

Summary Judgment Review

Case Name: *Herman Quintana v. Smyrna Ready Mix Concrete LLC*

Nature of the Order: Final Report and Recommendation

Magistrate Judge: J. Clay Fuller

District Judge: Steve C. Jones

Claims & Outcomes:

1. **Claim:** Race discrimination under § 1981
 - a. **Outcome:** Defendant's MSJ recommended
2. **Claim:** National origin discrimination under § 1981
 - a. **Outcome:** Defendant's MSJ recommended
3. **Claim:** Retaliation under § 1981
 - a. **Outcome:** Defendant's MSJ recommended
4. **Claim:** Race discrimination under Title VII
 - a. **Outcome:** Defendant's MSJ recommended
5. **Claim:** National origin discrimination under Title VII
 - a. **Outcome:** Defendant's MSJ recommended
6. **Claim:** Retaliation under Title VII
 - a. **Outcome:** Defendant's MSJ recommended
7. **Claim:** Hostile work environment under Title VII
 - a. **Outcome:** Defendant's MSJ recommended

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiff: Hispanic, Chilean

Gender of Plaintiff: N/A

Long Summary:

Plaintiff worked for Smyrna Ready Mix Concrete, LLC. Upon being hired, Plaintiff reviewed the employee handbook, but did not receive any training regarding company policies. Plaintiff was hired as a truck driver. Defendant assigned trucks based on seniority, and when Plaintiff was hired, he was assigned a rear-loading truck. Within months, his performance impressed Plant Manager Willie Frazier and General Manager Shane Davis, and they assigned him a front-loading truck, which is tougher to drive but can be operated in inclement weather, allowing drivers to work more hours.

Plaintiff alleged white employees were assigned better or newer trucks, but the Court pointed out that he was assigned better trucks than some of white employees, and the truck Plaintiff wanted was unavailable because it was driven by another Hispanic driver. As a result of

the lack of evidence showing that Plaintiff was treated less favorably than those outside his race and national origin, the Court dismissed the claims.

Frazier and coworker Chuck Davis also made discriminatory comments about Trump deporting Hispanics, Plaintiff's medical condition (calling him cross-eyed or drunk), used n-word, and asked Plaintiff whether his cousin cut grass, among others. Plaintiff eventually called COO Michael Zagula and reported the behavior. Zagula told Shane Davis to handle it, and he held a meeting with Plaintiff, Frazier, and Chuck Davis, where Frazier apologized but later stormed out because Plaintiff wouldn't stop bringing up his discriminatory behavior.

Plaintiff didn't believe his complaints were adequately addressed and a week later asked Frazier for permission to leave early. Frazier asked where he was going, and Plaintiff said to the EEOC to file a complaint. Frazier gave him permission but then later that date he texted Plaintiff saying he couldn't leave until 11am or noon – a text Plaintiff testified that he did not receive. When Plaintiff left just after 10am, he called his father to let him know that he was going to do what his father had advised him to do (file a charge of discrimination).

The following day was rainy, which meant Plaintiff may have the day off. He called and checked in with Frazier about whether he was needed, but Frazier told him that he had quit when he abandoned his job the day before. No matter how many times Plaintiff tried to explain his position to Frazier or Zagula (who agreed with Frazier, and refused to hear any different), their mind was made up.

Plaintiff's hostile work environment claim was dismissed because he didn't complaint about many of the comments, many of the comments weren't related to his race or national origin, and the use of the n-word (and Plaintiff not being black) were neither severe nor pervasive enough to meet the standard.

The Court dismissed Plaintiff's retaliation claims for failure to overcome Defendant's legitimate, non-discriminatory reason for terminating him (job abandonment). Defendant argued that Zagula (the one who made the final decision to terminate Plaintiff) had a good faith belief in terminating Plaintiff based on the information he received from Frazier. Plaintiff, rather than responding to Defendant's argument, argued that he had been given permission to leave and thus did not abandon his job.