

SUPREME COURT OF MONTANA

Becker v. Rosebud Operating Services, Inc.

2008 MT 285 (Mont. 2008) · No. DA 07-0155 · Decided August 12, 2008

SUMMARY

The Supreme Court of Montana affirmed summary judgment for Rosebud Operating Services, Inc. in Thomas Becker's wrongful-discharge action. The court held that Becker's appellate arguments did not constitute an impermissible change in legal theory, but concluded that his profanity and disruptive conduct toward supervisors provided good cause for termination under Montana's Wrongful Discharge from Employment Act. The court also held that Becker could not create a genuine issue of material fact through inconsistent deposition testimony and unsupported speculation that his discharge was pretextual.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Montana                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Justice Jim Rice; Karla M. Gray, C.J.; James C. Nelson; Patricia Cotter; John Warner; W. William Leaphart; Brian Morris                                                                                                                                      |
| JURISDICTION          | Montana                                                                                                                                                                                                                                                      |
| DECIDED               | August 12, 2008                                                                                                                                                                                                                                              |
| DOCKET                | DA 07-0155                                                                                                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Becker appealed the grant of summary judgment to Rosebud Operating Services, Inc. in his wrongful discharge action under Montana's Wrongful Discharge from Employment Act.                                                                                   |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo under the same criteria applied by the district court under M. R. Civ. P. 56. Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                               |
| PARTIES               | Thomas Becker v. Rosebud Operating Services, Inc.                                                                                                                                                                                                            |

TOPICS

- wrongful termination
- employment at-will
- summary judgment
- appellate procedure
- standard of review

## PRACTICE AREAS

employment law

wrongful discharge

civil procedure

## QUESTIONS PRESENTED

1. Whether the Supreme Court should decline to consider Becker's appellate argument because his legal theory changed from the theory presented to and relied upon by the District Court.
2. Whether summary judgment was proper on Becker's wrongful discharge claim because the undisputed facts established good cause for his termination under Montana's Wrongful Discharge from Employment Act.

## HOLDINGS

1. The Court would consider Becker's appellate arguments because his overall theory—that ROSI lacked good cause to terminate him under the Wrongful Discharge from Employment Act—had not significantly changed, even though some specific arguments were not presented below.
2. The District Court properly granted summary judgment because Becker's undisputed conduct—directing profanity and abusive language at his supervisors after being placed on paid administrative leave and instructed to calm down—constituted good cause for termination, and Becker presented no evidence that ROSI's stated reason was pretextual, arbitrary, or capricious.

## KEY QUOTATIONS

*“The basis for the general rule is that “it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider.””* (¶ 17)

*“While the district courts must exercise extreme care not to take genuine issues of fact away from juries, “[a] party should not be allowed to create issues of credibility by contradicting his own earlier testimony’...”* (¶ 22)

*“A legitimate business reason is one that is “neither false, whimsical, arbitrary or capricious, and it must have some logical relationship to the needs of the business.””* (¶ 24)

## FACTUAL BACKGROUND

Thomas Becker worked as a fuel technician for Rosebud Operating Services, Inc. at its power plant in Colstrip, Montana. After a limestone blower malfunctioned, Becker had heated exchanges with his supervisor and plant manager during a workplace inspection and was placed on paid administrative leave to calm down. Becker then directed profane and abusive language at the managers, after which he was terminated for unruly behavior, a threatening attitude, and abusive language. ROSI's employee handbook identified profane or abusive language on company premises as a serious breach potentially warranting immediate discharge.

## PROCEDURAL HISTORY

Becker was terminated from his employment and filed a wrongful discharge action in the Thirteenth Judicial District Court, Yellowstone County. The District Court granted ROSI summary judgment, concluding Becker

offered only speculation that he was discharged for reasons other than good cause. The Montana Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Delaware v. K-Decorators, Inc., 1999 MT 13, 293 Mont. 97, 973 P.2d 818
- Bruner v. Yellowstone County, 272 Mont. 261, 900 P.2d 901 (1995)
- Arnold v. Yellowstone Mountain Club, LLC, 2004 MT 284, 323 Mont. 295, 100 P.3d 137
- Day v. Payne, 280 Mont. 273, 929 P.2d 864 (1996)
- Unified Industries, Inc. v. Easley, 1998 MT 145, 289 Mont. 255, 961 P.2d 100
- Meadow Lake Estates Homeowners Assoc. v. Shoemaker, 2008 MT 41, 341 Mont. 345, 178 P.3d 81
- Bowen v. McDonald, 276 Mont. 193, 915 P.2d 201 (1996)
- Stott v. Fox, 246 Mont. 301, 805 P.2d 1305 (1990)
- Wilson v. Westinghouse, 838 F.2d 286 (8th Cir. 1988)
- Kestell v. Heritage Health Care Corp., 259 Mont. 518, 858 P.2d 3 (1993)
- Johnson v. Costco Wholesale, 2007 MT 43, 336 Mont. 105, 152 P.3d 727
- Andrews v. Plum Creek Mfg., 2001 MT 94, 305 Mont. 194, 27 P.3d 426