Owen v. L'Anse Area Sch.

United States District Court for the Western District of Michigan, Northern Division
November 14, 2001, Decided ; November 14, 2001, Filed
Case No. 2:00-CV-71

Reporter: 2001 U.S. Dist. LEXIS 19287

LOUIS OWEN, Plaintiff, v. L'ANSE AREA SCHOOLS; BRIAN JENTOFT, in his Official and Individual Capacities; and H. PETER MOORE, in his Official and Individual Capacities, Jointly and Severally, Defendants. and UNITED STATES OF AMERICA, Plaintiff, v. L'ANSE AREA SCHOOLS, Defendant.

Disposition: [*1] Defendants' Motion for Summary Judgment GRANTED IN PART and DENIED IN PART.

Counsel: For LOUIS OWEN, plaintiff: Patricia A. Stamler, Sommers, Schwartz, Silver & Schwartz, PC, Southfield, MI.

For L'ANSE AREA SCHOOLS, BRIAN JENTOFT, H. PETER MOORE, defendants: Philip A. Erickson, Plunkett & Cooney, PC, Lansing, MI.

For L'ANSE AREA SCHOOLS, BRIAN JENTOFT, H. PETER MOORE, defendants: Susan Douglas MacGregor, Plunkett & Cooney, PC, Marquette, MI.

For USA, intervenor: Charles R. Gross, U.S. Attorney's Office, Western District of Michigan, Grand Rapids, MI.

For USA, intervenor: William B. Fenton, Aaron D. Schuham, Ross Wiener, U.S. Department of Justice, Washington, DC.

Judges: GORDON J. QUIST, UNITED STATES DISTRICT JUDGE.

Opinion by: GORDON J. QUIST

Opinion

This is an unusual employment discrimination claim involving student-on-teacher harassment at a high school. Plaintiff, Louis Owen ("Owen"), was a history teacher in the L'Anse Area Schools for 31 years before retiring in June 2000. He filed suit against his former employer as well as Brian Jentoft, a former superintendent, and H. Peter Moore, the current high school principal, for discrimination. Owen, a Jew, claims [*2] that Defendants discriminated against him by failing to address his complaints about student harassment. He brings claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), *42 U.S.C. § 2000e--2000e*-17, the Michigan Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101--.2804 ("ELCRA"), and *42 U.S.C. § 1981*, for religious and ethnic discrimination and hostile work environment. Defendants moved this Court for summary judgment. At the hearing on October 11, 2001, the Court denied summary judgment on the hostile work environment claim and the claim against the individual defendants under ELCRA. For the following reasons, the Court will deny summary judgment on the discrimination claim based on constructive discharge and will grant summary judgment on the *42 U.S.C. § 1981* claim.

Summary Judgment Standard

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Fed. R. Civ. P. 56*. Material facts are facts which are defined by substantive law and are necessary to apply the law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). [*3] A dispute is genuine if a reasonable jury could return judgment for the non-moving party. *Id.* The court must draw all inferences in a light most favorable to the non-moving party, but may grant summary judgment when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Agristor Financial Corp. v. Van Sickle*, 967 F.2d 233, 236 (6th Cir. 1992)(quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)).

Discussion

I. Discrimination under Title VII and ELCRA [1]

[*4]

Title VII prohibits discrimination against any individual with respect to terms conditions, or privileges of

---

[1] The standard for liability is the same under both the state and federal law civil rights laws. *See Terwilliger v. GMRI, Inc.*, 952 F. Supp. 1224, 1227 (E.D. Mich. 1997)(stating that cases brought pursuant to Michigan's Elliott-Larsen Civil Rights Act are analyzed under *McDonnell-Douglas* framework used in Title VII cases.). *aff'd142 F.3d 436 (6th Cir. 1998)*; *Koester v. City of Novi*, 458 Mich. 1, 11-12, 580 N.W.2d 835, 840 (1998)(noting that Michigan "courts have consistently relied on the federal judiciary for guidance when addressing the Michigan Civil Rights Act.")

