

NO. A10-2095

State of Minnesota
In Court of Appeals

Sheila D. Matthews, n/k/a Sheila D. Heller,
Appellant,

v.

Eichorn Motors, Inc.,
Defendant,
Mitch Eichorn and Justin Eichorn,
Respondents.

RESPONDENT'S BRIEF

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LEGAL ISSUES

I. Was the district court correct in ruling that Appellant failed to offer sufficient evidence to support a claim against Respondents for aiding and abetting discrimination under the Minnesota Human Rights Act?

The District Court held that the record does not include facts or permit reasonable inferences that would support a finding that either Mitch Eichorn or Justin Eichorn is individually liable for any harm caused to Appellant.

Apposite Cases:

Wallin v. Minnesota Dep't of Corrections, 598 N.W.2d 393 (Minn. Ct. App. 1999)

Davis v. Hennepin County, 559 N.W. 2d 117 (Minn. App. 1997)

Fallila v. City of Passaic, 146 F.3d 149 (3rd Cir.1998)

Minnesota Statute §363A.14

II. Was the District Court correct in declining to apply the reasonable corporate officer doctrine to the Appellant's claims of aiding and abetting discrimination?

The District Court declined to apply the reasonable corporate officer doctrine to the present case.

Apposite Cases:

In re Dougherty, 482 N.W. 2d 485 (Minn. App. 1992)

Frieler v. Carlson Marketing Group, Inc. 751 N.W. 2d 558 (Minn. 2008)

STATEMENT OF FACTS

Eichorn Motors, Inc., (“Eichorn Motors”) was a car dealership located in the City of Grand Rapids, Minnesota. The dealership was incorporated as an S Corporation and owned by Respondent Justin Eichorn (“Justin”) (App. 038 and 040). According to the Eichorn Motors Stockholder Agreement, Justin owned an 85 percent share of the company and was the named owner, whereas Michael Coombe (“Coombe”) served as the general manager and held a 15 percent share of the company (App. 039-041). Although Respondent Mitch Eichorn (“Mitch”) and his wife loaned money to Justin to help finance the business, Mitch was not an owner of Eichorn Motors (App. 029, *See also* App. 042-045, Eichorn Motors, Inc. federal tax returns for 2006 and 2007 listing only Justin Eichorn and Michael Coombe as shareholders). At times, Mitch, who is Justin’s father, would show up at Eichorn Motors to perform manual labor and help with building projects (App. 030). Mitch, however, did not engage in any type of management decisions concerning Eichorn Motors, including those related to employment (App. 031).

Appellant was hired by Eichorn Motors on May 10, 2006 (App. 020). Appellant alleges that during her employment at Eichorn Motors, Coombe engaged in acts which constituted sexual harassment against her (App. 021-025). Due in part to conversations with co-workers and in part to Coombe’s statements regarding Mitch’s investment in the dealership, Appellant believed Mitch was the owner of the business (A. 048). On or about August 3, 2006, Plaintiff approached Mitch while he was performing manual labor at the dealership to discuss Coombe’s actions (App. 005). Mitch believed the purpose of

Appellant's conversation was to inform him she was leaving work (App. 062). Although he does remember Appellant making a closing remark regarding a potential sexual harassment suit, he does not recall Appellant specifically informing him of Coombe's conduct (App. 062-063). Mitch "had no idea" what the basis for Appellant's remarks were (App. 063). Mitch never spoke to Justin or Coombe regarding this conversation (App. 063).

On August 15, 2009, Appellant was terminated from Eichorn Motors (App. 006). The decision to terminate Appellant was made by Coombe who was Appellant's direct supervisor (App. 074). According to Justin, Coombe made this decision unilaterally and did not consult him about it (App. 076). Justin allowed Coombe the freedom to "completely run the business" because Justin was only present at Eichorn Motors on a "very part time" basis (App. 076). According to Appellant, Justin "exercised no authority whatsoever and was rarely even in the office..." (App. 049). Justin learned of Coombe's decision to terminate Appellant the day she was fired (App. 074). Coombe informed Justin that Appellant was being terminated for the following reasons: her failure to process sales contracts, which cost the dealership money, giving unauthorized rebates to customers, and for missing a number of meetings (App. 074-075). At Coombe's request, Justin accompanied Coombe to the meeting where Appellant was terminated (App. 076-077). During the meeting Justin was silent and Coombe "did all the talking" (App. 006). In a written statement, Appellant claims that Coombe's statements during the termination

termination meeting were a “clear indication” that he “had been hiding his arrogant behavior from the owners” (App. 086).

