Williams v. Trotwood Madison City Sch.

United States Court of Appeals for the Sixth Circuit

May 16, 2019, Filed

No. 18-3848

Reporter
2019 U.S. App. LEXIS 14707 *

NYRTISTENE WILLIAMS, Plaintiff-Appellant, v. TROTWOOD MADISON CITY SCHOOLS; EDDIE SAMPLE; KEVIN BELL; TRACEY MALLORY; JODY MCCURDY, Defendants-Appellees.

Notice: NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. *SIXTH CIRCUIT RULE 28* LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE *RULE 28* BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

Prior History: [*1] ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO.

Williams v. Trotwood Madison City Schs, 2018 U.S. Dist. LEXIS 132574 (S.D. Ohio, Aug. 7, 2018)

Case Summary

Overview

HOLDINGS: [1]-Defendants were properly granted summary judgment on the employee's claim of retaliation under *§ 504 of the Rehabilitation Act* because defendants articulated a nondiscriminatory reason for not renewing the employee's contract and the employee had not produced any evidence to show that defendants' reason was pretextual.

Outcome
Judgment affirmed.

Counsel: For Nyrtistene Williams, Plaintiff - Appellant: Erica Ann Probst, Kemp, Schaeffer & Rowe, Columbus, OH.

For Trotwood Madison City Schools, Eddie Sample, Kevin Bell, Tracey Mallory, Jody Mccurdy, Defendants - Appellees: Bernard William Wharton McCaslin, Imbus & McCaslin Cincinnati, OH.

Judges: Before: DAUGHTREY, GRIFFIN, and STRANCH, Circuit Judges.

Opinion

ORDER

Nyrtistene Williams, an Ohio resident proceeding with counsel, appeals a district court judgment in favor of the defendants on her claims of retaliation under *§ 504* of the *Rehabilitation Act* and the *First Amendment*. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a)*.

Williams, an intervention specialist in the Trotwood Madison City ***School District***, filed a complaint against the ***school district***, Special Education Supervisor Eddie Sample, School Superintendent Kevin Bell, Westbrooke Village Elementary School Principal Tracey Mallory, and Director of Special Education Jody McCurdy, claiming that her employment was terminated in retaliation for William's directly contacting Bell regarding the inadequacy of special education services **[*2]** at Westbrooke Village Elementary School. The district court dismissed Williams's *First Amendment* retaliation claim after determining that her communications with her supervisors were not protected because they were made pursuant to her official duties. The district court then granted summary judgment in favor of the individual defendants on Williams's claim of retaliation under the Rehabilitation Act after determining that they could not be held personally liable, and the court granted summary judgment in favor of the ***school district*** after Williams failed to demonstrate that the reasons for her termination were merely pretextual.

Williams now argues that the district court erred in granting summary judgment in favor of the defendants

because they failed to articulate a legitimate reason for the non-renewal of Williams's employment contract. Because Williams does not challenge the district court's dismissal of her *First Amendment* retaliation claim, the grant of summary judgment in favor of the individual defendants, or the determination that she failed to show pretext, she has abandoned review of those arguments before this court. *See* *Agema v. City of Allegan, 826 F.3d 326, 331 (6th Cir. 2016)*.

We review de novo a district court's grant of summary judgment. *Franklin v. Kellogg Co., 619 F.3d 604, 610 (6th Cir. 2010)*. Summary judgment **[*3]** is appropriate when the evidence presented shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*. The moving party bears the burden of showing "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*.

Retaliation claims under the Rehabilitation Act are analyzed in accordance with the burden-shifting analysis of *McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)*. *Gribcheck v. Runyon, 245 F.3d 547, 550 (6th Cir. 2001)*. The plaintiff bears the initial burden of setting forth a prima facie case of retaliation. *McDonnell Douglas Corp., 411 U.S. at 802*. To establish a prima facie case of retaliation, the plaintiff must demonstrate that (1) the plaintiff engaged in a legally protected activity; (2) the defendant knew about the engagement in the protected activity; (3) the defendant then took adverse action against the plaintiff; and (4) there was a causal connection between the protected activity and the retaliation. *A.C. ex rel. J.C. v. Shelby Cty. Bd. of Educ., 711 F.3d 687, 697 (6th Cir. 2013)*. Upon making a prima facie showing of retaliation, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason" for its actions. *McDonnell Douglas Corp., 411 U.S. at 802*. If the defendant is able to articulate a legitimate nondiscriminatory reason, the burden shifts back to the plaintiff to prove by a preponderance of the evidence that **[*4]** the reasons offered were a pretext for retaliation. *Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981)*.

The ***school district*** asserts that Williams was dismissed, in part, because of her uncooperative behavior, unprofessional conduct, and failure to follow protocol. Williams disputes the veracity of these claims. But, despite her assertions to the contrary, the record contains evidence that Williams had conflicts with coworkers, that she received an oral reprimand for tardiness, that she received oral and written reprimands regarding her failure to meet deadlines, and that she exercised poor professional judgment in sending an email directly to the superintendent rather than her immediate supervisor and in putting oil in a student's hair without parental permission. Williams has failed to provide any evidence to substantiate her claims that the reasons given for her dismissal were pretextual. Additionally, although Williams asserts that the district court erred in granting summary judgment because the defendants failed to establish that they would have taken the same action even if Williams had not participated in the protected conduct, that is the test for retaliation under the *First Amendment* not the Rehabilitation Act. *Compare* *Burdine, 450 U.S. at 253* (discussing *McDonnell-Douglas* ***[*5]*** framework) *with* *Leary v. Daeschner, 349 F.3d 888, 898 (6th Cir. 2003)* (discussing constitutional retaliation test). Because the defendants articulated a nondiscriminatory reason for not renewing Williams's contract and because Williams has not produced any evidence to show that defendants' reason is pretextual, the district court properly granted summary judgment in favor of the defendants.

For the foregoing reasons, we **AFFIRM** the judgment of the district court.

End of Document