

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon

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Employment

Plaintiff suffered an on-the-job injury while working for defendant as a flight attendant. All agreed that she could not return to her flight attendant position after being released to work. Plaintiff filed an action after she was not returned to several other positions she considered available and "suitable" under the statutes protecting injured workers. Judge King recently granted partial summary judgment dismissing her workers' compensation discrimination claim, intentional infliction of emotional distress claim, and failure to reinstate claim concerning two positions: board room concierge and medical specialist. Factual issues on plaintiff's failure to reinstate claim for an in-flight supervisor position and customer service agent position resulted in summary judgment being denied. Garrison v. Alaska Airlines, Inc., CV98-433-KI (Opinion and Order, June 17, 1999).

Plaintiff's Counsel:

Margaret Weddell

Defense Counsel: Cal Keith,

David Symes

IDEA

The parents of a special needs child filed an action seeking to recover attorney fees incurred in a state proceeding. The plaintiffs had lodged a complaint with the school district alleging that the district failed to properly identify their child's disability and failed to provide a free appropriate public education (FAPE) as required by the IDEA. Plaintiffs' allegations were investigated by the school superintendent pursuant to Oregon's Complaint Resolution Proceeding (CRP). The Superintendent issued a report largely sustaining the plaintiffs' allegations and directing that the district submit a revised individualized education program (IEP) for the student.

The school district refused to pay attorney fees incurred in the IEP process on grounds that the IDEA only provides for attorney fees incurred as a result of an administrative proceeding. Defendant argued that the CRP was not an administrative proceeding, but rather was an alternative dispute resolution proceeding to the due process hearings also afforded under Oregon law.

Judge Janice M. Stewart rejected the defendant's argument and held that a CRP fell within the IDEA's definition of an administrative proceeding. Examining the text of the statute, the court also noted that

to disallow fees in this instance might discourage early resolution and settlement of claims. The court also found that plaintiffs could recover for fees incurred as a result of the IEP meetings conducted to ensure compliance with the CRP decision. The court expressly rejected the defendant's argument that such a holding might encourage more litigation. The court then found that plaintiffs were prevailing parties and were entitled to all fees sought. Lucht v. Mollala River School Dist., CV 98-1375-ST (Findings and Recommendation, April 23, 1999-- 23 pages; Adopted by Order of Judge Owen Panner, June 25, 1999).

Plaintiffs' Counsel: Dana Taylor

Defense Counsel: Nancy
Hungerford

Social Security

Judge Ancer L. Haggerty held that in an application for widow's benefits, all of the time a couple lived together should be "tacked" together to determine if the surviving spouse qualifies for benefits. Plaintiff had lived with the decedent prior to marriage and following the couple's divorce. Plaintiff was living with the decedent at the time of his death, but

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at that point, the couple had been living together for only 9 years and 4 months, 8 months short of the ten years necessary under Oregon law. However, once the time the couple had lived together prior to the divorce was added in, plaintiff would qualify for benefits. The court based its conclusion upon a "plain reading" of the statute, noting the absence of a requirement that the spouses have lived together continuously or without interruption. Smith v. Apfel, CV 98-1240-HA (Order, June, 1999 - 4 pages).

Plaintiff's Counsel: Sara Gabin
Defense Counsel: Richard Wetmore

Labor

In a proposed class action, plaintiffs challenged their former employer's policy of failing to pay wages until the regularly scheduled payday for employees terminated either voluntarily or involuntarily. Plaintiffs relied upon Oregon law which requires payment within 24 hours - 5 days of termination (depending upon the circumstances surrounding the termination).

Judge Ancer L. Haggerty noted that while plaintiffs had a valid claim under Oregon law, they had failed to state a claim for a violation of the Fair Labor Standards Act (FLSA). Following a recent decision by Judge Dennis J. Hubel (Davis v. Maxima, CV 98-1258-HU), the court concluded that the FLSA only requires payment on the regularly scheduled payday. Judge

Haggerty noted the need for national uniformity in enforcement of the FLSA as an additional basis for his conclusion. Based in part upon this holding, the court denied class certification. Hargrove v. Sykes Enterprises, Inc., CV 99-110-HA (Opinion, June 30, 1999 - 9 pages).

Plaintiffs' Counsel: A.E. Bud Bailey
Defense Counsel: David Wilson

Copyrights

A pro se plaintiff filed an action claiming that 44 defendants conspired to misappropriate his intellectual property. Plaintiff also asserted claims under RICO and anti-trust laws. Plaintiff was a student in a video production class who submitted a synopsis for a proposed production entitled "Critical Scrutiny" to one of the defendants who worked for News Corp. When nothing came of that submission, plaintiff decided to produce the program himself within the class offered through Portland Cable Access. Plaintiff completed the production in 1992.

In 1994, Twentieth Century Fox released a film entitled "Pagemaster," which plaintiff claims is based upon a misappropriation of his production of "Critical Scrutiny." Plaintiff contends that Michael Ovitiz and Steven Spielberg conspired with state and local officials to infiltrate plaintiff's production during the filming of "Critical Scrutiny" and that these officials received revenue from the release of "Pagemaster" in

exchange for their cooperation.

Judge John Jelderks reviewed both film and production clips and concluded that "no reasonable trier of fact . . . could conclude that the allegedly infringing works are substantially similar to plaintiff's original work." The court noted that the plot, character, dialogue, pace, mood and sequence of events in plaintiff's 15 minute video were completely dissimilar to the 75 minute "Pagemaster." The court also declined to find that plaintiff had any protectable rights in any of the old film clips plaintiff included within his film. The court granted summary judgment against all claims and dismissed the action. Rappoport v. Ovitiz, et al., CV 98-797-JE (Opinion, May 4, 1999 - 11 pages).

Plaintiff: Pro Se
Defense Counsel: Christopher Kent

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