

SUPREME COURT OF WASHINGTON

Korslund v. Dyncorp Tri-Cities Services, Inc., 156 Wash. 2d 168

125 P.3d 119 (2005) · No. No. 75662-7 · Decided December 22, 2005

SUMMARY

The Supreme Court of Washington held that the plaintiffs' wrongful discharge and retaliation claims based on public policy failed because the Energy Reorganization Act provided adequate alternative remedies. The court allowed the plaintiffs' claims for breach of promises of specific treatment in specific situations to proceed, concluding that those claims were not limited to discharged employees and presented material factual issues.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Madsen, J.; Alexander, C.J.; C. Johnson, J.; Bridge, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.; Chambers, J.; Sanders, J.
JURISDICTION	Washington
DECIDED	December 22, 2005
DOCKET	No. 75662-7
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Washington Supreme Court granted DynCorp's petition for discretionary review of an appellate decision reversing in part the trial court's summary judgment. The Supreme Court reviewed summary judgment de novo, affirmed summary judgment on the public-policy tort claims, and remanded the claims for breach of promises of specific treatment in specific situations.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, using the same inquiry as the trial court. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law; facts and reasonable inferences are construed in favor of the nonmoving party.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Washington; precedential.
PARTIES	Dyncorp Tri-Cities Services, Inc., Fluor Daniel Hanford, Inc. v. Steven M. Korslund, Virginia A. Miller, John Acosta

TOPICS

whistleblower

retaliation

constructive discharge

employment contracts

summary judgment

PRACTICE AREAS

employment law

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QUESTIONS PRESENTED

1. Whether an employee may establish constructive discharge for purposes of a wrongful-discharge-in-violation-of-public-policy claim by permanently leaving work on medical leave without formally quitting or resigning.
2. Whether the Energy Reorganization Act's whistleblower protections and remedies provide adequate alternative means of protecting the public policy against retaliation for reporting nuclear-industry safety violations, thereby defeating the jeopardy element of Washington's public-policy tort.
3. Whether Washington should recognize a separate tort for wrongful retaliation in violation of public policy under the circumstances presented.
4. Whether a claim for breach of promises of specific treatment in specific situations is available absent termination and to employees covered by a collective bargaining agreement or an at-will employment provision.
5. Whether the plaintiffs presented factual issues concerning promises, breach, and justifiable reliance sufficient to defeat summary judgment on their specific-treatment claims.

HOLDINGS

1. An employee may, under some circumstances, be constructively discharged when an employer deliberately creates intolerable working conditions that force the employee to permanently leave the workplace for medical reasons; the employee need not formally quit or resign. However, an employee who remains employed, continues receiving employment benefits, or has protected ability to return to work generally has not been constructively discharged unless the leave is comparable to termination.
2. The plaintiffs' wrongful-discharge claims fail as a matter of law because the Energy Reorganization Act provides adequate alternative means of promoting and protecting the public policy against retaliation for reporting nuclear-industry safety violations.
3. The court declined to recognize or consider the proposed tort of wrongful retaliation in violation of public policy because the same public policy was adequately protected by the ERA and therefore the plaintiffs could not establish jeopardy.
4. Discharge is not a prerequisite to a claim for breach of promises of specific treatment in specific situations, and coverage by a collective bargaining agreement or the existence of an at-will employment provision does not automatically bar such a claim.
5. The plaintiffs presented sufficient evidence to create material factual issues concerning whether DynCorp's policies made specific promises of corrective or disciplinary action, whether those promises

were breached, and whether the plaintiffs justifiably relied on them. Summary judgment was therefore improper on those claims.

