MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MICHAEL EIVINS,

Appellant

v.

MISSOURI DEPARTMENT OF CORRECTIONS,

Respondent

DOCKET NUMBER WD84321

DATE: October 26, 2021

Appeal From:

Circuit Court of Buchanan County, MO
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:

Division Two
Mark D. Pfeiffer, Presiding Judge, Alok Ahuja, Judge, Anthony Rex Gabbert, Judge

---

Attorneys:

Christina J. Nielson, Lorain, OH,
Counsel for Appellant

Attorneys:

Abbie E. Rothermich, Kansas City, MO,
Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MICHAEL EIVINS, Appellant,
v.
MISSOURI DEPARTMENT OF CORRECTIONS, Respondent.

WD84321 **Buchanan County**

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, Alok Ahuja, Judge, and Anthony Rex Gabbert, Judge

Michael Eivins appeals the circuit court's Judgment granting the Missouri Department of Corrections' (DOC) motion for summary judgment on all counts in Eivins's "Petition for Damages" which alleged age discrimination in violation of the Missouri Human Rights Act (MHRA), retaliation in violation of the MHRA, and hostile work environment in violation of the MHRA. Eivins asserts on appeal that the circuit court, 1) erred in applying the motivating factor standard to Eivins's claims, arguing that the contributing factor standard applies to the State and State agencies, 2) erred in granting summary judgment to the DOC on Eivins's age discrimination claim, arguing that genuine issues of material fact exist as to whether Eivins's age was a contributing or motivating factor in the alleged discriminatory actions taken against him, 3) erred in granting summary judgment to the DOC on Eivins's hostile work environment claim, arguing that the trial court improperly disregarded tangible employment actions that are legally sufficient to support a hostile work environment claim, evaluated each paragraph of Eivins's petition individually and failed to consider the totality of the circumstances, disregarded uncontroverted evidence of a hostile work environment, and improperly ignored events a jury could have considered as background evidence when determining if Eivins's work environment was abusive, and 4) erred in granting summary judgment to the DOC on Eivins's retaliation claim, arguing that genuine issues of material fact exist regarding this claim and the court failed to consider Eivins's evidence of retaliation while improperly giving the DOC the benefit of inferences from the evidence.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

Division Two holds:

1) The circuit court did not err in applying the motivating factor standard to Eivins's MHRA claims against the DOC. In 2017, the Missouri legislature expressly abrogated caselaw which used the contributing factor standard and substituted the motivating factor standard via Section 213.010(2), RSMo. This new standard clearly applies to the State and its political subdivisions.

2) The circuit court erred in granting summary judgment to the DOC on Eivins's MHRA age discrimination claim. Material facts remain in dispute as to whether the DOC's reasons for failing to promote Eivins constitute legitimate, nondiscriminatory justifications.

3) The circuit court erred in granting summary judgment to the DOC on Eivins's MHRA hostile work environment claim. Material facts remain in dispute as to whether a jury could conclude that the DOC's failure to promote Eivins, placement of Eivins on a performance plan, nitpicking of Eivins, and false allegations of drinking on the job, individually or collectively, constitute unwanted harassment with Eivins's age being a motivating factor in that harassment.

4) The circuit court erred in granting summary judgment to the DOC on Eivins's MHRA retaliation claim. Material facts remain in dispute as to whether Eivins's complaint of discrimination was a motivating factor in Eivins being accused of drinking on the job and nitpicked, all of which allegedly resulted in Eivins suffering damages.

Opinion by: Anthony Rex Gabbert, Judge Date: October 26, 2021

* * * * * * * * * * * * * * * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.