

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Elizabeth Graham v. Bristol Hospice Holdings, Inc.

Graham v. Bristol Hospice Holdings, Inc. · No. 2:21-cv-00754-TS-DBP · Decided January 23, 2026

SUMMARY

The United States District Court for the District of Utah denied without prejudice three motions in limine filed by Elizabeth Graham in an employment dispute against Bristol Hospice Holdings, Inc. The court addressed the admissibility of employee statements, Debra Wertz’s journal, and Kirton McConkie’s response to an EEOC charge, focusing primarily on hearsay exceptions, foundation, relevance, and Rule 403. The court permitted the defendant an opportunity at trial to establish foundation for the statements and journal, while reserving the EEOC-response issue for rebuttal if necessary.

CASE DETAILS

COURT	United States District Court for the District of Utah
WRITING FOR THE COURT	Ted Stewart
JURISDICTION	United States District Court for the District of Utah
DECIDED	January 23, 2026
DOCKET	2:21-cv-00754-TS-DBP
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved in limine to exclude written statements, a journal, and a law firm's response to an EEOC charge. The district court denied all three motions without prejudice, allowing Defendant an opportunity to lay evidentiary foundation at trial.
STANDARD OF REVIEW	Evidentiary rulings on motions in limine are governed by the Federal Rules of Evidence; the court assessed admissibility under the applicable hearsay, relevance, and Rule 403 standards.
PRECEDENTIAL VALUE	Unknown; memorandum decision and order from a federal district court
PARTIES	Elizabeth Graham v. Bristol Hospice Holdings, Inc.

TOPICS

- hearsay
- relevance
- motion in limine
- evidence
- civil procedure

PRACTICE AREAS

evidence

employment law

civil procedure

QUESTIONS PRESENTED

1. Whether the written statements of Myers, Warren, and Biesinger were inadmissible hearsay or could potentially qualify for the business-records, present-sense-impression, or residual-hearsay exceptions.
2. Whether the written statements were irrelevant or subject to exclusion under Federal Rule of Evidence 403.
3. Whether Wertz's journal was inadmissible hearsay, including double hearsay, or could potentially qualify as a business record.
4. Whether the journal entries were irrelevant or subject to exclusion under Federal Rule of Evidence 403.
5. Whether Plaintiff's motion concerning Kirton McConnie's response to the EEOC charge should be granted when Defendant did not intend to offer the response except possibly for rebuttal.

HOLDINGS

1. The written statements were offered for the truth of the matters asserted and therefore constituted hearsay. The court declined to exclude them finally at the pretrial stage because Defendant might establish a business-record foundation at trial.
2. The written statements did not qualify for the present-sense-impression exception on the record presented because they were written days or weeks after the events described.
3. Defendant did not satisfy its burden to establish admissibility under the residual-hearsay exception, and the court would not permit the statements under that exception without additional support.
4. The written statements had sufficient relevance to disputed facts concerning the reasons for Plaintiff's termination, and Plaintiff did not show that exclusion under Rule 403 was warranted.
5. The court denied the motion to exclude the journal without prejudice because Defendant could attempt to establish a business-record foundation at trial, but any embedded hearsay would require an exception for each layer of the hearsay chain.
6. The journal entries had some relevance to disputed workplace interactions, and Plaintiff did not establish that the extraordinary remedy of Rule 403 exclusion was warranted.
7. The court denied without prejudice Plaintiff's motion concerning Kirton McConnie's response to the EEOC charge because Defendant represented that it would not offer the document unless necessary for rebuttal.

KEY QUOTATIONS

"To have been prepared 'in the normal course of business,' the [written statement] must have been made in the regular course of business of a regularly conducted business activity; and it must have been the regular practice of that business to have made the [written statement]." (Section II.a)

“Therefore, even if the Court finds the business records applies to the journal, the entries that include an added layer of hearsay must be redacted unless Defendant is able to support the admissibility of each “link.”” (Section II.b)

FACTUAL BACKGROUND

Plaintiff challenged three categories of proposed trial exhibits: written statements from Faith Myers, Mia Warren, and Annette Biesinger; journal entries maintained by Debra Wertz; and Kirton McConnie's response to an EEOC charge. The written statements described employees' firsthand interactions with Plaintiff before her termination, while the journal contained entries regarding workplace events and reports from others. Defendant represented that the statements and journal were relevant to the reasons for Plaintiff's termination and might be offered at trial.

PROCEDURAL HISTORY

Plaintiff filed three motions in limine concerning exhibits identified by Defendant for potential use at trial. The court considered hearsay, business-record, present-sense-impression, residual-hearsay, relevance, and Rule 403 objections. It denied each motion without prejudice and indicated that admissibility could be revisited at trial.

DISPOSITION

other

CASES CITED

- United States v. Twitty, 689 F. App'x 890, 894-95 (10th Cir. 2017)
- Hertz v. Luzenac Am., Inc., 370 F.3d 1014, 1017 (10th Cir.)
- United States v. Harper, 118 F.4th 1288, 1298-99 (10th Cir. 2024)
- Echo Acceptance Corp. v. Household Retail Servs., Inc., 267 F.3d 1068, 1091 (10th Cir.)
- United States v. McFadden, 116 F.4th 1069, 1082 (10th Cir. 2024)
- United States v. Yazzie, 188 F.3d 1178, 1189 (10th Cir. 1999)
- United States v. Tan, 254 F.3d 1204, 1211 (10th Cir. 2001)
- United States v. Rodriguez, 192 F.3d 946, 949 (10th Cir. 1999)
- United States v. Ary, 518 F.3d 775, 787 (10th Cir.)
- Regan-Touhy v. Walgreen Co., 526 F.3d 641, 650 (10th Cir.)