employment because of the individual's race, color, religion, sex, or national origin. *42 U.S.C. § 2000e-2(a)*. ELCRA prohibits discrimination in employment because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status. [2]M.C.L. § 37.2102. Direct evidence and circumstantial evidence are two avenues by which a plaintiff may establish unlawful discrimination. *See Laderach v. U-Haul of Northwestern Ohio*, 207 F.3d 825, 829 (6th Cir. 2000). To make out a claim for discrimination in violation of Title VII or ELCRA under the traditional *McDonnell-Douglas-Burdine* analysis, Owen must show that (1) he is a member of a protected class, (2) he suffered an adverse employment action, (3) he was qualified for his position, and (4) he was treated differently than other similarly situated non-minority employees. *Logan v. Denny's, Inc.*, 259 F.3d 558, 567 (6th Cir. 2001).

[*5] The Court has already ruled as a matter of law that Owen, a Jew, is a member of a protected class. In their Brief, Defendants go into some detail regarding Owen's inadequacy as a teacher as an explanation for the way the students treated him, but they do not suggest that Owen was "unqualified" for his position. Defendants, the moving party, also failed to show that no issue of material fact remains about whether Owen was treated differently than other teachers. The issue addressed in this section of the Opinion is whether there is a genuine issue of material fact about whether Owen suffered an adverse employment action.

An adverse employment action has been defined to include termination of employment, demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, and significantly diminished material responsibilities. *Kocsis v. Multi-Care Mgmt., Inc.*, 97 F.3d 876, 886 (6th Cir. 1996). Owen retired after the 2000 spring semester. He was not fired. In order to sustain a claim for discrimination, then, Owen must show constructive discharge, in which case he would be treated as if the school had fired him. *Logan*, 259 F.3d at 568. [*6] In other words, when an employee resigns, an employer can still be liable if the resignation was involuntary and due to discriminatory conditions.

The Sixth Circuit has set out the test for whether a plaintiff has been constructively discharged: "To constitute a constructive discharge, the employer must deliberately create intolerable working conditions, as perceived by a reasonable person, with the intention of forcing the employee to quit." *Moore v. KUKA Welding Sys. & Robot Corp.*, 171 F.3d 1073, 1080 (6th Cir. 1999). The court must look to the employer's intent and the employee's objective feelings and ask whether a reasonable person in the employee's position would have felt forced to resign. *Id.* (citing *Held v. Gulf Oil Co.*, 684 F.2d 427, 432 (6th Cir. 1982)). A plaintiff can demonstrate intent by showing that quitting was a foreseeable consequence of the employer's actions. *Logan*, 259 F.3d at 567. Proof of a hostile work environment alone is not sufficient to prove constructive discharge. *Yates v. Avco Corp.*, 819 F.2d 630, 636-37 (6th Cir. 1987).

In *Logan*, the Sixth Circuit identified several factors [*7] that may be considered in determining whether a reasonable person would have felt compelled to resign due to working conditions:

> (1) demotion; (2) reduction in salary; (3) reduction in job responsibilities; (4) reassignment to menial or degrading work; (5) reassignment to work under a younger supervisor; (6) badgering, harassment, or humiliation by the employer calculated to encourage the employee's resignation; or (7) offers of early retirement or continued employment on terms less favorable than the employee's former status.*Logan*, 259 F.3d at 569 (citing *Brown v. Bunge Corp.*, 207 F.3d 776, 782 (5th Cir. 2000)). Here, Owen's allegations include only the sixth factor -- badgering, harassment, or humiliation. It is also important to note that the students who harassed or otherwise engaged in abusive conduct toward Owen are not the defendants in this case. Students, unlike fellow employees or supervisors, are not agents of the school. The Court must examine the school's intent by analyzing the actions taken in response to the reports of harassment made by Owen.

