

SUPREME COURT OF CONNECTICUT

Cendant Corp. v. Commissioner of Labor, 276 Conn. 16

883 A.2d 76 (2005) · Decided October 25, 2005

SUMMARY

The Connecticut Supreme Court considered the framework for analyzing an employee’s claim that an employer interfered with the employee’s right to reinstatement under the Connecticut Family and Medical Leave Law. The court adopted the majority federal approach, under which an employee need not prove employer intent, while the employer bears the burden of showing that the employee would not have retained the position absent the leave. The court affirmed the trial court’s dismissal of Cendant Corporation’s appeal from the commissioner of labor’s decision.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Vertefeuille, J.
JURISDICTION	Connecticut
DECIDED	October 25, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cendant Corporation appealed from a trial court judgment dismissing its administrative appeal and affirming the Commissioner of Labor's determination that Cendant violated Connecticut's Family and Medical Leave Law by failing to reinstate Kim Persky after maternity leave. The appeal was transferred from the Appellate Court to the Connecticut Supreme Court.
STANDARD OF REVIEW	The court reviewed the previously unreviewed legal question concerning the analytical framework for an interference claim de novo because an agency is not entitled to special deference on a legal question not previously subjected to judicial scrutiny. It reviewed the Commissioner's factual findings and conclusions under the substantial-evidence standard, asking whether substantial evidence supported the basic facts and whether the conclusions drawn from those facts were reasonable; neither the trial court nor the Supreme Court could retry the case or substitute its judgment on factual questions.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Connecticut

PARTIES

Cendant Corporation v. Commissioner of Labor, Kim Persky

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QUESTIONS PRESENTED

1. What analytical framework governs an employee's claim that an employer interfered with the employee's right to reinstatement under Connecticut's Family and Medical Leave Law?
2. Whether an employee asserting an interference claim must prove the employer's intent or whether liability may attach without proof of intent.
3. Whether the employer or employee bears the ultimate burden of proving that the employee would have been terminated even if the employee had not taken leave.
4. Whether the trial court properly determined that substantial evidence supported the Commissioner's findings of a causal connection between Persky's leave and the denial of reinstatement and that Persky would have retained her position absent the leave.

HOLDINGS

1. Connecticut adopts the framework used by the majority of federal courts for FMLA interference claims. An employee must initially show that the employer denied a statutory right and that the denial was connected in part to the employee's protected leave; once that showing is made, the employer may avoid liability by proving that the employee would have been terminated or otherwise not employed when reinstatement was requested even if the employee had not taken leave.
2. An employee asserting interference with the right to reinstatement need not prove that the employer acted with discriminatory or retaliatory intent. The term strict liability describes the irrelevance of employer intent, not liability regardless of whether the employer had a legitimate reason that would independently have resulted in termination.
3. The McDonnell Douglas burden-shifting framework does not apply to interference claims under Connecticut's Family and Medical Leave Law.
4. Substantial evidence supported the Commissioner's findings that Persky's leave was causally connected to the denial of reinstatement and that she would have retained her position had she not taken leave.

KEY QUOTATIONS

"We therefore endorse the framework employed by the majority of federal courts and conclude that the trial court properly affirmed the commissioner's application of the strict liability standard and his allocation of the

burden of proof.” (276 Conn. at 31)

“The term “strict liability” has been used to distinguish the framework used for interference claims from the framework used for discrimination claims under FMLA.” (276 Conn. at 32)

“Because we already have concluded that the FMLA regulation established the correct burden-shifting framework, and because the McDonnell Douglas Corp. framework was created explicitly to address claims where proof of an employer’s intent is required, we reject the use of the McDonnell Douglas Corp. framework for analyzing interference claims under the leave statute.” (276 Conn. at 35)

FACTUAL BACKGROUND

Kim Persky was a vice president and general manager of Cendant's Sidewalk business unit and notified management that she would take maternity leave beginning in January 1999. While Persky was on leave, Microsoft exercised an option to purchase the Sidewalk unit, and Cendant reorganized its management structure. Cendant did not specifically offer Persky her former position or an equivalent position and later treated her failure to accept other positions as a voluntary resignation. The administrative record supported findings that Persky's position continued to exist, that her temporary replacement performed substantially similar duties, and that she would have retained the position had she not taken leave.

PROCEDURAL HISTORY

After a contested administrative hearing, a hearing officer concluded that Cendant violated the leave statute and awarded Persky damages. The Commissioner of Labor affirmed and incorporated the hearing officer's findings and conclusions. The trial court dismissed Cendant's appeal, concluding that the Commissioner used the proper legal framework and that substantial evidence supported the findings. The Connecticut Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Nevada Dept. of Human Resources v. Hibbs, 538 U.S. 721, 732, 123 S. Ct. 1972, 155 L. Ed. 2d 953 (2003)
- Liu v. Amway Corp., 347 F.3d 1125, 1132, 1136 (9th Cir. 2003)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)
- Bachelder v. America West Airlines, Inc., 259 F.3d 1112, 1125 (9th Cir. 2001)
- Smith v. Diffie Ford-Lincoln-Mercury, Inc., 298 F.3d 955, 960, 963 (10th Cir. 2002)
- Cross v. Southwest Recreational Industries, Inc., 17 F. Supp. 2d 1362, 1368 (N.D. Ga. 1998)
- Throneberry v. McGehee Desha County Hospital, 403 F.3d 972, 977, 980 (8th Cir. 2005)
- O’Connor v. PCA Family Health Plan, Inc., 200 F.3d 1349, 1354 (11th Cir. 2000)
- Rice v. Sunrise Express, Inc., 209 F.3d 1008, 1018 (7th Cir. 2000)
- Southern New England Telephone Co. v. Dept. of Public Utility Control, 274 Conn. 119, 127, 874 A.2d 776 (2005)

- Nussbaum v. Kimberly Timbers, Ltd., 271 Conn. 65, 73 n.6, 856 A.2d 364 (2003)
- Builders Service Corp., Inc. v. Planning & Zoning Commission, 208 Conn. 267, 304-305, 545 A.2d 530 (1988)
- Fenton v. Connecticut Hospital Assn. Workers' Compensation Trust, 58 Conn. App. 45, 53, 752 A.2d 65, cert. denied, 254 Conn. 911, 759 A.2d 504 (2000)
- Craine v. Trinity College, 259 Conn. 625, 637, 791 A.2d 518 (2002)
- Potenza v. New York, 365 F.3d 165, 168 (2d Cir. 2004)
- King v. Preferred Technical Group, 166 F.3d 887, 891 (7th Cir. 1999)
- Webster Bank v. Oakley, 265 Conn. 539, 555 n.16, 830 A.2d 139, cert. denied, 541 U.S. 903, 124 S. Ct. 1603, 158 L. Ed. 2d 244 (2004)

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