The District Court found for the purposes of summary judgment that there was no showing that Mitch Eichorn intentionally assisted or encouraged Coombe’s alleged harassment, or that Justin Eichorn ever knew, or had reason to know, of Coombe’s alleged behavior (Findings of Fact, Conclusions of Law and Order dated December 11, 2009; App.111).

LEGAL ARGUMENT

I. STANDARD OF REVIEW

On appeal from summary judgment, this Court is to determine whether there are any genuine issues of material fact and whether Respondents are entitled to judgment as a matter of law. *Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 788 (Minn. 2005). This Court is to view the evidence in the light most favorable to Appellant since she is the party against whom judgment was granted. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008). Summary judgment shall be granted and affirmed where there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. No genuine issue of material fact exists when "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Frieler v. Carlson Mktg. Group*, 751 N.W.2d 558, 564 (Minn. 2008). It is important to note that **mere speculation, without more, is insufficient to raise a genuine issue of material fact and defeat summary judgment.** *Bob Useldinger &*

Sons, Inc. v. Hangsleben, 505 N.W.2d 323, 328 (Minn. 1993)(concluding that mere speculation, without concrete evidence, is not enough to avoid summary judgment, (Emphasis added)).

Appellant has also brought up issues of statutory construction which, like summary judgment, is subject to de novo review. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007); *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Courts are to give effect to a statute's plain meaning when its language is clear and unambiguous. *State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004).

II. THE DISTRICT COURT CORRECTLY HELD THAT APPELLANT FAILED TO OFFER SUFFICIENT EVIDENCE TO SUPPORT HER CLAIMS AGAINST RESPONDENTS FOR AIDING AND ABETTING COOMBE'S DISCRIMINATORY CONDUCT.

A. The District Court properly interpreted Minnesota Statute Section 363A.14.

Minnesota Statute §363A.14 states in relevant part:

“It is an unfair discriminatory practice for any person:

(1) intentionally to aid, abet, incite, compel, or coerce a person to engage in any of the practices forbidden by this chapter;

(2) intentionally to attempt to aid, abet, incite, compel, or coerce a person to engage in any of the practices forbidden by this chapter.”

As discussed above, courts are to give effect to a statute's plain meaning when its language is clear and unambiguous. *Bluhm* at 651. The Minnesota Court of Appeals has held that "aiding and abetting" implies that persons acted in concert against another for a discriminatory purpose *Wallin v. Minnesota Dep't of Corrections*, 598 N.W.2d 393, 405 (Minn. Ct. App. 1999) (holding that plaintiff failed to establish facts that defendants acted in concert in order to discriminate against plaintiff because of his disabilities), *review denied* (Minn. Oct. 21, 1999). The trial court did not limit its inquiry to whether Respondents acted in concert with Coombe, but also focused on whether Respondents **intentionally** aided and abetted Coombe's alleged conduct (*See App.* 115-117). Minnesota Statute §363A.14 specifically states that an individual's actions, or attempted actions, **must be intentional** (*See: Davis v. Hennepin County*, 559 N.W. 2d 117, 123 (Minn. App. 1997) holding the aiding and abetting provision requires intentional conduct and actions are judged based on their objective reasonableness). The District Court also relied on two federal cases: *Ulrich v. City of Crosby*, 848 F.Supp. 861, 869 (D. Minn. 1994), which held that the plaintiff failed to establish a claim under the MHRA's aiding and abetting statute because the evidence was insufficient to demonstrate any **intent** to assist others in performing an unlawful discriminatory act (Emphasis added); and *Fallila v. City of Passaic*, 146 F.3d 149, 159 (3rd Cir.1998) which held that mere knowledge of unlawful discriminatory conduct is insufficient to find that an actor aided and abetted discrimination. Thus, by using the foregoing cases and applying a plain meaning

interpretation of the aiding and abetting statute, the District Court correctly concluded that,

