STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0683

Rachael Lundquist,
Appellant,

vs.

Rice Memorial Hospital,
Respondent.

Filed February 12, 2008
Affirmed
Muehlberg, Judge[*]

Kandiyohi County District Court
File No. 34-C5-00-000299

DeAnna M. McCashin, Schoep & McCashin, Chtd., 6747 State Highway 29 South, Alexandria, MN 56308 (for appellant)

Marlene S. Garvis, Elisa M. Hatlevig, Jardine, Logan & O'Brien, P.L.L.P., 8519 Eagle Point Boulevard, Suite 100, Lake Elmo, MN 55042 (for respondent)

Considered and decided by Ross, Presiding Judge; Toussaint, Chief Judge; and Muehlberg, Judge.

U N P U B L I S H E D O P I N I O N

MUEHLBERG, Judge

Appellant was discharged from her position as a nurse at Rice Memorial Hospital after she sustained a neck injury and filed a workers' compensation claim. After

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art VI, § 10.

appellant presented her evidence at trial, the district court dismissed her claim for retaliatory discharge. Because the district court properly determined that appellant was being discharged for being unable to perform her job and that she failed to establish that she was discharged in retaliation for filing for workers' compensation benefits, we affirm.

FACTS

Between 1988 and 1995, appellant Rachael Lundquist worked as a registered nurse at Rice Memorial Hospital in Willmar. In 1994 and 1995, Lundquist suffered injuries to her neck that limited her ability to perform lifting work.

Lundquist applied for workers' compensation coverage, but her initial requests were denied. She was subsequently placed on an unrequested medical leave of absence and her employment was eventually terminated. The hospital stated that she was discharged because she was unable to perform essential job duties. After Lundquist filed a union grievance, an arbitrator concluded that Lundquist should have a chance to show she can perform her essential job functions and reinstated her to her job as a staff nurse. Lundquist then settled her workers' compensation claims with the hospital and returned to her job in December 1996.

After about one month, Rice Memorial received reports that Lundquist was refusing to lift patients. The hospital placed Lundquist on paid administrative leave until she completed a functional capacity evaluation. After further investigation revealed that Lundquist was unable to perform the lifting her job required, Rice Memorial terminated Lundquist's employment in December 1997.

Lundquist filed two federal suits alleging violations of the Americans with Disabilities Act and state laws. Lundquist's first suit—which was filed just after the arbitrator reinstated her to her original job—was dismissed through summary judgment. Lundquist's second suit—which was based on events occurring after the first suit—was initially dismissed on res judicata grounds. But the Eighth Circuit reversed. *Lundquist v. Rice Memorial Hospital*, 238 F.3d 975 (8th Cir. 2001). On remand, Lundquist's second federal suit was dismissed through summary judgment. In both suits, Lundquist's state law claims were dismissed without prejudice.

Lundquist's state suit was filed in 2000, but the suit was stayed until her federal case was resolved. In November 2005, the state district court denied Rice Memorial's motion for summary judgment. In January 2007, the district court held a bench trial on Lundquist's claim that she was fired in retaliation for filing a workers' compensation claim. After Lundquist presented her evidence, the district court granted Rice Memorial's motion to dismiss under Minn. R. Civ. P. 41.02(b), reasoning that Rice Memorial presented evidence that Lundquist was discharged because she was unable to perform essential job functions and that Lundquist had failed to present sufficient evidence that she was fired in retaliation for her workers' compensation claim. Lundquist now appeals.

D E C I S I O N

Under Minn. Stat. § 176.82, subd. 1 (2006), an employer who discharges "an employee for seeking workers' compensation benefits . . . is liable in a civil action." The order and allocation of proof in a workers' compensation retaliation claim is governed by

the *McDonnell Douglas* burden-shifting test used in employment discrimination cases. *Snesrud v. Instant Web, Inc.*, 484 N.W.2d 423, 427-28 (Minn. App. 1992) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 92 S. Ct. 1817 (1973)), *review denied* (Minn. June 17, 1992); *see also Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 119 n.7 (Minn. 1991) (discussing retaliation cases in general).

