

2001 WL 34105468
United States District Court,
M.D. Tennessee, Nashville Division.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff and Peggy Rouillier,
Intervenor,

v.

THE GUARDIAN LIFE INSURANCE COMPANY,
Defendant.

No. 3:99-1145. | Dec. 15, 2001.

Attorneys and Law Firms

Katharine Kores, Terry Beck, and Celia S. Liner (EEOC Memphis District Office), Memphis Tennessee, and Lawrence Kenyon (EEOC Nashville Area Office), Nashville, Tennessee, for Plaintiff.

Irwin Venick (Dobbins & Venick), Nashville, Tennessee, for Plaintiff-Intervenor.

Richard Colbert and Beth Baggett (Colbert & Winstead), Nashville, Tennessee, for Defendant.

Opinion

HAYNES, J.

*1 Plaintiff, Equal Employment Opportunity Commission (“EEOC”), filed this action under Title VII of the Civil Rights Act of 1964, amended 42 U.S.C. § 2000(e), *et seq.* and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, *et seq.* against the defendant the, Guardian, an employer whom the Commissioner alleges terminated an employee from her employment with the Guardian on the basis of her sex. Subsequently, the employee, Peggy Rouillier, was granted permission to intervene as a plaintiff in this action. (Docket Entry Nos. 10 and 12). The parties proceeded with discovery.

Before the Court is the defendant’s motion to dismiss or in the alternative for summary judgment. (Docket No. 17) in which the defendant contends that Rouillier was not an employee within the meaning of Titles I or VII, but was an independent contractor with whom Guardian agreed to do business.

In opposition, the EEOC has submitted its response with proof that sufficient facts exist to show that Guardian exercised extensive authority and control over the manner in which Rouillier performed her work for Guardian. Thus; making Guardian an employee subject to Title I and

Title VII.

For the reasons presented below, the Court concludes that the EEOC has presented sufficient facts to show that Guardian is an employer subject to Title I and Title VII of the Civil Rights Acts.

A. Review of the Evidence

Guardian, a life insurance company, contracted with J. Thomas Whitten to recruit and supervise Guardian’s field representatives. Whitten signed a contract with Guardian that refers to him as an independent contractor. Other facts, however, show that Guardian assigned Whitten’s territory to recruit and train its sale representatives. Guardian processed Whitten’s payroll and benefits directly through Guardian’s New York offices. Guardian provided its employees to train Whitten’s staff and recruits, reimbursed Whitten’s expenses and conducted audits of Whitten’s business. Guardian also reserved the right to approve or reject materials that were used by Whitten to perform his duties. Whitten used Guardian stationary to correspond with the persons in his agency.

As to Rouillier, the other evidence shows that she was recruited by Whitten and worked as a Guardian field representative. Guardian set the minimum qualifying score for passing the field representative examination. On occasion, Guardian would communicate directly with its field representatives, like Rouillier. As a field representative, Rouillier signed an agreement with Guardian that provided for automatic termination, if Rouillier failed to comply with Guardian’s rules and regulations. Guardian could also cancel any business that Rouillier entered with other insurance companies and Rouillier had to obtain written consent to do business with another insurance company. Field representatives had to commit seventy-five percent of their business activities to Guardian.

In 1995, Guardian classified its field representatives as “statutory employees”. In 1995, Rouillier had to sign another field representative agreement or she would not be paid. In 1998, Rouillier’s agreement with Guardian provided that Guardian could cancel her contract with another insurance company and if Rouillier declined, she could be terminated.

*2 The EEOC notes evidence that from 1991 to 1998, Rouillier received W-2 statements directly from Guardian. In 1998, Guardian ceased to withhold federal income taxes from the wages reported on the W-2 form. Guardian reimbursed field representatives for continuing education expenses as well as for licensing fees. Guardian

paid worker's compensation insurance for field representatives and offered field representatives a variety of employment benefits. Guardian's benefit packages included a leave of absence not to exceed six months and temporary disability. In documents describing these benefits, Guardian referred to field representatives as employees.

B. Conclusions of Law

"The very reason of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." Advisory Committee Notes on Rule 56, Federal Civil Judicial Procedure and Rules (West Ed.1989). In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), the United States Supreme Court explained the nature of a motion for summary judgment:

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment 'shall be rendered forthwith 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 the moving party is entitled to a judgment as a matter of law.' By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

477 U.S. at 247-48 (emphasis in the original and added in part). Earlier the Supreme Court defined a material fact for Rule 56 purposes as "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986) (citations omitted).

A motion for summary judgment is to be considered after adequate time for discovery. *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Where there has been a reasonable opportunity for discovery, the party opposing the motion must make an affirmative showing of the need for additional discovery after the filing of a motion for summary judgment.

