IN THE COURT OF APPEALS OF IOWA

No. 0-515 / 09-1906
Filed September 9, 2010

JENNIFER AJUOGA,
Plaintiff-Appellant,

vs.

ADVENTURE LANDS OF AMERICA, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

Plaintiff appeals the district court order granting defendant summary judgment on her claim of gender discrimination. **AFFIRMED.**

Thomas A. Newkirk, Jill M. Zwagerman, and Katie Ervin Carlson of Newkirk Law Firm, P.L.C., Des Moines, for appellant.

Bridget R. Penick of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellee.

Considered by Vaitheswaran, P.J., Danilson, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.

I. Background Facts & Proceedings

Jennifer Ajuoga was hired by Adventure Lands of America, Inc. to work as a sales manager at Adventureland Inn. Another sales manager, Mindy Cochran, was hired at about the same time.[1] The supervisor of the two sales managers was Sandra Osterhus. Osterhus reported to the assistant manager, Joseph Formaro, who in turn reported to the general manager, Matthew Krantz.

Ajuoga's first day of work was August 8, 2007. She was terminated from her employment on September 4, 2007, by assistant manager Formaro. Ajuoga filed charges of employment discrimination against Adventureland with the Iowa Civil Rights Commission. She received an administrative release. Ajuoga filed a petition in district court alleging Adventureland violated Iowa Code chapter 216 (2007), the Iowa Civil Rights Act, by terminating her employment because of her pregnancy.

Adventureland filed a motion for summary judgment, which Ajuoga resisted. The district court granted the motion. The court found Ajuoga had not presented any direct evidence she was terminated because she was pregnant. The court then considered whether she had presented a prima facie case of discrimination. The court determined Ajuoga had not shown her termination occurred under circumstances giving rise to an inference of discrimination. The court noted that although Ajuoga was terminated soon after she informed her coworkers of her pregnancy, other matters negated the temporal proximity of her termination. She also did not show that statements about handling her job were

[1] Cochran had previously worked for Adventureland in a different capacity.

based on her pregnancy. Furthermore, she did not show she was treated differently than employees who were not pregnant. Ajuoga appeals the decision of the district court.

II. Standard of Review

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.907 (2009). Under Iowa Rule of Civil Procedure 1.981(3) summary judgment is proper only when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smidt v. Porter*, 695 N.W.2d 9, 14 (Iowa 2005). The court views the record in the light most favorable to the nonmoving party. *Id.* In determining whether there is a genuine issue of material fact, the court affords the nonmoving party every legitimate inference the record will bear. *Id.*

III. Merits

Ajuoga contends the district court erred by failing to require that Adventureland carry its burden to prove there were no genuine issues of material fact. She asserts the issue of the motivation for her discharge should be submitted to a jury.

We often turn to federal law in interpreting claims under the Iowa Civil Rights Act. *Deboom v. Raining Rose, Inc.*, 772 N.W.2d 1, 7 (Iowa 2009). Under federal law, in order to survive a motion for summary judgment, a plaintiff in a discrimination case must (1) present direct evidence of discrimination or (2) create an inference of discrimination under the analysis of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04, 93 S. Ct. 1817, 1824-25, 36 L. Ed. 2d 668,

677-79 (1973). *Elam v. Regions Fin'l Corp.*, 601 F.3d 873, 878 (8th Cir. 2010). The district court properly applied these principles in analyzing Ajuoga's claims.

A. Direct Evidence

Ajuoga claims the district court improperly considered whether there was direct evidence of discrimination, because direct and circumstantial evidence are equally probative. *See* Iowa R. App. P. 6.904(3)(*p*) ("Direct and circumstantial evidence are equally probative."). In this context, however, "direct evidence" refers to one method of proving a discrimination claim. *See Smidt*, 695 N.W.2d at 14. In discrimination cases, "direct evidence" is "evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action." *Russell v. City of Kansas City*, 414 F.3d 863, 866 (8th Cir. 2005) (citation omitted).

Ajuoga initially testified in her deposition that Osterhus stated to her, "Jen, are you okay? Are you sure? *You're pregnant*. Are you going to be able to do this, because you're going to have to work long hours." (Emphasis added.) However, when specifically questioned on her testimony, she immediately retracted and testified, "She did not explicitly state because I was pregnant, but that's the inference that I would go on because there was nothing else would make me not able to perform the hours." The following colloquy then took place:

> Q. Well, the night of the event you were late; right? A. That's true.
> Q. So I suppose she could have been mentioning, "You couldn't make it here on time today. Are you sure you can handle this?" A. Very true.

We find no error in the district court's conclusion that Ajuoga did not present direct evidence of discrimination due to pregnancy.

B. Inference of Discrimination

Under the *McDonnell Douglas* framework, a plaintiff must first establish a prima facie case of discrimination. *Smidt*, 695 N.W.2d at 14 (citing *McDonnell Douglas*, 411 U.S. at 802, 93 S. Ct. at 1824, 36 L. Ed. 2d at 677). A plaintiff must demonstrate: (1) she was pregnant; (2) she was qualified for her position; and (3) her termination occurred under circumstances giving rise to an inference of discrimination. *Deboom*, 772 N.W.2d at 6. If a plaintiff demonstrates these three elements, the burden shifts to the defendant to offer a legitimate, nondiscriminatory reason for the termination. *Id.* This is a burden of production, not persuasion. *Smidt*, 695 N.W.2d at 15. Once the employer offers a sufficient reason for the termination, the plaintiff must show the defendant's reason was pretextual, and that unlawful discrimination was the actual reason for the termination. *Deboom*, 772 N.W.2d at 6-7.

Ajuoga challenges the use of this analysis on several different grounds. We note that this analysis was recently used in the pregnancy discrimination case of *Deboom*, 772 N.W.2d at 6-7. It was also used in a pregnancy discrimination case considered on summary judgment. *Smidt*, 695 N.W.2d at 14-15. We conclude the district court did not err by using the burden-shifting framework identified in *McDonnell Douglas*, 411 U.S. at 802-04, 93 S. Ct. at 1824-25, 36 L. Ed. 2d at 677-79, to determine whether summary judgment was appropriate. *See id.* (stating the establishment of a prima facie case "is a

minimal requirement that is not as onerous as the ultimate burden to prove discrimination").

Ajuoga asserts summary judgment was inappropriate because there were genuine issues of material fact regarding whether her pregnancy was a motivating factor in her termination. She states that the timing of her discharge from Adventureland, just eight days after she announced she was pregnant, creates an inference of discrimination.

The district court found that there were several aspects of Ajuoga's job performance that were deficient. Among them were her problems with tardiness and work absences even though she had only been on the job about three weeks. In addition, there were serious problems with confrontational behavior and insubordination. We agree with the district court that these matters establish a lack of a genuine issue of material fact. We further agree with the district court that Ajuoga's evidence, at best, provided a suspicion for the cause of her termination and she has failed to demonstrate that her termination occurred under circumstances giving rise to an inference of discrimination. Finally, we find no merit in the other issues raised on appeal.

We affirm the decision of the district court granting summary judgment to Adventureland.

AFFIRMED.