

FEB 23 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES R. MEIRHOFER; ANN L.
MEIRHOFER,

Plaintiffs - Appellants,

v.

SMITH'S FOOD AND DRUG CENTERS
INC., doing business as Fry's Food and
Drug Stores, Inc. doing business as Fry's
Food Stores, Inc.; KROGER COMPANY,

Defendants - Appellees.

No. 09-17702

D.C. No. 4:07-cv-00422-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted February 18, 2011**
San Francisco, California

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: O'SCANNLAIN and TROTT, Circuit Judges, and CAMPBELL, Senior District Judge.***

James Meirhofer appeals from the district court's summary judgment in favor of his employer on his hostile work environment claim under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* The facts are known to the parties and will not be repeated here except to the extent necessary.

Assuming, arguendo, that hostile work environment claims are cognizable under the ADA, we conclude that Meirhofer's allegations do not rise to the level of "a discriminatorily hostile or abusive environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). At most, the derogatory nickname and occasional insulting comments constituted "simple teasing" and "isolated incidents" and were not sufficiently severe or pervasive to alter the terms and conditions of his employment and create an abusive work environment. *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998).

AFFIRMED.

*** The Honorable Tena Campbell, Senior District Judge for the U.S. District Court for Utah, Salt Lake City, sitting by designation.