

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-230

FEBRUARY TERM, 2007

Charles Crannell	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
Pam Pederson, M.D. and Pat Lewis Nurse	}	
N.S.C.F	}	DOCKET NO. 316-6-01 Wncv

Trial Judge: Helen M. Toor

In the above-entitled cause, the Clerk will enter:

Plaintiff Charles Crannell appeals pro se from the trial court=s order granting summary judgment to defendants. He argues that summary judgment was improper because facts remain in dispute. We affirm.

Plaintiff is incarcerated. In June 2001, he filed a complaint against a doctor and nurse who treated him in prison. Plaintiff alleged that defendants violated the Americans with Disabilities Act, 42 U.S.C. " 12101-12300, and intentionally interfered with a business or contractual relationship because they erroneously concluded that he was medically unfit to work in the prison woodshop.

Defendants moved for summary judgment, and the trial court granted their request. The court began by

noting that, while plaintiff denied some of the claims made by Dr. Pederson in her affidavit, he did not provide an affidavit addressing these issues, nor did he cite any record evidence to dispute her sworn statement. Thus, the factual assertions in Dr. Pederson=s affidavit were deemed admitted. Accordingly, the court found as follows. Dr. Pederson worked under contract to provide medical care to inmates at the Northern State Correctional Facility. Defendant Lewis, a nurse, was similarly employed. In May 2001, plaintiff sought treatment for tinnitus, an ear disorder. Dr. Pederson ordered plaintiff to stop working in the woodshop because he was exposed to high levels of noise there and he refused to wear earplugs. Dr. Pederson also diagnosed plaintiff with high blood pressure, which she felt was another reason that plaintiff should not be working in the woodshop. Dr. Pederson continued to treat plaintiff through the fall of 2001, and once his hypertension stabilized, plaintiff was allowed to return to work at the woodshop. Dr. Pederson=s decisions were based on her medical judgment, which was in turn based upon clinical information.

With these facts in mind, the court turned to plaintiff=s claims. It first concluded that plaintiff=s complaint failed to state a cause of action under the ADA. It explained that plaintiff alleged a violation of two sections of the ADA, 42 U.S.C. " 12111 and 12201, but neither provided the basis for a claim. The first merely defined an Aemployer,@ while the second had no apparent relevance. To the extent that plaintiff was arguing that defendants were liable under the ADA as Aemployers,@ the court found no evidence to support such a claim.

The court also rejected plaintiff=s claim for intentional interference with business or contractual relations. It explained that Dr. Pederson acted to protect plaintiff based upon her medical judgment as a doctor, and this provided a valid defense to plaintiff=s claims. The court thus entered judgment for defendants. Plaintiff appealed.

On appeal, plaintiff argues that summary judgment was improperly granted because facts remain in dispute. Specifically, he asserts that: defendants failed to respond to his discovery request for evidence that Dr. Pederson was qualified to diagnose or treat his ear problem; he never refused to wear earplugs at the woodshop but rather stated that he could not wear headphones at night because they exacerbated his ear problem; and Dr. Pederson unreasonably believed that she was protecting plaintiff.

On review, we apply the same standard used by the trial court: summary judgment is appropriate when, taking all allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. See V.R.C.P. 56(c). Summary judgment was properly granted here. The factual disputes alleged above do not relate to the ADA claim, and they are immaterial to plaintiff=s claim of interference with business or contractual relations. As the trial court explained, Dr. Pederson concluded that plaintiff should not work in the woodshop based on her medical judgment as a doctor, and thus plaintiff cannot establish that she Aimproperly@ interfered with any contract or business relations that plaintiff may have had with the prison woodshop. See Restatement 2d of Torts ' 770 (1979) (AOne who, charged with responsibility for the welfare of a third person, intentionally causes that person not to perform a contract or enter into a prospective contractual relation with another, does not interfere improperly with the other=s relation if the actor (a) does not employ wrongful means and (b) acts to protect the welfare of the third person.@).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice