IN THE COURT OF APPEALS OF TENNESSEE,
AT NASHVILLE

RETA J. BEST,	)	Rutherford County Chancery Court
	)	No. 97CV-488
Plaintiff/Appellant.	)	
	)	
VS.	)	C.A. No. 01A01-9812-CH-00652
	)	
DISTRIBUTION & AUTO SERVICES, INC.,	)	
	)	
Defendant/Appellee.	)	

From the Chancery Court of Rutherford County at Murfreesboro.
Honorable Robert E. Corlew, III, Chancellor

William Kennerly Burger, Murfreesboro, Tennessee
Attorney for Plaintiff/Appellant.

Larry G. Trail,
Diana C. Benson,
TRAIL & TRAIL, Murfreesboro, Tennessee
Attorneys for Defendant/Appellee.

OPINION FILED:

AFFIRMED & REMANDED

FARMER, J.

CRAWFORD, P.J., W.S.: (Concurs)
LILLARD, J.: (Concurs)

In this employment discrimination action, Plaintiff Reta J. Best appeals the trial court's judgment granting the motion for summary judgment filed by Defendant/Appellee Distribution & Auto Services, Inc. (DAS). We affirm the trial court's judgment based upon our conclusion that, even when viewed in the light most favorable to Best, the evidence fails to support Best's claim that DAS discriminated against her on the basis of her pregnancy.

The facts in this case were largely undisputed. When Best was hired by DAS in October 1994, DAS had in effect the following three-tier leave policy. Employees who had worked for DAS for less than ninety days were entitled to medical leave for a period of up to the length of their employment. For example, an employee who had been employed for only thirty days would be entitled to a medical leave of absence not to exceed thirty days. Employees who had worked for DAS for ninety days or more, but less than one year, were entitled to a medical leave of absence for a period of up to ninety days. For employees in this second category, however, the ninety-day period would be extended to four months if the reason for the leave of absence was maternity leave or a disability due to pregnancy. Employees who had worked for DAS for one year or more were entitled to take a medical leave of absence of up to six months, regardless of the reason for the leave. Under DAS's leave policy, employees could request two successive medical leaves of absence for different disabilities. In order to be eligible for the second leave of absence, however, employees were required to return to work for a minimum of ten days and they were required to provide medical documentation to support their request. An employee's eligibility for leave was determined by the length of time the employee had worked for DAS on the date the employee made the leave request.

In July 1995, Best requested a medical leave of absence from July 17, 1995, until September 10, 1995. To support her leave request, Best provided a note from her doctor which stated simply that due to "extreme heat and Reta Best's pregnancy related fainting spells, she is advised to be off her feet & work." Based upon this documentation, DAS granted Best's leave request.

On September 10, 1995, Best attempted to return to work, but she found that she physically was unable to perform her job duties. On September 11, 1995, therefore, Best provided DAS with a doctor's note requesting that Best be allowed to remain off work until after the birth of

her child. This time, the doctor's note merely stated that "[d]ue to pregnancy, Reta Best is advised to stop work @ this time." When Best talked to DAS's human resource manager, Darlene Listovitch Eychner, on September 11, 1995, Best allegedly told Eychner that her leave request was "mainly due to [her] back." It was undisputed, however, that Best did not provide DAS with any other documentation when she requested the additional leave of absence on September 11, 1995.

Because Best had been employed by DAS for approximately nine months when she submitted her original leave request, DAS took the position that Best was entitled to a medical leave of absence not to exceed four months. On November 18, 1995, therefore, DAS terminated Best's employment because she had exhausted the four-month period of medical leave allowed under DAS's leave policy. Believing that she had been discriminated against on the basis of her pregnancy, Best filed this employment discrimination action against DAS in April 1997.

In her complaint for employment discrimination, Best cited both the federal Pregnancy Discrimination Act (PDA)[1] and the Tennessee Human Rights Act (THRA).[2] In an order entered in February 1998, the trial court ruled that Best's THRA claim was time-barred. In December 1998, the trial court granted DAS's motion for summary judgment as to Best's remaining claim under the PDA.

On appeal, Best challenges only the trial court's dismissal of her PDA claim. Specifically, Best contends that the record contains material evidence to support her claim that DAS was guilty of discrimination in the application of its leave policy for pregnant employees.

