

**BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY**

<u>Bradley Matteson,</u>)	Human Rights Act Case No. 9901008658
Charging Party,)	
versus)	<i>Final Agency Decision</i>
Prince, Inc.,)	
<u>Respondent.</u>)	

I. Procedure and Preliminary Matters

Charging party filed a complaint with the Department of Labor and Industry on September 18, 1998. He alleged the respondent, Prince, Inc., discriminated against him on the basis of marital status when it dismissed him from his position as Parts Runner on or about August 3, 1998. On March 31, 1999, the department gave notice Matteson's complaint would proceed to a contested case hearing, and appointed Terry Spear as hearing examiner. The department identified the respondents as John and Bonnie Prince, d.b.a. Prince, Inc. At the final prehearing conference, respondents, through counsel, moved to amend the caption to reflect that the corporation was the sole respondent, in accord with the original complaint. Matteson did not object to the motion. The hearing examiner granted the motion.

This contested case hearing convened on June 7, 1999, in Forsyth, Rosebud County, Montana. Bradley Matteson, the charging party, was present and represented himself. Prince, Inc., the respondent, was present through its designated representative, Bonnie Prince, President of the corporation. J. Dennis Corbin represented Prince, Inc. The hearing examiner excluded witnesses on respondent's motion. Bradley Matteson, Bonnie Prince (adverse witness), Alexandra Matteson (Matteson's 11-year old daughter) and Cale Matteson (Matteson's 8-year old son) testified under oath in Matteson's case. Prince, Inc., did not call any witnesses.

The hearing examiner admitted Matteson's exhibits 1 and 2, and Prince, Inc.'s exhibit A without objections. The hearing examiner admitted Matteson's exhibits 3 and 4 over Prince, Inc.'s relevance and foundation objections. The hearing examiner refused Matteson's exhibit 6 on Prince, Inc.'s foundation objections. The parties gave oral arguments at the close of hearing.

II. Issues

The legal issue in this case is whether Prince, Inc., illegally discriminated against Matteson in his employment because of his marital status. A full statement of the issues appears in the final prehearing order.

III. Findings of Fact

1. In 1983, Bradley Matteson married Leslie Prince, daughter of John and Bonnie Prince. The Prince family owned and operated Prince, Inc., a construction company with offices in Billings and Forsyth, Montana. Leslie Matteson owned one share of stock in Prince, Inc. Her parents were the majority shareholders. Her mother, Bonnie, was president of the corporation and acted as chief executive officer at all times pertinent to this case. Testimony of Bradley Matteson and Bonnie Prince.
2. Leslie's parents, acting through another family-held corporation, FVH Collins Ranch, Inc., provided medical insurance for the Mattesons, later including their two children, Alexandra and Cale. Leslie Matteson also owned a small interest in this corporation. The insurance cost Bradley Matteson nothing. Testimony of Bonnie Prince.
3. Prince, Inc. hired Bradley Matteson as a full-time employee in 1988. Bonnie Prince had reviewed some statistics Bradley Matteson prepared while coaching a softball team for one of the Prince family's companies. She asked if he would be able to do the same kind of work for the company. He said he could, and she hired him. Testimony of Bonnie Prince and Bradley Matteson.
4. Matteson worked for Prince, Inc., from January 1988 through June 1995. He was a full-time employee. He left his job on June 29, 1995. Testimony of Bonnie Prince and Bradley Matteson.
5. Prince, Inc., hired Matteson again in November 1997. Bonnie Prince made the decision to hire Matteson. She did not know of any serious marital discord between Matteson and her daughter at the time that she hired Matteson. She chose to offer him the job because she believed he was not working a full-time job, and she thought of him first for the job because he was married to her daughter. Testimony of Bonnie Prince.

