STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2203

Thomas Brown-Rojina,
Appellant,

vs.

Minneapolis Glass Company, Inc.,
Respondent.

Filed August 26, 2013
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-CV-11-17342

Andrew Gene Birkeland, R. Daniel Rasmus, Rasmus Law Office, LLC, Minneapolis, Minnesota (for appellant)

Louise A. Behrendt, Kirsten Jean Hansen, Stich Angeli Kreidler Dodge & Unke, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Presiding Judge; Peterson, Judge; and Chutich, Judge.

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

PETERSON, Judge

In this appeal from a judgment dismissing appellant's claims of age and disability discrimination in violation of the Minnesota Human Rights Act (MHRA), appellant argues that he established prima facie cases of age and disability discrimination and that

the employer's proffered reason for terminating his employment was pretextual. We affirm.

FACTS

Appellant Thomas Brown-Rojina worked for respondent Minneapolis Glass, Inc., as a glass cutter and fabricator. During his employment, appellant sustained a number of work-related injuries, including apparent heat stroke and a deep cut to a tendon in his leg, which resulted in his transfer to the light-duty shower-door department. Appellant received workers' compensation benefits for some of these injuries.

After sustaining a work-related back injury in June 2010, appellant was absent from work for almost three weeks. When he returned, he was assigned to the glass filming department for light-duty work, but, at his request, was reassigned to the shower-door department. Respondent modified appellant's job duties in the shower-door department to accommodate his work restrictions.

Early during the workday on Friday, August 6, 2010, several employees observed appellant exhibiting signs of intoxication, including staggering, talking loudly and obnoxiously, slurring his speech, swearing, acting belligerently, sitting in a chair with his eyes closed (apparently asleep), and lying down on the floor. Appellant's supervisor Jay Weide observed appellant arguing with and swearing at other employees. When an employee mentioned that appellant "smell[ed] like a brewery," Weide walked over to appellant and smelled the odor of alcohol. Appellant's behavior that day was inconsistent with his normal behavior at work, and two employees testified that appellant's behavior was consistent with his behavior at social events when he had been drinking.

Weide reported his observations to company vice president Tom Stadler. Stadler went to investigate and found appellant lying on the floor in an office with his eyes closed and instructed him to stand up. When appellant stood, Stadler smelled "a very, very strong alcohol odor." Stadler observed that appellant's eyes were very bloodshot and his speech was slurred. Stadler told appellant: "[I]t's apparent you've been drinking this morning. You don't appear to be normal. You're not speaking clearly and you smell like alcohol and I don't think it's safe for you here." Appellant responded that he had two beers the previous evening, that he was able to work, and that he was not an alcoholic. Stadler escorted appellant out of the building and sent him home.

When respondent's president Jennifer Lang arrived at work on August 6, 2010, Weide and Stadler told her that "several employees had noticed . . . strange behavior and a smell of alcohol" coming from appellant and that they had sent him home because they believed he was intoxicated. Before deciding to terminate appellant, Lang spoke to Weide, Stadler, and at least four other employees about their observations of appellant. Lang decided to terminate appellant "based on a cumulative effect of all the statements, of all the observations" because being intoxicated at work was unacceptable behavior and unsafe for the intoxicated employee and other employees. Lang testified that neither appellant's age nor his workers' compensation status was a factor in the decision.

Appellant was terminated when he reported to work on Monday, August 9, 2010. Sometime in the fall of 2010, respondent offered appellant his job back on the condition that he undergo a drug-and-alcohol evaluation.

Appellant denied being intoxicated at work and testified that he was in horrible pain on August 6, 2010, but went to work because respondent was short-staffed that day. He testified that it was an extremely hot day, and he was very concerned about getting heat stroke again. Appellant testified that he was angry that day about Stadler and Weide reprimanding him about his lack of productivity a few days earlier and, as a result, when an employee made a comment about appellant "sitting down on the job," appellant lashed out by swearing at the employee.

Appellant's claims of age and disability discrimination were tried to the court. The district court concluded that appellant failed to establish a prima facie case of age or disability discrimination. The court also concluded that respondent had a reasonable, legitimate, nondiscriminatory reason for terminating appellant based on respondent's "reasonable belief that [appellant] appeared at work intoxicated in violation of the company's policy." Judgment was entered for respondent. This appeal followed.

