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September 2012

EVIDENCE

10th Circuit upholds jury's award in pregnancy discrimination case

by Lance Rich

Robert Frost, the great American poet, once wrote that "a jury consists of twelve persons chosen to decide who has the better lawyer." While the truth of that statement can be debated, it's no lie that a jury can be a fickle bunch, and employers typically want to avoid facing a jury in an employment discrimination case. As the following case demonstrates, even when a district court judge disagrees with a jury's verdict and decides to throw it out, appellate courts will defer to the jury's verdict unless there is no way the jurors could have reasonably reached the result based on the evidence presented.

A pregnant pause

In November 2006, YRC, Inc., offered an HR specialist position to Mary Brown at its Kansas headquarters. At the time, she was about three months pregnant. Before accepting the position, she e-mailed Stacy Beecher, the HR supervisor who had extended the offer, to inform her that she was pregnant and to inquire about benefits. She stated that she would need to take maternity leave when her baby arrived around the end of May 2007 and she wouldn't feel comfortable accepting the position if that would inconvenience the department.

Unbeknownst to Brown, YRC's busy season for HR specialists began in May and ran through August. No one responded to her e-mail prior to the day she was asked to respond to the job offer. Nevertheless, she accepted the offer.

Brown's job was to assist an HR manager located in the region to which she was assigned with the process of hiring employees. Beecher initially planned to have Brown take over YRC's Phoenix region on January 1, 2007. She told Brown that some of the HR specialists trained independently but she would be trained by Shannon Bahre, who was then covering the Phoenix region.

In December 2006, Beecher's boss, Lindsay Jordan, met with Bahre to discuss Brown's training progress. Jordan asked Bahre to send her something in writing to describe Brown's shortcomings. Bahre sent an e-mail containing a list of perceived problems, including her observations that Brown took few notes, repeatedly asked questions about the same basic processes, and wasn't receptive to the training process. None of those problems were shared with Brown at the time.

On January 2, Jordan and Beecher met with Brown to discuss her individual development plan for the coming year. Brown listed her goals and objectives, some of which were related to her anticipated maternity leave. Jordan became upset about her upcoming leave and said something like, "You're not going to be here during our busy season anyway. Why don't you just learn your job?"

Three days later, Beecher told Brown that she had concerns about her training progress and that she wouldn't be taking over the Phoenix region as scheduled. As a follow-up, Beecher sent Brown an e-mail that had been revised by Jordan, criticizing her for being indifferent to the process and resistant to the YRC way. A few days later, however, Beecher complimented her on a productive training session and did so again after she completed a complex assignment. The next day, Brown learned that she had been nominated by another HR specialist for an award recognizing coworker excellence. Yet on January 15, Beecher summoned her to Jordan's office and terminated her employment. At the time, she was about six months pregnant and showing.

Judge and jury

Brown sued YRC in federal district court in Kansas for pregnancy discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978 (PDA). She sought to

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prove discrimination through indirect evidence under the *McDonnell Douglas* framework and succeeded in setting forth a basic case of pregnancy discrimination. YRC then presented its nondiscriminatory explanation for firing her—that she wasn't progressing satisfactorily with her training. The court determined that there were issues of fact regarding whether YRC's explanation for terminating Brown was credible, so the case went to trial.

At trial, Brown argued that once YRC learned she was pregnant and that her maternity leave would coincide with its busy season, it no longer wanted her to accept the job. She claimed that the company ignored her questions about benefits before she accepted the position, hoping she would decline the offer. She argued that after she accepted the position, YRC continued to withhold benefit information and sought to sabotage her training.

After Brown presented her evidence to the court, YRC asked the judge to rule that she hadn't proven her case. The judge took the request under advisement. After all the evidence was presented, the jury found that Brown had proven that her pregnancy was a motivating factor in YRC's decision to terminate her employment. The jury awarded her lost wages, lost benefits, and damages totaling more than \$75,000.

YRC then renewed its request for the judge to determine that Brown hadn't proven her case. The trial judge agreed, concluding that the jury had nothing but unsupported speculation to support a finding of illegal discrimination. Therefore, the trial judge threw out the jury's verdict and ruled in favor of YRC. Brown appealed the judge's decision to the U.S. 10th Circuit Court of Appeals, whose rulings apply to employers in Utah as well as Kansas.

Through the lens of the jury

The 10th Circuit emphasized that it must view all the evidence in the light most favorable to the jury's verdict and that the employer is entitled to judgment in its favor only if all the evidence viewed in that light reveals no legally sufficient evidentiary basis to find for the employee. The court determined that under that standard, there was sufficient evidence for the jury to infer that YRC's reasons for firing Brown were simply a cover-up for discrimination.

An employee can establish pretext—i.e., that the reason isn't credible—by showing weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's explanation for its employment action from which a jury could infer pretext. The court believed that Brown had directed its attention to sufficient evidence to establish pretext.

For example, it noted that despite YRC's claim that she wasn't progressing adequately in her training, Brown was nominated by a coworker for a performance award in January before her termination. It also noted that the HR manager with whom she worked complimented her for her good, positive, and helpful guidance. The court found that the jury could have given more credence to the favorable comments of Brown's coworker and the HR manager than to the negative assessments provided by Bahre and Beecher. The court also noted that Bahre and Beecher were unable to identify specific concerns about her performance when their depositions were taken before the trial.

In addition, the court stated the jury could reasonably infer discriminatory animus from Jordan's statement that Brown should just learn her job because she would be on maternity leave during YRC's busy season. Finally, YRC fired her less than two weeks after Jordan expressed aggravation with her maternity leave.

For those reasons, the 10th Circuit found that there was substantial evidence of pretext and both YRC and the trial judge had ignored the lens through which the evidence must be viewed following a jury verdict. It reversed the federal district court's judgment and reinstated the jury's verdict in Brown's favor. *Brown v. YRC, Inc.*, 2012 WL 3064831 (10th Cir., July 30, 2012).

The verdict

The upshot of this case is that once a jury reaches a verdict based on the evidence presented to it, courts will generally defer to the verdict unless the jurors clearly made a mistake and there was no legally sufficient basis to support it. Much of the important work in any employment discrimination case is done before trial in an effort to persuade the judge to rule in the employer's favor and dismiss the case so that it never reaches a jury. If a case reaches the jury, it matters less whether you can persuade the judge that you should win and much more whether you can convince a group of people with no legal training that you should win the case. Juries tend to be unpredictable; thus, employers are motivated to either get the case thrown out by the judge early on or settle a questionable case before it reaches the jury. Therefore, it helps to have the better counsel throughout the entire process, not just, as Robert Frost quipped, when the case reaches the jury.

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