep't of Mental Retardation, 69 Mass. App. Ct. 267, 284 n.24 (2007) (ruling on motion for summary judgment, trial judge did not abuse discretion in declining to subject expert affidavits to Lanigan gatekeeper analysis, "because neither party made a Lanigan challenge to the other's expert evidence"). When addressing a challenge to the admissibility of expert evidence, "courts must be cautious -- except when defects are obvious on the face of a proffer -- not to exclude debatable scientific evidence without according the proponent of the evidence adequate opportunity to defend its admissibility." DeRosa, supra, quoting Cortés-Irizarry v. Corporación Insular de Seguros, 111 F.3d 184, 188 (1st Cir. 1997). The plaintiff created no such opportunity below by moving for a Daubert-Lanigan hearing, and as a result, his arguments on this point are waived.

The plaintiff's other concerns about Dr. Madoff's affidavit go to its weight, not its admissibility, which is not a factor to be considered by a judge in reviewing a motion to strike. Commonwealth v. Hinds, 487 Mass. 212, 224 (2021), S.C., 494 Mass. 681 (2024) ("a judge acting as gatekeeper must limit his or her analysis to the reliability of an expert's methodology, not the persuasiveness of the conclusion"). First, contrary to

the plaintiff's contention, Dr. Madoff was permitted to base his testimony on scientific studies. The purpose of expert testimony is to assist the fact finder "in interpreting evidence that lies outside their common experience." Commonwealth v. Shanley, 455 Mass. 752, 761 (2010). That evidence includes data aggregated from multiple sources. See Commonwealth v. Durand, 475 Mass. 657, 670 (2016), cert. denied, 583 U.S. 896 (2017) (expert's "reliance on treatises and literature not in evidence was proper opinion testimony"). Indeed, an expert's opinion may be based wholly on such sources, so long as "'the facts or data are independently admissible' and are 'of the sort that experts in that specialty rely on.'" Commonwealth v. McNickles, 434 Mass. 839, 855 (2001), quoting Department of Youth Servs. v. A Juvenile, 398 Mass. 516, 531, 532 (1986). We have never required that such sources be the product of the testifying expert's own research. See Durand, supra at 669-670 (expert testimony admissible even though opinion was "based upon studies that she did not perform and literature that she did not author").

Furthermore, even if, as the plaintiff contends, Dr. Madoff's affidavit relied on outdated studies about the rates of COVID-19 infection after vaccination, this argument, too, goes to weight and would not render Dr. Madoff unqualified or his testimony inadmissible. See Commonwealth v. Crouse, 447

Mass. 558, 569 (2006) ("where an expert has been determined to be qualified, questions or criticisms as to whether the basis of the expert's opinion is reliable go to the weight, and not the admissibility, of the testimony"). Likewise, Dr. Madoff's qualification is unaffected by his purported failure to address the limitations of the studies he cites; his treatment of -- or failure to address -- contrary evidence is irrelevant to his qualification to testify. See Kilmartin v. Lowell Gen. Hosp., 23 Mass. App. Ct. 901, 902 (1986) ("The weight to be accorded [expert] opinion in relation to contrary evidence belongs at a later stage of proceedings").

Finally, the plaintiff complains that Dr. Madoff's affidavit leaves certain "basic questions" about the COVID-19 vaccine unanswered, including questions as to the exact strength and duration of protection from illness. However, so long as omissions do not render an expert affidavit "so incomplete as to be 'irrelevant' to" the ultimate issue -- which is not the case here -- that Dr. Madoff may not have addressed every potential aspect of the case, "affects the probativeness, rather than the admissibility" of his affidavit. Salvas v. Wal-Mart Stores, Inc., 452 Mass. 337, 360 (2008).