“To assert a claim of aiding and abetting discrimination under the MHRA, the plaintiff must allege that Mitch and/or Justin Eichorn intentionally aided and abetted Coombe’s unlawful conduct or attempted to do so *** A fair reading of the aiding and abetting provision of the MHRA makes it clear that mere knowledge of sexual harassment and the failure to take appropriate measures is not sufficient to constitute aiding and abetting of sexual harassment. To aid and abet requires some form of assistance in the carrying out of the harassment.” (Findings of Fact, Conclusions of Law and Order dated December 11, 2009; App. 115-116).

B. The appellant failed to offer sufficient evidence to support claims against Respondents for aiding and abetting Michael Coombe’s alleged conduct.

Appellant argues that she proffered sufficient evidence to satisfy the elements of aiding and abetting under the MHRA and that the District Court drew evidentiary assumptions favorable to the non-moving party. A look at the record, however, proves that the District Court viewed all evidence in a light most favorable to Appellant and properly ruled that Appellant failed to support a finding that either respondent **intentionally** aided Coombe’s conduct.

With regard to Mitch Eichorn, Appellant argues that his “refusal to consider and act on” Appellant’s complaint constitutes an intentional act that aided Coombe’s

discriminatory practices (Appellant Brief, p. 12). According to Appellant, she complained to Mitch Eichorn regarding the harassment and he “just blew it off...” (Appellant’s Brief, p.13). This conversation and Mitch Eichorn’s subsequent inaction, however, only proves that he took no interest in Appellant’s complaint. It does not prove that he intentionally aided Coombe’s alleged conduct. As the District Court properly stated,

“Mitch Eichorn’s apparent indifference and inaction after [Appellant] complained to him is not enough to show that he acted in concert with Coombe or intentionally aided or abetted Coombe’s unlawful conduct.” (Findings of Fact, Conclusions of Law and Order dated December 11, 2009; App.116).

As for Justin Eichorn, Appellant is in a difficult position to prove her claim against him. The District Court held that Appellant failed to offer sufficient evidence that Justin was even aware of Coombe’s alleged conduct (App.116). Appellant admitted that Justin was never at the dealership (App. 049). Although Justin was present during Appellant’s termination meeting, Appellant failed to offer evidence that he was aware of Coombe’s conduct at that time, let alone that he aided in Coombe’s alleged reprisal. Despite a lack of factual support, Appellant claims that Justin’s presence “could easily raise an inference that he *wanted* to be there to see the appellant fired after she had had the temerity to complain” (Appellant’s Brief, p.12). This assertion, however, is pure speculation and speculation is insufficient to raise a material fact question. *W.J.L. v. Bugge*, 573 N.W.2d

677, 680 (Minn. 1998) (holding that to withstand summary judgment, a showing of material fact may not be hypothetical or speculative, nor may it rest on the possibility of evidence to be developed later).

Appellant also asserts that, as president of Eichorn Motors, Justin Eichorn had an affirmative duty to prevent sexual harassment and that his admitted absence constitutes a breach of this duty (*See* Appellant's Brief, p. 20). Appellant reasons that knowledge imputed to the company should be imputed to Justin Eichorn and he should therefore be held individually liable for Coombe's alleged conduct (*Id.*) To support this claim Appellant cites *Gillison v. State of Minnesota DNR*, 492 N.W. 2d 835 (Minn. App. 1992). A reading of *Gillison*, however, shows that Appellant's argument is misplaced. In *Gillison*, the Court found that because the employee's supervisor did not investigate or act upon allegations of sexual harassment the *employer* could be held liable not the individual. *Gillison* at 841. Applied to this case, Eichorn Motors can be held liable for Coombe's conduct, not Justin.

