

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed December 30, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-1979

Lower Tribunal Nos. 09-24 AP, E01-0906-052

Industrial Affiliates, Ltd.,

Petitioner,

vs.

Hilda Fish,

Respondent.

A Writ of Certiorari to the Circuit Court Appellate Division for Miami-Dade County, Scott M. Bernstein, Mindy S. Glazer and Maria Espinosa Dennis, Judges.

Greenberg Traurig and Paul B. Ranis and Kristina L. Arnsdorff (Fort Lauderdale); Greenberg Traurig and Elliot H. Scherker and Brigid F. Cech Samole, for petitioner.

Sheldon Engelhard (Boca Raton), for respondent.

Before WELLS and SHEPHERD, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

For reasons unknown, the circuit court, appellate division, per curiam denied review of a final order of the Miami-Dade County Equal Opportunity Board

awarding damages to the employee, Ms. Fish, in an alleged employment discrimination case. The record conclusively demonstrates, however, that Ms. Fish was not discharged from her employment because she was in the class of married persons protected by the Florida Civil Rights Act of 1992. See §§ 760.01-760.11, Fla. Stat. (2009).¹ Rather, she was terminated after years of service because she married Mr. Fish, one of three hands-on partners who operated her employer. It is established that a valid discrimination claim cannot arise on the basis of “the specific identity . . . of an individual’s spouse.” *Donato v. Am. Tel. & Tel. Co.*, 767 So. 2d 1146, 1155 (Fla. 2000) (holding that term “marital status” for discrimination purposes “means the state of being married, single, divorced, widowed, or separated, and does not include the specific identity or actions of an individual’s spouse”); see also *Burke-Fowler v. Orange County, Fla.*, 447 F.3d 1319 (11th Cir. 2006).

The decision under review therefore represents a clear departure from the essential requirements of the law resulting in a miscarriage of justice and is consequently quashed.

Certiorari granted.

¹ The fact that she was replaced by another married woman itself demonstrates that she could not establish a prima facie case of discrimination on this ground. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Vessels v. Atlanta Indep. Sch. Sys.*, 408 F.3d 763 (11th Cir. 2005).