Construing the record in the light most favorable to Owen, the Court finds [*8] sufficient evidence from which a reasonable jury could conclude that Defendants intended to force Owen to retire in that it was foreseeable that he would have felt compelled to leave. Defendants did not engage in abusive conduct, but a jury could conclude that Defendants' alleged responses were so inadequate and demeaning that Defendants intended that Owen quit. Or, a reasonable jury could conclude that Defendants' allegedly weak response to the harassment impliedly encouraged the

---

[2] Defendants take the untenable position that by only defining sexual harassment, the statute is limited to sexual harassment claims. The Michigan Court of Appeals has rejected that conclusion. *Malan v. Gen. Dynamics Land Sys., Inc.*, 212 Mich. App. 585, 587, 538 N.W.2d 76, 77 (1995)(per curiam). The court in *Malan* concluded that "harassment based on any one of the enumerated classifications is an actionable offense." *Id.*

students to engage in more harassment. For example, in February 1997, when two Presidents' pictures were marked with swastikas and derogatory epithets, Jentoft indicated an investigation would take place, but nothing further was done and no student was punished. (Pl.'s Br. Resp. Exs. 3-5.) On three separate occasions, Davin Johnson, a student, engaged in harassing behavior that resulted in no discipline or serious effort to stop the behavior. (Pl.'s Br. Resp. Exs. 22, 28.) When Owen found a noose in his classroom, Moore indicated to students that he did not want to know who did it and only wanted to know it was a prank. (Pl.'s Br. Resp. Ex. 22; Moore Dep. I at 222, attached to Pl.'s Br. Resp.) Moore implicitly [*9] blamed the incident on Owen for failure to monitor his classroom. (Pl.'s Br. Resp. Ex. 16.) Owen's inability to control his students' behavior was also cited when he reported a swastika being carved into a podium and when he found chewing gum in his cup. (Pl.'s Br. Resp. Exs. 39, 45.)

Defendants note that Owen waited until June 2000 to retire. The bulk of the harassment by students took place during the 1998 school year, but Owen continued teaching. By the 2000 Spring semester, the school had attempted to increase its response to the harassment, and the harassment conduct was sparse. By that time, though, Owen allegedly had already been experiencing severe stress and nervousness at school. He was diagnosed with Post-traumatic Stress Disorder by his therapist, who indicated Owen's struggle of wanting to teach but having difficulty concentrating and feeling anger and anxiety. (Collins Dep. at 71, 81-82, 96, attached to Pl.'s Br. Resp.) It is not dispositive that Owen failed to quit at the height of the harassing activity. The entire employment environment during this time period must be analyzed, and some events did take place in the 1999-2000 school year. Given Owen's alleged emotional [*10] state and the frequent inadequacy of Defendants' responses up to this point, these events take on particular relevance.

A jury could reasonably conclude that Owen's retirement was a foreseeable consequence of the defendants' conduct and that a reasonable person would have felt compelled to resign in his situation. Owen has presented enough evidence that he was constructively discharged. Since the evidence could support a finding of an adverse employment action, summary judgment on his claim for discrimination under Title VII and ELCRA will be denied. [3]

II. *§ 1981* Claim

A. *42 U.S.C. § 1981* [*11] **Provides No Remedy.**

42 U.S.C. § 1981 provides that all persons shall have equal rights under the law and prohibits discrimination by government actors. *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 731, 109 S. Ct. 2702, 2721, 105 L. Ed. 2d 598 (1989) held that *§ 1981* provides no remedy itself. Rather, *Jett* holds, *§ 1983* contains the exclusive remedy against government actors for violations of *§ 1981*.

There is debate among the circuits over whether the amendment to *§ 1981*, which provides, "the rights protected by this section are protected against impairment by non-governmental discrimination and impairment under color of state law," overrules *Jett*. *42 U.S.C. § 1981(c)*. The Ninth Circuit has so held. *Fed'n of African Am. Contractors v. City of Oakland*, 96 F.3d 1204, 1205 (9th Cir. 1996). Other circuits addressing the issue have maintained the *Jett* understanding that only *§ 1983* contains a remedy. *Dennis v. County of Fairfax*, 55 F.3d 151, 156 n.1 (4th Cir. 1995); *Butts v. County of Volusia*, 222 F.3d 891, 894 (11th Cir. 2000). The Sixth Circuit has not addressed the [*12] issue. This Court will follow the rule that *§ 1981* contains no remedy itself.