KEY QUOTATIONS

“We believe it is sufficient for a plaintiff to prove that an employer deliberately rendered working conditions intolerable and thus forced the employee to permanently “leave” the employment; the employee need not prove that she technically “quit” in every case.” (125 P.3d at 125)

“Deliberately creating conditions so intolerable as to make the employee so ill that he or she must leave work permanently is functionally the same as forcing the employee to quit.” (125 P.3d at 126)

“The ERA thus provides comprehensive remedies that serve to protect the specific public policy identified by the plaintiffs.” (125 P.3d at 127)

“It would be inconsistent with Thompson and its progeny to conclude that once an application containing an at-will provision is signed, the employer is thereafter free to make whatever promises it wishes to make without any obligation to carry them out.” (125 P.3d at 130)

“Thus, the Court of Appeals erred insofar as it reasoned that a plaintiff does not have to show inducement.” (125 P.3d at 131)

FACTUAL BACKGROUND

Korslund, Miller, and Acosta worked for DynCorp at the Hanford Nuclear Reservation and reported alleged safety violations, mismanagement, misuse of government funds, fraud, and related misconduct. They alleged that management and coworkers responded with harassment, threats, discipline, reduced responsibilities, and other retaliation; Korslund and Miller ultimately left work or went on medical disability. The plaintiffs also relied on company policies promising corrective or disciplinary action against employees who retaliated against those reporting violations.

PROCEDURAL HISTORY

Plaintiffs sued DynCorp for wrongful discharge and retaliation in violation of public policy and for breach of promises of specific treatment in specific situations based on employment policies and manuals. The trial court granted summary judgment to DynCorp on all relevant claims. The Court of Appeals reversed dismissal of Korslund's wrongful-discharge claim and the specific-treatment claims, affirmed dismissal of Miller's wrongful-discharge claim, and declined to recognize a separate wrongful-retaliation tort. The Washington Supreme Court granted discretionary review and held that the public-policy tort claims were barred because the Energy Reorganization Act supplied adequate alternative protection, while factual issues required further proceedings on the specific-treatment claims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on the plaintiffs' claims that DynCorp breached promises of specific treatment in specific situations, including factual determination of awareness, inducement, justifiable reliance, and breach. The summary judgment disposition on the wrongful-discharge and proposed wrongful-retaliation public-policy claims remains in favor of DynCorp.

CASES CITED

- Gardner v. Loomis Armored, Inc., 128 Wash. 2d 931, 913 P.2d 377 (1996)
- Dicombe v. State, 113 Wash. 2d 612, 782 P.2d 1002 (1989)
- Thompson v. St. Regis Paper Co., 102 Wash. 2d 219, 685 P.2d 1081 (1984)
- Hubbard v. Spokane County, 146 Wash. 2d 699, 50 P.3d 602 (2002)
- Smith v. Bates Technical College, 139 Wash. 2d 793, 991 P.2d 1135 (2000)
- Havens v. C & D Plastics, Inc., 124 Wash. 2d 158, 876 P.2d 435 (1994)
- Cagle v. Burns & Roe, Inc., 106 Wash. 2d 911, 726 P.2d 434 (1986)
- White v. Honeywell, Inc., 141 F.3d 1270 (8th Cir. 1998)
- White v. State, 131 Wash. 2d 1, 929 P.2d 396 (1997)
- English v. General Electric Co., 496 U.S. 72, 110 S. Ct. 2270, 110 L. Ed. 2d 65 (1990)
- Wilmoth v. Kaiser Aluminum & Chemical Corp., 118 Wash. 2d 46, 821 P.2d 18 (1991)
- Bulman v. Safeway, Inc., 144 Wash. 2d 335, 27 P.3d 1172 (2001)
- Swanson v. Liquid Air Corp., 118 Wash. 2d 512, 826 P.2d 664 (1992)
- DePhillips v. Zolt Construction Co., 136 Wash. 2d 26, 959 P.2d 1104 (1998)
- Gaglidari v. Denny's Restaurants, Inc., 117 Wash. 2d 426, 815 P.2d 1362 (1991)
- Trimble v. Washington State University, 140 Wash. 2d 88, 993 P.2d 259 (2000)
- Stewart v. Chevron Chemical Co., 111 Wash. 2d 609, 762 P.2d 1143 (1988)
- Reninger v. Department of Corrections, 134 Wash. 2d 437, 951 P.2d 782 (1998)
- Roberts v. Dudley, 140 Wash. 2d 58, 993 P.2d 901 (2000)
- Bulaich v. AT&T Information Systems, 113 Wash. 2d 254, 778 P.2d 1031 (1989)
- Martini v. Boeing Co., 137 Wash. 2d 357, 971 P.2d 45 (1999)