Appellant also offers, as evidence of Respondents' liability, the fact that Coombe asked permission from Respondents if he could date Appellant at the onset of her employment (*See* Appellant's Brief, p.11, 15). This, however, does not prove any intention by either respondent to aid Coombe in any type of unlawful behavior. Finally, Appellant claims that the *carte blanche* given to Coombe by Respondents constitutes an intentional act that "clearly enabled" Coombe to engage in unlawful discriminatory practices (*See* Appellant Brief, p. 12). This argument fails because allowing Coombe the

freedom to run the dealership does not constitute intention to aid his alleged discriminatory behavior. As the District Court correctly concluded,

“There is no basis in the record for concluding that the Eichorns authorized Coombe to engage in any unlawful acts whatsoever. To suggest that Eichorns aided and abetted Coombe’s unlawful conduct simply by trusting him to run the business misconstrues the definition of aiding and abetting.” (Findings of Fact, Conclusions of Law and Order dated December 11, 2009; App. 117).

In sum, Appellant failed to offer any evidence that would allow a reasonable trier of fact to find that Respondents’ **intentionally** aided Coombe, or that either of them **acted in concert** with Coombe to assist his alleged conduct. As such, the trial court correctly held that Appellant failed to support her claims of aiding and abetting against Respondents and summary judgment was granted accordingly.

II. THE RESPONSIBLE CORPORATE OFFICER DOCTRINE DOES NOT SERVE AS A BASIS FOR HOLDING RESPONDENTS INDIVIDUALLY LIABLE UNDER THE M.H.R.A.

Appellant incorrectly argues that Respondents should be held personally liable for Coombe’s actions under the responsible corporate officer doctrine. This contention is erroneous. The reasonable corporate officer doctrine holds that corporate officers are liable for violations of law by their corporations when:

- 1) The law violated is a public welfare statute that imposes strict liability;
- 2) the individual occupies a position of responsibility within the corporation;

- 3) the individual's position is reasonably related to the violations; *and*
- 4) the individual's action or inaction facilitated the violations.

In re Dougherty, 482 N.W. 2d 485 (Minn. App. 1992). Appellant points out that, “in *Dougherty* the doctrine operated to impose strict liability on the president of company who had not participated directly in the violations of the law, but his inaction and failure to address the violation facilitated them.” (Appellant’s Brief, p. 22). Appellant then ties *Dougherty* to *Frieler v. Carlson Marketing Group, Inc.* 751 N.W. 2d 558 (Minn. 2008), which held an employee was not required to prove that the employer knew of the sexual harassment to be held vicariously liable (*See* Appellant’s Brief, p.22). Appellant reasons that, because vicarious liability may be imposed upon the employer, “it thus follows that the reasonable corporate officer doctrine might also be applicable in the instant case.” (*Id.*) This reasoning is completely misguided. First, as Appellant admits, the court in *Frieler* never came to this decision. Instead, the court states “We...reject Frieler's argument that strict liability is the standard to be applied in sexual harassment cases.” *Frieler* at 568. Second, as *Dougherty* points out, the responsible corporate officer doctrine applies to public welfare offenses that impose strict liability by plain language and intent. *Dougherty* at 489. Although it has public policy underpinnings, the Minnesota Human Rights Act is not a public welfare statute because it does not “pervasively affect activities that threaten human health and safety as well as the environment.” *Id.* Finally, in *Frieler*, it was the company, as the employer, who was held vicariously liable, not the individual. To say that *Frieler* opens the door for strict liability to apply to corporate officers in harassment cases is a misapplication of both the responsible corporate officer

doctrine and the concept of strict liability. Therefore, the District Court properly declined to apply the doctrine to Appellant's claims.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court affirm the partial summary judgment of the District Court dismissing Appellant's claims against Respondents.

Dated: January 21, 2011

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**CERTIFICATION OF BRIEF
LENGTH**

**APPELLATE COURT CASE
NUMBER: A10-2095**

I hereby certify that this brief conforms to the requirements of Minn.R.Civ.App.P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 2,740 words. This brief was prepared using Microsoft Office Word 2007.

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