

Spees v. James Marine, Inc.
No. 5:08-CV-00073-TBR
U.S. DISTRICT COURT, WESTERN DISTRICT OF KENTUCKY
APRIL 22, 2009

Facts of the Case

On May 11, 2007, plaintiff Heather Spees was hired by defendant James Marine as a welder. Spees was the only woman working at the Jamesbuilt facility, which was new and still under construction. In her position she would weld, shovel coal, pull lines and carry some heavy objects over short distances. All workers at the site were given a locker to store personal items, located in an area where they could change. Spees was given a locker in a separate location, the tool room, where workers went to check out tools. In the tool room there was no space for Spees to change in private. Similarly, male employees had their own restroom. Spees was not allowed to use this facility and was instead provided with the use of a portable toilet found in the yard. The portable toilet was used by some of the male employees, which eventually led the employer to put a lock on it so only Spees could access it.

When Spees became pregnant, she informed two James Marine foremen, who asked that Spees get a doctor's note to verify her pregnancy. Spees received clearance to work from her doctor, who suggested that she wear a respirator while welding. The employer then asked Spees to get an additional note specifying that she could carry heavy objects and be around welding fumes. Spees received the second note, however, it stated that she should perform light duty and avoid toxic fumes.

On June 19, 2007, Spees was restricted to working in the tool room, which was hot, dirty and dusty. The staff in charge of safety issues told her that James Marine was a "man's world" and not a place for a woman to be welding. Concerned by these comments, Spees spoke with staff in the human resources department. One staff member said that James Marine could fire her, but that they would not if she agreed to switch from welding day shifts to night in the tool room.

Spees visited a doctor in August of 2007, who again encouraged her to use a respirator while at work. Spees claims a manager told her to seek a doctor's note placing her on sick leave because she was often sick at work, and that if she got the note she would be able to leave work and later return. On August 16, 2007, Spees received a note from her doctor placing her on bed rest for the remainder of her pregnancy. She took leave and was terminated on August 24, 2007.

Issues of the Case

Whether pregnancy is a disability or was regarded as a disability by James Marine for purposes of the ADA.

Prepared by the legal research staff of the Burton Blatt Institute (BBI): Centers of Innovation on Disability at Syracuse University (<http://bbi.syr.edu/>) for the DBTAC: Southeast ADA Center (Southeast DBTAC) (<http://www.sedbtac.org/>). This document does not provide legal advice. If you have further questions about the issues of this case that relate to you, please consult an attorney licensed in your state.

Argument

Spees argued that James Marine regarded her pregnancy as a disability and discriminated against her in violation of the ADA by restricting her position to the tool room and not allowing her to continue her duties as a welder.

Analysis & Ruling

The district court explained that to show discrimination based on disability, Spees must demonstrate (1) she has a disability; is “(2) otherwise qualified for the position, with or without reasonable accommodation; (3) suffered an adverse employment decision; (4) the employer knew or had reason to know of the plaintiff’s disability and (5) the position remained open while the employer sought other applicants or the disabled individual was replaced.” Under the ADA a person does not have a disability if the impairment is transitory or minor. Moreover, the court noted that in *Gover v. Speedway Super America*, and in *Jessie v. Carter Health Care*, federal district courts in the Sixth Circuit held that pregnancy is a short term condition, and under normal circumstances not a disability.

Additionally, the plaintiff contends that because her employer perceived her as having a disability, she could go forward with a regarded as claim. The court reasoned that the plaintiff presented no evidence that the defendant perceived her as unable to perform her duties because of her pregnancy. However, the court indicated that the perception of a disability could be sufficient for an ADA claim, if an individual’s condition fell within the recognized parameters of the ADA. The plaintiff must claim actual disability, which in this circumstance is not the case. As a matter of law the ADA claim failed.

Conclusion

The court ruled Spees was not a person with or regarded as having a disability for purposes of the ADA. She, however, was successful in showing that there were issues in regards to gender discrimination under Title VII of the Civil Rights Act of 1964 and the Kentucky Civil Rights Act. Plaintiff was able to show that she received different treatment at work because of her gender and on those grounds she could pursue her case.

Policy and Practice

No Circuit Court has found that pregnancy is a disability under the ADA. For women in similar situations, it would be most effective to take legal action in the form of gender discrimination where anti-discrimination laws such as the Civil Rights Act or similar state laws have precedent

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for affording protection to women in similarly placed situations. Additionally, one could make out a claim under the Pregnancy Discrimination Act of 1978, more likely to protect women in Heather Spees situation.

Cases Cited

- Gover v. Speedway Super America, LLC, 254 F.Supp.2d 695 (S.D. Ohio 2002).
- Jessie v. Carter Health Care, Inc., 926 F.Supp. 613 (E.D. Ky. 1996).

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