B. *Section 1983* - No Official Policy or Custom.

Owen seeks permission to amend his complaint to add a *§ 1983* claim against the school board. [4] Under *42 U.S.C. § 1983*, in order to hold the school board liable, Owen must show that the impermissible conduct resulted from an official policy, custom, or usage having the force of law. *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 690-691, 98 S. Ct. 2018, 2035-36, 56 L. Ed. 2d 611 (1978); *Jett*, 491 U.S. at 735-36, 109 S. Ct. at 2723. *See Hull v. Cuyahoga Valley Bd. of Ed.*, 926 F.2d 505, 515-16 (6th Cir. 1991)(policy-making body for school district is school board).

[*13] The school board had a policy against discrimination at the time of the incidents here. (Def.'s Br. Resp. Ex. I.) Owen argues that the policy was deficient in that it did not require training for administrators and did

---

[3] At trial, Defendants might be able to show that Owen was a lousy teacher and that his inability or unwillingness to work contributed to harassment by students and that these factors, rather than the Defendants' implicitly condoning the anti-Semitic acts, caused Owens to retire. However, as emphasized throughout this Opinion, at this stage all evidence must be construed in the light most favorable to Owen.

[4] Owen never formally moved the Court for leave to amend his complaint. In his Brief, he asks that if the Court refuses to follow the Ninth Circuit's opinion that *Jett* has been overruled that he be allowed to amend the complaint. Since the Court would grant summary judgment on a *§ 1983* claim, such an amendment is futile.

not outline steps for responding to reports of harassment. Owen further asserts that the school's failure to adequately respond demonstrates a custom of discrimination by the school. There are limited circumstances under which failure to train can lead to municipal liability. *City of Canton v. Harris*, 489 U.S. 378, 387, 109 S. Ct. 1197, 1204, 103 L. Ed. 2d 412 (1989). To make out such a claim, Owen must show that the board acted with "deliberate indifference" to the "known or obvious consequences" of its actions. *Id.* at 388, 109 S. Ct. at 1204; *Bd. of County Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 407, 117 S. Ct. 1382, 1390, 137 L. Ed. 2d 626 (1997). The Board must have known that the policies or training were inadequate and then consciously disregarded that knowledge to Owen's detriment. *Brown*, 520 U.S. at 407-08, 117 S. Ct. at 1390. The board's failure to stop the harassment must in essence "amount to an official policy of inaction. [*14] " *Doe v. Claiborne County*, 103 F.3d 495, 508 (6th Cir. 1996). Owen must also show a causal connection between the policy and his injuries. *Garner v. Memphis Police Dept.*, 8 F.3d 358, 364 (6th Cir. 1993).

Construing the evidence in the light most favorable to Owen, he does not meet this high standard. He has not come forth with evidence that the board continued to adhere to an approach it knew or should have known failed to prevent harassment. *Brown*, 520 U.S. at 407, 117 S. Ct. 1390. In July 1999, the school district specifically addressed anti-Semitism in the Student-Parent Handbook distributed the following school year. (Def.'s Br. Supp. Ex. L.) This amended the anti-harassment policy to prohibit "verbal, physical or written behavior during school, at extra-curricular activities, or on the bus which intimidates individuals or groups on any basis including race, ethnic background, religion, gender, sexual orientation, national origin, or disability." (Def.'s Br. Supp. Ex. H.) Administration officials also attended diversity training in October 1999. (Def.'s Br. Supp. Ex. LL.) The board's actions do not amount to "conscious disregard" [*15] or "deliberate indifference" necessary for liability. *Id.*

Conclusion

Summary judgment will be granted to Defendants on Owen's § 1981/1983 claim.

An Order consistent with this Opinion will be entered.

Dated: *NOV 14 2001*

GORDON J. QUIST

UNITED STATES DISTRICT JUDGE

ORDER

In accordance with the Opinion filed this date,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (docket no. 117) is **GRANTED IN PART** and **DENIED IN PART**. The motion is granted as to Plaintiff's claim for discrimination under *42 U.S.C. § 1981*. The motion is denied as to Plaintiff's claim for discrimination under Title VII of the Civil Rights Act of 1964, *42 U.S.C. § 2000e -- 2000e-17*, and the Michigan Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 -- .2804.

Dated: *NOV 14 2001*

GORDON J. QUIST

UNITED STATES DISTRICT JUDGE