STATE OF MINNESOTA
IN COURT OF APPEALS
A11-256

Matthew Halleck,
Appellant,

vs.

MMSI, Inc. (a/k/a Mayo Management Services, Inc.),
Respondent.

Filed October 3, 2011
Affirmed
Stauber, Judge

Olmsted County District Court
File No. 55CV094682

Jeremy R. Stevens, Bird, Jacobsen & Stevens, P.C., Rochester, Minnesota (for appellant)

Gregory J. Griffiths, Dunlap & Seeger, P.A., Rochester, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

Appellant Matthew Halleck challenges the district court's award of summary judgment in favor of respondent MMSI, Inc. (a/k/a Mayo Management Services, Inc.) on a variety of employment claims. Because the district court did not err by concluding that there are no genuine issues of material fact, we affirm.

FACTS

Respondent employed appellant from May 2, 2005, until October 1, 2007. Appellant was hired as a limited-tenure employee, with a tenure period of one year. At the expiration of his initial tenure, appellant's employment was renewed for another year.

David Jasperson supervised appellant from July 2005 until May 2006. During this time, Jasperson received 13 complaints from various staff members regarding appellant's behavior and alleging a number of performance problems such as intimidating or bullying other employees, using unapproved interviewing techniques, and using his work email as a means to disseminate negative comments about the department. Following Jasperson's departure in May 2006, James Purvis was hired as an interim supervisor.

In August 2006, Simona Ahmed was hired as appellant's supervisor. Ahmed completed appellant's performance appraisal—which had been started by Jasperson prior to his departure—in April 2007. The appraisal included feedback from previous incomplete appraisals started by appellant's former supervisor, as well as information that Ahmed gathered and observed. Coworkers and Ahmed voiced concerns about appellant's behavior, noting that he exhibited a "disruptive behavior" that negatively influenced his co-workers and was disruptive to the program. Ahmed instituted a performance-improvement plan (PIP), requiring appellant to improve his attendance record, cease unprofessional communications, and come into compliance with MMSI call completion guidelines by June 30, 2007.

In the spring of 2007, appellant informed Ahmed that his wife was pregnant and he requested leave for the birth of the child. Ahmed made a comment suggesting that

appellant was ineligible to take the leave as his wife was the person who was having the baby. Ahmed admits making the statement, but claims that it was meant as a joke to ease the tension that had arisen between herself and appellant since the initiation of the PIP. Appellant informed Ahmed that parental leave is available to male and female employees. Ahmed did not take any further action with regard to the leave at that time.

On June 4, 2007 appellant appealed his PIP on June 4, 2007, to Barbara Kreinbring, respondent's Chief Health Services Officer. Kreinbring reviewed the file, and upheld the performance appraisal and PIP on June 22. Appellant also appealed the PIP to Daniel Dogo-Esekie, respondent's human resources senior service partner. In his response, Dogo-Esekie rejected appellant's allegations of gender discrimination and retaliation.

While appellant's PIP was in place, Ahmed promoted several females from limited-tenure to regular status. The criteria for such promotion were (1) that the employee not be subject to corrective action or a PIP and (2) seniority. While the positions had been open prior to the initiation of appellant's PIP, he was deemed ineligible for promotion due to the existing PIP at the time they were filled.

In June, 2007, appellant met with Ahmed and Jone Trapp, director of the Mayo Clinic Tobacco Quit Line and Lifestyle Coaching Programs, to discuss his PIP and extension of his limited-tenure employment, which was set to expire the following day. Ahmed informed appellant that he had completed the PIP and asked if he wanted to end his employment or have his limited-tenure employment extended until October 1, 2007. After appellant stated that he wanted to continue his employment—and wanted a

promotion to regular employee status—respondent extended the limited-tenure employment to October 1.

In September, appellant informed Ahmed that his wife had been scheduled to be induced for labor on October 17, 2007, and that his parental leave needed to begin on that date. The record indicates that Ahmed again made a comment that appellant was not eligible for parental leave because he was not the one having the baby. Despite making this comment, Ahmed scheduled a meeting with appellant for October 9 to complete the parental-leave paperwork.

