IN THE SUPREME COURT OF THE STATE OF NEVADA

DARLENE JESPERSEN,
Appellant,
vs.
HARRAH'S OPERATING COMPANY, INC., A DELAWARE CORPORATION,
Respondent.

No. 40587

FILED

JUN 07 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent Harrah's Operating Company summary judgment on appellant Darlene Jespersen's claims of tortious discharge, breach of employment contract, and breach of the implied covenant of good faith and fair dealing. Harrah's hired Jespersen as a dishwasher in 1979. Approximately one year later, she was promoted to a bartender position, at which she remained until being fired in 2000 for her failure to comply with a company policy requiring all female employees to wear makeup. According to Jespersen, the makeup policy had been in place for over ten years, and she had worn makeup for a brief period early-on in her employment, but she had quickly stopped wearing it because it "made her feel extremely uncomfortable, . . . ill and violated." She further claims that Harrah's knew of the makeup's effects on her and accordingly did not require her to wear makeup for over twenty years.

Between 1980 and 2000, Jespersen received numerous reviews and letters detailing her above average performance and acceptable appearance. In April 2000, Harrah's implemented a "Personal Best Policy" which required females to wear makeup, but prohibited males from doing so. Jespersen refused to comply with the Personal Best Policy, and

was consequently terminated in August 2000.[1] Jespersen sued in Nevada district court for tortious discharge, breach of employment contract, and breach of the implied covenant of good faith. Harrah's filed a motion to dismiss, which, based on Harrah's submittal of additional evidence, the district court converted into a motion for summary judgment and subsequently granted. The district court determined that, although Jespersen had correctly asserted that Nevada has a public policy against employment discrimination based on NRS 613.330 and NRS 233.010, she had failed to allege how she was terminated based on her race, religion, age, or sex. Furthermore, the district court found, even if her termination had violated Nevada's public policy, her complaint was preempted by the existence of an adequate remedy under state anti-discrimination statutes. The district court also declined to find "that an employer's enforcement or non-enforcement of a policy with respect to a particular employee creates an implied employment contract" negating the presumption of at-will employment.

This court reviews de novo orders granting summary judgment. Summary judgment is appropriate when, after an examination of the record viewed in a light most favorable to the non-moving party, no genuine issues of material fact remain and the moving party is entitled to judgment as a matter of law.[2]

---

[1]Although the documents submitted by Jespersen consistently state that the termination occurred in August 2002, the correct date appears to be August 2000.

[2]Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).

Tortious discharge

A tortious discharge may ensue from either an at-will or a "continued" employment.[3] "The essence of a tortious discharge is the wrongful, usually retaliatory, interruption of employment by means which are deemed to be contrary to the public policy of this state."[4] Furthermore, "public policy tortious discharge actions are severely limited to those rare and exceptional cases where the employer's conduct violates strong and compelling public policy."[5]

Jespersen asserts that by firing her for failing to comply with its gender-based makeup policy, Harrah's tortiously discharged her for not complying with a policy that discriminates "on the basis of her sex due to gender stereotyping." She concedes, however, that Nevada has not expressly recognized that gender stereotyping in employment violates public policy. She further concedes that in Chavez v. Sievers,[6] this court held that NRS 613.330 provides a remedy for employment discrimination to the exclusion of any claims for tortious discharge, at least when the employee has already recovered tort damages under the statute. However, Jespersen argues that this court should now declare a public policy against gender discrimination, based on stereotyping, in accordance

---

[3]D'Angelo v. Gardner, 107 Nev. 704, 718, 819 P.2d 206, 215-16 (1991).

[4]Id.

[5]Sands Regent v. Valgardson, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989).

[6]118 Nev. 288, 43 P.3d 1022 (2002).

with NRS 233.010 and NRS 613.330.[7] She notes that she has not requested tort damages under NRS 613.330 and further argues that this court should overrule or modify the holdings in Chavez and other cases,[8] to the extent that they bar tortious discharge claims based on injuries with "exclusive statutory remedies," to allow tortious discharge claims in the current situation.

We decline to overrule or modify the holding of Chavez to allow a claim for tortious discharge derived from employment discrimination on the basis of one's gender. As discussed in Chavez, the Legislature has provided an adequate remedy for injuries of this type in NRS 613.330.[9]

Furthermore, we decline under the circumstances of this case to recognize a claim for tortious discharge based on a separate and distinct public policy against gender stereotyping or generally against employers terminating employees for violating a company policy. Jespersen does not allege that her termination was retaliatory, and the circumstances of Jespersen's termination are not so "rare and exceptional" as to warrant

---

[7]NRS 233.010 states that Nevada's public policy prohibits discrimination on the basis of sex. NRS 613.330(1)(a) makes it unlawful for certain employers to "discharge any person, or otherwise discriminate against any person . . . because of his race, color, religion, sex, sexual orientation, age, disability or national origin."

