

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION
CASE NO. 5:09-cv-00244-KSF

filed electronically

C. MARTIN GASKELL

PLAINTIFF

V.

**DEFENDANT UNIVERSITY OF KENTUCKY'S REPLY TO
PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

UNIVERSITY OF KENTUCKY

DEFENDANT

** ** * ** * ** * ** * ** *

Comes the Defendant, University of Kentucky, by counsel, and for its Reply to the Plaintiff's Response to the Defendant's Motion for Summary Judgment, states as follows:

This Defendant has already filed a Memorandum of Law in Support of its Motion for Summary Judgment, and a Response to the Plaintiff's Motion for Partial Summary Judgment, and believes that the issues have been adequately set out in those pleadings. However, a few statements made in Plaintiff's Memorandum in Response to Defendant's Motion for Summary Judgment merit further comment.

Gaskell's extensive discussion trying to justify or distance himself from the comments that he made at public lectures and in his lecture notes which he posted on the Internet suggests that he does not understand the issue before the Court. The issue for this Court to decide is whether an employer can consider public statements made by a candidate in making a hiring decision regardless of the content of those statements. Gaskell injected his personal beliefs about modern astronomy, science and the Bible into the public realm but argues that consideration of those public statements by the Advisory Committee is not proper because those statements contain religious references. Gaskell has failed to cite any law for the proposition that

consideration of publicly-made comments, regardless of their content, is inappropriate for an employer to consider in the hiring process.

In the context of the search process, Gaskell was never asked about his religious beliefs nor his position about biological evolution. None of the advisory committee members knew or were interested in what religion Gaskell practiced. Instead, the concern that was raised was whether he could keep whatever beliefs he held separate from his duties as observatory director.

Because Gaskell has been publically vocal about his issues with some of the principles of evolutionary science, it was reasonable for the University's Advisory Committee to consider whether the University, in hiring Gaskell, would be asked to comment on those statements. Gaskell argues that since Tim Knauer was hired as the Observatory Director, he has never had the subject of science and religion come up in his interactions with school-age children and the general public. However, Knauer never made public statements about science and religion that would have generated any comment. Gaskell, on the other hand, has done so by going around the country giving lectures about "Modern Astronomy, Science and the Bible" and then disseminating his lecture notes via the Internet. The concerns that were generated by Gaskell's public comments, regardless of their content, were something that the Advisory Committee members appropriately considered in the hiring process for the Observatory Director position. As Keith MacAdam explained, the concern of the Committee was that the true mission of the MacAdam Observatory would be compromised by the controversy that could be created by Gaskell's comments that "humanistic evolution" is premised on "unwarranted and atheistic assumptions and extrapolations". Forcing the University to hire Gaskell if there were serious and legitimate concerns regarding the scientific integrity of his public statements because those statements touch on religious topics is not supported by the law nor should it be the law.

The facts of this case require the Court to look beyond the conclusory statements regarding Gaskell and his personal beliefs in the emails generated by the Advisory Committee members. Although the e-mails continually refer to the issue as a “religious” issue, the actual issue for the Committee was whether Gaskell’s comments on biological evolution were supported by scientific evidence and if not, whether his unscientific comments evidenced a disregard for scientific principles regardless of why Gaskell held those particular beliefs. When considered in this context, it matters not whether Gaskell’s case is a single-motive or mixed-motive case. Gaskell’s religion was never a motivating factor in the decision not to hire him. This is not a religious discrimination case and the Defendant is entitled to summary judgment.

Gaskell would deny the Advisory Committee members their First Amendment right to an open discussion about information in the public domain simply because those public statements have religious undertones. It is Gaskell who injected religion into the hiring equation, not the University of Kentucky nor any of the Advisory Committee members. Once Gaskell let that “cat out of the bag,” he cannot argue that members of the Advisory Committee should not consider those statements in recommending the best candidate to fill the position of Director for the MacAdam Observatory. Why Gaskell said what he said was immaterial to the Advisory Committee members; rather, it was the fact that he made statements which indicated a lack of appreciation for accepted scientific principles that some of the Committee members discussed in the e-mails.

WHEREFORE, for the reasons outlined in Defendant’s Memorandum of Law in Support of its Motion for Summary Judgment, Defendant’s Response to Plaintiff’s Motion for Partial Summary Judgment, and Defendant’s Reply to Plaintiff’s Response to Defendant’s Motion for Summary Judgment, the Court is respectfully requested to grant the Defendant summary judgment and to dismiss Gaskell’s claim in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **October 29, 2010**, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Francis J. Manion, Geoffrey R. Surtees and Edward L. White, III.

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