

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY ELISE ALVARADO : CIVIL ACTION
v. :
MONTGOMERY COUNTY : NO. 05-5379

MEMORANDUM

Bartle, C.J.

March 22, 2007

Plaintiff Mary Elise Alvarado ("Alvarado") has filed a complaint against Montgomery County in which she asserts that the County discharged her from her position as an Official Court Reporter in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., and the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621 et seq. She alleges that she was terminated due to her sex, religion, national origin, and age. Alvarado is no longer pursuing her claim of national origin discrimination under Title VII.¹ Before the court is the motion of Montgomery County for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the remaining claims.

1. After review of the record in the light most favorable to the plaintiff, we find that she has not presented any evidence that she was terminated in 2003 "under circumstances that give rise to an inference of unlawful discrimination" on the basis of her national origin.

I.

Rule 56 permits us to grant summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317 (1986). An issue is "genuine" if the relevant evidence would permit a reasonable fact-finder to resolve the issue in favor of either side. See Liberty Lobby, 477 U.S. at 248. The genuine issue must involve a fact that is "material." Id. A material fact is one that has the capacity to affect the outcome of the litigation under the applicable law. Id. We must view all facts in the light most favorable to the nonmoving party and also draw all reasonable inferences in that party's favor. See In re Flat Glass Antitrust Litig., 385 F.3d 350, 357 (3d Cir. 2004); Liberty Lobby, 477 U.S. at 252-55. The non-moving party must do more than "simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. It may not rest upon mere allegations or denials of the moving party's pleadings but must set forth specific facts showing there is a genuine issue for trial. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990).

Title VII forbids employment discrimination on the basis of sex and religion. 42 U.S.C. § 2000e-2(a)(1). We analyze these claims under the familiar burden shifting framework announced by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). The prima facie case enunciated in McDonnell Douglas is flexible and must be adjusted to the various contexts in which it is applied. Sarullo v. U.S. Postal Service, 352 F.3d 789, 798 (3d Cir. 2003). To establish a prima facie case of discrimination on the basis of sex or religion under Title VII, the plaintiff must show: (1) she is a member of the relevant protected class; (2) she is qualified for the position in question; (3) she suffered an adverse employment action; and (4) the adverse employment action was taken under circumstances that give rise to an inference of unlawful discrimination.² See id. at 797. If the plaintiff establishes a

2. The ADEA forbids age discrimination in employment. 29 U.S.C. § 623. The plaintiff's prima facie case under the ADEA varies only slightly from the McDonnell Douglas format for Title VII claims. Our Court of Appeals has stated that to make out a prima facie case under the ADEA, plaintiff must show that (1) she was over forty years old at the time of the adverse employment decision; (2) she is qualified for the position in question; (3) she suffered from an adverse employment decision; and (4) her employer replaced her with someone sufficiently younger to permit a reasonable inference of age discrimination. Hill v. Borough of Kutztown, 455 F.3d 225, 247 (3d Cir. 2006) (citations omitted). The rest of the McDonnell Douglas burden shifting framework described above applies in the ADEA context. See Kautz v. Met-Pro Corp., 412 F.3d 463, 465 (3d Cir. 2005) (citation and quotation omitted).

prima facie case,³ she has created a reasonable inference of discrimination and the burden of going forward shifts to the defendant employer to articulate a "legitimate, non-discriminatory reason" for the plaintiff's termination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506-07 (1993); Tex. Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253-54 (1981); Sarullo, 352 F.3d at 797.

If the defendant proffers a legitimate, non-discriminatory reason, the plaintiff "must point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994); see also Tomasso v. Boeing Co., 445 F.3d 702, 706 (3d Cir. 2006). Our Court of Appeals has observed:

To discredit the employer's proffered reason, however, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities,

3. The Supreme Court has repeatedly characterized this burden as "minimal," see Hicks, 509 U.S. at 506, and "not onerous," see Burdine, 450 U.S. at 253.

inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence, and hence infer that the employer did not act for [the asserted] non-discriminatory reasons.

Fuentes, 32 F.3d at 765 (citations and quotations omitted); see also Hicks, 509 U.S. at 515; Sarullo, 352 F.3d at 797. The shifting burden described above is only that of production; the ultimate burden of persuasion always remains with the plaintiff. Hicks, 509 U.S. at 507; Burdine, 450 U.S. at 256.

II.

The following facts are undisputed or are stated in the light most favorable to the plaintiff. Alvarado is a Cuban-American who was born on December 4, 1958. When she was fired on June 9, 2003 for allegedly being late to work while on probation for tardiness, she was forty-four years old. Plaintiff first began working for Montgomery County in 1990 as a member of the "farm team" of court reporters.⁴ Alvarado worked as a member of the "farm team" until December, 1995, when she was employed by Montgomery County as an Official Court Reporter on a full-time basis. Harold Miller ("Miller") was the Chief Court Reporter of Montgomery County at the time and until January, 2001. Elizabeth

4. The "farm team" comprises court reporters who are not salaried, pensioned employees of Montgomery County. Rather, they are akin to independent contractors who are assigned to take depositions or handle various proceedings on a per diem basis at the Montgomery County courthouse.

