THE CONTINUED REIGN OF TITLE VII: RACIAL DISCRIMINATION TRUMPS PATIENT'S PREFERENCES

Chaney v. Plainfield Healthcare Center, 612 F.3d 908 (7th Cir. 2010)

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I. INTRODUCTION

In *Chaney v. Plainfield Healthcare Center*, the Seventh Circuit held that Title VII of the 1964 Civil Rights Act[1] constrains the ability of health-care patients' preferences to dictate employee duties at a health care facility.[2] Although both the Medicare Act[3] and Indiana's residents' rights act[4] grant certain rights to residents to choose their medical service providers, health care employers' sensitivity toward these rights will not create a good-faith defense to Title VII violations in situations where racial preferences create a hostile work environment or lead to discriminatory discharges.[5] This case indicates an intention on the part of the court that the kinds of employee protection provided by Title VII are to remain robust, even in the face of new emerging types of rights.

II. FACTUAL BACKGROUND

The decision in *Chaney* pertains to allegations of discriminatory discharge and a hostile workplace.[6] Plaintiff Brenda Chaney, a black nursing assistant worked for Plainfield Healthcare Center, a nursing home.[7] As a certified nursing

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[1] Civil Rights Act of 1964, 42 U.S.C.A. § 2000e et seq.

[2] *Chaney*, 612 F.3d at 914.

[3] 42 U.S.C. § 1395.

[4] 410 IND. ADMIN CODE 16.2-3.1-3(n)(1).

[5] *Chaney*, 612 F.3d at 914.

[6] *Id*. at 911.

[7] *Id*. at 910.

assistant ("CNA"), her job was to monitor patients, respond to their requests for service, and assist with their daily needs.[8] An assignment sheet issued to Chaney's unit giving the daily shift information also included a column with notes about the individual needs of the residents.[9] These notes included a notice that one of Chaney's residents, "Prefer[red] No Black CNAs."[10] Plainfield demanded that its employees respect the racial preferences of the residents because it feared doing otherwise would risk violating the state and federal laws granting the residents the right to select their own care providers.[11] Thus, Chaney was effectively banned from caring for certain residents despite the fact that one of them remained on her assignment list.[12] On one occasion, Chaney was in the best position to help a stricken resident in distress, but because this was a resident who had voiced a preference against black CNAs, Chaney sought out a white nurse to help instead.[13]

Chaney was also the target of racial epithets from her coworkers, and although these stopped when she reported this to a supervisor, the center's racial preference policy continued.[14] Three months after beginning work at Plainfield, a coworker reported that Chaney had used profanity while aiding a resident.[15] Despite a lack of corroborating reports from other nurses or residents, or any previous such infractions by Chaney, Plainview terminated her a few days later.[16] Chaney filed suit and the district court granted summary judgment in favor of Plainfield concerning the hostile work environment claim on the grounds that the center's management had worked to halt the use of racial epithets and that the center's following the racial preference policy was reasonable given their good

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[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id*. at 911.

[15] *Id.*

[16] *Id.*

faith belief that it was justified by Indiana's patient-rights laws.[17] The district court also granted summary judgment to Plainfield on Chaney's discriminatory discharge claim on the grounds that she had failed to produce evidence of racial animus for the decision to fire her.[18] Plaintiff Chaney appealed from that decision.[19]

III. RATIONALE

A. Racially Hostile Workplace

Unlike the district court, the Seventh Circuit was dissatisfied that Plainfield was able to remedy the hostile and abusive working environment simply by instructing its employees to refrain from racial epithets.[20] The circuit court instead found that Plainfield's continued maintenance of the racial preference policies created a racially hostile environment such as would satisfy a Title VII claim.[21]

The Seventh Circuit began its interpretation of the weight of patient racial preference law by pointing out that Title VII does not allow for a company to treat its employees differently due to customer preferences.[22] While the court acknowledged that sex-based discrimination may create a bona fide occupational qualification ("BFOQ") to Title VII,[23] it observed that gender-based preferences in a health-care setting are created to accommodate privacy interests that could

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[17] *Id.* at 912; Chaney v. Planfield Healthcare Center, 2009 WL 3242102 at *6 (S.D.Ind. 2009).

