Case No. 2021-122

VERMONT SUPREME COURT 109 State Street Montpelier VT 05609-0801 802-828-4774 www.vermontjudiciary.org



Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

DECEMBER TERM, 2021

Rene Benoit* v. Green Mountain Transit

- APPEALED FROM:
- Superior Court, Chittenden Unit,
- } Civil Division
- CASE NO. 20-CV-00967 Trial Judge: Samuel Hoar, Jr.

In the above-entitled cause, the Clerk will enter:

Plaintiff Rene Benoit appeals a civil division order dismissing his complaint. We affirm.

Plaintiff Rene Benoit was the unmarried domestic partner of Nancy Clodgo, who was a long-term employee of defendant Green Mountain Transit (GMT). GMT previously allowed its employees to include domestic partners on employer-provided health insurance without reference to marital status. In December 2017, GMT changed its policy to continue covering unmarried domestic partners but to require payment of an additional premium. Ms. Clodgo sued GMT, alleging the change in coverage violated the Vermont Fair Employment Practices Act (VFEPA), 21 V.S.A. §§ 495-496a, which prohibits employers from discriminating against individuals who fall into several protected classes. GMT moved for judgment on the pleadings, arguing that: Ms. Clodgo failed to state a claim because the VFEPA does not include marital status as a protected class; Ms. Clodgo lacked standing to bring claims on Mr. Benoit's behalf; and Ms. Clodgo had not alleged an adverse employment action relative to her own benefits. Ms. Clodgo failed to respond to the motion, and the civil division dismissed on that basis. On appeal, this Court affirmed. See Clodgo v. Green Mtn. Transit, No. 2020-157, 2020 WL 7121770 (Vt. Dec. (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/ documents/eo20-157.pdf [https://perma.cc/M7S4-UZKC].

Plaintiff then filed this suit, alleging virtually identical claims as those raised in the prior action by Ms. Clodgo. GMT moved to dismiss on three grounds: res judicata; lack of standing; and failure to state a claim under the VFEPA. The civil division concluded that res judicata barred the claim because the two complaints were identical except for the named plaintiff, and plaintiff was in privity with Ms. Clodgo. The civil division also concluded that plaintiff's allegation that he was a third-party beneficiary of Ms. Clodgo's insurance coverage was insufficient to give him standing to sue her employer. Finally, the court held that plaintiff's complaint failed to state a claim under the VFEPA because the Act did not prohibit discrimination based on marital status. Plaintiff appeals.

On appeal, plaintiff argues that the civil division erred in applying res judicata because he was not a party to the prior suit. He also argues that it was premature to dismiss his complaint for lack of standing because there was insufficient evidence regarding the terms of the contract between Ms. Clodgo and GMT. Plaintiff concedes that the civil division's reasoning regarding the lack of marital status as a protected class under the VFEPA "finds firmer footing," but maintains that the court's other errors nevertheless require reversal.

"We review the trial court's disposition of a motion to dismiss de novo, and may affirm on any appropriate ground." Bock v. Gold, 2008 VT 81, \P 4, 184 Vt. 575 (mem.). Where a complaint is dismissed for failure to state a claim, we dismiss only "when it is beyond doubt that there exist no facts or circumstances, consistent with the complaint that would entitle the plaintiff to relief." Id.

We do not reach plaintiff's arguments regarding res judicata or standing because we conclude that plaintiff has failed to state a claim under the VFEPA. The VFEPA prohibits an employer from discriminating "against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability." 21 V.S.A. § 495(a)(1). In interpreting the meaning of this statute, our primary objective is to implement the Legislature's intent. T.C. v. L.D., 2020 VT 19, ¶ 4, 211 Vt. 582. To determine intent, we look first to the plain language and when the "intent is clear from the statutory language, we accept the plain meaning, our inquiry is at its end, and [we] enforce the statute according to its terms." Id.

Here, the language of the VFEPA is unambiguous and does not provide that marital status is a protected class. Plaintiff offers no argument to the contrary. To make a prima facie case of employment discrimination under the VFEPA, plaintiff must demonstrate among other things that he "was a member of a protected group." Robertson v. Mylan Lab'ys, Inc., 2004 VT 15, ¶ 25, 176 Vt. 356. Because plaintiff was not a member of a protected group, he has failed to make a prima facie case under the VFEPA, and the complaint was properly dismissed.

Affirmed.

BY THE COURT:
Paul L. Reiber, Chief Justice
Harold E. Eaton, Jr., Associate Justice
William D. Cohen, Associate Justice