

REVERSE DISCRIMINATION CLAIM AGAINST PARK DISTRICT

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In the case of *Schandelmeier-Bartels v. Chicago Park District* (N.D. Ill. 11/7/2008), plaintiff Cathleen Schandelmeier-Bartels sued her former employer Chicago Park District for reverse race discrimination in violation of Title VII of the Civil Rights Act of 1964. Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

The federal district court reviewed the relevant facts in a light most favorable to plaintiff because the Park District's motion for summary judgment would effectively dismiss plaintiff's claims without a trial or consideration by a jury. In other words, all doubt would be resolved in favor of giving plaintiff her day in court.

ALLEGED FACTS

Plaintiff, a Caucasian woman, was hired as the Cultural Program Director for the South Shore Cultural Center ("the Center") in February of 2006. Her employment ended on August 1, 2006. According to the Park District, shortly after plaintiff was hired, she wrote an offensive play entitled "Vaudeville" which "featured offensive stereotypes of African-Americans as 'pickaninnies and sambos,' and was to be performed by the mostly African-American children of the afterschool program."

Plaintiff's supervisors at the Park District claimed the play was "evidence of Plaintiff's racial insensitivity." In response, plaintiff contended that "she wrote the play only at the instigation of her African-American colleague, who had taken an ethnic studies course and wanted to make the children aware of the racist stereotypes historically deployed against African-Americans." Neither the Park District nor plaintiff contended that the "Vaudeville" incident was directly related to plaintiff's termination.

On July 31, 2006, plaintiff claims she witnessed what she believed to be an incident of child abuse. Specifically, she claimed to have "heard the cries of a summer camper ("J.J.") and to have seen that camper's aunt raising a belt as if to strike the child." Both J.J. and his aunt are African-American. It was mandatory for Park District employees to report incidents of suspected child abuse.

After witnessing the incident, plaintiff relayed what she had seen to an African-American Park District employee. According to plaintiff, this employee allegedly responded by saying, "It's a Black thing, Cathleen. We beat our children." Later that day, Plaintiff also told another African-American of the incident, her immediate supervisor, Adrea Adams. Plaintiff alleged that Adams responded as follows:

I have to let you know that in our culture this is the way we discipline our children. Before Hillary Clinton wrote, "It takes a village," that was the

philosophy that our culture followed and I have permission to grab any child here I have unspoken permission. You see these junior counselors? Well they have grown up with me, and I know their parents. And if they step out of line, I have permission to grab anyone of them and put them back in line.

Plaintiff said she understood "grab" to mean "physically intervene," and "our culture" to mean African-American culture. Both Adams and the employee denied that they had made these alleged statements.

Later that evening, Adams called her supervisor Alonzo Williams and Human Resources Director Mary Ann Rowland, and relayed to them what Plaintiff had told her. Adams told Rowland that Plaintiff was aware that she had the right to call the Department of Child and Family Services ("DCFS") to report a suspected incident of child abuse. Plaintiff did in fact call DCFS later that evening, and was advised to call the Chicago Police Department. Plaintiff called the police the following morning, August 1, 2006, around 9:30 a.m.

Later that same day, plaintiff was called into Adams' office to discuss the events surrounding the alleged child abuse and plaintiff's report to DCFS and the police. Plaintiff alleged that Adams spoke angrily, attacking her for the following:

- (1) for reporting an incident of child abuse that may not have actually occurred (because Plaintiff did not witness the moment of impact and Adams believed the belt J.J.'s aunt raised could have simply been a threat rather than an actual strike),
- (2) for creating a police record for J.J.'s aunt based on an alleged incident of child abuse that may not have occurred, and (3) for her cultural insensitivity.

When plaintiff said, "My friends who are Black don't beat their children," Adams allegedly responded, "Your friends who are Black tell you that they don't beat their children and then they go home and they beat their children." According to plaintiff, Adams was "really angry" when she said, "Now [J.J.'s aunt] is going to have a police record and it all is going to be [your] fault . . . You sent the police to this woman's house."