Summary judgment is appropriate only when the parties' "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." T.R.C.P. 56.04. In determining whether or not a genuine issue of material fact exists for purposes of summary judgment, the trial court is required to consider the question in the same

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[1]42 U.S.C.A. § 2000e(k) (West 1994).

[2]T.C.A. §§ 4-21-101 to -905 (1991 & Supp. 1995).

manner as a motion for directed verdict made at the close of the plaintiff's proof. ***Byrd v. Hall***, 847 S.W.2d 208, 210 (Tenn. 1993). That is, the trial court, and this court on appeal, "must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence." ***Id***. at 210-11.

The party seeking summary judgment has the initial burden of demonstrating that there are no disputed, material facts creating a genuine issue for trial. ***Byrd v. Hall***, 847 S.W.2d at 215. The moving party cannot meet this burden merely by asserting in a conclusory manner that the nonmoving party has no evidence to support its claim. ***Id***. In appropriate cases, however, where the parties have had the opportunity to engage in discovery and to flesh out the relevant facts, a defendant moving for summary judgment may be able to meet this burden by demonstrating that, even if the facts are viewed in the light most favorable to the plaintiff, the plaintiff still cannot establish an essential element of her claim. ***See Caledonia Leasing & Equip. Co. v. Armstrong, Allen, Braden, Goodman, McBride & Prewitt***, 865 S.W.2d 10, 13 (Tenn. App. 1992); ***see also Horton v. Hughes***, 971 S.W.2d 957, 959 (Tenn. App. 1998) (explaining that failure of proof on essential element of claim necessarily renders all other facts immaterial). We believe this to be such a case.

Title VII of the Civil Rights Act of 1964 prohibits employers from engaging in discriminatory employment practices because of an individual's race, color, religion, sex, or national origin. 42 U.S.C.A. § 2000e-2(a) (West 1994). In 1978, Congress amended Title VII by adding section 2000e(k), known as the Pregnancy Discrimination Act. The PDA makes clear that "[t]he terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions." 42 U.S.C.A. § 2000e(k) (West 1994). In this regard, the PDA provides that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work." ***Id***.

As in all employment discrimination actions, an employee alleging pregnancy discrimination has the burden of establishing a ***prima facie*** case of discrimination. ***Ensley-Gaines v.***

Runyon, 100 F.3d 1220, 1224 (6th Cir. 1996). Only after the employee has met this initial burden does the burden of production shift to the defendant to articulate a legitimate, nondiscriminatory reason for its actions. ***Id***. In order to prevail on her claim for employment discrimination, therefore, Best will have the initial burden of demonstrating that DAS's leave policy discriminated against her on the basis of her pregnancy. Specifically, Best must demonstrate that, under the policy, another employee who was similarly situated in his or her ability or inability to work would receive more favorable benefits than those received by Best. ***Id***. at 1226. Stated another way, Best must demonstrate that she was treated less favorably than a similarly-situated nonpregnant employee and that Best's pregnancy was the reason for the less favorable treatment. ***Piraino v. International Orientation Resources, Inc.***, 137 F.3d 987, 990 (7th Cir. 1998).

We conclude that, even when viewed in the light most favorable to Best, the evidence fails to establish a ***prima facie*** case of employment discrimination. The undisputed evidence shows that, when Best requested a leave of absence in July 1995, she had been employed by DAS for ninety days or more, but for less than one year. Under DAS's leave policy, therefore, Best was entitled to a maximum leave of absence of four months for a pregnancy-related disability or ninety days for any other disability. Accordingly, rather than receiving less favorable benefits due to her pregnancy, Best actually received more favorable benefits than would have another employee who was similarly situated in his or her ability or inability to work. In light of this evidence, the trial court properly granted DAS's motion for summary judgment on Best's claim for employment discrimination.

On appeal, Best contends that Darlene Eychner's testimony supports the conclusion that, except for her pregnancy, Best would have been entitled to up to six months of medical leave for her back-related problems. We fail to see how Eychner's testimony could be viewed in this light. In her deposition, Eychner consistently testified that, because Best had been employed by DAS for less than one year at the time she made her leave request, Best was entitled to a maximum leave period of four months for a pregnancy-related disability or ninety days for any other disability.

Apparently, Best's argument that she was entitled to six months of leave is based upon the fact that, in October 1995 while she still was on her leave of absence, she reached the one-year anniversary of her employment with DAS. In our view, this argument ignores other undisputed

evidence in the record. Under DAS's leave policy, Best's eligibility for leave was determined by her length of employment at the time she submitted her leave request. Both of Best's leave requests were submitted prior to October 1995; Best did not submit any additional leave requests after the one-year anniversary of her employment with DAS. Moreover, in order to be entitled to an additional leave of absence for her back-related disability, Best would have been required to return to work for a period of at least ten days before requesting the additional leave, and she would have been required to submit documentation supporting her request. Best failed to meet these requirements and, thus, was not entitled to an additional leave of absence.

Finally, we reject Best's contention that DAS's leave policy discriminated against her because it unfairly required her to exhaust all of her medical leave due to her pregnancy. Contrary to Best's suggestion, the Pregnancy Discrimination Act did not entitle her to any additional medical leave beyond that assured by DAS's general leave policy. ***See Troupe v. May Dep't Stores Co.***, 20 F.3d 734, 738 (7th Cir. 1994).[3] Rather, the PDA merely prohibited DAS from treating Best, for all

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[3]In ***Troupe v. May Department Stores Co.***, the court explained that

> [t]he Pregnancy Discrimination Act does not, . . . require employers to offer maternity leave or take other steps to make it easier for pregnant women to work, ... Employers can treat pregnant women as badly as they treat similarly affected but nonpregnant employees, even to the point of "conditioning the availability of an employment benefit on an employee's decision to return to work after the end of the medical disability that pregnancy causes." ***Maganuco v. Leyden Community High School Dist. 212***, 939 F.2d 440, 445 (7th Cir. 1991). . . .
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> . . . The Pregnancy Discrimination Act requires the employer to ignore an employee's pregnancy, but (as the quotation from ***Maganuco*** shows) not her absence from work, unless the employer overlooks the comparable absences of nonpregnant employees.

Troupe, 20 F.3d at 738 (other citations omitted).

In contrast, the Tennessee Human Rights Act requires employers which employ at least 100 full-time employees to permit female employees who have been employed for at least twelve consecutive months as full-time employees to take up to four months of maternity leave. ***See*** T.C.A. §§ 4-21-408(a), (d)(3) (1991). The THRA specifically provides that such maternity leave shall not affect the employees' rights to receive any other employment benefits. ***See*** T.C.A. § 4-21-408(c)(1) (1991). Employees who meet the statute's advance notice requirements are entitled to be restored to their previous or similar positions. ***See*** T.C.A. § 4-21-408(b) (1991). The federal Family and Medical Leave Act (FMLA) similarly entitles eligible employees to a total of twelve workweeks of leave during any twelve-month period because of the birth of a child. ***See*** 29 U.S.C.A. § 2612(a)(1)(A) (West 1999). The FMLA specifically prohibits employers from discriminating against employees who exercise their rights under the FMLA. ***See*** 29 U.S.C.A. § 2615 (1999). Under the FMLA, the term eligible employee includes

employment-related purposes, any differently than it treated "nonpregnant employees who [were] similarly situated with respect to their ability to work." ***Ensley-Gaines v. Runyon***, 100 F.3d 1220, 1226 (6th Cir. 1996) (quoting ***UAW v. Johnson Controls, Inc.***, 499 U.S. 187, 205 (1991)); 42 U.S.C.A. § 2000e(k) (West 1994). The record contains no evidence to indicate that such dissimilar treatment occurred.

The trial court's judgment is affirmed, and this cause is remanded for further proceedings consistent with this opinion. Costs of this appeal are taxed to Best, for which execution may issue if necessary.

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FARMER, J.

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CRAWFORD, P.J., W.S. (Concurs)

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LILLARD, J. (Concurs)

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employees who have been employed for at least twelve months by their employer, for at least 1250 hours of service during the previous twelve-month period, and at a worksite at which the employer employs fifty or more employees. ***See*** 29 U.S.C.A. § 2611(2) (1999). Neither the THRA nor the FMLA are at issue in this lawsuit.