6. During this second tenure as an employee of Prince, Inc., Matteson worked as a parts runner, replacing a retired employee of Prince, Inc. The amount of this “as needed” work varied, depending upon the needs of the company at various work sites around the state. Matteson picked up parts in Billings, as needed, and took those parts to job sites when needed. He also drove flag vehicles as needed. During the nine months of his employment, Matteson worked for Prince, Inc., on 80 days for a total of 547 hours. Testimony of Bonnie Prince; Exhibit 1.

7. After hiring Bradley Matteson for the second time, Bonnie Prince learned that her daughter and Matteson were having serious marital problems. Away from work, the marital problems escalated, and Leslie Matteson filed for divorce, obtaining a temporary restraining order (TRO) against Bradley Matteson on June 8, 1998. Bonnie Prince attempted to help her daughter in conflicts with Bradley Matteson involving marital property. Bonnie Prince, acting for FVH Collins, Inc., made the decision no longer to provide free family medical coverage to the Matteson family. She gave Bradley Matteson a typed note, delivered at the same time as her daughter’s TRO, indicating that the cost of medical insurance for the Matteson family (through FVH Collins Ranch, Inc.) was \$173.68 per month. The note asked Bradley Matteson to “let us know” if he elected not to retain coverage, otherwise Prince, Inc., would begin deducting the cost of the insurance from his wages. Bradley Matteson resented Bonnie Prince’s involvement in his disputes with his wife. Testimony of Bonnie Prince and Bradley Matteson; Exhibit 4.

8. Matteson last worked for Prince, Inc., on July 31, 1998. On or before that last day¹, Bradley Matteson got into an argument with Leslie Matteson in the office of Prince, Inc. Bonnie Prince was present, and considered Bradley Matteson’s anger and behavior inappropriate for the work place. She expressed her feelings. Bradley Matteson responded angrily to her as well, venting some of his resentment toward her. Testimony of Bonnie Prince; Exhibit 1.

9. Prince, Inc., usually used a parts runner. Before Matteson, Prince, Inc., had employed an older employee who also performed other job duties, but who was increasingly limited in his activities and who ultimately retired. Before that employee, Prince, Inc. had used an older member of the Prince family as a parts runner. Prince, Inc., always could have done without a parts runner, using family members or regular employees to cover needed runs. Bonnie Prince decided to end Prince, Inc.’s use of Bradley Matteson as a parts

¹ The parties offered conflicting accounts of when this incident occurred. Whether it occurred on the very last day Matteson worked or some day before his last day is not significant to the decision. *Final Agency Decision, Page 3*

runner. She made this decision because of his marital problems with Leslie Matteson and because Bradley Matteson, she believed, did not act toward her with the proper respect and decorum as one of her employees. She caused the company to stop calling Matteson for parts runs or any other work. Testimony of Bonnie Prince and Bradley Matteson.

IV. Opinion

Montana law prohibits discrimination in employment based upon marital status. §49-2-303(1)(a) MCA. Discrimination in employment based on marital status includes employment discrimination based upon the identity of the spouse. *See, e.g., Thompson v. Board of Trustees*, 192 Mont. 266, 269-70, 627 P.2d 1229, 1231 (1981); **and** *Van Haele v. Hysham School District*, No. 9301005671 (Apr. 1, 1996).² The department considers employment discrimination based upon marital problems with or impending divorce from a member of the family of the employer to be within the rationale of *Van Haele*. If Prince, Inc., took adverse employment action against Bradley Matteson because he and Bonnie Prince's daughter were fighting, separating or divorcing, Prince, Inc., engaged in discrimination proscribed by the Montana Human Rights Act.

Bonnie Prince made the decision to stop using Bradley Matteson as a parts runner. That decision was within the course and scope of her authority as president and chief executive officer of the corporation. The clear and convincing evidence of record establishes two reasons for her decision.

² Other jurisdictions split on this issue. *Compare Magula v. Benton Franklin Title Co.*, 131 Wa.2nd 171, 930 P.2d 307 (1997, en banc)(discrimination based on identity of spouse is marital status discrimination) **with** *Bombard v. Industry Riggers, Inc.*, No. 140181, (Conn.Super., Jan. 5, 1998) 1998 WL 13935 (discrimination based on identity of spouse as not marital status discrimination).