In the final months of his employment, appellant continued to exhibit disruptive and negative behavior toward his co-workers and management. On October 1, 2007, respondent informed him that his limited-tenure employment would not be extended, and his employment ended on that date.

On January 26, 2009, appellant served respondent with a summons and complaint, alleging violation of the Minnesota Whistleblower Statute, gender discrimination under the Minnesota Human Rights Act (MHRA), gender discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), retaliation under the Minnesota Parental Leave Act (MPLA), interference with his exercise of rights under the Family Medical Leave Act (FMLA), and retaliation under Title VII and the MHRA. Respondent moved for summary judgment dismissing the claims, and the district court granted the motion.[1] This appeal follows.

[1] Appellant does not challenge the district court's award of summary judgment on the whistleblower claim. We therefore decline to address it further.

D E C I S I O N

A motion for summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. On an appeal from summary judgment, a reviewing court asks two questions: (1) whether there are any genuine issues of material fact and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). An appellate court reviews both questions de novo, viewing the evidence in the light most favorable to the party against whom judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002); *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Summary judgment will be affirmed if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

I. Gender Discrimination under Title VII and MHRA

Gender-discrimination claims under Title VII and the MHRA are analyzed under the three-step *McDonnell-Douglas* burden-shifting analysis. *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 802–804, 93 S. Ct. 1817, 1824–25 (1973) (Title VII); *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 623–24 (Minn. 1988) (MHRA). Under the first prong of this analysis, a person claiming disparate treatment bears the burden of establishing a prima facie case of disparate treatment based upon a statutorily prohibited discriminatory factor. *Anderson*, 417 N.W.2d at 623. If the prima facie case is established, a presumption arises that the defendant—typically an employer—

unlawfully discriminated against the plaintiff. *Id.* The defendant must then produce evidence articulating a legitimate, nondiscriminatory reason for the plaintiff's treatment. *Id.* "If the defendant can produce sufficient evidence to raise a genuine issue of fact that its stated motive for treating the claimant as it did arose from legitimate nondiscriminatory reasons, the burden shifts to claimant to demonstrate that the defendant's asserted legitimate reasons were pretextual." *Id.* at 623–24.

Here, appellant bore the initial burden to establish a prima facie case of gender discrimination by showing that he: (1) is a member of a protected class; (2) was qualified for the job from which he was discharged; (3) was discharged; and (4) was treated differently than similarly situated non-members of the protected class. *Hubbard v. United Press Int'l., Inc.*, 330 N.W.2d 428, 442 (Minn. 1983). The district court found that, when the evidence was viewed in the light most favorable to appellant, this prima facie case was established, and this finding is not challenged on appeal.

The burden then shifts to respondent to produce evidence articulating a legitimate, nondiscriminatory reason for not offering appellant a regular-status position and for not extending his employment beyond October 1, 2007. *See Anderson*, 417 N.W.2d at 623. The district court found that respondent had done so, noting that respondent received "multiple complaints about [appellant] well before any of the allegedly discriminatory acts occurred" and that appellant "continued to have performance and behavior problems with [respondent] during the time the allegedly discriminatory acts occurred."

Neither appellant's brief nor the record contradicts these findings. Instead, appellant argues that his supervisor "was attempting to . . . creat[e] an all-female

department" and that "a reasonable fact-finder could conclude that each of respondent's reasons for discharging appellant are false." This, however, seems to be an argument on the third prong of the *McDonnell-Douglas* framework: that the stated reasons are pretextual.

