

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 29, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

SEJAL QUAYLE, M.D.,

Plaintiff - Appellant,

v.

CATHOLIC HEALTH INITIATIVES
COLORADO, a Colorado nonprofit
corporation, d/b/a Centura Health-Mercy
Regional Medical Center; CENTURA
HEALTH PHYSICIAN GROUP; WILL
MCCONNELL, an individual,

Defendants - Appellees.

No. 21-1382
(D.C. No. 1:19-CV-02175-PAB-KLM)
(D. Colo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, EID**, and **CARSON**, Circuit Judges.

Dr. Sejal Quayle sued her employer (Mercy Hospital), alleging violations of Title VII. The district court granted Mercy’s motion for summary judgment.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

Quayle worked as a urologist for Mercy Hospital from 2008 until her termination in 2018. The first formal complaint against Quayle was filed in 2011.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

The complaint alleged that, while frustrated with a technician during an operation, Quayle shouted that she was “going to f***ing kill someone right now,” and “going to bitch slap [the technician].” App’x Vol. I at 99. Following this outburst, Quayle met with a Mercy administrator and agreed to behave more professionally.

However, in response to further complaints, in 2013, Mercy administration placed Quayle on a “Physician Performance Redirection and Improvement Plan” (“PRIP”). The complaints included Quayle’s use of inappropriate comments and language in front of patients, her disrespectful and verbally abusive behavior towards hospital staff, and her creation of a hostile work environment. Following these complaints, Quayle was given formal notice of the behavioral standards to which she was expected to adhere. In 2015, Mercy administration placed Quayle on a second PRIP because of continued complaints from staff that Quayle “abused and demeaned them,” “used profanity,” “created an intimidating atmosphere in the urology clinic,” and “yelled patients’ protected health information down public hallways” *Id.* at 100. The second PRIP required Quayle to “treat staff with respect, set a professional tone in the clinic, refrain from yelling and using profanity, [and] comply with the Code of Medical Staff Profession [sic] Conduct and other behavior standards,” noting that this would be Quayle’s “final written warning.” *Id.*

Additional issues followed during Quayle’s time at Mercy. In 2017, Quayle placed a catheter in a patient, CG. During the procedure, when CG was “writhing in pain and . . . crying out,” Quayle told CG that “you should have taken responsibility for your own health, and that’s why you’re in this situation.” *Id.* at 101. After the

procedure, CG and his wife requested that Quayle return and answer a few questions, but Quayle refused to reenter the room. Standing just outside CG's room, Quayle called CG an "asshole" and yelled "I don't have time for this f***ing patient." *Id.* Following this encounter, staff members again filed complaints about Quayle's behavior. Mercy administrators met with Quayle to discuss her encounter with CG; staff later reported that Quayle had contacted them to ask about "who turned her in." *Id.* at 102. In August 2017, administrators notified Quayle that she was suspended while they investigated the CG incident and interviewed Quayle's clinic staff. Later that month, administrators issued Quayle a third PRIP, stating that Quayle had to take responsibility for her actions, which had "deviated from Mercy norms of professional behavior" and conflicted with Mercy's core values. *Id.* at 103. Quayle disagreed with the PRIP and refused to sign it. Instead, she authored her own PRIP, denying any violation of Mercy's policies and maintaining that her behavior comported with Mercy's norms of professional conduct. Quayle returned to work that same month. In November 2017, Mercy administration once again met with Quayle, providing her with a revised PRIP that did not require her to admit wrongdoing. However, Quayle again refused to sign the PRIP. Mercy administration made continued attempts to find a "path forward" for Quayle at Mercy, *id.* at 103, suggesting she consult an "executive coach to improve her communication skills," *id.* at 104. Nevertheless, Quayle maintained that her behavior adhered to Mercy's professional norms and would not admit otherwise. Mercy leadership began "exploring other avenues" because Quayle refused to take responsibility for her actions. *Id.* at 108. In April

2018, Quayle and Mercy administration attended a mediation but failed to reach a resolution. Quayle was subsequently terminated.

Quayle brought claims for wrongful termination and retaliation in violation of Title VII, as well as state law tortious interference claims. She later conceded that the tortious interference claims should be dismissed. Mercy moved for summary judgment on Quayle's remaining claims. The district court granted summary judgment for Mercy on the wrongful termination and retaliation claims. Quayle appealed.

II.

“This court reviews the grant of summary judgment de novo, applying the same legal standard used by the district court and examining the record to determine if any genuine issue of material fact was in dispute; if not, we determine if the substantive law was correctly applied.” *United States ex rel. Sorenson v. Wadsworth Bros. Constr. Co., Inc.*, 48 F.4th 1146, 1159 (10th Cir. 2022) (cleaned up). “In so doing, we view the factual record and draw all reasonable inferences therefrom most favorably to . . . the nonmoving party.” *Id.* (cleaned up).

a.

