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Dismissal Improper in Mixed-Motive Case

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By Linda H. Evans

The trial court erred in dismissing a white female employee's race and sex discrimination claims, where although the employee admitted misconduct, other employees who engaged in similar behavior were not terminated, the 6th U.S. Circuit Court of Appeals ruled.

Kimberly Ondricko worked for the MGM Grand Detroit Casino (MGM) for several years and was eventually promoted to the position of floor supervisor in 2005. In April 2008, Ondricko was supervising the blackjack pit with dealer Vivian Baran. Ondricko was standing next to Baran when it was time for Baran to shuffle the cards, using a shuffling machine. After the cards were put into play, Ondricko noticed the door of the machine was still open and became concerned there may have been a "bad" shuffle. Ondricko instructed Baran to stop dealing and called over the pit manager to report the problem. MGM suspended Ondricko pending an investigation and later terminated her for violation of its rules of conduct. Ondricko filed a lawsuit claiming sex and race discrimination in violation of Title VII and state law.

Ondricko presented evidence that at least six other supervisors had engaged in misconduct related to shuffle procedures, but only two were terminated—a black woman and a white man. Five of the six other supervisors were men, and four of the six were black. Ondricko also showed that discriminatory remarks were made about her race during the investigation. Although each of the six other cases had included elements of improper shuffling, they were not identical to Ondricko's situation in every respect. Additionally, most of the six had records of disciplinary problems, while Ondricko's record was clean. The district court granted MGM's motion for summary judgment on the grounds that Ondricko had admitted the misconduct and had not shown disparate treatment of similarly situated employees. But the 6th U.S. Circuit Court of Appeals disagreed and reversed and remanded the case for trial.

The court noted that a mixed-motive analysis should be applied to the claims. Ondricko showed that even though there may have been other factors that led to her discharge, her protected status was a motivating factor in her termination, according to the 6th Circuit.

Ondricko presented direct evidence of race discrimination based on statements made during the investigation of her misconduct. She relied on circumstantial evidence to establish sex discrimination. Only one male employee had been terminated for similar conduct while both female employees had been terminated, and the 6th Circuit determined this raised a disputed issue of material fact that was enough to defeat a motion for summary judgment.

MGM argued that the circumstances for the nonterminated employees were too different to be used for a proper comparison to Ondricko's situation. But the 6th Circuit disagreed, holding that she did not need to demonstrate an exact correlation. She just had to show that the cases were similar in relevant parts.

Ondricko v. MGM Grand Detroit LLC, 6th Cir., No. 10-2133 (Aug. 8, 2012).

Professional Pointer: This case is a reminder that to defeat a motion for summary judgment, it is not necessary to have perfect evidence, especially under a mixed-motive analysis. MGM maintained that the behavior of the nonterminated employees was very different from Ondricko's misconduct, but the paperwork did not support these claims.

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