

Minault v Highbridge Advisory Council

2011 NY Slip Op 33987(U)

October 6, 2011

Supreme Court, Bronx County

Docket Number: 17272/07

Judge: Mary Ann Brigantti-Hughes

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10/17/11

**SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15**

PRESENT: Honorable Mary Ann Brigantti-Hughes

-----X
IDA V. MINAULT,

Plaintiffs,

-against-

DECISION / ORDER
Index No. 17272/07

HIGHBRIDGE ADVISORY COUNCIL FAMILY
SERVICES, INC.,

Defendants.

-----X
The following papers numbered 1 to read on the below motions noticed on **April 28, 2011**
and duly submitted on the Part IA15 Motion calendar of :

<u>Papers Submitted</u>	<u>Numbered</u>
Def. Notice of Motion, Memo, Exhibits	1,2
Pl.'s Opposition, Memo, Exhibits	3,4
Def.'s Affirmation in Reply.	5

In an action seeking damages for alleged employment discrimination, defendant Highbridge Advisory Council Family Services, Inc. (hereinafter "Defendant") moves for summary judgment, dismissing the complaint of plaintiff Ida V. Minault (hereinafter "Plaintiff"). Plaintiff opposes.

I. Factual History

Defendant is a non-profit organization that provides, among other things, early childhood education programs and daycare throughout New York City. Plaintiff was employed as an educational director for Defendant's day care programs beginning in or around November 2000. As an educational director, Plaintiff was tasked with "providing day-to-day supervision of the program of educational services to day care children," including "coordination and supervision of such program components as the social and intellectual growth of young children, as well as staff development and parent involvement in the program."

Upon her hire, conflicts arose between Plaintiff and Juliette Cannady, another director in the program, regarding Plaintiff's job responsibilities. Plaintiff alleged that Ms. Cannady had her performing administrative or clerical duties, such as answering phones and the door, and "trouble shooting". Plaintiff claimed she was kept out of the decision-making process for various activities and Ms. Cannady withheld from Plaintiff information that was vital to her job performance. These issues culminated in a meeting with Defendant's CEO, James Nathaniel, along with Plaintiff and Ms. Cannady. At that meeting, Mr. Nathaniel allegedly told Plaintiff that she "should resign" if she didn't like the way things were, and Plaintiff took this to mean that he was "letting [her] know that Ms. Cannady was in charge of the center and whatever she said was acceptable." Later, Ms. Cannady was replaced by Wanda Carter.

On October 7, 2005, she was terminated for alleged continuous disciplinary warnings and, ultimately, for her failure to report an incident of alleged abuse of a child by one of the daycare's staff members. Plaintiff alleges that she was illegally discharged due to her age.

II. Analysis

(A) Standard of Review

In accord with federal standards of recovery under Title VII of the Civil Rights Act of 1964 (*see Ferrante v. American Lung Assn.*, 90 N.Y.2d 623, 629 [1997], citing *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-253 [1981]; *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 [1973]), plaintiffs claiming discrimination under the New York Human Rights Law (Executive Law § 296) bear the initial burden of establishing a prima facie case of discrimination by demonstrating, by a preponderance of the evidence, that they are members of the class protected by the statute, that they were qualified for their positions and that they were discharged or suffered other adverse employment action under circumstances giving rise to an inference of discrimination (*see Ferrante*, 90 N.Y.2d at 629). It then falls to the defendant to articulate, through the introduction of admissible evidence, a legitimate, nondiscriminatory reason for the adverse action (*Id.*), after which the burden shifts back to the plaintiffs to prove that the legitimate reason proffered by the defendant is merely a pretext for discrimination (*Id.* at 629-630). To meet the ultimate burden of proving that intentional discrimination has occurred,

the plaintiffs must show both that the defendant's proffered reason was false and that discrimination was the real reason (*Id.* at 630). Thus, to withstand a motion for summary judgment, they must show that there is a material issue of fact as to those issues (*Id.*)

Likewise, a plaintiff bears the initial burden of establishing a prima facie case of age discrimination (*Ferrante, supra.*). She can meet this requirement only if she can demonstrate that (1) she was in a protected age group, (2) she was terminated, (3) she was sufficiently qualified to hold her position, and (4) that the discharge occurred under circumstances giving rise to an inference of age discrimination. *Id.* If a plaintiff does not produce direct or statistical evidence that would logically support an inference of discrimination, she must show her position was subsequently filled by a younger person or held open for a younger person (*Joelle v. Alden Press*, 145 A.D.2d 29, 35 [1989]).