Turning first to Quayle's wrongful determination claim, Title VII provides that “[i]t shall be an unlawful employment practice for an employer . . . to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's . . . sex.” 42 U.S.C. § 2000e-2(a)(1). Turning first to Quayle's discrimination claim, she has not alleged direct evidence of sex discrimination by

Mercy Hospital. “Title VII plaintiffs who can’t show direct evidence of discrimination may nevertheless prove discrimination through circumstantial evidence.” *Fassbender v. Correct Care Sols., LLC*, 890 F.3d 875, 884 (10th Cir. 2018). We apply the *McDonnell-Douglas* framework “to evaluate whether circumstantial evidence of discrimination presents a triable issue.” *Id.*; see generally *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973).

Under the *McDonnell-Douglas* framework, Quayle must first establish a prima facie case of discrimination. *Bird v. W. Valley City*, 832 F.3d 1188, 1200 (10th Cir. 2016). To do so, Quayle must show that she is a member of a protected class; she was terminated; she was otherwise qualified for the position; and the position was not eliminated. *Fassbender*, 890 F.3d at 884. While Quayle’s burden of making this showing is “not onerous,” she must still show “actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a discriminatory criterion illegal under Title VII.” *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 228 (2015). Should she succeed, “the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse action.” *E.E.O.C. v. PVNF, L.L.C.*, 487 F.3d 790, 800 (10th Cir. 2007). If Mercy meets “this burden, then the analysis moves to the third step of the *McDonnell-Douglas* framework, under which summary judgment is warranted unless [Quayle] can show there is a genuine issue of material fact as to whether the proffered reasons are pretextual.” *Fassbender*, 890 F.3d at 884.

The burden on Quayle is not onerous—but it is still a burden. Quayle must establish a prima facie case of discrimination “by a preponderance of the evidence.” *McCowan v. All Star Maint., Inc.*, 273 F.3d 917, 922 (10th Cir. 2001). We assume without deciding that Quayle has met her burden under the first step.

Turning to the second step, Mercy has satisfied its burden of showing “a legitimate, nondiscriminatory reason” for firing Quayle. *PVNF, L.L.C.*, 487 F.3d at 800. Record evidence indicates that Mercy fired Quayle because she refused to come to a resolution with Mercy on the third PRIP. The evidence also shows that Quayle’s tenure at Mercy involved several disputes between Quayle, her colleagues, and her patients—demonstrating that Mercy had valid, unbiased reasons for firing Quayle.

Finally, our “analysis moves to the third step . . . under which summary judgment is warranted unless [Quayle] can show there is a genuine issue of material fact as to whether the proffered reasons are pretextual.” *Fassbender*, 890 F.3d at 884. Quayle cannot demonstrate that Mercy’s motives for firing her were pretextual simply because her termination was not mutually agreeable, so the third step marks the end of the road for her discrimination claim. Indeed, the third PRIP resulted from Quayle’s treatment of patient CG, where she told him that his pain was his fault, called him an “asshole” just outside his hospital room, and refused to communicate with him after she left the room. Despite her actions, Quayle refused to sign the PRIP, which led to her termination. Quayle herself acknowledged that her refusal to admit that her conduct was outside the accepted norms at Mercy was the reason why she and Mercy were not able to find a resolution. Quayle alleges incidents in which

women were treated as inferior to men at Mercy—such as “being treated disrespectfully by male physicians, being hung up on, having their decision-making and medical judgment questioned, and having complaints about inappropriate conduct ignored,” as well as being asked “to complete tasks that . . . the men” were not required to. App’x Vol. I at 33. However, Quayle fails to connect these events to her termination. If true, the incidents are certainly troubling, but they do not involve Quayle’s termination. Rather, it is more likely than not that Quayle was terminated due to her unprofessional conduct toward patients and staff. Quayle does not come close to showing that Mercy’s reasons for firing her were pretextual and thus fails to meet her burden under the third step.

b.

Next, we turn to Quayle’s retaliation claim. “Title VII prohibits retaliation against an employee who has opposed any practice made unlawful by Title VII.” *Bennett v. Windstream Commc’ns, Inc.*, 792 F.3d 1261, 1269 (10th Cir. 2015) (cleaned up). “Title VII retaliation claims require an employee to demonstrate that, but for her protected activity, she would not have faced the alleged adverse employment action.” *Id.* Here, Quayle has failed to demonstrate that, but for some protected activity on her part, Mercy would not have discharged her. Indeed, she fails to identify a single incident of protected activity on her part that might form the basis of her retaliation claim. Mercy terminated Quayle because of her unprofessional behavior—not due to any activity that is protected under Title VII.

III.

We AFFIRM the district court's grant of Mercy Hospital's motion for summary judgment.

Entered for the Court

Allison H. Eid
Circuit Judge