

SUPREME COURT OF NEW JERSEY

Cutler v. Dorn, 196 N.J. 419

955 A.2d 917 (2008) · No. A-51 September Term 2007 · Decided July 31, 2008

SUMMARY

The Supreme Court of New Jersey considered whether a Jewish police officer presented sufficient evidence to submit a religion- and ancestry-based hostile work environment claim under the New Jersey Law Against Discrimination to a jury. The court held that religion-based hostile work environment claims are subject to the same threshold applicable to sex- and race-based claims and that the cumulative evidence could support the jury’s finding of liability. The court reversed the Appellate Division’s judgment overturning the verdict.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice LaVecchia; Chief Justice Rabner; Justice Long; Justice Albin; Justice Hoens
JURISDICTION	New Jersey
DECIDED	July 31, 2008
DOCKET	A-51 September Term 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Appellate Division's reversal of a jury verdict finding that plaintiff had been subjected to a religion- and ancestry-based hostile work environment under the New Jersey Law Against Discrimination. The Supreme Court of New Jersey granted certification.
STANDARD OF REVIEW	On a motion for judgment notwithstanding the verdict under Rule 4:40-2, the court must accept as true all evidence supporting the plaintiff and accord the plaintiff all reasonable inferences arising from that evidence. The sufficiency of the evidence is reviewed in light of the totality of the circumstances.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of New Jersey
PARTIES	Jason Cutler v. Theodore Dorn, Robert Shreve, Borough of Haddonfield, John Does 1 Through 25, Inclusive

TOPICS

hostile work environment

religious discrimination

employment discrimination

civil rights

employment law

PRACTICE AREAS

employment law

civil rights

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to allow a jury to find that Cutler experienced a hostile work environment based on religion and ancestry under the New Jersey Law Against Discrimination.
2. Whether religion-based hostile work environment claims under the LAD are subject to a higher or more stringent threshold than sexual- or race-based hostile work environment claims.
3. Whether the trial court properly denied Haddonfield's motion for judgment notwithstanding the verdict.
4. Whether the lower courts abused their discretion by refusing to allow Cutler to amend his complaint to specify an additional retaliation claim.

HOLDINGS

1. A religion- or ancestry-based hostile work environment claim under the New Jersey Law Against Discrimination is governed by the same severe-or-pervasive threshold applicable to sexual- and race-based hostile work environment claims; it is not subject to a higher or more stringent threshold.
2. The evidence, viewed in the light most favorable to Cutler and under the totality-of-the-circumstances standard, was sufficient for a rational jury to find severe or pervasive, unwelcome harassment based on Jewish religion and ancestry.
3. The trial court properly denied Haddonfield's motion for judgment notwithstanding the verdict because sufficient evidence supported the jury's finding of a hostile work environment.
4. The Appellate Division correctly rejected Cutler's claim that the courts abused their discretion by refusing to allow amendment of the complaint to add an additional retaliation claim.

KEY QUOTATIONS

“Therefore, and also consistent with our holdings on hostile workplace claims in those settings, we conclude that plaintiff's case satisfied the standards for a hostile work environment claim to warrant, and subsequently uphold, a jury determination.” (920)

“Thus, where, as here, a hostile work environment claim involves allegations of harassment based on religious faith or ancestry, the inquiry is whether a reasonable person of plaintiff's religion or ancestry would consider the workplace acts and comments made to, or in the presence of, plaintiff to be sufficiently severe or pervasive to alter the conditions of employment and create a hostile working environment.” (924)

“Rather than considering each incident in isolation, courts must consider the cumulative effect of the various incidents, bearing in mind that each successive episode has its predecessors, that the impact of the separate

incidents may accumulate, and that the work environment created may exceed the sum of the individual episodes.” (925)

“A claimant asserting harassment on the basis of religious beliefs and ancestry is not required to bear a heavier burden in order to place his hostile work environment claim before the jury.” (929)

“Thus, the standard is now clear.” (930)

FACTUAL BACKGROUND

Jason Cutler, a Jewish police officer employed by the Haddonfield Police Department, was repeatedly subjected to comments by supervisors and coworkers concerning Jews, Jewish stereotypes, and his Jewish ancestry. The comments included repeated references to Cutler as "the Jew," remarks about a "big Jew nose," statements that Jews are good with numbers and make money, and comments including "Those dirty Jews" and "let's get rid of all those dirty Jews." Cutler also encountered conduct involving Israeli and German flag stickers on his locker and was told not to wear a yarmulke while observing a Christian religious pin on another officer's uniform. After Shreve repeated the "dirty Jews" comment during a departmental disciplinary hearing, Cutler filed suit.

PROCEDURAL HISTORY

Cutler sued the Borough of Haddonfield, Theodore Dorn, and Robert Shreve under the New Jersey Law Against Discrimination. The trial court dismissed the claim against Shreve and granted Dorn's motion for involuntary dismissal, but allowed the hostile-work-environment claim against Haddonfield to go to the jury. The jury found a hostile work environment and municipal liability but awarded no damages. The trial court denied Haddonfield's motion for judgment notwithstanding the verdict. The Appellate Division reversed as to the hostile-work-environment verdict, concluding that the conduct was sporadic and insufficiently severe or pervasive, and the Supreme Court granted certification.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court affirmed the portion of the Appellate Division's judgment affirming denial of Cutler's motion to amend his complaint, reversed the portion that overturned the hostile-work-environment verdict and entered judgment for Haddonfield, and remanded to the Appellate Division to decide any unresolved issues Cutler had raised on appeal.

CASES CITED

- *Lehmann v. Toys 'R' Us, Inc.*, 132 N.J. 587, 626 A.2d 445 (1993)
- *Taylor v. Metzger*, 152 N.J. 490, 706 A.2d 685 (1998)
- *Green v. Jersey City Board of Education*, 177 N.J. 434, 828 A.2d 883 (2003)
- *Shepherd v. Hunterdon Developmental Center*, 174 N.J. 1, 803 A.2d 611 (2002)
- *El-Sioufi v. St. Peter's University Hospital*, 382 N.J. Super. 145, 887 A.2d 1170 (App. Div. 2005)

- Mancini v. Township of Teaneck, 349 N.J. Super. 527, 794 A.2d 185 (App. Div. 2002)
- Woods-Pirozzi v. Nabisco Foods, 290 N.J. Super. 252, 675 A.2d 684 (App. Div. 1996)
- Aman v. Cort Furniture Rental Corp., 85 F.3d 1074 (3d Cir. 1996)
- Streater v. City of Camden Fire Department, 567 F. Supp. 667 (D.N.J. 1983)
- DeCapua v. Bell Atlantic-New Jersey, Inc., 313 N.J. Super. 110, 712 A.2d 725 (Law Div. 1998)
- EEOC v. Sunbelt Rentals, Inc., 521 F.3d 306 (4th Cir. 2008)
- Heitzman v. Monmouth County, 321 N.J. Super. 133, 728 A.2d 297 (App. Div. 1999)
- Lewis v. American Cyanamid Co., 155 N.J. 544, 715 A.2d 967 (1998)
- Cutler v. Dorn, 390 N.J. Super. 238, 915 A.2d 65 (App. Div. 2007)
- Cicchetti v. Morris County Sheriff's Office, 194 N.J. 563, 947 A.2d 626 (2008)
- Fuchilla v. Layman, 109 N.J. 319, 537 A.2d 652 (1988)
- Abramson v. William Paterson College of New Jersey, 260 F.3d 265 (3d Cir. 2001)
- EEOC v. WC & M Enterprises, 496 F.3d 393 (5th Cir. 2007)