As the plaintiff has provided no basis to doubt either Dr. Madoff's qualifications as an expert or his methodology, the

judge did not abuse her discretion in denying the plaintiff's motion to strike Dr. Madoff's affidavit.

b. Summary judgment. i. Standard of review. "Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and 'the moving party is entitled to a judgment as a matter of law.'" Bernstein v. Planning Bd. of Stockbridge, 76 Mass. App. Ct. 759, 764-765 (2010), quoting Yakubowicz v. Paramount Pictures Corp., 404 Mass. 624, 626 (1989). "We review a grant of summary judgment de novo." Merrimack College v. KPMG LLP, 480 Mass. 614, 619 (2018). Critically, however, "the opposing party cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment." LaLonde v. Eissner, 405 Mass. 207, 209 (1989). "[M]erely responding 'disputed' to a proposed statement of fact does not establish a genuine dispute over a material fact. Rather, the party opposing summary judgment must adduce competent evidence sufficient to show a genuine issue for trial." Jenkins v. Bakst, 95 Mass. App. Ct. 654, 660 n.9 (2019). See Rule 9A(b)(5)(iii)(A) of the Rules of the Superior Court (party opposing summary judgment must respond by "stating whether a given fact is disputed and, if so, cite to the specific evidence . . . that demonstrates the dispute"). See also Mass. R. Civ. P. 56 (e) (if nonmoving party fails to "set

forth specific facts showing that there is a genuine issue for trial" in response to motion, "summary judgment . . . shall be entered against him").

ii. Religious discrimination and undue hardship. Under G. L. c. 151B, § 4 (1A), it is an "unlawful discriminatory practice for an employer to impose upon an individual as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such individual to violate, or forego the practice of, his creed or religion." Employers must accommodate an employee's religious practice unless the employer can prove that such accommodation would "cause undue hardship in the conduct of the employer's business." Id. Where, as the judge concluded here, the employee makes out a prima facie case of religious discrimination under G. L. c. 151B, § 4 (1A), "[t]he burden then shifts to the defendant-employer to prove that accommodation of the complainant's religious obligations would impose on the employer an undue hardship as defined by the statute." New York & Mass. Motor Serv., Inc. v. Massachusetts Comm'n Against Discrimination, 401 Mass. 566, 576 (1988).

The plaintiff argues that the judge erred in concluding that the defendants had met their burden of demonstrating an undue hardship and, consequently, in granting the defendants' motion for summary judgment. In reviewing a claim of undue

hardship, an appellate court "must inquire into the nature and operations of the employer's business to ascertain whether any of the conditions which might constitute undue hardship are present."⁴ New York & Mass. Motor Serv., Inc., 401 Mass. at 576. General Laws c. 151B, § 4 (1A), contains a nonexhaustive list of circumstances that render accommodation an undue hardship, contemplating dangers that include an undue "compromise of the health and safety of the public." Brown v. F.L. Roberts & Co., 452 Mass. 674, 684 (2008). This risk alone renders the accommodation unreasonable. Compare Massachusetts Bay Transp. Auth. v. Massachusetts Comm'n Against Discrimination, 450 Mass. 327, 337 (2008) ("If the employee's absence would unduly compromise[] public health or safety, then accommodation is unreasonable" [quotation and citation omitted]). Likewise, "if the employee's presence is 'needed to alleviate an emergency

⁴ The focus of the undue hardship analysis is "whether the employer could have exercised its managerial discretion in such a way that the employee's religious obligations could have been reasonably accommodated." New York & Mass. Motor Serv., Inc., 401 Mass. at 576. The plaintiff did not argue below, and does not assert on appeal, that the defendants have failed in this regard. The issue has therefore not been preserved for review. Palmer v. Murphy, 42 Mass. App. Ct. 334, 338 (1997) ("Objections, issues, or claims . . . that have not been raised at the trial level are deemed generally to have been waived on appeal"). In any case, the defendants sufficiently established that, particularly given the nature of the department's work, vaccine alternatives like masking, testing, and teleworking could not have adequately mitigated the risks posed by COVID-19, foreclosing any reasonable accommodation of the plaintiff's request for an exemption from the vaccination requirement.

situation,' his absence will be considered undue hardship."

Id., quoting G. L. c. 151B, § 4 (1A).

