STATE OF MINNESOTA
IN COURT OF APPEALS
A11-637

Melanie Michael,
Appellant,

vs.

Education Management Corporation,
d/b/a Argosy University,
Respondent

Filed February 6, 2012
Affirmed
Worke, Judge

Dakota County District Court
File No. 19HA-CV-10-9

David L. Shulman, Craig Buske, Law Office of David L. Shulman, PLLC, Minneapolis, Minnesota (for appellant)

Louise A. Behrendt, Stacey L. Sever, Stich, John F. Angell, Angell, Kreidler, Dodge & Unke, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges the dismissal of her disability-discrimination claim arising out of respondent educational institution's alleged failure to accommodate her learning disability, arguing that the district court erred by concluding that she failed to establish a

prima facie case of discrimination because respondent was not required to make accommodations that substantially alter the educational program. We affirm.

FACTS

Appellant Melanie Michael suffers from attention deficit hyperactivity disorder (ADHD). In January 2006, appellant began coursework in the sonography program at respondent Education Management Corporation, d/b/a Argosy University. When appellant applied to respondent, she failed to disclose that she had a learning disability. She passed her classes the first and second semesters without requesting or receiving accommodations for her disability. Appellant began her third semester in September 2006. She took three courses that had two components, a lecture and a lab. If a student failed one component, the student failed the entire course. Appellant passed one of the two-component courses, again, without receiving accommodations for her disability. Appellant failed the lab component of the second course and the lecture component of the third course; thus, she failed both courses. Jennie Durant, the instructor who failed appellant, suggested that appellant visit counseling services for assistance.

In early 2007, appellant sought counseling services and received a recommendation that she be afforded accommodations for her ADHD. Appellant was given a letter of accommodation to present to her instructors, indicating the accommodations that she was eligible to receive, including: (1) additional time to complete assignments, (2) a quiet location for testing, and (3) time-and-a-half for testing.

Appellant retook the failed courses the summer semester of 2007. Appellant presented the accommodation letter to Durant. Durant did not allow appellant additional

time to complete assignments because she determined that the allotted time was adequate, considering that assignments were listed in the syllabus and known from commencement of the course. Durant allowed appellant to take lecture exams in a separate room and gave her time-and-a-half to complete the lecture exams. Durant did not allow appellant extra time for lab proficiency exams. Respondent has a policy prohibiting accommodations in lab because respondent attempts to simulate a real-world environment; nevertheless, appellant passed both courses.

Appellant then failed two of Durant's classes in the fall 2007 semester.[1] Appellant could not progress in the program without passing the courses. She met with Karen Helfinstine, the program chair of respondent's diagnostic-medical-sonography program, because she wanted her grades changed. But Helfinstine was unwilling to change appellant's grades, suggesting instead that appellant retake the courses and put additional time into practicing the lab work. In the spring of 2008, respondent invited appellant to take her remaining courses, including the two she failed, at no charge. Helfinstine met weekly with appellant to go over assignments and plan her schedule. But after failing a lab proficiency exam, appellant withdrew from the program.

Appellant filed a complaint against respondent, alleging that it violated the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01 to .43 (2010), by failing to accommodate her disability. Following a court trial, the district court dismissed the matter after finding that respondent has a policy of not offering accommodations for lab

[1] Appellant filed a discrimination-and-harassment complaint against Durant. Respondent conducted an investigation and determined that there was no evidence supporting appellant's allegations.

proficiency exams because they are intended to "simulate a 'real world' or employment environment where sonographers work on tight and demanding schedules, and with noise and other 'real world' distractions." The district court found that respondent's program intends for proficiency exams to increase the student's ability to efficiently and correctly obtain quality diagnostic images and prepare students to graduate with skills commensurate with industry standards. The district court found that accommodations for proficiency exams would have required respondent to "compromise and substantially alter its academic requirements." The district court further found that appellant failed to show that she failed proficiency exams due to time constraints, concluding that she failed to establish a prima facie case of discrimination. This appeal follows.

D E C I S I O N

Appellant does not challenge the district court's findings, arguing only that the district court erred in its legal conclusion that appellant failed to establish a prima facie case of discrimination. An appeal from a district court's judgment on claims brought under the MHRA involves statutory interpretation, which is a question of law subject to de novo review. *Krueger v. Zeman Constr. Co.*, 781 N.W.2d 858, 861 (Minn. 2010).

