ORIGINAL

23-5843

SUPREME COURT OF THE UNITED STATES

Cleon Belgrave
Petitioner

v.

Publix Supermarket Inc.
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit Appeal from the United States District Court for the NORTHERN DISTRICT OF GEORGIA
No. 1:20-CV-02146-MH

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- Defendants falsely claimed that the plaintiff did not file a timely EEOC, and ignored evidence supporting timely filing. Moreover, the plaintiff should be allowed to subpoena further evidence to support his timely filing of an EEOC discrimination case.Furthermore, this was one of the reasons why the ADA case was wrongfully dismissed.
- Judge incorrectly cited reasons to deny plaintiff eligibility as a qualified person under ADA, even though multiple material facts suggest that the plaintiff meets all criteria to be qualified as a protected individual under ADA law.
- Plaintiff argues that multiple errors were made when considering his accommodation requests, which were cited as 'unreasonable". Also, the plaintiff highlights that some of the requests were ignored by the judge. However, there are material facts which show that all accommodation requests were reasonable under ADA law, and thus were not unlawfully dismissed.
- Plaintiff argues that defendants' true reasons for terminating his employment were ignored, even though material facts were presented as support. Moreover, the plaintiff is confused as to what constitutes termination by retaliation, as he was terminated after requesting reasonable accommodations and documentation to file discrimination case, which by ADA law meets the criteria to establish a discrimination case.

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT (CIP)

Cleon Belgrave vs. Publix Supermarket Inc.

11th Cir. 26. 1-1 (a) Certificate of Interested Persons and Corporate Disclosure Statement (CIP) that complies with FRAP 26.1 and the accompanying circuit rules. The CIP must list persons (last name first) and entities in alphabetical order, have only one column, and be double-spaced. In general, a CIP must contain a complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

Belgrave, Cleon
Eleventh Circuit Court of Appeals GA
Judge Cohen, Mark
Magistrate Judge McBath, Elizabeth
Miller and Martin, PLLC
Publix Supermarket Incorporated

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PETITION FOR WRIT OF CERTIORARI

In God I place my trust, Appellate Cleon Belgrave filing Pro Se, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals of the 11 Circuit Court.

OPINIONS BELOW

The decision by the District Court of North Georgia granting Respondent Public Supermarket Inc Summary Judgement and denying Mr. Belgrave direct appeal in . The eleventh Circuit Court of Appeal denied Mr. Belgrave' petition for rehearing on July 20, 2023 . That order and Justice's dissent is attached at Appendix A.

JURISDICTION

Appellate files his motion in a timely manner on this day October 12, 2023. Appellate received decision Dated May 16, 2023, Appellate also filed a petition for rehearing and received decision on July 20, 2023 . Mr. Belgrave invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Eleventh Circuit Court's ruling.

CONSTITUTIONAL PROVISIONS INVOLVED

42 U.S.C §12111(9)(B) (9) Reasonable accommodation

The term "reasonable accommodation" may include-

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C §12111(8)8) Qualified individual

The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

42 U.S.C. § 12102(1)(A)-(C)

ADA "disability" is defined by the ADA as (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

STATEMENT OF THE ISSUES ASSERTED TO MERIT WRIT OF CERTIORARI CONSIDERATION

1) Confusion arises in the sister courts when reasonable accommodation is requested but the company doesn't offer employees any reasonable accommodation but terminates employees instead.

2) By its plain language, the ADA requires employers to provide reasonable accommodations for their employees they regard as disabled.

3) The judge stated that the appellate made only one accommodation request, while ignoring the other two requests that were made.

4) Judge contends that request for helper was not "reasonable" even though evidence provided showed that it was previously provided for plaintiff during earlier injuries.

5) Judge and defendants confused the definition of "essential functions" under ADA, and used it as justification for summary judgment.

6) The judge contends that the appellate is not a protected individual under ADA and cannot establish a prima facie case, even though he made all the correct steps to establish eligibility. That is, he is a disabled individual who requested reasonable accommodations from his previous employers.

7) The judge contends that the appellate did not dispute the defendant's claims in 2019 that he was totally disabled. In doing so, the judge accepted testimony made one year after the initial ADA claim as justification for termination of plaintiff.