After meeting with plaintiff, Adams subsequently sent a memorandum to McDonald and Williams documenting several prior instances where plaintiff had failed in her duties, including failing to control the summer camp; failing to report disciplinary or medical incidents; leaving children behind during field trips; and engaging in favoritism (Plaintiff's son attended the summer camp). The memorandum concluded that the incident with J.J. was "the last straw," because plaintiff had "failed to discuss half of J.J.'s discipline reports with J.J.'s guardian, and had failed to ascertain whether child abuse had actually occurred before she called the police." Adams wrote: "It is difficult working with someone that does not follow instructions and continuously follows their own directive Something has to give."

On July 24, 2006, McDonald instructed Rowland to fire plaintiff. Plaintiff was presented with a letter terminating her employment at or around 6 p.m. on August 1, 2006 (the same day she had called the police).

DISCRIMINATION EVIDENCE

As a Caucasian woman, plaintiff claimed the Park District had violated Title VII of the Civil Rights Act of 1964 by terminating her employment due to her race. As cited by the federal district court, Title VII makes it unlawful for an employer to "fail or refuse to hire or to discharge any individual because of such individual's race." 42 U.S.C. § 2000e-2(a)(1). As described by the court, a plaintiff can establish a Title VII claim "by constructing a convincing mosaic of circumstantial evidence that allows a jury to infer intentional discrimination by the decisionmaker." In so doing, the court described "three means by which a plaintiff can defeat summary judgment using circumstantial evidence":

The first is through the demonstration of suspicious timing, ambiguous statements oral or written, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn.

The second is through evidence that a similarly situated employee received more favorable treatment...

[T]he third is through evidence that the plaintiff was qualified for the job in question but passed over in favor of (or replaced by) a person not having the forbidden characteristic and that the employer's stated reason for the difference in treatment is unworthy of belief.

In this particular instance, plaintiff alleged the facts in this case provided "bits and pieces from which an inference of discriminatory intent might be drawn." The court agreed and found "the circumstantial evidence presented in this case precluded a grant of summary judgment" in favor of the Park District. Specifically, the court found the following disputed facts, if proven at trial, could establish an inference of discriminatory intent:

(1) Defendant Adams made comments to Plaintiff about the alleged African-American practice of corporal child discipline, (2) whether the decision to terminate Plaintiff was made before or after Defendant Adams sent her August 1, 2006 memorandum to McDonald and Williams, and (3) on what basis McDonald, Rowland, Williams, and/or Adams decided that Plaintiff deserved to be terminated.

Moreover, in the opinion of the court, "the strongest evidence permitting an inference of discrimination on the part of the decision maker are the remarks that Defendant Adams allegedly made on the morning of August 1, 2008, to Plaintiff."

If a jury believes Plaintiff's testimony that Adams angrily berated her for calling DFCS and the police regarding J.J. and stated that African-Americans discipline their children differently, it could also conclude that had Adams would not have reacted as she did had Plaintiff been African-American instead of Caucasian.

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The jury could [also] believe that Adams objected to Plaintiff in her employment capacity because of her race and perceived inability to understand allegedly African-American social mores, leading her to write the August 1 memorandum that may have caused Plaintiff to be fired later that same day.

Under such circumstances, the court found that a reasonable jury could find that "Plaintiff had been fired at least in part because of her race." In particular, the court took note of "the suspicious and unexplained timing of Plaintiff's actual termination--which Defendants excuse as mere coincidence--and the ambiguity surrounding the date that the decision to fire Plaintiff was made." The federal district court, therefore, denied the Park District's motion for summary judgment and allowed plaintiff to proceed to trial to prove her Title VII reverse discrimination.

At trial, plaintiff would have to convince a jury that racial discrimination motivated her termination, or the reasons articulated by the Park District for her firing were a mere pretext for racial discrimination. Conversely, to defend itself, the Park District would have to convince the jury that the adverse employment action was prompted by legitimate nondiscriminatory circumstances.

NOTE: In 1990, Cathleen Schandelmeier-Bartels founded "the Beach Poets" poetry readings on the beaches of Lake Michigan in Chicago. These summer poetry readings feature a round robin style open "mic", a featured poet, and music. Schandelmeier-Bartels is the author of several produced plays and published books. She has been named "Outstanding Leader in Peace" by the Peace Museum and has received a "Certificate of Leadership in Racial Justice" from the YWCA in DuPage County. She has also been named one of the "100 Women Making a Difference" by Today's Chicago Woman Foundation. <http://www.myspace.com/beachpoets>