

233 Fed.Appx. 395

This case was not selected for publication in the
Federal Reporter.

Not for Publication in West's Federal Reporter See
Fed. Rule of Appellate Procedure 32.1 generally
governing citation of judicial decisions issued on or
after Jan. 1, 2007. See also Fifth Circuit Rules 28.7,
47.5-3, 47.5-4. (Find CTA5 Rule 28 and Find CTA5
Rule 47)

United States Court of Appeals,
Fifth Circuit.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff-Appellant

v.

MOTHER'S WORK INC., Defendant-Appellee.
Equal Employment Opportunity Commission,
Plaintiff-Appellee

v.

Mother's Work Inc., Defendant-Appellant.

Nos. 06-50840, 06-51149. | June 21, 2007.

Attorneys and Law Firms

David C. Rivela, Equal Employment Opportunity
Commission, San Antonio, TX, for Plaintiff-Appellant.

***396** Randolph P. Tower, Clemens & Spencer, San
Antonio, TX, Edward S. Mazurek, Morgan, Lewis &
Bockius, Philadelphia, PA, for Defendant-Appellee.

Appeals from the United States District Court for the
Western District of Texas, San Antonio, (04-CV-873).

Before JOLLY, STEWART, and PRADO, Circuit Judges.

Opinion

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined
that this opinion should not be published and is not
precedent except under the limited circumstances set
forth in 5TH CIR. R. 47.5.4.

These appeals arise from a disability discrimination suit
brought by the Equal Employment Opportunity
Commission ("EEOC") against Mothers Work, Inc.
("Mothers Work"), in which the EEOC alleges that
Mothers Work terminated Monica Sarfaty ("Sarfaty")
from her position as a regional manager because of her
bipolar disorder, in violation of the Americans with
Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. The
district court granted summary judgment for Mothers

Work, concluding that the EEOC failed to raise a genuine
issue of material fact that Sarfaty's bipolar disorder
substantially limited a major life activity. In addition, the
district court found that any impairment suffered by
Sarfaty was corrected by the medication protocol
established for her by her doctors. Alternatively, the
district court held that the EEOC failed to present any
evidence that at the time of Sarfaty's discharge, Mothers
Work was aware that Sarfaty suffered from bipolar
disorder. In a subsequent order, the district court denied
Mothers Work's motion for attorneys' fees and most of
the requested costs.

The EEOC now appeals the district court's adverse
summary judgment ruling, arguing that a reasonable jury
could find (1) that Sarfaty is disabled within the meaning
of the ADA, (2) that Sarfaty's disability was a motivating
factor in Mothers Work's decision to terminate her, and
(3) that Mothers Work's stated reason for terminating
Sarfaty was a pretext for discrimination. Mothers Work
cross-appeals the district court's order on attorneys' fees
and costs. These actions have been consolidated on
appeal, and this court has jurisdiction pursuant to 28
U.S.C. § 1291.

We review the district court's grant of summary judgment
de novo, applying the same standard as the district court.
See Cutrera v. Bd. of Supervisors of La. State Univ., 429
F.3d 108, 110 (5th Cir.2005). We review the district
court's decision on attorneys' fees and costs for an abuse
of discretion. *See Mota v. Univ. of Tex. Houston Health
Sci. Ctr.*, 261 F.3d 512, 527, 529 (5th Cir.2001).

Having reviewed the briefs, the district court's orders, and
the pertinent portions of the record, we find no error of
law or fact warranting reversal. Essentially for the reasons
stated by the district court, we agree that the EEOC has
failed to create a genuine issue of material fact that
Sarfaty is a qualified individual with a disability within
the meaning of the ADA because there is no evidence that
she is substantially limited in one or more major life
activities. Because the EEOC has failed to establish a
prima facie case of discrimination under the ADA, we
affirm the district court's grant of summary judgment in
favor of Mothers Work. *See Mason v. United Air Lines,
Inc.*, 274 F.3d 314, 316 (5th Cir.2001).

In addition, we affirm the district court's order denying
attorneys' fees and certain costs to Mothers Work. For the
reasons given by the district court, we cannot conclude
***397** that the EEOC's action was "frivolous,
unreasonable, or groundless," entitling the prevailing
defendant to attorneys' fees. *See No Barriers, Inc. v.
Brinker Chili's Tex., Inc.*, 262 F.3d 496, 498 (5th
Cir.2001). We also find no abuse of discretion in the
district court's refusal to award costs associated with

video depositions, the second deposition of Phillip Williams, and other miscellaneous items, as these costs are either not authorized under 28 U.S.C. § 1920 or, in the case of the Williams deposition, precluded by a previous agreement between the district court and Mothers Work. *See* 28 U.S.C. § 1920; *see also Mota*, 261 F.3d at 529-30.

Accordingly, for the reasons stated above, we AFFIRM the judgment of the district court.

AFFIRMED.

Parallel Citations

2007 WL 1814212 (C.A.5 (Tex.))