

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002468-MR

RITA MEREDITH

APPELLANT

v. APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 06-CI-00222

CITY OF VERSAILLES

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: DIXON AND LAMBERT, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

DIXON, JUDGE: Rita Meredith appeals from a summary judgment of the Woodford Circuit Court that dismissed her claim of disability discrimination against her former employer, the City of Versailles. We affirm.

Meredith worked as an emergency 911 dispatcher for the Versailles Police Department from 1998 through 2005. As a dispatcher, Meredith operated a telephone

¹ Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and radio system to communicate with emergency response vehicles. All dispatchers, including Meredith, were required to work irregular hours and rotating shifts to ensure the 911 call center was adequately staffed.

In June 2002, Meredith was diagnosed with a sleep disorder which caused excessive drowsiness during the evening. More than two years later, in December 2004, Meredith provided her supervisor with the following note from Dr. James Thompson:

The patient has a medical condition affecting sleep. She can not do shift work. If forced to do shift work, this puts her at risk to have car accidents going to and from work and accidents on the job.

As a result, Meredith requested to work only first shift. After receiving her doctor's note, the chief of police advised Meredith that it was impossible for her to work only first shift because the dispatcher position necessarily required working irregular hours and rotating shifts. Meredith continued working as a dispatcher until March 20, 2005. She then took several weeks off work using vacation and medical leave. In April 2005, the mayor contacted Meredith and offered her a first shift position at the city's public works department. Meredith declined the offer because the salary was less than she made as a dispatcher. Meredith was also contacted by her supervisor, who offered to arrange transportation to and from work for her if she continued to work rotating shifts. Meredith declined because she felt tired when she worked during nighttime hours.

Meredith was expected to return to work on June 23, 2005. When she failed to report to work as scheduled, the mayor terminated Meredith's employment the following day.

On July 17, 2006, Meredith filed a complaint against the City alleging disability discrimination and wrongful termination. The City moved for dismissal, or alternatively, summary judgment. The trial court granted summary judgment in favor of the City on October 30, 2006. This appeal followed.

To prevail on a motion for summary judgment, the movant must “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Ky. R. Civ. P. (CR) 56.03; *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996). “Only when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor should the motion for summary judgment be granted.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). “Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue *de novo*.” *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001).

Meredith argues the City discriminated against her when it failed to accommodate her disability by scheduling her to work only first shift. She also contends the trial court failed to provide adequate time for discovery. The City, however, asserts that Meredith is not a disabled person and therefore, not entitled to an accommodation.

Pursuant to the Kentucky Civil Rights Act, it is unlawful for an employer to terminate an employee “because the person is a qualified individual with a disability. . . .” KRS 344.040(1). We note that the Kentucky Act is based upon federal law, and our

courts interpret the Act in accordance with federal precedent. *Howard Baer, Inc. v. Schave*, 127 S.W.3d 589, 593 (Ky. 2003).

To establish a *prima facie* case of disability discrimination, the movant must show: “(1) that he had a disability as that term is used under the statute (i.e., the Kentucky Civil Rights Act in this case); (2) that he was 'otherwise qualified' to perform the requirements of the job, with or without reasonable accommodation; and (3) that he suffered an adverse employment decision because of the disability.” *Hallahan v. The Courier Journal*, 138 S.W.3d 699, 706 (Ky. App. 2004). KRS 344.010(4)(a) defines “disability” as: “A physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual[.]” Furthermore, “[w]hether the plaintiff has an impairment and whether the conduct affected by the impairment is a major life activity under the statute are legal questions.” *Id.* at 707.

Curiously, Meredith does not assert that her sleep disorder substantially limits any of her major life activities. Instead, Meredith contends that this Court must assume she is disabled and find that the City unreasonably denied her requested accommodation. We disagree. “A[] . . . claimant must specify which major life activity has been limited; only those grounds specifically raised will be considered on appeal.”

Sinkler v. Midwest Property Mgmt. Ltd. P'ship, 209 F.3d 678, 683 (7th Cir. 2000).

Unfortunately for Meredith, we cannot simply accept her own opinion that she is disabled and address the remaining elements of the *prima facie* case. “It is insufficient for individuals attempting to prove disability status . . . to merely submit evidence of a

medical diagnosis of an impairment.” *Toyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184, 198, 122 S. Ct. 681, 691, 151 L. Ed. 2d 615 (2002).

After reviewing the record, we conclude that, even when viewed most favorably to Meredith, she failed to set forth an essential element of the *prima facie* case of disability discrimination under the Kentucky Civil Rights Act. As she did not show she was disabled pursuant to the Act, Meredith's claim fails as a matter of law. In light of our determination, we decline to address Meredith's alternative argument regarding the time allowed for discovery by the trial court.

For the reasons stated herein, the judgment of the Woodford Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Edward E. Dove
Lexington, Kentucky

BRIEF FOR APPELLEE:

Robert L. Roark
Erica L. Keenan
Lexington, Kentucky