[18] *Id.* at *10-11.

[19] *Id.*

[20] *Chaney*, 612 F.3d at 912.

[21] *Id.* at 912-15, 42 U.S.C. § 2000e-2(a)(1); *see also* Mendenhall v. Mueller Streamline Co., 419 F.3d 686, 691 (7th Cir. 2005) (listing the Seventh Circuit's criteria for a finding of Title VII racially hostile workplaces).

[22] *See* Johnson v. Zema Sys. Corp., 170 F.3d 734, 744 (7th Cir. 1999) (Employer's assigning an African-American salesperson to supervise only other African-American employees and firing him when he failed to confirm to racial expectations constituted a Title VII violation); Ferrill v. Parker Grp. Inc., 168 F.3d 468, 477 (11th Cir. 1999) (Telephone "get-out-the-vote" corporation violated Title VII by "race-matching" calls based on employee and recipients' race).

[23] *See* Jennings v. N.Y. State Office of Mental Health, 786 F.Supp. 376, 383 (S.D.N.Y.1992).

not be invoked by a health-care provider of a different race.[24] Having determined that no BFOQ exception to Title VII applied to this case, the court then held that the Supremacy Clause requires that Title VII prevail over the Indiana laws requiring that residents have choice of care providers.[25] Plainfield argued that instructing black CNAs to tend to racially biased residents would put them in danger. This argument failed in the face of the counter-argument that creating race-based rules of care could and did result in a failure of providing patient care.[26] The court also suggested that the center could instead work with the patients to inform them of the center's multi-racial workforce or work to "reform the resident's behavior after admission. . . ."[27] Accordingly, the Seventh Circuit expressed an attitude of optimism that racially-biased opinions can be changed and revealed its disapproval of such hostile outlooks on the part of the residents, however constitutionally protected they might be. That the court would go so far as to suggest that the defendant could correct the residents' behavior to prevent the conditions giving rise to this case further illustrates that the court's estimation of the relative importance of resident's rights compared to Title VII protections is comparatively low.

B. Discriminatory Discharge

The Seventh Circuit reversed the district court's grant of summary judgment, finding that the center's director of nursing conducted his inquiry into Chaney's alleged misconduct in an atypically cursory way that could be construed as evidence of pretext.[28] In addition, during litigation the defendant focused on other grounds for dismissal besides the alleged profanity, and thus eluding circumstantial evidence of improper motive.[29] Finally, the court indicated that the disparate treatment of the other nurse who accompanied Chaney on the night in

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[24] *Chaney*, 612 F.3d at 913.

[25] *Id.* at 914; U.S. CONST. art. VI § 2, 410 IND. ADMIN CODE 16.2-3.1-3(n)(1).

[26] *Chaney*, 612 F.3d at 914-15.

[27] *Id*. at 915.

[28] *Id.* at 915-16.

[29] *Id.* at 916; *see* Rudin v. Lincoln Land Cmty. Coll., 420 F.3d 712, 723-24 (7th Cir. 2005).

question added to the record, which in total could lead a reasonable jury to find for the plaintiff. For these reasons, Chaney defeated the defendant's motion for summary judgment.[30]

IV. CONCLUSION

Chaney v. Plainfield Healthcare Center is evidence that while the emerging schemes of patient's law are comparatively weak in the Seventh Circuit, Title VII of the Civil Rights Act remains a powerful force for preventing racial bias from curtailing American employment opportunities. While this particular case will not likely have deleterious effects on civil liberties as race has long been recognized as a protected class by the Supreme Court, the Seventh Circuit's reluctance to give weight to the countervailing interest of patient's rights indicates that future efforts to establish these new rights may meet further resistance from other types of existing case law.

[30] *Chaney*, 612 F.3d at 916.