Emmons v. McLaughlin, 874 F.2d 351, 355-57 (6th Cir.1989). *But see Routman v. Automatic Data Processing, Inc.*, 873 F.2d 970, 971 (6th Cir.1989).

*3 There is a certain framework in considering a summary judgment motion as to the required showing of the respective parties as described by the Court in *Celotex*

Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact ... [Me find no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent's claim.

Celotex, 477 U.S. at 323 (emphasis deleted).

As the Court of Appeals explained, "[t]he moving party bears the burden of satisfying Rule 56(c) standards." *Martin v. Kelley*, 803 F.2d 236, 239, n. 4 (6th Cir.1986). The moving party's burden is to show "clearly and convincingly" the absence of any genuine issues of material fact. *Sims v. Memphis Processors, Inc.*, 926 F.2d 524, 526 (6th Cir.1991) (quoting *Kochins v. Linden-Alimak, Inc.*, 799 F.2d 1128, 1133 (6th Cir.1986)). "So long as the movant has met its initial burden of 'demonstrating the absence of a genuine issue of material fact,' the nonmoving party then 'must set forth specific facts showing that there is a genuine issue for trial.'" *Emmons v. McLaughlin*, 874 F.2d 351, 353 (6th Cir.1989) (quoting *Celotex* and Rule 56(e)).

Once the moving party meets its initial burden, the Court of Appeals warned that "[t]he respondent must adduce more than a scintilla of evidence to overcome the motion [and] ... must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir.1989) (quoting *Liberty Lobby*). Moreover, the Court of Appeals explained that.

The respondent must 'do more than simply show that there is some metaphysical doubt as to the material facts.' Further, '[w]here the record taken as a whole could not lead a rational trier of fact to find' for the respondent, the motion should be granted. The trial court has at least some discretion to determine whether the respondent's claim is 'implausible.'

Street, 886 F.2d at 1480 (cites omitted). See also *Hutt v. Gibson Fiber Glass Products*. No. 89-5731 (6th Cir. filed September 19, 1990) ("A court deciding a motion for summary judgment must determine 'whether the evidence presents a sufficient disagreement to require a submission

to the jury or whether it is so one-sided that one party must prevail as a matter of law.” quoting *Liberty Lobby*.) If both parties make their respective showings, the Court then determines if the material factual dispute is genuine, applying the governing law.

More important for present purposes, summary judgment will not lie if the dispute about a material fact is ‘genuine’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

*4 Progressing to the specific issue in this case, we are convinced that *the inquiry involved in a ruling on a motion for summary judgment or for a directed verdict necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits.* If the defendant in a run-of-the-mill civil case moves for summary judgment or for a directed verdict based on the lack of proof of a material fact, *the judge must ask himself not whether he thinks the evidence unmistakable favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented.* The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. *The judge’s inquiry therefore, unavoidably asks whether reasonable jurors could find by preponderance of the evidence that the plaintiff is entitled to a verdict – ‘whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.’*

Liberty Lobby, 477 U.S. at 248, 252, 106 S.Ct. 2505, 91 L. Ed .2d at 211–212, 214 (citation omitted and emphasis added).

It is likewise true that

[I]n ruling on a motion for summary judgment, the court must construe the evidence in its most favorable light in favor of the party opposing the motion and against the movant. Further, the papers supporting the movant are closely scrutinized, whereas the opponent’s are indulgently treated. It has been stated that: ‘The purpose of the hearing on the motion for such a judgment is not to resolve factual issues. It is to determine whether there is any genuine issue of material fact in dispute....’

Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F.2d 425, 427 (6th Cir.1962) (citation omitted). As the Court of Appeals stated, “[a]ll facts and inferences to be drawn therefrom must be read in a light most favorable to the party opposing the motion,” *Duchon v. Cajon Company*, 791 F.2d; 43, 46 (6th Cir.1986) *app.* 840 F.2d

16 (6th Cir.1988) (unpublished opinion) (citation omitted).

The Court of Appeals further explained the District Court’s role in evaluating the proof on a summary judgment motion:

A district court is not required to speculate on which portion of the record the nonmoving party relies, nor is it obligated to wade through and search the entire record for some specific facts that might support the nonmoving party’s claim. Rule 56 contemplates a limited marshalling of evidence by the nonmoving party sufficient to establishing a genuine issue of material fact for trial. This marshalling of evidence, however, does not require the nonmoving party to “designate” facts by citing specific page numbers. Designate means simply “to point out the location of.” *Webster’s Third New InterNational Dictionary* (1986).