Appellant bases his pretext argument on *Sigurdson v. Isanti Cty.*, 386 N.W.2d 715 (Minn. 1986), in which the supreme court stated that pretext may be shown "either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." 386 N.W.2d at 720 (quotation omitted). The supreme court later said, however, that "in order to avoid summary judgment under the *McDonnell Douglas* third step, the employment discrimination plaintiff must put forth sufficient evidence for the trier of fact to infer that the employer's proffered legitimate nondiscriminatory reason is not only pretext *but that it is pretext for discrimination*." *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 546 (Minn. 2001) (emphasis added). The court further stated that "[i]n some cases, sufficient evidence may consist of only the plaintiff's prima facie case plus evidence that the employer's proffered reason for its action is untrue. In other cases, more may be required." *Id.*

Here, appellant argues that he has shown the stated reasons to be pretextual because (1) there are inconsistencies regarding when appellant's limited-tenure appointment was set to expire; (2) he received no further corrective action from the time he was released from the PIP until his limited-tenure employment was not renewed; and (3) that appellant's department was growing at the time his employment ended.

The record supports the district court's finding that appellant exhibited numerous performance and behavior problems while employed by respondent, including failure to follow protocol, poor attendance, and his aggressive and negative attitude in the workplace. Appellant does not argue on appeal that these assessments were fabricated. He has therefore failed to meet his burden to show that they were a pretext for gender discrimination.[2] Instead, he simply suggests that "a reasonable fact-finder could conclude that appellant would not have been released from the PIP or his supervisor would, at the very least, have discussed with him her concerns regarding his performance." This assertion is insufficient to defeat a summary judgment motion, and the district court therefore did not err by granting respondent's motion with respect to appellant's Title VII and MHRA gender-discrimination claims.

II. Retaliation under Title VII and MHRA

Appellant challenges the district court's award of summary judgment on the retaliation claims on both procedural grounds and on the merits. We address each argument in turn.

[2] Contrary to appellant's assertion, the district court did not base its award of summary judgment on the discrimination claim on respondent's assertions that the department was downsizing or that his limited-tenure appointment was set to expire. Instead, the district court found that appellant's continued performance and behavior problems were the legitimate, nondiscriminatory reasons for respondent's actions toward appellant. As such, we address only appellant's alleged performance and behavior problems.

A. Procedural

Appellant argues that the district court improperly awarded summary judgment on the MHRA and Title VII retaliation claims because respondent "failed to offer a theory by which the claim may be dismissed." This argument is unavailing.

Even if appellant is correct that respondent did not offer a summary-judgment theory on appellant's retaliation claim, "[a] district court may, sua sponte, grant summary judgment if, under the same circumstances, it would grant summary judgment on motion of a party." *Estate of Riedel v. Life Care Retirement Communities, Inc.*, 505 N.W.2d 78, 81 (Minn. App. 1993) (citing *Del Hayes & Sons v. Mitchell*, 304 Minn. 275, 280, 230 N.W.2d 588, 591–92 (1975)). And we will not reverse a district court's grant of summary judgment unless the objecting party can show prejudice from lack of notice, procedural irregularities, or the lack of a meaningful opportunity to oppose summary judgment. *Id.* at 81.

As evidenced by his memorandum in opposition to respondent's summary judgment motion, appellant knew that respondent sought summary judgment on all claims alleged in the complaint. Appellant therefore did not suffer from lack of notice and he was given a meaningful opportunity to oppose summary judgment on the retaliation claim.

Appellant's reliance upon the supreme court's decision in *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 187 N.W.2d 133 (1971), is misplaced. *Schoepke's* holding addressed a provision of the Minnesota Rules of Civil Appellate Procedure, stating that an issue is waived on appeal if a party fails to provide analysis,

authorities, or argument. 290 Minn. at 519–20, 187 N.W.2d at 135. Particularly in light of the district court's authority to award summary judgment sua sponte, *Schoepke* does not stand for the proposition that claims presented without analysis, authorities, or argument are unavailable for summary judgment.

Because appellant has not shown prejudice from lack of notice, procedural irregularities, or from the lack of a meaningful opportunity to oppose summary judgment on the retaliation claims, the district court did not err by considering and ruling on those claims.

