Anderson v. Independent School District Number 97

2001 | Cited 0 times | D. Minnesota | November 23, 2001

MEMORANDUM OPINION AND ORDER ON DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW

This dispute concerning the administration of a random controlled substance test to a school driver and the aftermath of the test was tried before the Court and a jury on November 13, 14, 19, 20, and 21, 2001. At the close of evidence on Wednesday, November 21, 2001 and prior to submission of the case to the jury, defendants moved for judgment as a matter of law pursuant to Federal Rules of Civil Procedure 50(a). The Court heard extensive oral argument from the parties and took the motion under advisement. For the reasons that follow, the Court grants defendants' motion for judgment as a matter of law on all claims except for plaintiff's claim of wrongful disclosure of private government data under the Minnesota Government Data Practices Act ("MGDPA").

ANALYSIS

Unfortunately, the Court did not have the benefit of any pretrial dispositive motions to resolve legal issues that could have narrowed and focused the case. As a result, much of the trial was focused on the community's reaction to the school district's handling of the results of the random test administered to plaintiff Duane "Dewey" Anderson on the morning of April 23, 1998.

A central issue in the case involves the proper legal interpretation of plaintiff's suspension letter dated May 13, 1998. In that letter, defendant Nancy Kaldor, the District's Superintendent, provided the following information to plaintiff:

The grounds for this suspension are that on or about April 23, 1998, you refused to provide an adequate urine sample pursuant to a request that you participate in a controlled substance test based upon random selection.

The Court finds as a matter of law that the remainder of the letter constitutes simply the school district's interpretation of the federal regulations governing such random tests, not an expression of opinion concerning drug usage by plaintiff and not an expression of facts concerning the situation. The letter does not in any way conclude that plaintiff actually tested positive for controlled substances. The school district's interpretation of the then-applicable federal regulations is correct.

Plaintiff now claims late in his testimony at trial that he did provide a sufficient amount of urine for the controlled substance test, but that testimony is contradicted by all of the evidence in the case,

including the testimony of the test administrator Kyle Newmann and the Transportation Supervisor who was present during the test, Art Forse. Furthermore, the actions of Newmann, Forse, and the plaintiff since April, 1998 do not suggest that there has ever been a factual dispute in this case concerning the amount of urine provided until plaintiff's testimony at the end of the trial. In the Court's view, no reasonable jury could find that the conclusion of the Independent School District Number 97 (hereinafter "District" or "school district") concerning the adequacy of the sample was false.

I. Disability Claims

Plaintiff brings disability discrimination claims under the Americans with Disabilities Act ("ADA"), the Rehabilitation Act of 1973 and the Minnesota Human Rights Act on the basis that the school district perceived plaintiff to be a drug user. The ADA expressly provides protection for employees who are erroneously regarded as current illegal drug users. 42 U.S.C. § 12113(b)(3).

The sole evidentiary basis for plaintiff's disability discrimination claims are 1) the undated and handwritten memorandum sent by Art Forse to Nancy Kaldor concerning the events surrounding the random drug test and 2) the May 13, 1998 letter from Nancy Kaldor to the plaintiff informing him that he was suspended.

Nothing in these documents can be interpreted as an expression that the school district "regarded" plaintiff as disabled. Instead, the evidence is uncontradicted that the school district simply regarded plaintiff as having provided an insufficient urine sample for purposes of the random drug test requirement. Furthermore, even though plaintiff refused to take a second drug test, the District invited him to return to work not only in October 1998, but later as well. The District was well aware that plaintiff's sample that was tested was negative. The District's suspension of plaintiff, based on the requirements of the federal regulations, cannot as a matter of law be interpreted as the District "regarding" plaintiff as disabled under state or federal law.

Additionally, courts have held that "the erroneous perception of being an illegal drug user is to be treated like any other perception of a disability, and is only considered to be a qualifying disability if the employer actually perceives the disability to substantially limit a major life activity of the employee." Parry v. Mohawk Motors of Michigan, Inc., 236 F.3d 299, 310-11 (6th Cir. 2000); Nielsen v. Moroni Feed Co., 162 F.3d 604, 610 (10th Cir. 1998). Here, plaintiff, who alleges that the District regarded him as substantially limited in the major life activity of working, has simply failed to present sufficient evidence upon which a reasonable jury could conclude that the District regarded or perceived plaintiff as being significantly restricted from either a class of jobs or a broad range of jobs across various classes as required under the ADA and its regulations. Nielsen, 162 F.3d at 611-12 (evidence showing that employer regarded plaintiff as incapable of performing a single, particular job does not constitute a substantial limitation in the major life activity of working). Thus, for the reasons stated above, plaintiff's discrimination claims must be dismissed. [1]

II. Minnesota Government Data Practices Act Claims

Plaintiff has pursued three claims against the District for violations of the Minnesota Government Data Practices Act, including claims for untimely disclosure of demanded data, failure to correct inaccurate data, and wrongful disclosure of private data.

