Carey v. Mountain Man Hiking Tours, Inc.
Supreme Court of Smalbania
March 15, 2007

Opinion of the Court delivered by Justice Learned Arm.

In this case, we consider for the first time the Smalbanians with Disabilities Act. Since the Act's passage last year, it has created a great deal of controversy regarding its proper application. We take this opportunity to clarify some of the confusion regarding its terms.

In the case at hand, we hear the appeal of Lou Carey, a former employee of Mountain Man Hiking Tours, a company with ten permanent employees that specializes in planning and executing overnight camping and hiking tours throughout the Adirondack and Catskill Mountains. Mr. Carey began working for Mountain Man in the fall of 2003. His principal duties were to plan tours, organize tour groups, and scout out possible locations for camps and hikes, but he also led about 5 tour groups per year on so-called "extreme hikes." These hikes, which took place over the most difficult and challenging terrain that Mountain Man Hiking Tours could find, were open only to experienced hikers who passed a rigorous physical exam in advance of the hike. In the words of one of the participants, "Dude, that hike totally kicked my [expletive deleted]. Like, I've done a lot of hiking before, but I was so wasted when I finished the extreme hike that I like just slept for a week. I'm still sore a month later." Carey and one other employee of Mountain Man Hiking Tours were solely responsible for conducting the extreme hikes, which produced 35% of Mountain Man's gross revenues for the years between 2004 and 2006. Mountain Man claimed at the trial that Carey was hired principally for his expertise in leading rigorous hikes, and the percentage of the company's income coming from such hikes would seem to support this analysis.

In the early spring of 2006, Carey suffered a mild heart attack. Upon examination, his doctor discovered that he had a congenital heart defect. While the defect was not severe enough to warrant open-heart surgery, Carey's doctor advised him that he had to limit his physical activity to some degree. While he would still be able to exercise, he was to engage in vigorous exercise only in the more controlled setting of a gym, where he could be fitted with a heart monitor to ensure that his heart rhythms remained stable. After his rehabilitation was complete, he returned to Mountain Man, requesting that his duties be limited to planning and scheduling hikes along with an occasional scouting trip to campgrounds and trails that would not overtax his health. When Mountain Man protested that his primary value to the company was as a leader of extreme hikes, Carey offered to initiate a program of hikes with minimal physical demands for older and less physically capable hikers. Mountain Man concluded that this offer would not suffice to make Carey valuable to the company; statistics entered at the trial showed that the typical hiker with Mountain Man was 23 years old with 6 years of hiking experience. Mountain Man terminated Carey's employment in June of 2006.

In July of 2006, Carey filed a lawsuit under the Smalbanians with Disabilities Act, demanding back pay and reinstatement. The jury found in favor of Mountain Man, but Carey now appeals based on the judge's instructions to the jury, which Carey claims improperly limited the concept of reasonable accommodation and defined too broadly

undue hardship. It is to these issues that we turn today to try to clarify the legislature's intentions in passing the SDA.

No one can doubt that the legislature had in mind a sweeping revision of the way that the state and its citizens view disabilities. The legislature found that the state has a duty to assure full participation and independence for the disabled in the workplaces of Smalbania (Report of the Smalbania Legislature, Sept. 25, 2004). Nonetheless, this participation and independence was not intended to come at the expense of the legitimate needs of the employer.

Petitioner Carey has sought to read the legislature's findings of fact as placing the disabled upon the same standing as individuals handicapped in the workplace by racial or sexual discrimination. The way that the SDA is structured, however, belies this comparison. The disabled are somewhat like racial minorities in the disgraceful history of discrimination that they have endured. They are not like racial minorities, however, in that absolute equality of circumstances and treatment for the disabled and the able bodied may sometimes be inappropriate or even counterproductive. Asking an individual paralyzed from the waist down to compete without her wheelchair in a race with an able-bodied individual may constitute equal treatment, but no one would doubt the unfairness of such a race.

