

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Sotomayor v. City of New York

713 F.3d 163 (2d Cir. 2013) · No. 12-2319-cv · Decided April 11, 2013

SUMMARY

The United States Court of Appeals for the Second Circuit affirmed summary judgment dismissing Gladys Sotomayor's claims of employment discrimination and retaliation under federal, New York State, and New York City law, as well as her Family and Medical Leave Act claim. The court concluded that, even assuming the defendants' conduct constituted an adverse employment action, no reasonable jury could find that it was motivated by discriminatory or retaliatory animus.

OPINION

PER CURIAM.

12-2319-cv Sotomayor v. City of N.Y. UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT August Term 2012 (Submitted: February 20, 2013 Decided: April 11, 2013) Docket No. 12-2319-cv _____ GLADYS SOTOMAYOR, Plaintiff-Appellant, CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, FRED WALSH, JEANETTE SMITH, Defendants-Appellees. _____ Before: WINTER, CHIN, and DONEY, Circuit Judges. _____ Appeal from a judgment of the United States District Court for the Eastern District of New York (Weinstein, J.) granting summary judgment in favor of defendants-appellants and dismissing plaintiff-appellant's discrimination and retaliation claims under federal, state, and New York City law.

AFFIRMED. _____ ALAN E. WOLIN, Wolin & Wolin, Jericho, New York, for Plaintiff-Appellant. EDWARD F.X. HART & DRAKE A. COLLEY, of Counsel, for Michael A. Cardozo, Corporation Counsel of the City of New York, New York, New York, for Defendants-Appellees. _____ PER CURIAM: Plaintiff-appellant Gladys Sotomayor appeals from the district court's judgment dismissing her claims of employment discrimination and retaliation under federal, state, and New York City law.

We hold that the district court properly granted summary judgment dismissing her claims. Accordingly, we affirm. BACKGROUND Sotomayor, a schoolteacher, is a fifty-six year old woman of Hispanic descent. She has been employed by the New York City Department of Education since 1999. Sotomayor claims that, beginning in the 2007-2008 school year, defendants unfairly reprimanded her, observed her classroom with unusual frequency, evaluated her classroom -2- performance negatively, and gave her less desirable classroom assignments and duties.

She argues that these actions were unwarranted and motivated by discriminatory and retaliatory animus. Defendants acknowledge that they increased their supervision of and attention toward Sotomayor, but they contend they did so to address her performance and behavioral issues. Sotomayor filed a complaint against defendants raising claims pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; the Civil Rights Act of 1866, 42 U.S.C. § 1983; the New York State Human Rights Law, N.Y.

Exec. Law § 290 et seq.; and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 et seq., claiming that she was discriminated and retaliated against on the basis of her age, race, and national origin. In addition, she asserts that defendants violated the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq.

After discovery, defendants moved for summary judgment. On May 24, 2012, the district court issued a -3- Memorandum, Order & Judgment granting the motion in favor of defendants and dismissing all of plaintiff's claims. *Sotomayor v. City of N.Y.*, 862 F. Supp. 2d 226 (E.D.N.Y. 2012). This appeal followed. DISCUSSION We review de novo a district court's grant of summary judgment after construing all evidence, and drawing all reasonable inferences, in favor of the non-moving party.

McBride v. BIC Consumer Prods. Mfg. Co., 583 F.3d 92, 96 (2d Cir. 2009). Summary judgment is appropriate only when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

We have conducted a de novo review of the record, and we conclude that the district court properly granted summary judgment in favor of defendants for substantially the reasons articulated by the district court in its thorough and well-reasoned Memorandum, Order & Judgment. See *Sotomayor*, 862 F. Supp. 2d 226. With respect to Sotomayor's retaliation claims, however, the district court discussed retaliation only in -4- the context of the FMLA.

See *id.* at 261-62 (declining to otherwise address allegations of retaliation because plaintiff never alleged that she had participated in other "protected activity" under federal, state, or city laws). We note that Sotomayor asserted a broader claim of retaliation; her Amended Complaint contends that defendants retaliated against her after she filed a notice of claim, filed a discrimination charge with the U.S. Equal Employment Opportunity Commission, and began this action.

SDNY ECF No. 13. Nonetheless, we have independently reviewed the record and conclude that, even if we assumed defendants' actions resulted in an adverse employment action, no reasonable jury could find that such actions were motivated by a retaliatory animus. See, e.g., N.Y.C. Admin. Code § 8-107(7) (prohibiting retaliation "in any manner," even absent an adverse employment action); *Terry v. Ashcroft*, 336 F.3d 128, 140-41 (2d Cir.

2003) (Title VII & ADEA); *Torres v. Pisano*, 116 F.3d 625, 629 n.1 (2d Cir. 1997) (claims brought under New York state law are "analytically identical" to those raised under Title VII). -5-
CONCLUSION For the foregoing reasons, we AFFIRM the judgment of the district court. -6-