[8]See, e.g., D'Angelo, 107 Nev. at 722, 819 P.2d at 218 ("It is in precisely such cases, i.e., where no comprehensive statutory remedy exists, that courts have been willing to create public policy tort liability."); Valgardson, 105 Nev. at 440, 777 P.2d at 900 ("[T]he Legislature has . . . defin[ed] the extent of the remedy available to parties injured by [age] discrimination.").

[9]See 118 Nev. at 294, 43 P.3d at 1025-26.

recognition of a tortious discharge claim in this case. Consequently, the district court properly granted summary judgment as to Jespersen's tortious discharge claim.

Breach of employment contract and the implied covenant of good faith and fair dealing

Both the claim of breach of employment contract and the claim of tortious breach of the implied covenant of good faith (i.e. bad faith discharge) are predicated on the existence of contractual expectations or obligations of continued employment.[10] Jespersen concedes that her employment at Harrah's carries a presumption of at-will employment; however, she asserts that the presumption can be overcome based solely on Harrah's non-enforcement of the makeup policy while she was employed before 2000. Specifically, she contends that by allowing her to forgo wearing makeup for over twenty years despite the alleged existence of a handbook policy requiring its use, Harrah's impliedly promised not to fire her for non-compliance with a makeup requirement, and she relied on this promise by continuing to work for Harrah's.

Subject to limited public policy exceptions, an employer may discharge an at-will employee for any reason.[11] A plaintiff may rebut the at-will employment presumption by demonstrating the existence of implied "continued employment" obligations from circumstances of employment indicating an indefinite term terminable only for cause or in

---

[10]See, e.g., D'Angelo, 107 Nev. at 711-712, 819 P.2d at 211-12; Valgardson, 105 Nev. at 439, 777 P.2d at 899.

[11]Coast Hotels v. State, Labor Comm'n, 117 Nev. 835, 843, 34 P.3d 546, 551 (2001).

accordance with established policies or procedures.[12] Although certain handbook provisions and employment practices may demonstrate implied contractual obligations of continued employment, such obligations may also be absent as a matter of law.[13] Thus, "general expressions of job longevity and advancement" are insufficient to rebut the at-will presumption.[14]

Jespersen does not assert that Harrah's promised to forgo enforcing a makeup requirement during the entirety of her employment, or not to change or modify its policy, or that her employment would be terminated only for cause, or that she would have employment for life or for a specified period of time.[15] Thus, even if the non-enforcement of the policy did create an expectation that Jespersen would be continually allowed to forgo wearing makeup, this expectation is insufficient to convert an at-will employment into one allowing termination only for cause. Therefore, the district court properly granted summary judgment on Jespersen's claims for breach of employment contract and breach of the implied covenant of good faith and fair dealing, based on the non-existence of a contract of continued employment. Accordingly, we

---

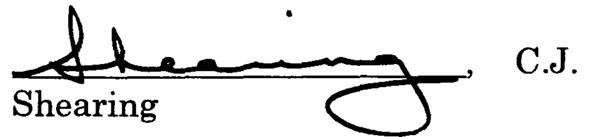
[12]D'Angelo, 107 Nev. at 714, 819 P.2d at 211 ("We have called this a contract of 'continued employment' a contract which an employee can enforce in accordance with its terms.") (also citing Foley v. Interactive Data Corp., 765 P.2d 373 (Cal. 1988).

[13]Id. at 710, 819 P.2d at 210-11.

[14]Vancheri v. GNLV Corp., 105 Nev. 417, 422, 777 P.2d 366, 369 (1989).

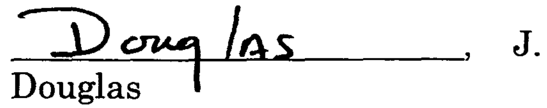
[15]See Vancheri, 105 Nev. at 421-22, 777 P.2d at 369.

ORDER the judgment of the district court AFFIRMED.



Shearing, C.J.

Rose, J.



Douglas, J.

cc: Hon. Brent T. Adams, District Judge
Kenneth J. McKenna
Littler Mendelson/Las Vegas
Littler Mendelson/Reno
Washoe District Court Clerk