2019 A.D. Cases 437,849

792 Fed.Appx. 438
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial
decisions issued on or after Jan. 1, 2007.
See also U.S.Ct. of App. 9th Cir. Rule 36-3.
United States Court of Appeals, Ninth Circuit.

Ross MICKEALSON, Plaintiff-Appellant,
v.
CUMMINS, INC., Defendant-Appellee.

No. 18-35827
|
Argued and Submitted October
24, 2019 Portland, Oregon
|
FILED November 14, 2019

Synopsis

Background: Dismissed employee brought action against his former employer, seeking to recover under the Americans with Disabilities Act (ADA), as well as under Montana statute. Former employer filed motion for summary judgment. The United States District Court for the District of Montana, No. 1:16-cv-00075, Susan P. Watters, J., 2018 WL 4562472, granted former employer's motion, and employee appealed.

Holdings: The Court of Appeals held that:

[1] employee's failure to communicate with his supervisor as instructed qualified as insubordination and provided employer with legitimate business reason to terminate his employment

[2] employee failed to demonstrate the employer's legitimate, nondiscriminatory reason for discharging him was pretextual or to establish lack of reasonable accommodation.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (3)

[1] **Labor and Employment** Disobedience or insubordination

Employee's failure to communicate with his supervisor as instructed qualified as insubordination and provided employer with legitimate business reason to terminate his employment, such that he was not terminated without "good cause" in violation of Montana's Wrongful Discharge from Employment Act (WDEA); employee presented no evidence that employer's stated reason for terminating him based on this insubordination was pretext for discriminating against him for his disability or otherwise. Mont. Code Ann. § 39-2-904.

[2] **Civil Rights** Discrimination by reason of handicap, disability, or illness

On dismissed employee's disability discrimination claim under the Americans with Disabilities Act (ADA), once employer articulated a legitimate, nondiscriminatory reason for terminating employee based on his insubordination in not communicating with his supervisor as instructed, burden shifted to employee to demonstrate that employer's stated reason was pretextual by introducing direct evidence of employer's discriminatory intent, or by presenting evidence sufficient to give rise to inference of discrimination, barring which employer was not liable under the ADA for dismissing employee. Americans with Disabilities Act of 1990 § 102(a), 42 U.S.C.A. § 12112(a).

[3] **Civil Rights** In general; elements of accommodation claims

Employee could not successfully pursue a "reasonable accommodation" claim under the Americans with Disabilities Act (ADA), absent a showing that he suffered an adverse employment action because of his disability. Americans with Disabilities Act of 1990 § 102(b)(5)(A), 42 U.S.C.A. § 12112(b)(5)(A).

Attorneys and Law Firms

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Appeal from the United States District Court for the District of Montana, Susan P. Watters, District Judge, Presiding, D.C. No. 1:16-cv-00075-SPW

Before: FARRIS, BEA, and CHRISTEN, Circuit Judges.

MEMORANDUM [*]

Appellant Ross Mickealson appeals the district court's grant of summary judgment in favor of Cummins, Inc., his former employer, on his wrongful termination, disability discrimination, and failure to accommodate claims under the Americans with Disabilities Act ("ADA"), Montana's Human Rights Act ("MHRA"), and Montana's Wrongful Discharge from Employment Act ("WDEA"). We have jurisdiction under 28 U.S.C. § 1291. Reviewing the district court's grant of summary judgment de novo and viewing the facts in the light most favorable to Mickealson as the nonmoving party, we **AFFIRM.**

1. Montana's WDEA provides that a discharge is "wrongful" if it "was not for good cause and the employee had completed the employer's probationary period of employment." Mont. Code Ann. § 39-2-904. An employer has "good cause" if it has a "legitimate business reason" for discharging the employee. *Id.* § 39-2-903(5). A "legitimate business reason" is one that is not "false, whimsical, arbitrary or capricious" and has "some logical relationship to the needs of the business." *Buck v. Billings Mont. Chevrolet, Inc.*, 248 Mont. 276, 811 P.2d 537, 540 (1991). An employer's reason for discharge is not "good cause" if it "is a pretext and not the honest reason for the discharge." *Arnold v. Yellowstone Mtn. Club, LLC*, 323 Mont. 295, 100 P.3d 137, 141 (2004) (quoting *Mysse v. Martens*, 279 Mont. 253, 926 P.2d 765, 770 (1996)).

[1] Mickealson's failure to communicate with his supervisor as instructed qualifies as insubordination that provided Cummins with a "legitimate business reason" to terminate his employment. There is no triable issue of fact as to whether Mickealson was insubordinate or whether Cummins's decision to label Mickealson's behavior as insubordinate was arbitrary and capricious or unrelated to the needs of Cummins's business. Mickealson presented no evidence that Cummins applied its employment ***440** policy unequally, arbitrarily or capriciously. *See* *Johnson v. Costco Wholesale*, 336 Mont. 105, 152 P.3d 727, 734 (2007). Nor has Mickealson presented evidence that creates an issue of fact as to whether Cummins's stated reason for terminating Mickealson was a pretext for discriminating against Mickealson because he had a disability, requested accommodations, had an upcoming surgery, or filed a complaint against his supervisor. [1]

Because Cummins had good cause for terminating Mickealson's employment, the district court properly granted Cummins's motion for summary judgment on Mickealson's Montana WDEA wrongful termination claim. *See, e.g.*, *Mysse*, 926 P.2d at 771 (finding employer had good cause to terminate employee because she refused to perform her job duties).

[2] 2. The ADA [2] prohibits an employer from discriminating "against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). Thus, to establish a prima facie case for disability discrimination under the ADA, a plaintiff must show that: (1) he is disabled, (2) he is qualified to perform the essential functions of his position, and (3) he suffered an adverse employment action because of his disability. *See* *Hutton v. Elf Atochem N. Am., Inc.*, 273 F.3d 884, 891

(9th Cir. 2001); *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1246 (9th Cir. 1999); *see also McDonald v. Dep't of Envtl. Quality*, 351 Mont. 243, 214 P.3d 749, 758 (2009). To withstand a motion for summary judgment on an ADA claim, a plaintiff must either provide sufficient direct evidence of an employer's discriminatory intent, or give rise to an inference of discrimination by satisfying the burden-shifting test from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *See* *Cordova v. State Farm Ins. Cos.*, 124 F.3d 1145, 1148 (9th Cir. 1997).

Here, Cummins articulated a legitimate, nondiscriminatory reason for Mickealson's termination by presenting evidence that Mickealson was terminated because he was insubordinate, not because of his disability. Because Mickealson failed to present direct evidence or evidence that gives rise to an inference that his disability was a cause for his termination to rebut this legitimate justification, the district court properly granted summary judgment in favor of Cummins on Mickealson's disability discrimination claims.

[3] 3. The ADA requires employers to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability." 42 U.S.C. § 12112(b)(5)(A). Because Mickealson cannot show that he suffered an adverse employment action because of his disability, his reasonable accommodation claim also fails.

AFFIRMED.

All Citations

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Footnotes

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1 While Mickealson has disputed the truth of many factual assertions made by his supervisors and the internal complaint investigator, such disputes do not render summary judgment inappropriate where there are facts *not* in dispute that provide "good cause" for terminating Mickealson's employment. *See Becker v. Rosebud Operating Servs.*, 345 Mont. 368, 191 P.3d 435 (2008).

2 Because "the MHRA is closely modeled after federal anti-discrimination statutes such as the ADA," *Pannoni v. Bd. of Trs.*, 321 Mont. 311, 90 P.3d 438, 444 (2004), we analyze Mickealson's ADA and MHRA claims together.