B. Merits

Minnesota courts use the same *McDonnell-Douglas* analysis when evaluating retaliation claims under Title VII and the MHRA. *Ray v. Miller Meester Adver., Inc.*, 664 N.W.2d 355, 367 (Minn. App. 2003), *aff'd*, 684 N.W.2d 404 (Minn. 2004). Under the first prong of this analysis, appellant must establish a prima facie case for retaliation by showing that (1) he engaged in a protected activity; (2) that respondent took adverse action against him; and (3) there is a causal connection between the two. *Ray*, 664 N.W.2d at 367. The district court found that appellant had engaged in protected activity by raising his gender-discrimination concerns and that respondent took adverse action by discharging appellant, and these findings are not challenged on appeal. However, the district court found that appellant had not "shown a factual basis upon which a jury could reasonably conclude that [respondent] discharged him *because of* his gender discrimination claims."

Appellant argues that the district court's reasoning is flawed because a causal connection may be inferred based on the temporal proximity between his filing of the internal appeal and his discharge. But "courts have been hesitant to find pretext or discrimination on temporal proximity alone and look for proximity in conjunction with other evidence." *Hansen v. Robert Half Intern., Inc.*, 796 N.W.2d 359, 367 (Minn. App. 2011) (quotation omitted). Here, appellant points to no evidence suggesting a causal connection between the two events *other than* the temporal proximity. On this record, the district court did not err by concluding that appellant had not established a prima facie case of discriminatory retaliation under Title VII or the MHRA. Because appellant's claims fail under the first prong of the *McDonnell-Douglas* framework, there is no need to analyze whether respondent has established a legitimate, nondiscriminatory reason for the discharge and whether the purported reason is pretextual.

III. Claims under FMLA and MPLA

The MPLA, in relevant part, requires an employer to grant a six-week unpaid leave of absence to an employee who is a natural or adoptive parent in conjunction with the birth or adoption of the child. Minn. Stat. § 181.941, subd. 1 (2010). The statute prohibits employers from retaliating against an employee for requesting or obtaining a leave of absence under the MPLA. *Id.*, subd. 3. Likewise, the FMLA allows employees to take up to twelve weeks of unpaid leave for "the birth of a son or daughter of the employee . . . in order to care for such son or daughter" and prohibits employers from interfering with, restraining, or denying the exercise of or the attempt to exercise FMLA rights or discharging an individual for opposing any practice made unlawful by the

FMLA. 29 U.S.C. §§ 2612(a)(1)(A), 2615 (a) (2006). Appellant's claims under the FMLA and MPLA relate simultaneously to a denial of benefits and to retaliation.

"In an [FMLA] interference claim, an employee must show only that he or she was entitled to the benefit denied." *Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1050 (8th Cir. 2006) (quotation omitted). However, an employee who requests FMLA leave would have no greater protection against his or her employment being terminated for reasons not related to his or her FMLA request than he or she did before submitting the request. *Cf.* 29 C.F.R. § 825.216(a) (noting that an employee may be laid off or refused reinstatement, so long as the action would have been taken in the absence of the leave). As such, an employer is not liable for interference with FMLA leave "where an employer's reason for dismissal is insufficiently related to FMLA leave." *Stallings*, 447 N.W.2d at 1051.

For the reasons described above, respondent has shown that the non-renewal of appellant's employment was unrelated to his parental-leave request. Respondent is therefore not liable for interference with appellant's rights under FMLA or MPLA. As explained by the district court, appellant "did not receive FMLA benefits upon the birth of his child because he was no longer employed by [respondent] at that time." The district court therefore did not err by awarding respondent summary judgment on the claim.

With respect to appellant's retaliation claim—arguing that his employment ended because he requested leave under the FMLA and MPLA—his claim suffers from the same flaw. Respondent has shown that its decision to not renew appellant's limited-

tenure employment was unrelated to his requests to take parental leave. The district court therefore did not err by awarding summary judgment on the claim.

Affirmed.