A. Untimely Disclosure of Demanded Data

Minn. Stat. § 13.04, subd. 3, provides that a responsible authority shall provide to the requesting person copies of private or public data on that person within ten days of the date of the request. Plaintiff has claimed that he made oral and written requests to Kaldor for copies of the results of his controlled substance test on or about May 19, 2001, and that the District never provided him with the requested data. However, plaintiff filed a grievance challenging his suspension on May 18, 2001, and his union representative, Gary Johnson, requested and received copies of the test results, in a timely manner. There is no claim in the case that Johnson did not receive the requested data in a timely manner. Also, there is no dispute that plaintiff did not receive a copy of the requested data from the District in response to his requests.

The question presented by this case is whether submission of the requested data to the plaintiff's union representative satisfies, as a matter of law, the requirements of Minn. Stat. § 13.04, subd. 3. The Court finds no violation of subdivision 3. When there is a grievance pending which involves the data that has been requested, the requester is represented by the union in the grievance, and the union representative requests and receives the requested data in a timely manner, there is no violation of the Act. As a result, plaintiff's claim under subdivision 3 is dismissed as a matter of law.

B. Failure to Correct Inaccurate Data

Minn. Stat. § 13.04, subd. 4 provides that an individual who is the subject of data in the file of a responsible authority may contest the accuracy of the data and within thirty days the authority is required to correct the data or notify the individual that the data is correct. Through counsel, plaintiff requested on June 5, 1998 that the District correct the inaccurate data in this personnel file. The District found that nothing in plaintiff's file was incorrect, but did not respond to plaintiff. The claim is based solely on the contents of the May 13, 1998 suspension letter. The Court has already determined that nothing in that letter was incorrect or inaccurate. As a result, there was nothing in the file that must be corrected in response to plaintiff's demand.

Plaintiff is correct in stating that the Act required the District to respond by notifying plaintiff that the District believed the data to be correct, and that the District did not so respond. Minn. Stat. § 13.04, subd. 4 (providing that upon written request by the individual to the responsibility authority, "the responsible authority shall within 30 days either (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including

recipients named by the individual or 2) notify the individual that the authority believes the data to be correct."). However, plaintiff has offered no evidence and has not in any way demonstrated that the District's failure to respond caused him any damages or that he suffered any damages related to the District's actions. Recent Minnesota decisions make clear that in order to prevail on a claim under the MGDPA, a plaintiff "must show that [he] sustained damage and that the damage [he] sustained was a direct result of the school district's alleged violations of the MGDPA." Navarre v. South Washington County Schools, 633 N.W.2d 40, 53-54 (Minn. Ct. App. 2001); Clearwater v. Independent School Dist. No. 166, No. C1-01-555, 2001 WL 1155706, at *3 (Minn. Ct. App. Oct. 2, 2001) (unpublished opinion); Unke v. Independent School District No. 147, Dilworth, 510 N.W.2d 271, 273-74 (Minn. Ct. App. 1994) (finding violation of MGDPA but remanding for jury determination on causation and damages). As a result, plaintiff's claim for damages must be dismissed. No reasonable jury could find that plaintiff suffered damages as a result of this violation of subdivision 4.

C. Wrongful Disclosure of Private Government Data

Plaintiff has also claimed that the District wrongfully disclosed private data maintained in his personnel file, and as a result is liable for damages. He brings this claim under Minn. Stat. §§ 13.04, subd. 3, 13.05, subds. 4-5, and 13.08, subd. 1.

While there have been quite a number of alleged statements made concerning plaintiff and his controlled substance test, only one such alleged statement is sufficiently clear that it presents a factual issue for the jury to resolve. Jeffrey Kirk, the former Transportation Supervisor at the District, testified that Art Forse told him in a conversation at Art's Café in May 1998 that the plaintiff "refused to take a drug test." Forse vehemently denies having made this statement to Kirk. That statement, if made, could be considered a wrongful disclosure of information from plaintiff's personnel file and as a result, the Court will submit this question to the jury for its factual determination.