*5 Of course, the designated portions of the record must be presented with enough specificity that the district court can readily identify the facts upon which the nonmoving party relies; but that need for specificity must be balanced against a party’s need to be fairly apprised of how much specificity the district court requires. This notice can be adequately accomplished, through a local court rule or a pretrial order.

InterRoyal Corp. v. Sponseller, 889 F.2d 108, 111 (6th Cir.1989) *cert. denied* 110 S.Ct. 1839, 108 L.Ed.2d 967 (1990) Here, the parties have given some references to the proof upon which they rely. Local Rule 8(b)(7)(A) and (C) require a showing of undisputed and disputed facts.

In *Street*, the Court of Appeals discussed the trilogy of leading Supreme Court decisions, and other authorities on summary judgment and synthesized ten rules in the “new era” on summary judgment motions:

1. Complex cases are not necessarily inappropriate for summary judgment.
2. Cases involving state of mind issues are not necessarily inappropriate for summary judgment.
3. The movant must meet the initial burden of showing ‘the absence of a genuine issue of material fact’ as to an essential element of the non-movant’s case.
4. This burden may be met by pointing out to the court that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case.
5. A court should apply a federal directed verdict standard in ruling on a motion for summary judgment. The inquiry on a summary judgment motion or a directed verdict motion is the same: ‘whether the

evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that the party must prevail as a matter of law.’

6. As on federal directed verdict motions, the ‘scintilla rule’ applies, *i.e.*, the respondent must adduce more than a scintilla of evidence to overcome the motion.

7. The substantive law governing the case will determine what issues of fact are material, and any heightened burden of proof required by the substantive law for an element of the respondent’s case, such as proof by clear and convincing evidence, must be satisfied by the respondent.

8. The respondent cannot rely on the hope that the trier of fact will disbelieve the movant’s denial of a disputed fact, but must ‘present affirmative evidence in order to defeat a properly supported motion for summary judgment.’

9. The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.

10. The trial court has more discretion than in the ‘old era’ in evaluating the respondent’s evidence. The respondent must ‘do more than simply show that there is some metaphysical doubt as to the material facts.’ Further, ‘[w]here the record taken as a whole could not lead a rational trier of fact to find’ for the respondent, the motion should be granted. The trial court has at least some discretion to determine whether the respondent’s claim is ‘implausible.’

*6 *Street* 886 F.2d at 1479–80.

The Court has distilled from these collective holdings four issues that are to be addressed upon a motion for summary judgment: (1) has the moving party “clearly and convincingly” established the absence of material facts?; (2) if so, does the plaintiff present sufficient facts to establish all the elements of the asserted claim or defense?; (3) if factual support is presented by the nonmoving party, are those facts sufficiently plausible to support a jury verdict or judgment under the applicable law?; and (4) are there any genuine factual issues with respect to those material facts under the governing law?

Title VII extends its protection to an “employee” who is defined as “an individual employed by an employer” 42 U.S.C. § 2000(e). In a word, independent contractors are not covered by Title VII. *Alfred v. Tennessee Farmers Mut. Ins. Co.*, 8 F.Supp.2d 1024, 1026 (E.D.Tenn.1997). In *Everman v. Mary Kay Cosmetics, Inc.*, [59 EPD ¶ 41,532] 967 F.2d 213, 218–1) (6th Cir.1992), the Sixth Circuit noted that under the “economic realities” test, while there are several factors to be considered in determining whether a person is and employee or independent contractor “the employer’s ability to control the job performance and employment opportunities of the plaintiff is the most important factor” *Id.* (citing *Armbuster v. Quinn*, 711 F.2d 1332, 1341–42 (6th Cir.1983) (defining the Title VII standard).

In the Court’s view, the EEOC has presented sufficient evidence to show that Guardian exercised significant and substantial control over the manner in which Rouillier performed her job. as its field representative. Guardian set the standards, by which, she was recruited and hired. Guardian also provided resources such as licensing fees and educational reimbursement to allow Rouillier to perform her job. Moreover, Guardian exercised control over other firms with which Rouillier could do business. Although the field representative agreement refers to Rouillier as an independent contractor, Guardian provided W–2 forms to Rouillier for most of her employment. In any event, the labeling of the parties’ relationship and terms of the contract is not controlling.

In sum, the Court is required to consider all the factual circumstances and finds sufficient facts have been presented to conclude that Guardian was the employer and Rouillier was its employee protected by the provisions of Title VII. Thus, the Court concludes that the defendant’s motion to dismiss or for summary judgment should be denied.

An appropriate order is filed herewith.

Parallel Citations

83 Empl. Prac. Dec. P 41,344