

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001321-MR

LATONYA HARDIN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE FREDERIC COWAN, JUDGE
ACTION NO. 14-CI-000734

HUMANA, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CLAYTON, AND JONES, JUDGES.

JONES, JUDGE: The Appellant, Latonya Hardin, appeals from the Jefferson Circuit Court's order granting summary judgment in favor of the Appellee, Humana, Inc. For the reasons set forth below, we affirm.

I. Factual and Procedural Background

In 2012, Latonya Hardin (“Hardin”) was a full-time employee of Humana, Inc. (“Humana”). While employed by Humana, Hardin received a

summons from the Administrative Office of the Courts indicating that she had been selected for jury duty in Jefferson County, Kentucky. After receiving the summons, Hardin notified Humana that she had been selected for jury duty and that she would need “approximately two weeks off.”

Hardin was “on call” for jury service on both January 19 and 27, 2012. It is undisputed that being “on call” did not require Hardin to personally report to the courthouse. It is likewise undisputed that Hardin did not report to work at Humana on either of those dates, having previously informed her supervisor that she would be out for jury duty.

On February 3, 2012, after reviewing information provided by the court system and discovering that Hardin was not present for jury duty on either January 19 or January 27, 2012, and that she did not report to work on those dates, Humana terminated Hardin for violating its “Critical Offense Policy.” A little over two years later, on February 10, 2014, Hardin filed suit against Humana. In her complaint, Hardin alleged that Humana illegally terminated her for missing work for jury duty in violation of KRS¹ 337.415. Humana moved to dismiss the complaint on the basis that it was time-barred.²

By opinion and order rendered July 10, 2014, the trial court granted Humana’s motion. The trial court reasoned that Hardin’s claim was governed by the ninety-day limitation period set forth in KRS 29A.160, not the more general

¹ Kentucky Revised Statutes.

² Hardin incorporated matters outside of the pleading in her response. As such, the trial court elected to treat Humana’s motion as one for summary judgment.

five-year limitation period for actions under KRS 337.415. Specifically, the trial court stated:

[T]he Court disagrees with plaintiff's interpretation of these statutes. KRS 337.415, entitled "Court-ordered appearance by employee not grounds for dismissal by employer; penalty for unlawful discharge," states that "No employer shall discharge an employee for taking time off, as required by law, to appear in any duly constituted local, state or federal court or duly constituted administrative tribunal or hearing . . ." While jury service is certainly a "[c]ourt-ordered appearance required by law," the words "juror," "jury duty" or "jury service" appear nowhere in KRS 337.415.

Conversely, KRS 29A.160 is very specific in preventing any adverse employer action when an "employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service." The plaintiff specifically claims in her complaint that the defendant terminated her "because Plaintiff had Jury Duty." (Complaint at ¶ 19). Moreover, her affidavit, taken as a whole, proves beyond doubt she is claiming that the defendant terminated her due to her jury service. Therefore, KRS 29A.160 is inarguably more applicable to plaintiff's claims than KRS 337.415 because the latter more generally applies to any "court-ordered appearance required by law." *Commonwealth v. Stanbaugh*, 327 S.W.3d 435, 442 (Ky. 2010) ("[T]he more specific statute controls over the more general statute"). Applying KRS 29A.160(2) to plaintiff's claims leads the Court to one inescapable conclusion: The action must be dismissed for the plaintiff's failure to file within the ninety-day limitations period.

This appeal followed.

II. Standard of Review

The standard of review on appeal when a trial court grants a motion for summary judgment is "whether the circuit judge correctly found that there were no

issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Pearson ex rel. Trent v. Nat’l Feeding Systems, Inc.*, 90 S.W.3d 46, 49 (Ky. 2002). “[T]he trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor.” *Steelvest, Inc., v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480–82 (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).

III. Analysis

KRS 29A.160 provides:

- (1) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.
- (2) If an employer discharges an employee in violation of subsection (1) of this section, the employee may within ninety (90) days of such discharge bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee with full seniority and benefits. Damages recoverable shall not exceed lost wages. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

KRS 337.415 provides:

No employer shall discharge an employee for taking time off, as required by law, to appear in any duly constituted

local, state or federal court or duly constituted administrative tribunal or hearing if such employee, prior to taking such time off, gives notice to the employer that he is required to serve by presenting a copy of the court or administrative certificate to said employer. The penalty for such unlawful discharge may include, but is not limited to, reemployment, assessment of court costs, appropriate attorney fees, and back pay as ordered by a court of competent jurisdiction.

KRS 337.425 is subject to a five-year limitation period because the statute itself does not set forth a specific limitation period. *See* KRS 413.120 (“The following actions shall be commenced within five (5) years after the cause of action accrued: . . . (2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.”).

On appeal, Hardin argues that the trial court erred when it granted summary judgment to Humana. She contends that she was dismissed for being required to appear and serve in a state court matter making her cause of action one for violation of KRS 337.425, and therefore, subject to a five-year limitations period. Humana counters that it is undisputed that the court matter at issue involves jury service thereby requiring suit to be filed within ninety days of the termination pursuant to KRS 29A.160.

The statutes cannot be applied in harmony. Both deal with discharge of employment and the only court matter at issue in this case is Hardin’s jury service. She has one claim for illegal discharge. That claim is either subject to a five-year limitation period or a ninety-day period. This requires us to determine which limitation period controls in this situation.

KRS 337.415 is the more general of the two statutes. It prohibits an employer from terminating an employee “for taking time off, as required by law, to appear in *any* duly constituted local, state or federal court or duly constituted administrative tribunal or hearing.” *Id.* (emphasis added). KRS 29A.160 is specific to jury duty. It specifically addresses an employer’s duty as related to an employee who is called for jury duty. Moreover, it is contained in a chapter of the Kentucky Revised Statutes that relates solely to jurors.

It is well-settled that when a conflict between two statutes exists, “Kentucky follows the rule of statutory construction that the more specific statute controls over the more general statute.” *Light v City of Louisville*, 248 S.W.3d 559, 563 (Ky. 2008). Consequently, we agree with the trial court’s conclusion that that KRS 29A.160’s ninety-day limitation period governs Hardin’s claim for wrongful discharge. *See also Litsey v. Allen*, 371 S.W.3d 786, 789 (Ky. App. 2012) (quoting *Boyd v. C & H Transp.*, 902 S.W.2d 823, 824 (Ky. 1995) (“A specific statute of limitation preempts a general statute of limitation where there is a conflict.”)).

Hardin was terminated by Humana on February 3, 2012. Hardin did not file suit for her alleged unlawful discharge until February 10, 2014, more than two years past her termination date and well past the ninety-day limitation period contained in KRS 29A.160. Hardin’s claim is time barred. Accordingly, the trial properly granted summary judgment to Humana.

IV. Conclusion

For the above mentioned reasons, we affirm the July 10, 2014, Opinion and Order of the Jefferson Circuit Court.

ALL CONCUR.

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