Under the three-part test, the employee must first establish a prima facie case of retaliatory discharge. *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986). The district court concluded that Lundquist's discharge shortly after filing a workers' compensation claim establishes a prima facie case of retaliatory discharge and we assume that this conclusion was correct. After the employee establishes a prima facie case, the burden then shifts to the employer to produce "evidence of some legitimate, non-discriminatory reason for its actions." *Id.* If the employer produces evidence of a non-discriminatory reason for its actions, the burden shifts back to the employee to show that "the reason or justification stated by the employer is actually a pretext for discrimination." *Id.*

The district court resolved this case through a motion to dismiss. Minn. R. Civ. P. 41.02(b). After the plaintiff has finished presenting evidence, the rule permits dismissal if the plaintiff has shown no right to relief. *Id.* "In an action tried by the court without a jury, the court as trier of the fact may then determine the facts and render judgment against the plaintiff." *Id.* Because the district court acts as the trier of fact, we defer to the district court's decision as if a full trial had been held. *See Fidelity Bank & Trust Co. v. Fitzimons*, 261 N.W.2d 586, 588 n.5 (Minn. 1977) (discussing dismissal after evidence

is presented). We review findings of fact for clear error and we review de novo questions of law. *Rubey v. Vannett*, 714 N.W.2d 417, 421, 423 (Minn. 2006).

I.

The district court found that Rice Memorial satisfied its burden under the second part of the *McDonnell Douglas* test when it produced evidence that Lundquist was discharged because she was unable to physically perform her job. More specifically, the district court found that Rice Memorial proved "that the plaintiff, due to the physical limitation placed upon her by her physician related to her injury, could no longer meet the physical demands of her job as a Staff RN."

Lundquist argues that Rice Memorial failed to prove that she was unable to perform her job and that Rice Memorial therefore failed to satisfy its burden under the second prong of the *McDonnell Douglas* test. The district court's finding, however, was not clearly erroneous. Although the case was dismissed before Rice Memorial presented its direct evidence, Rice Memorial introduced evidence about Lundquist's ability to perform her job. The evidence included an arbitrator's determination that a staff nurse must be able to lift 25 pounds and a subsequent functional capacity evaluation that revealed that Lundquist was unable to perform lifting duties as frequently as her job required. Rice Memorial introduced internal memoranda and correspondence to third parties indicating that Lundquist was discharged for being unable to perform her job. In addition, Lundquist testified on direct and cross-examination that Rice Memorial told her she was being discharged for being unable to perform her job.

From this evidence, it was not clearly erroneous to conclude that Lundquist was unable to perform her job duties.[1] Additional evidence in the record supports the finding that Lundquist's employment was terminated for her inability to perform her job duties. For example, Lundquist's own treating physician, Dr. Raino, opined in his letter dated October 13, 1997, that "[her] job as defined, without accommodation, would pose significant risk to Mrs. Lundquist and she would not be able to perform the essential functions of her job." Thus, we conclude the district court properly determined that Rice Memorial satisfied its burden under the second prong of the *McDonnell Douglas* test.

II.

The third prong of the *McDonnell Douglas* test requires the employee to establish that "the reason or justification stated by the employer is actually a pretext for discrimination." *Sigurdson*, 386 N.W.2d at 720. The employee "has the burden of persuading the court by a preponderance of the evidence that the employer intentionally discriminated against her." *Id.* The employee "may sustain this burden either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Id.* (quotation omitted); *see also Anderson v. Hunter, Keith, Marshall & Co., Inc.*, 417 N.W.2d 619, 626-27 (Minn. 1988) (holding that burden is the same regardless of whether the employer was motivated by single motive or mixed motive).

[1] Because the district court's finding was not clearly erroneous, we need not address Rice Memorial's argument that it was only required to *produce* evidence of a legitimate, non-discriminatory reason for its actions.

The district court found that Lundquist failed to satisfy her burden of proof under the third prong of the *McDonnell Douglas* test. The district court concluded that Lundquist failed "to prove that this proffered reason given by defendant was a pretext to cover up the real reason for her termination—retaliation for her receipt of workers' compensation benefits."

Lundquist argues that the district court committed an error of law by failing to analyze whether it was "more likely than not" that Lundquist was discharged for filing for workers' compensation benefits. Lundquist is correct that she can sustain her burden of proof by showing that "an illegitimate reason 'more likely than not' motivated the discharge decision." *McGrath v. TCF Bank Sav., FSB*, 509 N.W.2d 365, 366 (Minn. 1993).