Disability-discrimination claims under the MHRA are analyzed under the burden-shifting analysis articulated by the U.S. Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). *Sigurdson v. Isanti Cnty.*, 386 N.W.2d 715, 719-20 (Minn. 1986); *see also Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001). Under this analysis, a plaintiff alleging disability discrimination must present a prima facie case of discrimination by a preponderance of the evidence.

Sigurdson, 386 N.W.2d at 720. The burden then shifts to the defendant to present evidence of a legitimate non-discriminatory reason for its action. *Id.* If the defendant is able to show that its actions were related to a legitimate purpose, the plaintiff must then show that the defendant's reason is actually a pretext for discrimination. *Id.* A district court is not required to rigidly apply this analysis, but it must make findings that are sufficient for appellate review. *Id.* at 721-22.

Appellant claims that respondent failed to accommodate her disability. To establish a prima facie claim for failure to accommodate, appellant must prove three elements: (1) that she is a qualified disabled person; (2) that respondent knew of her disability; and (3) that respondent failed to make reasonable accommodations. Minn. Stat. § 363A.08, subd. 6; *Hoover*, 632 N.W.2d at 547. If appellant is able to identify evidence to support the existence of these three elements, she has met her prima facie burden, which then shifts to respondent to articulate a legitimate non-discriminatory reason for its action. If, however, appellant fails to identify evidence to support one of these elements, she has failed to make a prima facie case of discrimination, hence, concluding our analysis.

There is no dispute that appellant is a qualified disabled person and that respondent knew of appellant's disability. The issue is whether respondent failed to make reasonable accommodations for appellant's disability. Appellant's main contention is that respondent failed to provide a quiet location and extra time for lab proficiency exams. Respondent argues that it reasonably accommodated appellant's disability and that any other accommodation would have substantially altered the nature of the

academic program. *See Amir v. St. Louis Univ.*, 184 F.3d 1017, 1028 (8th Cir. 1999) (stating that public universities are not required to make accommodations that "substantially alter the nature of the program"). The district court appropriately agreed.

Appellant first claims that she was not afforded a quiet area for lab proficiency exams. First, the word "quiet" is not defined. And Helfinstine testified that although respondent did not necessarily provide appellant with a "quiet" location because respondent attempts to simulate a real-world setting, the testing room was actually quiet, comparing it to a "library environment." But she stated that it was never completely quiet because a real-life environment cannot be controlled; for instance, a hospital is always going to have some level of noise. Appellant asserts that if respondent attempted to create a real-world environment then the noise level would have been consistent. She claims that at times the testing environment had more noise and more distractions than other times. Appellant's suggestion that respondent should have controlled the testing environment to simulate a real-world environment is counterintuitive to a real-world environment, which is inconsistent and has many variables. It is unreasonable to accommodate appellant with a completely quite environment when that is not what she would encounter in a real-world setting.

Appellant next claims that she was not afforded time-and-a-half for lab proficiency testing. Helfinstine testified that respondent does not allow additional time for lab proficiency testing because an inefficient ultrasound technician compromises patient care. Students are expected to increase their speed and become more efficient with practice. Helfinstine testified that she encouraged appellant to practice. She stated

that a student who practiced 10 hours a week would surely succeed. According to Helfinstine, in September 2007, appellant's recorded practice time indicated that she averaged 8 hours but trailed off to an average of 4.4 hours in November 2007, which coincided with major proficiency exams. The record shows that students were expected to reach a certain speed in operation in order to advance to a clinical site and that those sites reject students who could not meet the clinical standards.

Finally, an accommodation has to make a difference for the student. Allowing appellant extra time would not have made a difference because, as the district court found, appellant's proficiency exam score sheets reflect that she completed exams within the allowed time, or in less than the time allowed. Appellant does not challenge this finding. The record further demonstrates that appellant lost interest in 45-minute proficiency exams after fifteen or twenty minutes. Appellant does not challenge the district court's finding that appellant lost interest in exams and then hurried through them. Thus, any additional time would not have made a difference to appellant. Respondent's policy of not allowing extra time for lab proficiency testing promotes its educational policy of preparing students for the professional setting; thus, allowing extra time is not a reasonable accommodation.

Because appellant failed to show that she was not afforded reasonable accommodations, she failed to support a prima facie case of discrimination. Thus, judgment was appropriate as a matter of law.

Affirmed.