



David B. Jones v. Wal-Mart Stores East

2010 | Cited 0 times | Ninth Circuit | December 3, 2010

NOT FOR PUBLICATION

MEMORANDUM¹

Argued and Submitted November 4, 2010 San Francisco, California

Before: THOMAS and IKUTA, Circuit Judges, and SETTLE, District Judge.²

Even assuming that Jones established a *prima facie* case of discrimination, he has not raised a genuine issue of material fact that Wal-Mart's explanation for terminating him (namely, that he engaged in sexual harassment of several female co-workers) was pretextual, and therefore cannot overcome Wal-Mart's motion for summary judgment. See, e.g., *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000); *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 890 (9th Cir. 1994). Construing the facts in the light most favorable to Jones, *Vasquez v. County of Los Angeles*, 349 F.3d 634, 639--40 (9th Cir. 2003), he did not offer any direct evidence of discriminatory animus on the part of Wal-Mart. Nor did Jones offer any "specific and substantial" indirect evidence that Wal-Mart's proffered nondiscriminatory reason for terminating him was a pretext to disguise a racially discriminatory reason. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1062 (9th Cir. 2002) (citing *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1222 (9th Cir. 1998)).

Jones's allegations that Wal-Mart conducted an investigation of his alleged wrongdoings that was more thorough than prior investigations, that Wal-Mart failed to properly evaluate the evidence uncovered by the investigation, and that it imposed harsher punishment on Jones than on other employees accused of sexual harassment, do not create a genuine issue of material fact as to pretext. There is no evidence that discredits Wal-Mart's assertions that it terminated Jones because he had engaged in sexual harassment. See *Villiarimo*, 281 F.3d at 1063.

AFFIRMED.

1. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

2. The Honorable Benjamin H. Settle, Judge of the United States District Court for the Western District of Washington, sitting by designation.

