

# UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

## Ade v. Conklin Cars Salina

No. No. 19-3131, United States Court of Appeals for the Tenth Circuit (January 30, 2020)

### SUMMARY

**\*\*Ade v. Conklin Cars Salina\*\*** – Tenth Circuit affirmed summary judgment for employer on Title VII sex discrimination and Kansas retaliatory discharge claims. Plaintiff failed to show pretext for termination based on disruptive behavior and insubordination; the "same actor" inference applied where the same manager hired and fired her within six months. Her email complaining about a sales contest did not invoke rights under the Kansas Wage Payment Act or qualify as whistleblowing because it did not place the employer on notice of a statutory claim or involve a law pertaining to public health, safety, or general welfare.

### CASE DETAILS

|                       |                                                                                                                                                                           |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Tenth Circuit                                                                                                                      |
| WRITING FOR THE COURT | Paul J. Kelly, Jr.; Harris L Hartz; Scott M Matheson                                                                                                                      |
| JURISDICTION          | Federal                                                                                                                                                                   |
| DECIDED               | January 30, 2020                                                                                                                                                          |
| DOCKET                | No. 19-3131                                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Appeal from the United States District Court for the District of Kansas granting summary judgment to defendant on plaintiff's Title VII and retaliatory discharge claims. |
| STANDARD OF REVIEW    | De novo review of summary judgment, viewing evidence in light most favorable to nonmoving party, applying same standard as district court.                                |
| PRECEDENTIAL VALUE    | Unpublished                                                                                                                                                               |
| PARTIES               | Jillian Ade v. Conklin Cars Salina, LLC                                                                                                                                   |

### TOPICS

employment discrimination title vii retaliation summary judgment standard of review  
appellate procedure evidence hearsay civil procedure statutory interpretation

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment on Ade's Title VII sex discrimination claim by finding she failed to raise a genuine issue of material fact as to pretext.
2. Whether the district court erred in granting summary judgment on Ade's retaliatory discharge claims under the Kansas Wage Payment Act and whistleblower protections.

## HOLDINGS

1. Ade failed to show pretext because the same-actor inference applied (same manager hired and fired her within six months) and she did not present evidence that similarly situated male employees were treated differently or that hearsay evidence of a meeting was admissible.
2. The email did not clearly assert rights under the KWPA; it merely expressed disagreement with the contest structure, not a legal claim.
3. Kansas law does not recognize whistleblower protections for KWPA violations under the Palmer framework because the KWPA is not a law pertaining to public health, safety, and general welfare.

## KEY QUOTATIONS

*"A plaintiff may show that a reason is pretextual by pointing out 'weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions' that would allow a rational factfinder 'to conclude [the proffered reason is] unworthy of belief.'" (at 7)*

*"Where an employee was hired and discharged by the same person within a relatively short time span, 'there is a strong inference that the employer's stated reason for acting against the employee is not pretextual.'" (at 8)*

*"In order to invoke the protections of the KWPA, an employee must either file a claim under the act or raise a complaint that 'is clear enough that the employer would understand that the employee is asserting rights protected by the [KWPA].'" (at 11-12)*

## FACTUAL BACKGROUND

Ade was hired as used car manager at Conklin Salina in January 2017 and terminated six months later. She had a history of disruptive behavior, including profanity, threats, and complaints about coworkers. Ade emailed her manager complaining about a sales contest payout structure, which she later claimed was a protected complaint. Conklin stated termination was for disruptive behavior, conflict, and insubordination. Ade alleged that male coworkers were treated more leniently and that a manager's animus toward women caused her firing.

## PROCEDURAL HISTORY

Jillian Ade sued Conklin Cars Salina, LLC in the District of Kansas for sex discrimination under Title VII and retaliatory discharge under Kansas law. The district court granted summary judgment to Conklin. Ade appealed to the Tenth Circuit.

## DISPOSITION

affirmed

## CASES CITED

- Seifert v. Unified Gov't of Wyandotte Cty./Kan. City, 779 F.3d 1141 (10th Cir. 2015)
- Hardscrabble Ranch, LLC v. United States, 840 F.3d 1216 (10th Cir. 2016)
- Teets v. Great-West Life & Annuity Ins. Co., 921 F.3d 1200 (10th Cir. 2019)
- Tesone v. Empire Mktg. Strategies, 942 F.3d 979 (10th Cir. 2019)
- Wade v. Emcasco Ins. Co., 483 F.3d 657 (10th Cir. 2007)
- MidAmerica Constr. Mgmt., Inc. v. MasTec N. Am., Inc., 436 F.3d 1257 (10th Cir. 2006)
- Thomas v. Berry Plastics Corp., 803 F.3d 510 (10th Cir. 2015)
- EEOC v. PVNF, L.L.C., 487 F.3d 790 (10th Cir. 2007)
- Hiatt v. Colo. Seminary, 858 F.3d 1307 (10th Cir. 2017)
- Swackhammer v. Sprint/United Mgmt. Co., 493 F.3d 1160 (10th Cir. 2007)
- EEOC v. BCI Coca-Cola Bottling Co., 450 F.3d 476 (10th Cir. 2006)
- Green v. New Mexico, 420 F.3d 1189 (10th Cir. 2005)
- Antonio v. Sygma Network, Inc., 458 F.3d 1177 (10th Cir. 2006)
- Proud v. Stone, 945 F.2d 796 (4th Cir. 1991)
- Campbell v. Husky Hogs, L.L.C., 255 P.3d 1 (Kan. 2011)
- Deeds v. Waddell & Reed Inv. Mgmt. Co., 280 P.3d 786 (Kan. Ct. App. 2012)
- Palmer v. Brown, 752 P.2d 685 (Kan. 1988)

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