The District claims that regardless of whether this statement was made, the plaintiff has not offered sufficient evidence to show that the statement caused any damages to plaintiff and that plaintiff's evidence on damages is too weak to raise a jury question. The Court finds that the issue of damages in this case, while somewhat weak, was sufficiently presented to permit the jury to make a determination on damages, if it is found that Forse's statement to Kirk was actually made.

None of the other testimony concerning the discussions at the coffee shop is sufficient to present a jury question on the issue of the District's liability under the MGDPA. Statements attributable to Forse are too vague to be considered actionable, or are statements of opinion, not personnel data.

Further, the testimony of District employees Linda Berglund and Lori Beamer that they overheard discussions in the district offices, either behind partitions or closed doors, concerning plaintiff's controlled substance test, are either too vague or not attributable to anyone in particular, and, as a

result, cannot as a matter of law be considered a wrongful disclosure of data from plaintiff's file.

Kirk also testified to a conversation with Lori Beamer at the Post Office in which he asked her a series of questions about plaintiff's dispute with the District. Beamer did not testify about this conversation other than to say generally that she had never discussed the matter with anyone outside the District offices. According to Kirk, the discussion concerned the District's potential liabilities in the case and consisted primarily of Kirk asking questions and Beamer not confirming or denying anything. Again, this testimony is far too vague and unsubstantiated to raise a factual issue as to a potential violation of the MGDPA.

The school district has questioned whether the alleged statement made by Forse to Kirk constitutes government data, the release of which could subject the District to liability. While as discussed, the purported statement that plaintiff "refused to take a drug test" is in some respects an interpretational result drawn from the federal regulations, it is a statement contained in plaintiff's personnel file, at least to the extent that it is included in the May 13, 1998 suspension letter, and perhaps also in Forse's written memorandum to Kaldor explaining what happened on April 23, 1998. Release of such a statement would be sufficient to raise a question as to the District's liability under the MGDPA.

Therefore, as to the one alleged statement that is discussed herein made by Forse to Kirk and any causation and damages questions that arise from a jury determination that the statement was actually made, the Court will deny defendants' motion for a directed verdict. This statement, if true, is the only alleged release of data from plaintiff's personnel file that is sufficient as a matter of law and fact to raise a question for the jury's determination.

III. Defamation Claims

Finally, plaintiff alleges that the school district, through its agents or employees, defamed plaintiff by making one or more of the following untruthful statements about him to third parties: 1) plaintiff refused to provide an adequate urine sample on the drug test; 2) plaintiff refused to take the drug test; 3) plaintiff tested positive on the drug test; 4) plaintiff was a drug user; and/ or 5) plaintiff failed the drug test. To prevail on a claim for defamation under Minnesota law, plaintiff must prove that an agent or employee of the school district made a defamatory statement about plaintiff, that is, a statement that tended to harm the plaintiff's reputation and to lower his esteem in the community, that was false and was communicated to someone other than the plaintiff. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn. 1980). Plaintiff's defamation claim concerning the third and fourth alleged defamatory statements are easily disposed of. There is no evidence in the record that any employee of the school district ever told anyone that "plaintiff tested positive on the drug test" or "that plaintiff was a drug user."

The alleged statement that "plaintiff refused to provide an adequate urine sample on the drug test" also fails as a matter of law because Kaldor, who made this statement in her May 13, 1998 suspension

letter to plaintiff, never repeated the statement or disclosed the letter to anyone other than plaintiff. Rather, it was plaintiff himself who showed the content of the letter to others, which then fueled additional rumors concerning plaintiff's controlled substance test throughout the community. Therefore, plaintiff's defamation claim based on this statement fails because plaintiff is unable to prove the publication element of his claim.

Plaintiff also alleges that agents or employees of the school district told third parties that he "failed the drug test." The only evidence to support the making of any such statement comes from Linda Berglund, who testified that she overheard the statement in question while Forse, Beamer, and Kaldor were discussing plaintiff's situation in the school district office. Berglund's testimony on this point is extremely weak, however. As mentioned earlier, the discussions she and Beamer claimed to have overheard around the office occurred either behind partitions or closed doors and she could not conclusively identify who actually made the statement. The Court finds that a discussion among employees in which the individual allegedly making the statement cannot even be identified, is clearly insufficient.

