IN THE COURT OF APPEALS OF IOWA

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No. 7-197 / 95-1294

FILED
JUL 30 1997
CLERK SUPREME COURT

SUSAN RENEA RICKETTS,

Plaintiff-Appellant\Cross-Appellee,

vs.

WATERLOO COURIER, INC.,

Defendant-Appellee\Cross-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Susan Ricketts appeals the district court's order denying her petition against the Waterloo Courier Inc. for retaliatory discharge. **AFFIRMED.**

Thomas P. Frerichs, Waterloo, for appellant.

Larry J. Cohrt and Beth E. Hansen of Swisher & Cohrt, P.L.C., Waterloo, for appellee.

Heard by Habhab, C.J., and Cady, and Streit, JJ.

CADY, J.

Susan Ricketts appeals from an adverse judgment entered by the district court following a trial of her claim for retaliatory discharge against the Waterloo Courier, Inc. We affirm the district court on our review.

Ricketts was employed as an advertising representative at the Waterloo Courier from October 1987 until her termination on April 1, 1994. After receiving releases from the Iowa Civil Rights Commission and the Equal Employment Opportunity Commission (EEOC), Ricketts filed a petition in district court against the Courier for retaliatory discharge. She claimed the Courier fired her for encouraging a co-worker, Pat McElligott, to file a complaint with the EEOC against the Courier.

The case was tried to the court. Ricketts presented evidence McElligott filed a complaint with the EEOC against the Courier in March 1993. The complaint alleged harassment and discrimination based on her sex. Ricketts and McElligott were friends and Ricketts began to encourage McElligott to file the complaint in January or February 1993. Ricketts believed McElligott had a legitimate complaint and urged McGilligott to take appropriate action.

Ricketts maintained the Courier subsequently began a course of retaliatory actions against her culminating in her termination. On April 20, 1993, the Courier announced a new sales policy for its nine advertising representatives. This policy required the representatives to maintain a minimum number of accounts and to make a minimum number of business calls each day. The Courier made this policy

retroactive to April 1, 1993. Ricketts, as well as three other representatives, failed to meet the requirements for April. The employees were given written reprimands and placed on probation.

On May 17, 1993 McElligott resigned from her job. The Courier divided her accounts among the other advertising representatives except Ricketts and one other representative. In September 1993, Ricketts complained her sales manager was acting in an unprofessional manner towards her, including raising his voice at her.

Ricketts last day of work at the Courier was October 29, 1993. At the suggestion of her doctor, Ricketts was placed on medical leave. Ricketts was suffering from stress. The Courier terminated her employment on April 1, 1994 after she failed to respond to questions concerning her medical condition and intentions to return to work.

The district court concluded Ricketts failed to prove she was engaged in a protected activity by merely encouraging McElligott to file an EEOC complaint. It also found Ricketts failed to establish she suffered any adverse employment action. The district court was also unable to find the Couriers' actions were retaliatory. Finally, the district court found the Courier had proven an articulable and legitimate business reason for its actions.

Ricketts claims on appeal the district court erred as a matter of law by concluding the act of encouraging a co-worker to file an EEOC complaint was not a protected activity. She also claims the district court erred in finding she did not suffer

any adverse employment action and that the Courier established legitimate business reasons for its actions.

We begin our analysis by recognizing our standard of review. Civil rights actions are tried at law and our review is limited to the correction of legal error. *Hulme v. Barrett*, 480 N.W.2d 40, 41 (Iowa 1992) (Hulme II). The findings of the district court have the weight of a special verdict and are binding on appeal if supported by substantial evidence. *Id.* Evidence is substantial if a reasonable person would accept the proof as adequate to support the conclusions. *Id.*

We next consider the governing law. A three-step process is followed to establish a retaliation claim. *Hulme v. Barrett*, 449 N.W.2d 629, 633 (Iowa 1989) (Hulme I). First, the plaintiff must establish a prima facie case of retaliatory discharge. *Id.* To do this, the plaintiff must prove 1) she was engaged in a statutorily protected activity, 2) she suffered adverse employment action, and 3) a causal connection between the two. *Id.* Once established, the defendant must articulate a legitimate, nonretaliatory reason for the dismissal. *Id.* If this is done, the plaintiff can still prevail by showing the reason offered for the dismissal was actually pretextual. *Id.*

The causation standard necessary to prove a prima facie case is substantial. *Hulme II*, 480 N.W.2d at 42. The causal connection must be a significant factor motivating the adverse employment decision. *Id.*

Ricketts first argues she was engaged in a protected activity as a matter of law. She claims her conduct in encouraging a co-worker to file an EEOC complaint was a statutorily protected activity.

Our appellate courts have not previously decided whether encouraging a co-worker to file an EEOC complaint is a statutorily protected activity. [1] Nevertheless, it is not an issue we need to address.

We will affirm the trial court if any grounds exist to support the decision. *In re L.G.*, 532 N.W.2d 478, 480 (Iowa App. 1995). In this case, the trial court made alternative findings. It found that Ricketts was not entitled to relief even assuming she was engaged in a protected activity. We conclude there was substantial evidence to support this finding.

We find ample evidence in the record to support the conclusion of the trial court that Ricketts did not suffer any adverse employment action as a result of her conduct in encouraging a co-worker to pursue a complaint. There was substantial evidence the Courier was, instead, motivated only to improve its revenues, and its actions were the result of recommendations stemming from an independent consultant. The evidence supports a finding the employment actions Ricketts confronted after March 1993 merely involved conduct to improve productivity.

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[1] It is an unlawful under State law to discriminate or retaliate against a person because the person has assisted another in a civil rights commission proceeding. Iowa Code § 216.11 (1995). Similarly, it is unlawful under federal law to discriminate against an employee for assisting or participating in a proceeding. 42 U.S.C.A § 2000e-3(a) (West 1994).

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Moreover, a reasonable person could draw from the evidence that the Courier did not even know Ricketts had encouraged the co-worker to file a complaint.

In conclusion, substantial evidence in the record supports the trial court's conclusion that Ricketts' actions in encouraging a co-worker to file an EEOC complaint were not a substantial factor in her discharge from her employment with the Courier or any other actions by the Courier. Ricketts failed to prove a prima facie case of retaliatory discharge. We affirm the judgment of the district court.

AFFIRMED.