D E C I S I O N

In an appeal following a court trial, this court defers to the district court's factual findings and will not reverse the findings unless they are clearly erroneous. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). "This deference is especially strong in employment discrimination cases." *Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 593 (Minn. App. 1994) (quotation omitted). Under the clearly-erroneous standard, the district court's factual findings will be sustained if they are "reasonably supported by evidence in the record

considered as a whole." *Id.* But this court is not bound by and need not defer to the district court's decision on a purely legal issue. *Porch*, 642 N.W.2d at 477.

The MHRA prohibits an employer from discharging an employee based on age or disability. Minn. Stat. § 363A.08, subd. 2(2) (2012). A plaintiff may prove discriminatory intent either by direct evidence or by circumstantial evidence using the burden-shifting method adopted in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824 (1973). *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001); *Friend v. Gopher Co., Inc.*, 771 N.W.2d 33, 37 (Minn. App. 2009).

Appellant sought to prove his discrimination claims using the *McDonnell Douglas* burden-shifting method.

> Under this framework, a plaintiff must first make out a prima facie case of discrimination. Once established, the burden then shifts to the employer to articulate a legitimate and nondiscriminatory reason for the adverse employment action. The burden then shifts again to the plaintiff to put forward sufficient evidence to demonstrate that the employer's proffered explanation was pretextual.

Hansen v. Robert Half Int'l., Inc., 813 N.W.2d 906, 918 (Minn. 2012).

Prima facie case

Because we conclude that respondent had a legitimate, nondiscriminatory reason for terminating appellant that was not pretextual, we will not address appellant's arguments that the district court erred in determining that appellant failed to establish a prima facie case of age or disability discrimination. Even if appellant established a prima facie case, he ultimately failed to prove discriminatory intent.

Legitimate nondiscriminatory reason

Violation of a company policy constitutes a legitimate, nondiscriminatory reason for terminating an at-will employee. *Twymon v. Wells Fargo & Co.*, 462 F.3d 925, 935 (8th Cir. 2006). The employee handbook in effect when appellant was terminated includes a drug-and-alcohol policy that states that "[e]mployees are not to report to work under the influence of alcohol and therefore are not to use alcohol during lunch or other workday breaks" and that "[e]mployees who are in a condition which impairs their ability to perform their job or endangers the safety of themselves and others, will not be allowed to continue working or remain in the workplace." The handbook provides that all employees are at will and that an employee who violates the drug-and-alcohol policy may be subject to disciplinary action, including termination without prior disciplinary action. Under the handbook, appellant was an at-will employee, and intoxication during the workday is a violation of company policy.

Although Minnesota's appellate courts have not addressed whether the reason for termination must be factually accurate, federal courts have applied the standard whether the employer "in good faith believed that the employee was guilty of the conduct justifying discharge." *McCullough v. Univ. of Ark. for Med. Sciences*, 559 F.3d 855, 861-62 (8th Cir. 2009); *see also Twymon*, 462 F.3d at 935 (stating that "a proffered legitimate, non-discriminatory reason for termination need not, in the end, be correct if the employer honestly believed the asserted grounds at the time of the termination"). Interpretations of federal antidiscrimination statutes may guide our interpretation of the MHRA when the MHRA provision in question is similar to a provision of the federal statute. *Kolton v.*

Cnty. of Anoka, 645 N.W.2d 403, 407-08 (Minn. 2002) (relying on interpretations of Title I of Americans with Disabilities Act in construing MHRA).

Appellant argues that his behavior on August 6 was the result of pain and that evidence of his intoxication was discredited at trial. But the district court found:

> 6. The Court heard testimony regarding [appellant's] conduct at work on August 6, 2010, including reports that [appellant] was staggering, had bloodshot eyes, was belligerent, smelled of alcohol, was swearing, was found sleeping in a chair and laying down in an office. [Appellant] argued that he was laying down on the office floor in an effort to perform traction on his lower back, as instructed by his medical providers. However, the Court notes that it was not until September 16, 2010, over one month later, that Dr. Huebner instructed [appellant] to lie flat to help alleviate pain, as needed.
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> 7. [Appellant] attempts to discredit this testimony on the grounds that Mr. Stadler, the only witness who smelled alcohol on [appellant's] person, did not testify at trial.[1] Although [respondent's] case was weakened by the absence of Mr. Stadler, the burden ultimately rests on [appellant] to establish the elements of his discriminatory discharge case. Based upon a full review of the record before the Court, [respondent] had a reasonable belief that [appellant] appeared at work intoxicated in violation of the company's policy.