Additionally, even assuming that the statement was made, the school district would be entitled to a qualified privilege. "An employer may have a qualified privilege to publish a defamatory statement if the communication is made upon a proper occasion, from a proper motive, and based upon reasonable or probable cause." Wirig v. Kinney Shoe Corp., 448 N.W.2d 526, 532 (Minn. Ct. App. 1989); Stuempges, 297 N.W.2d at 256-57. The statement which Berglund alleges to have overheard was made within the office by employees discussing what action should be taken in light of plaintiff's failure to provide an adequate urine sample. The Court finds that a statement made in this factual context is precisely the type of situation for which the qualified-privilege is intended to apply. As such, plaintiff can prevail on his defamation claim based on this statement only if he showed that the school district acted with actual malice and abused the privilege. Although this determination is generally one for a jury, the Court finds that no reasonable jury could find that the statement was made with actual malice as that term is defined under Minnesota law. See Minnesota Civil Jury Instructions 50.35. Again, the statement in question, even if made by one of the employees in the office, which is weakly supported, was a direct consequence of how the federal regulations treat plaintiff's failure to provide an adequate urine sample. Accordingly, plaintiff's defamation claim based on this allegedly defamatory statement fails as a matter of law.

The final alleged defamatory statement is that an employee of the school district told others that "plaintiff refused to take the drug test." The only evidence at trial to support this claim is the testimony from Jeff Kirk who, as previously mentioned, testified that Forse made this statement at Art's Café.

At the outset, the Court notes that there is a serious question as to whether the above statement, even if made by Forse, could bind the school district. Minnesota courts have spoken at length as to when an employer can be held vicariously liable for the intentional torts of their employees. Lange v.

National Biscuit Co., 211 N.W.2d 783, 786 (Minn. 1973); Marston v. Minneapolis Clinic of Psychiatry, 329 N.W.2d 306, 311, n.3 (Minn. 1982); P.L. v. Aubert, 545 N.W.2d 666, 667-68 (Minn. 1996); Fahrendorff v. North Homes Inc., 597 N.W.2d 905, 913 (Minn. 1999). In this case, it is highly questionable whether Forse's factually disputed statement to Kirk at the coffee shop could be found to have occurred within the limits of time and place of Forse's employment, for which the District can be held liable. Oslin v. State, 543 N.W.2d 408, 413-13 (Minn. Ct. App. 1996) (concluding that employer could not be vicariously liable as a matter of law for intentional torts committed at Christmas party held after work at a local saloon or unforeseeable statements made during working hours).

Even assuming that liability could attach to the school district in this context, plaintiff's claim still fails because Forse's statement that plaintiff "refused to take the drug test" is an accurate statement based on the federal regulations. The federal regulations clearly provide that a failure to provide an adequate urine sample is treated as a "refusal to test." 49 C.F.R. 40.25 (f)(10)(iv)(A)(1). Thus, the Court finds that the statement is "substantially accurate," see Minn. Civ. Jig. 50.25, and therefore provides a complete defense to plaintiff's defamation claim against the school district.

Thus, for all the foregoing reasons, the Court grants defendants' motion for judgment as a matter of law on all claims but plaintiff's claim for wrongful disclosure of private government data under the MGDPA.

ORDER

Based upon the foregoing, the submissions of the parties, the arguments of counsel and the entire file and proceedings herein, IT IS HEREBY ORDERED that defendants' motion for judgment as a matter of law is GRANTED in part and DENIED in part.

1. Defendants' motion is GRANTED as to Counts I,II, III, IV, VIII, IX, X, of plaintiff's first amended complaint [Docket No. 51] and these counts are hereby DISMISSED with prejudice.

2. Nancy Kaldor is DISMISSED as a defendant in this case.

3. Defendants' motion is DENIED as to Count XI of plaintiff's first amended complaint [Docket No. 51].

1. The claim against defendant Nancy Kaldor for aiding and abetting discrimination under the Minnesota Human Rights Act is premised entirely on a finding of discrimination by the District. As a result of the dismissal of plaintiff's disability discrimination claims against the District, the claim for aiding and abetting against Kaldor cannot stand and she is dismissed as a defendant in this action.