If a plaintiff meets this burden, the employer must then produce admissible evidence that clearly sets forth legitimate, independent and nondiscriminatory reasons to rebut the presumption of discrimination (*see St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, [1993]; *see also Ferrante*, 90 N.Y.2d at 629). If the employer produces such evidence, the burden shifts back to plaintiff, who must then show that the proffered reason was merely a pretext for discrimination by demonstrating "both that the reason was false, and that discrimination was the real reason". *Id.* *see also Brennan v. Metropolitan Opera Assn.*, 284 A.D.2d 66, 71 [2001]). However, "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff" (*Texas Dept. of Community Affairs v. Burdine, supra.*) To prevail on a motion for summary judgment, an employer "must demonstrate either the employee's failure to establish every element of intentional discrimination, or having offered legitimate, nondiscriminatory reasons for the challenged action-the absence of a material issue of fact as to whether its explanations were pretextual" (*Messinger v. Girl Scouts of U.S.A.*, 16 A.D.3d 314, 792 N.Y.S.2d 56 [2005]; *see also Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305 (2004). Plaintiff retains the burden of proving that the discharge decision would not have been made "but for" the employer's discriminatory motivation. *Joelle v. Alden Press, Inc.*, 145 A.D.2d 29 (1st Dept. 1989). Where the employer demonstrates a legitimate

nondiscriminatory reason, defendant is entitled to summary judgment if the plaintiff offers no evidence that the legitimate explanation was a pretext for discrimination. *Forrest, supra*.

(B) Discussion

In this matter, Plaintiff unequivocally meets the first three elements of intentional age discrimination. At the time of termination, she was over seventy years old and it is not disputed that she had been qualified to hold the position of Educational Director. After Plaintiff was discharged, she was replaced by someone approximately forty (40) years younger than her. To support an age discrimination claim, plaintiff's replacement should ordinarily be substantially younger than the discharged plaintiff. *See Haskell v. Kaman Corp.*, 743 F.2d 113 (2d Cir 1984). Plaintiff has therefore carried her burden of proving a prima facie claim, and the burden thereby shifts to Defendant to explain by admissible evidence the legitimate, independent and nondiscriminatory reasons to rebut the presumption of discrimination.

Defendant states that it discharged Plaintiff for continuously failing to cooperate and follow the directives of her immediate supervisors since her hiring in November 2000. In addition, there were several documented events where Plaintiff exhibited disregard for the safety and/or well-being of children who were under her care. Her discharge ultimately culminated from an incident herein Plaintiff failed to secure immediate medical attention to an injured child.

In September 2003, Plaintiff was formally reprimanded for allowing parents to avoid submitting regularly required children's medical information by a due date, in violation of the Department of Health regulations. This lapse caused the program to go unlicensed for three (3) months and jeopardized the center's funding. A letter of reprimand was thereafter issued to Plaintiff.

In November 2003, Plaintiff was reprimanded for permitting a child to remain in soiled clothing for forty-five (45) minutes after she was notified by a teacher. Plaintiff did notify the child's parents, but made no efforts to locate a change of clothes. Plaintiff's supervisor ultimately learned about the situation and immediately changed the child. Plaintiff was suspended for two weeks without pay.

On August 19, 2005, a child had sustained a rope-burn injury to his neck while at the center. Instead of complying with protocol by immediately contacting EMS, Plaintiff instructed an aide to call his parents while she brought the child to another director to handle the matter. That director then contacted EMS. For her inaction, Plaintiff was suspended without pay by her immediate supervisor.

Approximately two weeks after Plaintiff served her above-referenced suspension, she was approached by a parent who purportedly witnessed a teacher strike her child. Plaintiff testified at deposition that the child exhibited aggressive behavior towards other children and teachers, and suggested the parent stay in the classroom for future sessions. The teacher had denied striking the child. Plaintiff took no further action. Shortly thereafter, the parent contacted Plaintiff's supervisor and complained that nothing was done in response to her complaint.

In determining Plaintiff's punishment for the above offense, Defendant CEO James Nathaniel reviewed her personnel file and found a history of insubordination, separate and apart from the above-listed infractions. Memoranda in her file from 2004 addressed outstanding concerns regarding Plaintiff's day-to-day responsibilities. A March 2004 letter from Plaintiff's co-director, Ms. Cannady, to Mr. Nathaniel explains that Plaintiff continues to refuse tasks and "disrespect" Ms. Cannady's authority. There are additional letters in Plaintiff's file from 2003 regarding her personal issues with Ms. Cannady. Ultimately, Mr. Nathaniel decided to discharge Plaintiff and sent her a letter to that effect on October 7, 2005.

In light of all of the above, Defendant has exhibited a legitimate and non-discriminatory reason for discharging Plaintiff. The burden therefore shifts, again, to Plaintiff, to demonstrate (1) that the above reasons are false, and (2) that the real reason for the action was age discrimination.

In opposition to the motion, Plaintiff refutes the substance of her previous disciplinary actions and suspensions taken against her. She states in paragraph 24 of her affidavit in opposition, "over the course of my tenure of employment with the defendant I witnessed them replacing older workers like myself with younger less experienced individuals. Three such examples were the Educational Directors of the Steven Sales, Paradise Day Care, and Nelson Avenue programs who were replaced by Mr. Nathaniel with someone in their twenties or thirties.