8) Evidence presented to the judge showed that the defendants stated that the Appellate was terminated because of his meeting with the Defendants on the morning of June 7, 2019, and appellate was terminated on the evening of June 7,

2019 which shows that appellate demonstrated the necessary level of causation of pretext. This is discrimination by retaliation under the ADA.

9) Further discrimination by retaliation is covered under ADA when a request for reasonable accommodation (statutorily protected expression) "was met by an adverse action"(Page 9 of Opinion of the court) as appellate was terminated on the same day the requests were made as evidenced showed.

10) Judge erred in review that plaintiff "refused to review and acknowledge a written recap of a safety meeting he missed in mid-may (2019)".

11) Judge erred in its findings regarding the Appellant's timely filed EEOC charge of discrimination.

ARGUMENTS AND AUTHORITIES

As acknowledged by the courts and defendants, it is undisputed that Belgrave has a disability and given such, it can be assumed that "the ADA, by its plain language, requires employers to provide reasonable accommodations for employees they regard as disabled". *(Williams v. Phila. Hous. Auth. Police Dep't).* Nevertheless, Belgrave made several accommodation requests, all of which were reasonable because they were done for others within his department and others. They are as stated below:

- He requested to be placed on day shift by recommendation of the company's doctor (see Exhibit 5). This would have lessened the side effects of his prescribed medication, mainly drowsiness. Moreover, it was reasonable because the company offered three shifts per day, and people were often rotated between them. It is known that "For purposes of the ADA, "reasonable accommodations" may comprise "job restructuring, part-time or modified work schedules," 42 U.S.C. § 12111(9)(B), and "permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment...." (29 C.F.R. § 1630.2(o)). (*Wilson, 2013*). Thus, this modification of work schedule would have positively affected his ability to perform his essential duties because he would not have had to worry about the side effects affecting his performance.

- He requested a helper to be stationed in his department. This was also reasonable because every other department had a helper assigned to their stations. Moreover, during his first two injuries, he was offered helpers by supervisors (Id ¶ 28; pRDF ¶ 28). These helpers did not have to be hired or bumped up from another position nor were they exclusively performing Belgrave's essential tasks. Based on page 8 of the opinions of the court, it stated that "when Publix fired Belgrave, he necessarily could not perform

the dough room tasks of mixing and moving dough on the pie line." Given that Belgrave's essential task involved operating the dough machine which was a specialized task, and not opening boxes, this accommodation would not have adversely affected the company's production since the helper would not have had to be trained to operate the machine, but just to assist in other auxiliary tasks.

- He requested that the line machines be slowed down to cater for his injuries. This would not have caused any unjust hardship because this was a routine practice with other production lines. Moreover, the machines were often ran above the standard speed set by the company, and thus, slowing it down would have just reverted it to that standard speed. Material facts was presented which shows that machines were often sped up during Belgrave's lunch breaks, in an effort to affect his production rate (Exhibit 1, recording 1). Evidence provided also showed that supervisors acknowledged that machines were often not working properly and Belgrave requested that they were fixed so as not to affect his performance (Exhibit 1, recording 1). However, this request was never acknowledged.This evidently would have affected Belgrave's production rate and was used to tarnish his record. Eventually, these were cited as the reason for termination,when in fact Belgrave's work records showed that his job performance was great before injuries. Here, the law judge erred in not acknowledging Belgrave's argument for modification of equipment speed and maintenance as reasonable accommodation, when by definition a reasonable accommodation can be "adjustment or modification of equipment." 42 U.S.C. § 12111(9)(B).

Based on these reasonable accommodation requests above, he would have been a protected individual under the ADA since it is stated that a "qualified individual with a disability," in turn, is an individual who, with reasonable accommodation, "can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). Therefore, he would have been able to perform his essential tasks more efficiently if any of these accommodations were offered.

