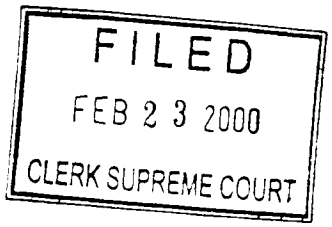
IN THE COURT OF APPEALS OF IOWA

No. 1999-377 (9-630) / 98-2055
Filed February 23, 2000



ETHEL THANNISCH,
Plaintiff-Appellee,

vs.

TEIKYO MARYCREST UNIVERSITY, k/n/a
MARYCREST INTERNATIONAL UNIVERSITY,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

Marycrest International University appeals a jury award in favor of Ethel Thannisch on her sex discrimination claim. **AFFIRMED.**

Richard M. Batcher of Bozeman, Neighbour, Patton & Noe, Moline, Illinois, for appellant.

Dorothy A. O'Brien and Brad A. Reynolds of Brooke & O'Brien, P.L.C., Davenport, for appellee.

Heard by Streit, P.J., Vaitheswaran, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

SCHLEGEL, S.J.

Marycrest International University appeals a jury award in favor of Ethel Thannisch on her sex discrimination claim. We affirm.

Background facts. In March of 1992 Ethel Thannisch was hired as director of the American Language and Culture program (ALC) at Teikyo Marycrest University, now known as Marycrest International University (Marycrest). The ALC program was specifically geared toward assisting Japanese students who came to Marycrest to obtain a two-year degree. In addition to her duties as director, Thannisch was placed on the tenure track as an assistant professor to teach English as a Second Language. In May of 1995 Thannisch was removed as director of ALC and given a terminal teaching contract that would end in the spring of 1996. Thannisch subsequently brought suit against Marycrest under both the Federal and Iowa Civil Rights Acts, alleging employment discrimination on the basis of age and gender.

Following trial in June of 1998, a jury returned a verdict in favor of Thannisch on her sex discrimination claim. The jury awarded Thannisch $51,500 for emotional distress; $166,070 in front pay damages; $125 in back pay; and $34,736.96 in attorney fees. The district court reduced the front pay award to $90,000, but denied the remainder of Marycrest's posttrial motions. Marycrest now appeals.

I. Sufficiency of the evidence/nexus. Marycrest contends Thannisch failed to produce sufficient evidence to prove she was removed from her position because of her gender. Marycrest concludes the court erred in refusing to grant its motions for a directed verdict, a judgment not withstanding the verdict, or a new trial.

We review a district court's denial of a motion for directed verdict and motion for judgment notwithstanding the verdict for correction of errors at law. *See* Iowa R. App. P. 4. Our standard of review of a denial of a motion for new trial depends upon the grounds for new trial asserted in the motion and ruled upon by the court. *Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993).

Once Thannisch established a prima facie case of discrimination - that she was a member of a protected class, had been performing her work satisfactorily, and had adverse action taken against her - the burden shifted to Marycrest to show a legitimate nondiscriminatory reason for the adverse action. *See Vaughan v. Must, Inc.*, 542 N.W.2d 533, 538 (Iowa 1996). Although Marycrest offered nondiscriminatory reasons for her removal as director, we find sufficient evidence in the record to support the jury's conclusion that those reasons were, in fact, pretext. *See id.*

The evidence at trial supporting Thannisch's claim of discrimination primarily centered on the cultural differences and difficulties Thannisch experienced in dealing with Japanese officials who essentially had financial control over the ALC program and the university as a whole. Thannisch presented evidence that these officials, because of their cultural lack of respect for women, could not tolerate Thannisch being in a position of authority and ultimately arranged for her removal. The evidence presented at trial was extensive and does not bear repeating here. However, upon review of the record, we agree with the trial court's determination that there was sufficient evidence to support the jury's finding of discrimination. We therefore find no error in the trial court's denial of Marycrest's motions for directed verdict, judgment notwithstanding the verdict, or new trial.

II. Front pay vs. reinstatement. In the alternative, Marycrest asks that the district court's judgment be modified to order Thannisch's reinstatement as opposed to awarding front pay.

A court's decision whether to order reinstatement or front pay is reviewable for an abuse of discretion. *See Philipp v. ANR Freight Sys., Inc.*, 61 F.3d 669, 674 (8th Cir.) 1995. A plaintiff who proves discrimination in violation of Title VII is entitled to reinstatement, unless exceptional circumstances make the chances for a satisfactory employment relationship unlikely. *Suggs v. ServiceMaster Educ. Food Management*, 72 F.3d 1228, 1233 (6th Cir. 1996) (citation omitted). An award of back pay is presumptively favored in employment discrimination cases. *Id.* (citation omitted).

We agree with the district court's conclusion that the offer of reinstatement was "impractical, inappropriate, not feasible and also not possible." As Marycrest concedes, the ALC program has practically been eliminated. Moreover, there is little likelihood Thannisch would have a satisfactory employment relationship given the past difficulties between herself and the administration. We therefore find no abuse of discretion by the district court in awarding front pay as opposed to ordering reinstatement.

Marycrest also complains the front pay award did not place Thannisch in the same position that she would have been in had the discrimination not occurred, but rather made Thannisch more than "whole." *See Suggs*, 72 F.3d at 1234. Because the ALC program was practically eliminated in early 1997 and Thannisch eventually

obtained a higher-paying job after leaving Marycrest,[1] Marycrest concludes that the front pay award should be vacated. We disagree. As the trial court noted, had Thannisch been retained as a teacher, she would have attained tenure and would likely have remained at Marycrest as planned for another three years until her retirement. We find the award of front pay was appropriate under the circumstances.

III. Attorney fees. Finally, Marycrest asks that the hourly attorney fee rate allowed by the trial court be reduced from $165 per hour to $125 per hour or less. We find the hourly rate to be reasonable and decline to alter the trial court's award.

The court has considered the remainder of Marycrest's arguments on appeal and has found them to be without merit. For all of these reasons, we affirm the district court's judgment in its entirety.

AFFIRMED.

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[1] Thannsich's first job after leaving Marycrest was at the University of Texas, where she taught one semester and earned $10,875. In April of 1997 Thannisch was hired as a principal in Qatar, Texas, where she earns $60,000 per year. Her salary at Marycrest was $30,000 per year.