

Federal Court Awards Summary Judgment to Employer on Race, Sex and Retaliation Claims

Kelley Kronenberg partner [Angelo M. Filippi](#) received a summary judgment on behalf of his client in a Title VII case heard in Federal Court in Middle District of Florida. The Plaintiff filed his Complaint on August 12, 2010. The Complaint alleges violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. and the Florida Civil Rights Act of 1992, Florida Statutes § 760 et seq. Plaintiff alleges in Counts I and II that he was subjected to disparate treatment because of his race and sex. In Count III and IV of the Complaint, Plaintiff alleges that he was terminated in retaliation for engaging in a protected activity. The Defendant owns and operates nursing homes and assisted living facilities in several states. Plaintiff alleged that he was treated more harshly than employees outside his protected class in that his supervisor falsely accused him of violations of policy involving absenteeism, tardiness and inadequate resident care, resulting in written discipline. Plaintiff identified White/female employees were not disciplined for repeated instances of tardiness. The Court held that Plaintiff could not raise an inference of discriminatory intent as there was no evidence that any employee was treated more favorably under similar circumstances. Tardiness was one of several issues for which Plaintiff was disciplined. The Court held that the comparison must be with one who committed nearly identical infractions in order to raise an inference of disparate treatment. After receiving the written discipline, Plaintiff filed a charge of discrimination. He was terminated less than two months after filing the charge. He alleged that, after filing the charge, he was retaliated against when he was summarily discharged for failing to report to work. He alleged that he followed policy by calling in prior to his shift. However, the Court found that evidence obtained through testimony in his worker's compensation deposition, as well as contradictory testimony during his deposition, failed to raise an issue of fact that he followed policy. The Court held Plaintiff failed to demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reason for its action that a reasonable fact finder could find the reason unworthy of credence. Further, his conclusory allegations did not suffice to demonstrate pretext. Accordingly, the employer was awarded summary judgment on all counts. Mr. Filippi is an Employment & Labor attorney who works from the firm's [Fort Lauderdale office](#). If you have questions regarding this ruling, please feel free to call him at 954-370-9970, or send an email to afilippi@kelleykronenberg.com.