Huber Berry ("Berry") succeeded Miller as Chief Court Reporter in January, 2001 and held the position until 2005.

On November 21, 1996, Assistant Public Defender Stephen Heckman ("Heckman") sent Miller a letter asking him to intercede to direct plaintiff to transcribe various portions of the original criminal proceedings in Commonwealth v. Melvin Meachum, for which plaintiff was the court reporter. Heckman had previously approached her about transcribing the proceedings so that he could prepare for a retrial. Because plaintiff dismissed Heckman's request, saying she would "get to it eventually," he had obtained an order dated October 29, 1996 from Judge Albert R. Subers to prepare the transcription forthwith. Plaintiff had still not complied with Judge Suber's order when Heckman sent his November 21 letter to Miller. As a result of that letter, Miller pulled Alvarado off her other assignments so that she could complete the transcript.

Plaintiff recalls that in 1997, Miller spoke often about his church and would sell various items to his colleagues as part of the church's fundraising efforts. Berry recalls that she once purchased some hand cream from Miller. Alvarado maintains he also asked her to make a donation to the church. At this time, plaintiff sang in a choir and says she spoke with Miller on several occasions about singing and Gospel music. She claims that she made a few donations by check in 1997 but then

informed Miller that she did not wish to continue to do so because she did not know if she believed in the Christian faith.⁵ Plaintiff states that after she informed Miller of this he never brought up with her again his or her religious beliefs, religion generally, his church, or his fundraising efforts. Likewise Alvarado does not point to any other person in the courthouse who either knew her religious beliefs or lack thereof or took any action against her in this regard.

The record shows only one document authored by Miller during his tenure as Chief Court Reporter that pertains to Alvarado's lateness to work prior to January, 2001. In that document, dated October 22, 1999, Miller wrote that on Monday, October 18, 1999 at 9:20 a.m., his office received a call from the "secretary to the senior judges inquiring as to who the reporter is for Judge Subers" and why said reporter was not in court. Plaintiff was the missing reporter, and Miller reports that he was later informed she did not show up until 9:45 a.m. Alvarado does not claim that the particular event described by Miller in this particular document did not occur or that Miller's description is in any way incorrect, incomplete, or misleading.

In January, 2001, Miller was replaced as Chief Court Reporter by Berry. Plaintiff was late to work on one occasion

5. Alvarado's uncertainty as to her religious beliefs or whether she was a Christian are as close as she comes to stating any "religion."

between Berry's appointment and February, 2003. On April 15, 2003, Alvarado was late to work and Berry placed her on probation for six months. In the probationary memorandum, Berry wrote that plaintiff would be terminated if she was to be late during the six-month period of probation. On May 28, 2003, defendant claims that plaintiff was late for work. Alvarado disputes this contention. Pursuant to the terms of her probation, plaintiff was terminated on June 9, 2003. The decision to terminate was made by Berry and Michael Kehs, the Court Administrator of Montgomery County.

III.

There is no dispute that plaintiff is female and was over the age of forty when she suffered an adverse employment action, that is, her termination as an Official Court Reporter on June 9, 2003.

Plaintiff cannot, however, make out a prima facie case of religious discrimination under Title VII. The evidence, viewed in the light most favorable to her, does not show her termination took place "under circumstances that give rise to an inference of unlawful discrimination" on the basis of her religion, or lack thereof. Plaintiff asserts that Harold Miller, the Chief Court Reporter at the time and her supervisor, urged her to donate to his church. She claims that after she told him she would no longer donate money because she was not sure she was

a Christian, he started to dislike her and vindictively filled her file with false, negative statements about her.

Alvarado was terminated on June 9, 2003 allegedly for being late to work while she was on probation because of repeated lateness. First, there is no evidence that Miller played any role in plaintiff's termination six years after she stopped making donations. In fact, he was no longer the Chief Court Reporter after January, 2001. Furthermore, there is no evidence that Miller placed any false statements in her file relevant to plaintiff's termination. In fact, there is only one document in plaintiff's personnel file authored by Miller that pertains to her lateness. Alvarado does not argue the event described in this document did not occur or that Miller's description of it is at all inaccurate or misleading. Rather, it is undisputed not only that was Miller not in any way involved in plaintiff's termination six years after she stopped donating money to his church but also that the one time Miller reported plaintiff's lateness in her personnel file he did so in a complete and accurate way.

Accordingly, because Alvarado cannot show that she was terminated under circumstances supporting an inference of unlawful discrimination on the basis of religion, we will grant defendant's motion for summary judgment as it relates to this claim.

Defendant's motion for summary judgment will otherwise be denied. Plaintiff's claims of discrimination on the basis of sex and age must await trial due to the presence of genuine issues of material fact. See Fuentes, 32 F.3d at 764; see also Tomasso, 445 F.3d at 706.