First, Bonnie Prince decided to stop using Bradley Matteson as a parts runner because he vented some of his frustration upon her. Matteson is a strong personality. He displayed during hearing his single-mindedness and his tenacity. He also displayed some flashes of his temper.³ The hearing examiner has ample basis upon which to conclude that Matteson did treat Bonnie Prince, on the business premises, as a meddling mother-in-law rather than as his boss and the CEO of his employer.

Second, Bonnie Prince decided to stop using Bradley Matteson as a parts runner because her daughter was divorcing Matteson. Bonnie Prince had twice hired Matteson because he was her son-in-law. Both times, she had jobs available for which he qualified, but she chose him because she thought of him, her daughter's husband, first. When her daughter decided to divorce him, she no longer had any reason to integrate him in the family business.

A "mixed motive" case arises when the charging party proves illegal discrimination but the discriminator proves a sufficient nondiscriminatory reason also existed for the adverse action. A successful mixed motive defense bars recovery for the charging party.⁴ The employer must prove that without the discriminatory motive, it would have made the same decisions. With such proof, no harm to the charging party resulted from the discrimination--the same result would have occurred without it--and there is nothing to rectify. Prince, Inc., has proved a sufficient nondiscriminatory reason for its adverse employment action--Matteson's conduct and attitude at work toward Bonnie Prince.

The concept of "mixed motive" cases serves the public interest. The determination that a discriminatory motive played a part in the decision mandates affirmative relief under the Act, to prevent future discriminatory action by the respondent. §49-2-506(1)(a) MCA. In the interest of the public,

³ Matteson's contentions, vigorously pressed, included the claim that Bonnie Prince and Prince, Inc., violated the TRO when Bonnie Prince, acting for FVH Collins, Inc., made the decision no longer to provide free family medical coverage to the Matteson family. The TRO restrained Bradley Matteson and Leslie Matteson from canceling health insurance coverage held for the benefit of either them or their children. Matteson argued, in substance, that this order barred the entire Prince family and any of their corporations from withdrawing any benefits he might have. The argument was without legal merit. The argument did demonstrate how Matteson's angry efforts to vindicate his rights when his wife decided to leave him became attacks upon members of her family, including his boss.

⁴ *Hearing Aid Institute v. Rasmussen*, 258 Mont. 367; 852 P.2d 628 (1993), *Johnson v. Bozeman School Dist.* 226 Mont. 134, 734 P.2d 209 (1987).

Prince, Inc., must not discriminate in the future. Nevertheless, Bradley Matteson is not entitled to recovery.

V. Conclusions of Law

1. The Department has jurisdiction over this case. §49-2-509(7) MCA.
2. Respondent Prince, Inc., acting through its CEO, Bonnie Prince, unlawfully discriminated in employment against charging party Bradley Matteson by reason of his marital status when it decided not to use him any longer as a parts runner after July 31, 1998. §49-2-303(1)(a) MCA.
3. Prince, Inc., would have taken the same adverse action against Matteson even without the discriminatory motive. Consequently, Matteson did not suffer any harm, pecuniary or otherwise, from which he would have been free but for the illegal discrimination. §49-2-506(1)(b) MCA.
4. The circumstances of the illegal discrimination do not mandate particularized affirmative relief. §49-2-506(1) MCA.

VI. Order

1 Judgment is found in favor of Bradley Matteson and against Prince, Inc., on the charge that Prince, Inc., illegally discriminated against Matteson in employment by reason of marital status.

2 Prince, Inc., is enjoined from taking any adverse employment action against any employee by reason of marital status.

3 Bradley Matteson did not suffer any harm, pecuniary or otherwise, from which he would have been free but for the illegal discrimination, and therefore is not entitled to any relief.

Dated: September 27, 1999.

Terry Spear, Hearing Examiner
Montana Department of Labor and Industry