Moreover, there is misinterpretation concerning the timing of his disability. The testified claim made in the deposition that Belgrave was " totally disabled " was made in July of 2020 indicating that this should not have any effects on his initial ADA claim made in December 4, 2019 with the EEOC. Due to this timeline alone, it is unfair to assume that his claim of disability which was made a year after his initial ADA claim would have also been the reason for his performance during the initial claim, as stated on page 8 of opinions of the court document which claims that "there was nothing to suggest that his abilities at the time of this deposition were any different from his abilities at the time of his accommodation request". In fact, Belgrave provided evidence in Exhibit 1 Recording #1 -(13:40) ,(35:44), (01:01:39) which stated that "Plant general manager praised Plaintiff for doing an excellent job and thanked plaintiff for signing Tag form.". However, it would be illogical to have high praise for an employee who is "completely unable to work". Hence and furthermore, if the individual "is unable to perform an essential function of his job, even with an accommodation, he is, by definition, not a 'qualified individual' and, therefore, not covered under the ADA". However, the plaintiff was never offered any accommodations by the defendants and his accommodation requests were all ignored and he was instead terminated, so it is unfair to assume that he was unable to do his essential function of his job under this assumption. Therefore, the plaintiff was a qualified individual under ADA and his claim for ADA protection was accurate at the time of the claim.

On the morning of June 7, 2019, Belgrave met with his employers where he complained to management about being treated unfairly, harassed and discriminated against especially with regards to asking for help both with his injuries and requesting reasonable accommodation. This subsequently resulted in his termination upon return to work that evening.Thus, Belgrave believes that " temporal proximity alone can create a genuine dispute to causation." (*Haulbrook,2001*), as he was terminated the same day he requested these accommodations. The plaintiff provided recorded evidence in plaintiff Exhibit 1 Recording 2- which showed "that he spoke to Medcor on the evening of June 7, 2019 along with the Production Manager Josh Farnsworth, in the recording Medcor advised Mr. Josh Fornworth that Appellant Cleon Belgrave needed to be treated and Mr. Fornsworh told Cleon Belgrave that the safety manager Ms. Todd will contact him. He was not contacted by the company. Mr Fonsworth then informed

Appellate Cleon Belgrave that he was being terminated from the job based on his meeting that was held in the morning with his Plant general manager and Supervisor.", and not his alleged history of discipline of tardiness, poor job performance and insubordination as listed on page 11 of opinions of the court document.

Based on their own company policy, an employee needs to be placed on level 4 in order to be terminated. Belgrave also provided evidence that he signed the tag form within the correct time frame in Exhibit 1 Recording #1 -(13:40) ,(35:44), (01:01:39) which stated that "Plant general manager praised Plaintiff for doing an excellent job and thanked plaintiff for signing Tag form." Therefore, if Publix now claims that the signed form was not the reason that Belgrave was terminated then he would not have been on a level necessary to be terminated. Moreover, it was stated by the manager on June 7, 2019 that Belgrave's termination was not related to any job performance issues but related to his conversion with management on the day of his termination, where he expressed that he was being discriminated against by his managers, asked for reasonable accommodations, and requested the form to send to HR regarding discriminatory acts. Furthermore, Belgrave did not receive any workers compensation and unemployment benefits, or medical attention which leads to Belgrave continued deteriorating medical conditions such as his TBI (Traumatic Brain Injury), Bell's Palsy, and upon submitting a Brief to 11 circuit court of appeals, Belgraves dividends which he usually received from Publix stopped abruptly without any reason or explanation. All of these retaliatory actions against Belgrave would constitute as discrimination under ADA.

Belgrave believes he has the right to subpoena evidence which supports his claim of a timely filed EEOC document. Henceforth, he has attached documents from the EEOC which supports plaintiff material facts, which would make his filling within the 180 days a valid material fact. This could then be entered as a material fact since "Material facts" are facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion."(Rule 3.1350). Moreover, as "material facts are genuinely in dispute,the court must resolve the disputes in plaintiff favor." *(Scott v. Harris, 2007)* . Therefore, this will provide further support that the plaintiff was a qualified person under ADA and engaged in protected activities.

CONCLUSION

There is considerable confusion as to the interpretation of the law when it comes to what constitutes reasonable accommodation for a known disabled employee, what qualifies someone under ADA and whether the ADA allows an employee to be discriminated against for requesting reasonable accommodation. This ruling will lead to further confusion among the sister courts as to whether a person with a disability vacates their protected status upon request for reasonable accommodation and having adverse actions taken against them .This would lead to incorrect judicial judgment and should be further reviewed.

Entered on this date of October 12 , 2023.

Petitioner Cleon Belgrave

/s/ Cleon Belgrave

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