Here, the plaintiff's responsibilities involved close, in-person interaction with families and children, including children with health vulnerabilities, and regularly required that the plaintiff be on call to respond to emergencies. COVID-19 infection could have compromised not only the plaintiff's own performance of these essential duties, but also given the rapid spread of COVID-19 in close quarters and among vulnerable populations, see Foster v. Commissioner of Correction (No. 1), 484 Mass. 698, 703 (2020), S.C., 484 Mass. 1059 (2020), and 488 Mass. 643 (2021) (describing risk of spreading COVID-19 from staff at correctional institutions to captive inmate population), could have triggered an outbreak among the department's staff as well as the families and children it serves -- a widespread and potentially dire threat to public health and safety. Furthermore, considering that the department was already "experiencing significant staffing shortages" at the time the plaintiff submitted his request, such an outbreak could have severely threatened the department's capacity to provide necessary social services, particularly, but not exclusively, in emergency situations. See New York & Mass. Motor Serv., Inc., 401 Mass. at 578 (accommodation creates undue hardship where it "would cause staffing levels to fall below the minimum level

needed to operate the business"). The department has met its burden of demonstrating that these hardships fell within those contemplated by G. L. c. 151B, § 4 (1A).

The plaintiff's response to the defendants' arguments fails to address their undue burden argument squarely. Below and on appeal, the plaintiff has not disputed the description of his job duties or the consequences that COVID-19 exposure might create for the children, families, and coworkers with whom he engaged on a daily basis. Rather, he has maintained that the defendants' undue hardship defense fails because it "rests entirely on the faulty premise that the products advertised as COVID-19 vaccines protect against infection and transmission of COVID-19, something that the evidence shows to be in dispute." In other words, because the plaintiff believes that the vaccine does not actually protect against the disease, he contends that the department would suffer no hardship if he were permitted to perform his duties unvaccinated.

To support their motion, the defendants submitted, among other materials, affidavits from Dr. Madoff, three officials employed by the EOHHS, and the director of the department's area office where the plaintiff worked, averring to the health and safety risks posed by unvaccinated individuals, the importance of vaccination against COVID-19 to protect the public's uninterrupted access to critical services, and the inadequacy of

nonpharmaceutical interventions. Contrast Jeune v. UMass Memorial Health Care Sys., 106 Mass. App. Ct. 95, 103 (2025) (employer hospital failed to provide declaration from medical expert regarding risks and efficacy of requested accommodations). The plaintiff, however, failed to offer any evidence in rebuttal, entitling the defendants to summary judgment on his claim. See Community Nat'l Bank v. Dawes, 369 Mass. 550, 556-557 (1976) (summary judgment in favor of moving party proper where moving party's pleadings and affidavit establish absence of genuine issue of material fact, and nonmoving party fails to present "countervailing details"). The plaintiff has thus failed to establish any genuine issue requiring resolution at trial. "As a result of the plaintiff's failure in this regard, the grant of summary judgment to the defendants was appropriate." Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

This conclusion aligns with the United States Court of Appeals for the First Circuit's treatment of the issue in similar cases. See, e.g., Melino v. Boston Med. Ctr., 127 F.4th 391, 397-398 (1st Cir. 2025) (exempting defendant from vaccination requirement would impose undue hardship); Rodrique v. Hearst Communications, Inc., 126 F.4th 85, 94 (1st Cir. 2025) ("there is no genuine dispute of material fact related to [employer's] undue hardship defense" where employee's sole

argument is that employer "has not presented competent evidence that vaccinated people are less likely to transmit COVID-19"). Of course, we are not bound to follow the reasoning of the Federal courts in construing G. L. c. 151B, see Cuddyer v. Stop & Shop Supermkt. Co., 434 Mass. 521, 536 (2001), and the plaintiff suggests that we take this opportunity to rethink their approach. However, like the Federal courts, the Supreme Judicial Court has instructed that we carefully balance litigants' constitutional rights against the serious dangers of transmitting COVID-19. See Vazquez Diaz v. Commonwealth, 487 Mass. 336, 350 (2021) ("Protecting the public health during this pandemic constitutes an important public policy that may be the basis of a finding of necessity"; concluding that denial of defendant's confrontation rights furthered important public policy). Here, where the plaintiff has provided us with no persuasive reason to depart from the Federal interpretations of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2, and our State law analog, G. L. c. 151B, § 4, and where such a departure could threaten the health and wellbeing of especially vulnerable members of our community, we decline to do so.

Judgment affirmed.