

Summary Judgment Review

Case Name: Shelton v. Vertical Earth, Inc.

Nature of the Order: Opinion and Order of District Judge Adopting Magistrate's Report and Recommendation

Magistrate Judge: John K. Larkins

District Judge: Steven D. Grimberg

Claims & Outcomes:

1. Claim: FLSA Overtime
 - **Outcome:** Summary Judgment Denied
2. Claim: FMLA Interference and Retaliation
 - **Outcome:** Summary Judgment Denied

Whether R&R Followed: Adopted.

Long Summary:

The district court adopted the Magistrate's Report and Recommendation, which is summarized below.

Plaintiff Elisabeth Shelton filed suit, alleging that Defendant violated the FLSA by failing to pay her overtime wages for times that she worked over forty hours. Plaintiff Shelton then filed another suit alleging that Defendant violated the FMLA by failing to notify her of her right to FMLA leave for her injury and for terminating her in retaliation for her injury-related absence. The Court consolidated the two cases, and the Defendant, after discovery, moved for summary judgment on all of Plaintiff Shelton's claims. Defendant argued that Plaintiff's FLSA claim failed as a matter of law because she was a bona fide exempt administrative employee and not entitled to overtime. Defendant also argued that the FMLA claims failed because Plaintiff did not request FMLA leave, and even if she did, Defendant decided to terminate her before she asked for leave.

Magistrate Judge Larkins recommended that summary judgment be denied on all claims. With respect to the FLSA claim, since the parties agreed that Defendant could show the first two elements required for the administrative exception to apply, Judge Larkins focused his analysis on whether the Defendant could show that Plaintiff's primary duty included "the exercise of discretion and independent judgment with respect to matters of significance." First, Judge Larkins noted that Defendant did not make clear what the "primary duty" of Plaintiff's job was and failed to connect the regulatory definitions of "primary duties" with any of the tasks that Plaintiff performed. Judge Larkins also found that Defendant did not adequately explain how duties of Plaintiff's job required the exercise of discretion and independent judgment regarding matters of significance as related to the regulatory definition. Despite these initial observations at the outset of the analysis, Judge Larkins analyzed the following tasks, as identified in Defendant's brief: managing schedules, daily logs, involvement with work orders, pay applications, sorting mail and ordering office supplies,

planning tasks for project managers, logging new construction jobs in foundations, and checking for underground utilities. Judge Larkins found that there were genuine issues of fact concerning

Plaintiff's job duties and that he could not conclude that the Defendant carried its burden in showing that Plaintiff was an exempt employee under the administrative exemption.

With respect to the FMLA claims, Judge Larkins found that Plaintiff's foot injury constituted a serious health condition because Defendant did not present evidence to the contrary and that there is a triable issue of fact as to whether Plaintiff provided sufficient notice that her absence from work was potentially FMLA-qualifying. Judge Larkins, in looking to an email that Plaintiff sent after her appointment that she was not healing properly with an attached doctor's note, stated that a jury could find that the email constituted notice. Further, Magistrate Judge Larkins found that a reasonable jury could find, given the record, that Defendant had not taken sufficient steps to show that they had already decided to terminate Plaintiff at the time it learned of her FMLA-qualifying injury.

Magistrate Judge Larkins recommended denial of Defendant's Motion for Summary Judgment on all of Defendant's claims. The district court reviewed the FMLA claims, because of Defendant's objections, *de novo* and denied summary judgment on all claims.