Lundquist's argument, however, ignores the factual findings actually made by the district court. The district court found: "The only evidence submitted by plaintiff in support of this prong of the test is the fact that she was terminated after filing for workers' compensation benefits. While such a fact may be some evidence of retaliation, standing alone it is insufficient to meet plaintiff's burden in this regard." By making this finding, the district court implicitly concluded that Lundquist failed to introduce other sufficient evidence showing that she was "more likely than not" terminated for filing for workers' compensation benefits.

In addition to arguing that the district court failed to analyze whether she was "more likely than not" discharged for filing for workers' compensation benefits, Lundquist argues that other evidence shows that she was fired for filing for workers'

compensation benefits. In general, we review a district court's findings of fact for clear error. *Rubey*, 714 N.W.2d at 423. The question of whether specific facts are sufficient to show retaliation involves a question of law, which we review de novo. *See Varda v. Northwest Airlines Corp.*, 692 N.W.2d 440, 444 (Minn. 2005) (stating that "the application of a statute to essentially undisputed facts is a question of law"). We conclude that the district court properly found that Lundquist failed to establish that she was discharged in retaliation for filing workers' compensation benefits.

First, the district court's finding was not based on an error of law. In dismissing Lundquist's claim, the district court noted that Minn. Stat. § 176.82, subd. 1, "imposes no requirement upon an employer to make reasonable accommodations." Lundquist disputes this statement and argues that the district court's decision was based on an error of law. We conclude that the district court correctly stated the law. Under Minn. Stat. § 176.82, subd. 1, an employer is prohibited from "discharging or threatening to discharge an employee for seeking workers' compensation benefits or in any manner intentionally obstructing an employee seeking workers' compensation benefits." Nothing in this subdivision refers to reasonable accommodations. Thus, although failure to provide reasonable accommodations may be *relevant* to the third prong of the *McDonnell Douglas* test in this case, we cannot conclude that it would constitute *conclusive* evidence of retaliation for filing for workers' compensation benefits.[2] The district court's

[2] Furthermore, Lundquist is incorrect that the failure to treat evidence about reasonable accommodations as conclusive evidence of retaliation would leave disabled employees without any sort of protection. The Americans with Disabilities Act and the Minnesota Human Rights Act require reasonable accommodations of disabilities in certain

statement does not suggest that evidence of failure to make reasonable accommodations is completely irrelevant. Therefore, we cannot conclude that the district court's finding was based on an error of law.

Second, based on the evidence presented, the district court's finding was not clearly erroneous. Lundquist's brief presents a long list of facts which she claims supports an inference that Rice Memorial discharged her for filing a workers' compensation claim. The list includes the hospital's failure to provide reasonable accommodations of her injuries, evidence that Lundquist could in fact perform her job, the hospital's requirement that she undergo multiple functional capacity evaluations, and evidence that other hospital employees' injuries were accommodated. This evidence might be sufficient to establish a genuine issue of material fact as to retaliation. But we are reviewing the district court's findings of fact, not a grant of summary judgment. The district court evidently concluded that Lundquist's proffered evidence was unpersuasive. In resolving these questions, we defer to the district court and recognize that it "has the advantage of hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it."

---

situations. 42 U.S.C. § 12112(b)(5)(A) (2000); Minn. Stat. § 363A.08, subd. 6 (2006). Lundquist's appeal does not involve those statutes. In addition, a different part of the workers' compensation retaliation statute may mandate some degree of reasonable accommodation. Under Minn. Stat. § 176.82, subd. 2 (2006), an "employer who, without reasonable cause, refuses to offer continued employment to its employee when employment is available within the employee's physical limitations shall be liable in a civil action for one year's wages." Before trial, Lundquist voluntarily dismissed her claim under subdivision 2.

Hasnudeen v. Onan Corp., 552 N.W.2d 555, 557 (Minn. 1996). Thus, we can find no basis for concluding that the district court's finding was clearly erroneous.

Because the district court properly considered the evidence and concluded that Lundquist failed to establish that she was discharged in retaliation for filing for workers' compensation benefits, the district court correctly concluded that Lundquist failed to satisfy her burden under the third prong of the *McDonnell Douglas* test. Accordingly, we affirm the district court's rule 41.02(b) dismissal.

Affirmed.