Ample evidence supports a finding that Lang had a good-faith belief that appellant was intoxicated at work when she made the decision to terminate his employment.[2]

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[1] Due to a medical condition, Stadler's trial testimony was presented via deposition under Minn. R. Evid. 804(b)(1).

[2] Appellant objects to the district court's use of the term "reasonable belief." But a greater showing is required to establish an objective reasonable belief than a subjective good-faith belief. *See Choa Yang Xiong v. Su Xiong*, 800 N.W.2d 187, 191-92 (Minn. App. 2011) (explaining difference between reasonable belief and good-faith belief), *review denied* (Minn. Aug. 16, 2011).

Pretext

A plaintiff may show pretext by "directly . . . persuading the court that a discriminatory reason likely motivated the employer" or by "indirectly . . . showing that the employer's proffered explanation is unworthy of credence." *Hamblin v. Alliant Techsystems, Inc.*, 636 N.W.2d 150, 153 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002).

To show pretext, appellant testified that, in a June 2010 meeting, the company's owner talked about skyrocketing workers' compensation rates and mentioned that people had taken advantage of the system and were no longer employed by respondent. But Lang testified that the intent of the meeting was to remind employees that "everyone needs to work safe and smart and . . . watch out for one another." Lang also testified that respondent has six to ten workers' compensation claims filed per year but has never discouraged employees from filing claims or terminated an employee for filing a claim.

Appellant also relies on a comment that Stadler made about appellant being unable to lift heavy shower doors because he was old. Appellant argues that the comment shows that Stadler had animosity toward him and that the animosity is significant because Stadler "was the only witness who smelled alcohol on [appellant's] person" and Lang "made no personal observations about [appellant] on August 6, 2010, and relied exclusively upon the information received from [Stadler], and his alleged investigation, to determine whether [appellant] was intoxicated at work."

Appellant's argument is contrary to the evidence in the record. Weide testified that he smelled alcohol on appellant, and he decided to investigate appellant's behavior

after an employee reported that appellant "smell[ed] like a brewery." Also, although Lang did not personally observe appellant on August 6, she did not rely solely on information from Stadler in deciding to terminate appellant's employment. Rather, she made the decision after speaking to Weide, Stadler, and at least four other employees about their observations of appellant. Although the employees' observations were not recorded until the end of September 2010, Lang spoke to them before deciding to terminate appellant.

Appellant also cites evidence about an incident involving an employee who was prohibited from driving vehicles for respondent but not otherwise disciplined when the results of a random drug test showed marijuana use by the employee. That incident is not probative of pretext, however, because it occurred in 1996, before respondent adopted the employee handbook, Lang was not aware of the incident before trial, and the evidence does not show that the employee was impaired at work.

Although the district court did not specifically address the pretext evidence presented by appellant or find that appellant's intoxication was not a pretextual reason for termination, it is apparent in reading the district court's order as a whole that the court found credible the evidence presented by respondent, and we can infer a finding that respondent's intoxication was not a pretextual explanation for terminating appellant's employment. *See Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996) (stating that when a reviewing court is able to infer findings from the district court's conclusions, it is not necessary to remand the case for additional findings of fact); *see also Vangness v. Vangness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (stating that this

court defers to the district court's credibility determinations); Minn. R. Civ. P. 52.01 (requiring appellate court to defer to district court's opportunity to "judge the credibility of the witness").

Respondent asks this court to strike from appellant's brief references to his own and Lang's deposition testimony because the testimony was not admitted into evidence at trial. Although the deposition testimony was not admitted into evidence at trial, it was submitted to the district court by appellant in opposing respondent's summary-judgment motion and, therefore is part of the record on appeal under Minn. R. Civ. App. P. 110.01. But because only the trial verdict is being challenged on appeal, we did not consider the deposition testimony of Lang and appellant in reaching our decision.

Affirmed.