The law's answer to this problem is to establish a dual test. First, the disabled individual must show that a reasonable accommodation will enable him to "perform the essential functions of the employment position that such individual holds" (15 Sma. Code 2001 § 102)(4)). If the disabled person is able to make such a showing, the employer may respond that allowing this accommodation would constitute an undue hardship, for which the statute lists a number of specific factors to be considered (15 Sma. Code 2001 § 201 (6)). We shall go through both of these elements of the test in turn.

First is reasonable accommodation. We believe that a reasonable accommodation is one that enables the employee to perform the same or substantially the same duties for which she was hired. If the employee is not able to perform the same or substantially the same duties for which she was hired, the employer is under no burden to create a position for the employee. The statute suggests some means of reasonable accommodation such as job restructuring or modification of work schedules, but these suggestions must always be subordinate to the employee's ability to perform the essential functions of the job (15 Sma. Code 2001 § 102 (4-5)). We see an essential function as a part of the job that touches on the core reason for which the employee was hired or maintained on the payroll.

In the case before the court today, Mountain Man employed Carey for several reasons, but one of the principal elements of his employment was his ability to lead extreme hikes. Mountain Man has demonstrated that these extreme hikes provided a substantial proportion of their annual income as a business. Only two individuals were qualified to lead these hikes. Presumably, almost any of the other employees of Mountain Man could have performed Carey's planning and scouting duties; the main value Carey had to the company as a unique employee was in his ability to lead extreme hikes. He no longer has this ability, which is tragic, but the SDA does not exist to compensate individuals for personal tragedies.

This issue alone resolves the case, but we could rest our decision on the alternative ground of undue hardship. An undue hardship is "an action requiring

significant difficulty or expense" (15 Sma. Code 2001 § 6). The law suggests that the proper way to determine whether a proposed accommodation requires significant difficulty or expense is to balance the nature and cost of the proposed accommodation against the size and resources of the employer (Id.). Obviously, a large international corporation like Nike or IBM can be expected to spend more money to provide reasonable accommodation than a small local interest with fewer than 15 employees.

Carey has proposed as a reasonable accommodation that Mountain Man establish an entirely new client base with a new advertising and marketing campaign. Such a marketing campaign would not be guaranteed to succeed and would constitute a heavy burden on Mountain Man, which has built its reputation and successes upon targeting a younger and more active clientele. Carey's willingness to work on such a campaign, while commendable, should not overshadow the hardship that such a campaign could place upon the company as a whole.

Thus on both grounds, we believe that the jury was reasonable to find against Carey. Because of the nature of his work, a reasonable accommodation could not be found that would enable him to perform his essential job functions. Second, the proposed accommodation, in addition to this failing, would have imposed an undue hardship on the employer. Therefore, Carey's appeal is denied.

I am authorized to say that Ms. Justice Roberta Dork joins my opinion.

Dissent by Justice Felix Kielbasa

At the trial, a major question of fact was the purpose for which Mr. Carey was hired. While Mountain Man insisted that Carey was principally hired to conduct the extreme hikes, Carey provided credible evidence that his role was far more extensive. Undisputed evidence shows that Carey actually spent almost all of his working hours planning tours for clients of Mountain Man, not mapping out or conducting extreme hikes. I believe that the inquiry into essential functions must take into account more than the employer's assertion of what constitutes a key part of the job.

Furthermore, the accommodation that Carey proposed – selecting a new marketing target – was eminently reasonable and posed no undue hardship on Mountain Man. While Mountain Man did not, at the time of Carey's firing, have an extensive clientele composed of older or less physically capable hikers, with targeted advertising and careful marketing such a client base could have been constructed. Carey himself proposed several means of reaching this population, and his subsequent success as a tour leader for Scenic Hikes, a company that provides "outdoor adventures for the unadventurous" suggests that Mountain Man was using a mere pretext to oust a disabled employee. While balancing the employer's resources against the cost of the proposed accommodation is appropriate, if the employee can show that the likely result of an accommodation is only a slight loss to the employer, the employer should recognize the larger benefits to society of allowing dignity and independence for persons with disabilities. In this case, the net result of the accommodation could even have been a gain for the employer.

Given these problems with the way the court has interpreted the SDA, I respectfully dissent.