

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

In Wirth v. GTE, 99-896-MA, the plaintiff applied for leave under the Family and Medical Leave Act (FMLA) in order to bond with his adopted child. The child had been placed in the plaintiff's home as a foster child approximately two years prior to plaintiff's request for leave. Upon commencement of his family leave, plaintiff left for a 10-day missionary trip to Mexico without the child. GTE subsequently revoked plaintiff's leave. Judge Marsh held that the plaintiff's FMLA leave request was timely despite the fact that the Act requires an applicant to take leave within 12 months of the placement of the child in the applicant's home. Judge Marsh construed the term "placement" for adoption, as used in 29 U.S.C. § 2612, to mean the date at which time the purpose for the child's placement in the applicant's home changes from that of a foster child to that of a prospective adoptee—at least in those circumstances where FMLA leave was not taken previously for the "placement" of the child for foster

care. Judge Marsh concluded that a genuine issue of fact existed as to plaintiff's FMLA interference claim with respect to whether GTE was aware when it granted plaintiff's FMLA leave request that plaintiff intended to take a missionary trip during the leave. Finally, Judge Marsh granted GTE's motion for summary judgment on plaintiff's constructive discharge claim, holding that no reasonable juror could conclude that a reasonable person in plaintiff's position would have resigned as a result of GTE's alleged interference with plaintiff's FMLA rights. (Opinion, June 13, 2000 - 18 pages).

Plaintiff's Counsel: Eric Fjelstad
Defense Counsel: John Acosta

Habeas

Judge Ann Aiken granted a habeas corpus petition for a prisoner denied good time credit under Oregon's "Denny Smith" Act. At the time that the petitioner entered a guilty plea, Oregon courts held that the Act should not apply to offenses occurring after 1989.

Thereafter, an Oregon court held that the Act should apply to offenses occurring after 1989 and the Department of Corrections applied the new ruling to the petitioner. The result was a sentence 7 years longer than the petitioner anticipated. Judge Aiken held that the Department's actions were contrary to clearly established law since it resulted in a plea that was neither knowing nor voluntary. The court concluded that the petitioner must be allowed to withdraw his plea. Edmonds v. Johnson, CV 98-673-CO (Order, July, 2000).

Petitioner's Counsel:
Ellen Pitcher
Respondent's Counsel:
Lynn Larsen

Discrimination

Following a 10-day jury trial, a jury returned a verdict finding in favor of the defendant and rejecting a plaintiff's claims of disability discrimination relative to an overseas educational program. The jury found in favor of the plaintiff on a single claim of breach

2 The Courthouse News

of fiduciary duty and plaintiff was awarded \$5,000. After receiving the verdict, Judge Ann Aiken denied plaintiff's request for any equitable relief under either the Rehabilitation Act or the ADA given the jury's rejection of those claims. Bird v. Lewis & Clark College, CV 98-691-AA (Order, July 12, 2000).

Plaintiff's Counsel:

Charles Denkers

Defense Counsel:

David Ernst

Patents

Judge Ann Aiken granted a defense motion for summary judgment based upon a finding that plaintiff's infringement claims were barred, as a matter of law, under the doctrine of laches. The plaintiff had obtained a patent in 1987 and immediately sent letters threatening several manufacturers, including the defendant, with a patent infringement action and/or an offer to license. Plaintiff then took no further action for 11 years before filing the instant complaint. Judge Aiken noted that there was a presumption of unreasonable delay for a 6 year period and found that defendant established prejudice due to the loss of key witnesses and detrimental reliance. Hayden v. Shin-Etsu, CV 97-1752-AA (Opinion, July, 2000).

Plaintiff's Counsel:

Michael Esler

Defense Counsel:

Craig Berne (local)

7 Judge Anna Brown granted a defense motion for summary judgment in a patent infringement action based upon her finding that plaintiff failed to establish an infringement claim as a matter of law. The court construed the patent claims under Markman and, relying upon prosecution history for claim construction, the court found that the patented cement mixture could not contain magnesium oxide. The court also held that any claim of infringement under the doctrine of equivalents was barred by prosecution history estoppel. Baker Rock Crushing Co. v. Pacific Rock Products, LLC, CV 98-1139-BR (Opinion, July 2000)

Plaintiff's Counsel:

Dennis Stenzel

Defense Counsel: Chin See Ming

Paul Fortino

Jurisdiction

A computer company filed a trademark action against another computer service related company asserting infringement and common law claims. The defendant is a Virginia corporation with its principal place of business located in Richmond, VA. Defendant

moved to dismiss the action for lack of personal jurisdiction. Defendant has no physical presence in Oregon, is not registered to do business in Oregon and 95% of its revenues are generated in Virginia. Plaintiff claimed personal jurisdiction based upon harm from the allegedly infringing activities caused to plaintiff in Oregon and defendant's maintenance of a "highly interactive" website. Plaintiff also noted that the website had been accessed by at least one Oregon resident and that defendant had advertised in national magazines circulated in Oregon.

Applying the "sliding scale" reasoning noted in the Ninth Circuit's decision in Cybersell and applied by Judge Aiken in Millenium Enterprises, Judge Janice Stewart held that while plaintiff failed to establish general jurisdiction, specific jurisdiction was proper. Tech Heads, Inc. v. Desktop Service Center, Inc., CV 99-1581-ST (Opinion, July 11, 2000).

Plaintiff's Counsel:

David D'Ascenzo

Defense Counsel:

John Ostrander