

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 16, 2006

Elisabeth A. Shumaker
Clerk of Court

CHIN THI LE; ANH “TONY” DANG

Plaintiffs-Appellants,

v.

HY-VEE, INC.

Defendant-Appellee.

No. 05-3226
(D.C. No. 04-CV-2037-CM)
(D. Kan.)

ORDER AND JUDGMENT*

Before **KELLY, BRISCOE, and LUCERO**, Circuit Judges.

Chin Thi Le and Anh “Tony” Dang appeal the district court’s grant of summary judgment in favor of Hy-Vee, Inc., on their claim that Hy-Vee denied them service in violation of 42 U.S.C. § 1981.¹ Specifically, plaintiffs assert the

* After examining the briefs and appellate record, this panel has determined unanimously to grant the parties’ request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

¹ On appeal, plaintiffs have expressly abandoned the state law claim they raised in the district court.

district court (1) ignored direct evidence of discrimination, (2) erroneously found plaintiffs' evidence of pretext insufficient to rebut defendant's alleged legitimate nondiscriminatory explanation for its actions, and (3) failed to apply the summary judgment standard.

Our jurisdiction arises under 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment, applying the same standard as that court under Fed. R. Civ. P. 56(c). Simms v. Okla. ex rel. Dep't of Mental Health & Substance Abuse Servs., 165 F.3d 1321, 1326 (10th Cir. 1999).

The district court provided a detailed summary of the facts; we need not restate those facts here. Having reviewed the briefs, the record, and the applicable law, we hold that plaintiffs have not identified any reversible error in this case. We therefore **AFFIRM** the judgment of the district court for substantially the same reasons stated in its memorandum and order, Le v. Hy-Vee, Inc., 385 F.Supp.2d 1111 (D. Kan. 2005).

Entered for the Court

Carlos F. Lucero
Circuit Judge