TAB 16

121 F.3d 715, 1997 WL 469636 (C.A.9 (Cal.)), 10 NDLR P 291
(Table, Text in WESTLAW), Unpublished Disposition
(Cite as: 121 F.3d 715, 1997 WL 469636 (C.A.9 (Cal.)))

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NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.
MILAD ISKANDER, Executor of the Estate of Laila Z. Iskander, deceased, Plaintiff-Appellant,
v.
RODEO SANITARY DISTRICT, a California public entity; Ray Guanill, Defendants-Appellees.
No. 95-16914.

Aug. 18, 1997.

Appeal from the United States District Court for the Northern District of California Samuel Conti, District Judge, Presiding Argued and Submitted January 15, 1997 San Francisco, California

Before: LAY [FN**] GOODWIN, and SCHROEDER, Circuit Judges.

FN** The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

MEMORANDUM [FN*]

FN* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

***1** Milad Iskander, husband of the deceased plaintiff Laila Iskander, moves for substitution as a party to this appeal and appeals portions of the district court's summary judgment and judgment following a jury trial of Laila Iskander's claims against defendants Rodeo Sanitary District ("Rodeo") and Ray Guanill. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The motion for substitution of party is granted, and we address the merits of the appeal.

The first issue appellant raises is whether the district court erred in holding that Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-65, did not apply to a public agency employing fewer than 15 people. Assuming the answer is yes, we look to the merits of the claim that Rodeo discriminated against the plaintiff on the basis of disability. The merits of this claim are the same as the merits of the state law claim of discrimination on account of medical condition. The only assertion on appeal is that the plaintiff could have returned to work if Rodeo had made reasonable accommodations for her medical condition. However, there is no evidence to support the premise that the plaintiff ever attempted to return to work after the cancer surgery. *See Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir.1996). Appellant relies upon *Fisher v. Superior Court of San Francisco*, 223 Cal.Rptr. 203 (Cal.Ct.App.1986), but that case is distinguishable because there the plaintiff did try to go back to work. We therefore conclude that judgment on both the federal and the state claims of discrimination on the basis of disability was proper. *See Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir.1994).

The second issue is whether the district court erroneously admitted into evidence letters containing settlement negotiations in violation of Fed.R.Evid. 408. The letters were not admitted to show that defendants offered to settle the case, but to show that the plaintiff was not terminated when she claimed she was. The portions of the letters referring to settlement were not before the jury. There was no error. *See* Fed.R.Evid. 408.

The third issue is whether the district court erred by instructing the jury that the plaintiff was required to prove that the underlying acts for which she claimed unlawful retaliation occurred within a one-year statutory period. This was an erroneous statement of the law. *See* Cal. Gov.Code § 12960; *Strother v. Southern Cal. Permanente Med. Group,* 79 F.3d 859, 868 n. 11 (9th Cir.1996). The plaintiff, however, does not show how the instruction could have affected the jury's verdict, *see Caballero v. City of Concord,* 956 F.2d 204, 206 (9th Cir.1992), and has not identified significant events that occurred outside the one-year period.

The fourth issue is whether the district court erred by instructing the jury that conduct constituting workplace harassment had to take place at the plant location and not at the plaintiff's home. The district court's instruction was incorrect. *See Capital City Foods v. Superior Court,* 7 Cal.Rptr.2d 418, 422 (Cal.Ct.App.1992). Nevertheless, the letters the plaintiff received at home asking about when she would return to work do not rise to the level of harassment, which requires hostility and abuse. *See Harris v. Forklift Sys., Inc.,* 510 U.S. 17, 21-22 (1993).

***2** Finally, the district court did not abuse its discretion by refusing to admit evidence of Griffin's alleged misconduct, because, in light of his resignation and the lack of any continuing relationship between him and other of Rodeo's employees, the continuing violation doctrine does not apply. *See Masson v. New Yorker Magazine, Inc.,* 85 F.3d 1394, 1399 (9th Cir.1996).

AFFIRMED.

C.A.9 (Cal.),1997.
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