

SUPREME COURT OF KANSAS

Larry L. Rebarchek v. Farmers Cooperative Elevator and Mercantile Association of Dighton, Kansas, and Floyd G. Barber, 272 Kan. 546

35 P.3d 892 (2001) · No. No. 82,662 · Decided December 7, 2001

SUMMARY

The Supreme Court of Kansas reviewed a retaliatory-discharge claim brought by Larry L. Rebarchek against his former employer and supervisor after he filed a workers compensation claim. The court held that Kansas applies a burden-shifting analysis to such claims and that Rebarchek presented sufficient evidence of causation and pretext to create genuine issues of material fact. The court also addressed the use of pre-limitations-period conduct as evidence of a continuing retaliatory pattern and supervisor liability.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Allegrucci, J.
JURISDICTION	Kansas
DECIDED	December 7, 2001
DOCKET	No. 82,662
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Rebarchek appealed summary judgment for his former employer and supervisor in his common-law retaliatory-discharge action based on filing a workers compensation claim. The Kansas Court of Appeals reversed and remanded for trial. The Kansas Supreme Court granted review, affirmed the Court of Appeals in most respects, but reversed its ruling imposing potential individual liability on the supervisor.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the district court. Facts and reasonable inferences are resolved in favor of the nonmoving party, and summary judgment must be denied when reasonable minds could differ as to the conclusions drawn from the evidence.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential

PARTIES

Larry L. Rebarchek v. Farmers Cooperative Elevator and Mercantile Association of Dighton, Kansas, Floyd G. Barber

TOPICS

workers compensation

retaliation

wrongful termination

summary judgment

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a plaintiff alleging retaliatory discharge for filing a workers compensation claim must satisfy the clear-and-convincing quality of proof at the summary-judgment stage.
2. Whether Kansas applies a burden-shifting framework to a common-law workers compensation retaliatory-discharge claim.
3. Whether Rebarchek presented sufficient evidence of causation and pretext to create genuine issues of material fact.
4. Whether conduct predating the limitations period may be considered as part of a continuing pattern of retaliatory conduct and as evidence of discriminatory intent.
5. Whether a supervisor may be held individually liable for a common-law retaliatory discharge carried out on behalf of the employer.
6. Whether maintaining both federal and state disability or discrimination claims precluded the separate common-law workers compensation retaliatory-discharge action.

HOLDINGS

1. A plaintiff need not satisfy the clear-and-convincing quality of proof applicable at trial in order to defeat summary judgment on a workers compensation retaliatory-discharge claim.
2. Kansas applies a modified McDonnell Douglas burden-shifting analysis to a common-law claim for retaliatory discharge based on filing a workers compensation claim.
3. Rebarchek presented sufficient circumstantial evidence to create genuine issues of material fact concerning causal connection and whether Farmers' stated performance-based reason for termination was pretextual.
4. Events occurring before the limitations period may support recovery when they form part of a continuing pattern of retaliatory conduct, and may be admitted to prove discriminatory or retaliatory intent concerning the ultimate termination.
5. Only the employer, not an individual supervisor, is liable for common-law retaliatory discharge based on an employee's pursuit of workers compensation benefits.

KEY QUOTATIONS

“We find the reasoning of Gorham and Baumann to be sound and conclude Rebarchek need not meet the clear and convincing standard at the summary judgment stage of the proceedings.” (552)

“The plaintiff must prove a claim for retaliatory discharge by a preponderance of the evidence, but the evidence must be clear and convincing in nature.” (554)

“We conclude that only the employer is liable for retaliatory discharge.” (562)

“The judgment of the Court of Appeals is affirmed in part and reversed in part. The judgment of the district court is affirmed in part and reversed in part, and the case is remanded to the district court for trial.” (563)

FACTUAL BACKGROUND

Rebarchek, a branch manager for Farmers, reported a back injury and filed a workers compensation claim in November 1994. Shortly thereafter, supervisor Floyd Barber removed Rebarchek's company-vehicle privileges, reassigned him, followed him home while angry about the claim-related communications, and expressed anger that Rebarchek had declined cash in lieu of pursuing workers compensation benefits. Farmers later reprimanded Rebarchek for failing to maintain stored grain and terminated him one week after he returned from back surgery with work restrictions; evidence also showed that similarly deficient employees were not terminated.

PROCEDURAL HISTORY

The district court granted summary judgment to Farmers and Barber. The Court of Appeals reversed and remanded, holding that Rebarchek had presented sufficient evidence of retaliatory discharge and that Barber could potentially be individually liable. The Kansas Supreme Court affirmed the reversal of summary judgment insofar as Rebarchek was entitled to proceed to trial, but reversed the supervisor-liability ruling and remanded for trial against the employer.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded to the district court for trial against Farmers. The supervisor-liability ruling is reversed, so Floyd G. Barber is not individually liable for the retaliatory discharge.

CASES CITED

- Rebarchek v. Farmers Co-op Elevator & Mercant., 28 Kan. App. 2d 104, 13 P.3d 17 (2000)
- Ortega v. IBP, Inc., 255 Kan. 513, 874 P.2d 1188 (1994)
- Baumann v. Excel Industries, Inc., 17 Kan. App. 2d 807, 845 P.2d 65 (1993)
- Gorham State Bank v. Sellens, 244 Kan. 688, 772 P.2d 793 (1989)
- Barbara Oil Co. v. Kansas Gas Supply Corp., 250 Kan. 438, 827 P.2d 24 (1992)
- Woods v. Midwest Conveyor Co., 231 Kan. 763, 648 P.2d 234 (1982)
- Sanjuan v. IBP, Inc., 160 F.3d 1291, 1298 (10th Cir. 1998)

- Bergstrom v. Noah, 266 Kan. 847, 974 P.2d 531 (1999)
- Marinhagen v. Boster, Inc., 17 Kan. App. 2d 532, 840 P.2d 534 (1992)
- Anderson v. Coors Brewing Co., 181 F.3d 1171 (10th Cir. 1999)
- Marx v. Schnuck Markets, Inc., 76 F.3d 324 (10th Cir. 1996), cert. denied, 518 U.S. 1019
- Robinson v. Wilson Concrete Co., 913 F. Supp. 1476 (D. Kan. 1996)
- Murphy v. City of Topeka, 6 Kan. App. 2d 488, 630 P.2d 186 (1981)
- Reno v. Baird, 18 Cal. 4th 640, 76 Cal. Rptr. 2d 499, 957 P.2d 1333 (1998)
- Buckner v. Atlantic Plant Maintenance, 182 Ill. 2d 12, 694 N.E.2d 565 (1998)
- Rebarchek v. Farmers Co-op Elevator and Mercant., 60 F. Supp. 2d 1145 (D. Kan. 1999), aff'd, 202 F.3d 282 (10th Cir. 2000)
- Larson v. Ruskowitz, 252 Kan. 963, 850 P.2d 253 (1993)
- Beech Aircraft Corp. v. Kansas Human Rights Commission, 254 Kan. 270, 864 P.2d 1148 (1993)
- Stock v. Nordhus, 216 Kan. 779, 533 P.2d 1324 (1975)
- Ruebke v. Globe Communications Corp., 241 Kan. 595
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- Edwards v. Western Manufacturing, Division of Montana Elevator, 641 F. Supp. 616 (D. Kan. 1986)
- Riddle v. Wal-Mart Stores, Inc., 27 Kan. App. 2d 79, 998 P.2d 114 (2000)

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