Mrs Wharton was the Director at Nelson Avenue who was a [sic] replaced with a much younger woman." Plaintiff was replaced by a "Ms. Massey", forty years younger than her. She alleges that other, younger people responsible for the actions surrounding her suspensions were not punished, as detailed as follows.

On November 2000, Plaintiff hired as Educational Director for "head start" program. On April 21, 2003, Mr. Nathaniel allegedly responded to complaints by Plaintiff of Ms. Cannady where he allegedly asked Plaintiff to resign; and said she "should retire anyway", and Plaintiff's job duties were whatever Ms. Cannady asked. He refused to accept further memos on the issue in 2004. Plaintiff had written a letter to the previous CEO, stating that Ms. Cannady didnt "share the same concept" of Plaintiff's role and title. Rather, Ms. Cannady "seems to think that I am here as an assistant who does auxiliary duties."

In September 2003, as outlined earlier, Plaintiff was reprimanded for failing to submit children's medical information by their due date. Plaintiff alleges that her supervisor, Ms. Cannady, was responsible for this task, and moreover didn't give Plaintiff adequate notice to complete the task. Ms. Cannady is decades younger and was not disciplined for the incident.

On November 24, 2003, Plaintiff was suspended for allowing a child to remain in soiled clothes for forty-five (45) minutes. Plaintiff alleges she deemed it appropriate for the parent to pick up the child. She states that Ms Cannady "failed to tell anyone" she had a change of clothing in her office. Despite this fact, she was not disciplined. At deposition, however, Plaintiff conceded that she made an error in judgment.

In July 2005, Ms Cannady was replaced by Wanda Carter, born in 1972. Plaintiff was not required to follow her directives and she did not have right to assign tasks to Plaintiff. In August of that year, a child was injured in a picnic. Plaintiff asserts that this was *Ms Carter's* responsibility since it was a school age child and there was no Educational Director for the School Age program. The child was brought into Plaintiff's office, who then brought her into Ms. Carter's office. Ms. Carter called EMS and suspended Plaintiff for not calling EMS. Plaintiff explained that she didn't call EMS because Ms. Carter was there and this was a "school age" child who was her responsibility.

In Fall 2005, Plaintiff was approached by a parent who stated she saw a teacher strike a child. Plaintiff questioned the teacher, who denied hitting the child. Another teacher denied seeing the action. The child did not seem upset. Plaintiff alleges she informed Ms. Carter, who did not say anything. The next day, Ms. Carter met with Mr. Nathaniel who terminated Plaintiff for doing nothing when incident occurred. Ms. Carter received no discipline.

In sum, Plaintiff alleges that the failure to discipline Plaintiff's younger colleagues coupled with the "intensity" of disciplinary action following Nathaniel's comments to Plaintiff that she should retire demonstrates that Defendant's legitimate business reason for firing was false and a pretext for discrimination.

In this matter, Plaintiff has disputed the grounds for her various suspensions or reprimands. In some instances, she acknowledges her mistake that lead to the reprimand. The totality of the record evinces a situation where Plaintiff was unhappy with being asked to perform certain tasks or undergo responsibilities that apparently fell outside her job description. To substantiate her age discrimination claim, Plaintiff merely states, in every circumstance, that a younger co-worker was not punished. She has not created an issue of fact as to the falsity of Defendant's legitimate and non-discriminatory reasons for her discharge, namely, her history of insubordinate behavior and failure to adequately intervene when confronted with an injured child. Moreover, Plaintiff has not created an issue of fact as to whether, more likely than not, her age was the real reason she was fired. *Ferrante, supra*. Plaintiff does not defeat the defendant's motion by pointing to disputed issues of fact unless those factual disputes relate to material issues. *Forrest v. Jewish Guild for the Blind, supra*. Further, a plaintiff must do more than challenge an employment decision as arbitrary or unsupported by facts. *Ioelle v. Alden Press Inc., supra*. Here, instead, Plaintiff only asserts that her replacement was younger than she was, her co-workers were younger, and makes unsubstantiated allegations that Mr. Nathaniel replaced directors of other youth centers with younger personnel. Conclusory allegations of discrimination are insufficient to defeat summary judgment. *Dickerson v. Health Mgt. Corp. of Am.*, 21 A.D.3d 326 (1st Dept. 2005). Plaintiff also alleges that Mr. Nathaniel told her he didn't want to do things the "old" way and go in a different direction. A decision-maker's isolated stray

remark, without more, does not constitute evidence of discrimination. *Metz v. New York State Office of Mental Retardation and Developmental Disabilities*, 21 A.D.3d 288 (1st Dept. 2005).

Accordingly, since Plaintiff has not satisfied her burden to defeat the instant summary judgment motion, it will be granted.

III. Conclusion

Accordingly, it is hereby

ORDERED, that Defendant's motion for summary judgment is hereby GRANTED, and it is further,

ORDERED, that Plaintiff's complaint is hereby DISMISSED WITH PREJUDICE.

This constitutes the Decision and Order of this Court.

Dated: October 6, 2011



Hon. Mary Ann Brigantti-Hughes, J.S.C.