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MCKNIGHT v. CIRCUIT CITY STORES, INCORPORATED 1997 WL 328634 (E.D.VA.)

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I FACTS

The plaintiffs filed suit against Circuit City in the United States District Court for the Eastern District of Virginia alleging race discrimination by the Circuit City Headquarters in Richmond, Virginia in their promotion process.[1] At trial, the jury returned a unanimous verdict in favor of the plaintiffs.[2] The jury found that Circuit City had (1), engaged in a pattern or practice of race discrimination, and (2), in October 1994, wrongfully denied plaintiff Renee Lowery promotion to Management Recruiting Supervisor, and (3), wrongfully denied Lisa Peterson promotions to Assistant Supervisor in November and December of 1994.[3] Twelve other claims of discrimination were denied.[4]

Circuit City moved for judgment notwithstanding the verdict as a matter of law claiming that there was insufficient evidence to support a finding that Circuit City engaged in a pattern or practice of race discrimination or discrimination toward plaintiffs.[5] The question before the District Court was whether there was a legally sufficient evidentiary basis for a reasonable jury to have found for the prevailing party when viewed in the light most favorable to the non-moving party.[6]

II HOLDING

The District Court held that the evidence presented at trial was sufficient to allow the jury to reasonably find that Circuit City engaged in a pattern or practice of race discrimination.[7] In regard to Renee Lowery and Lisa Peterson, the Court found that the evidence presented at trial was sufficient to sustain the jury's finding that Circuit City's explanations for passing over each of the plaintiff's was pretext for a discriminatory intent.[8]

III ANALYSIS/APPLICATION

Circuit City attacked the jury's finding of a pattern or practice of race discrimination on two grounds.[9] First, Circuit City contended that a pattern or practice claim may only be brought in a certified class action or a suit brought by the Equal Employment Opportunity Commission.[10] Circuit City argued that the decertification of the class in this suit rendered the submission of the pattern or practice question to the jury improper.[11] Circuit City cited the Fourth Circuit's decision in *Stastny v. Southern Bell Telephone & Telegraph Company* as direct support for their argument.[12]

The *Stastny* court had indicated that class action certification was dependent inter alia upon the existence of a pattern or practice of discrimination affecting a perceptible class of protected employees.[13] Due to the *Stastny* plaintiff's failure to meet the class certification requirements, the 4th Circuit found that the class action should have been withdrawn and the class allegations stricken.[14]

Circuit City asserts two principles could be drawn from the *Stastny* decision. First, that class decertification decides whether there is a pattern or practice of discrimination.[15] Second, that a pattern or practice claim is not a claim separate from a class action and cannot, therefore, be used in individual discrimination claims.[16]

The District Court rejected Circuit City's interpretation of the *Stastny* holding, ruling that the Stastny court had not addressed the question of whether a pattern or practice claim could be maintained apart from a class action suit.[17] The *Stastny* court merely held that where the class failed to meet the requirements of Rule 23, a court should deny certification and bar the pursuit of a

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[1] *McKnight,* 1997 WL 328634, 1.

[2] 1997 WL 328634, 1.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Anheuser-Busch, Inc. v. L&L Wings, Inc.,* 962 F.2d 316, 318 (4th Cir.), cert. Denied, 506 U.S. 872, 113 S.Ct. 206, 121 L.Ed.2d 147 (1992).

[7] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634 (E.D.Va.), 1.

[8] *McKnight,* 1997 WL 328634, 1.

[9] 1997 WL 328634, 1.

[10] *Id.*

[11] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 1 (E.D.Va.).

[12] *Stastny v. Southern Bell Tel. & Tel. Co.,* 628 F.2d 267 (4th Cir.1980).

[13] *Stastny v. Southern Bell Tel. & Tel. Co.,* 628 F. 2d 267, 274 (4th Cir. 1980).

[14] *Stastny,* 628 F. 2d at 276.

[15] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 2 (E.D.Va.).

[16] *McKnight,* 1997 WL 328634, at 2.

[17] 1997 WL 328634, at 2.

separate pattern or practice claim.[18] The District Court found that its decision to deny class certification in *McKnight* did not fall into the *Stastny* category, because plaintiffs' motion for certification was granted for purposes of better case management.[19]

According to the District Court, the goal of class certification, efficiency, could not be met through class action certification of Plaintiff's claims versus Circuit City. In fact, the court had expressly held that the class did meet the Rule 23 requirements in its original certification based on the subjectivity of the criteria used in the decision making at Circuit City.[20] The nature of the decertification by the court allowed each plaintiff to pursue the class-wide pattern or practice claim despite the individual nature of each claim.[21] Therefore, the District Court held that the pattern or practice question was properly presented to the jury.[22]

Circuit City's second argument asserted that even if the pattern or practice question was properly submitted to the jury, the evidence presented to the jury at trial was legally insufficient to support the jury's verdict.[23] *International Bhd. Of Teamsters v. United States* dictated that a pattern or practice claim demands that the plaintiff "prove more than the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts."[24] The *Teamsters* District Court analyzed the evidence under this rule and required the plaintiff to establish, by a preponderance of the evidence, "that racial discrimination was the company's standard operating procedure—the regular rather than the unusual practice."[25]

Circuit City attacked both the statistical and narrative evidence presented at trial. As to statistics, plaintiff's expert, Dr. Harless, had aggregated the promotions he examined for discrimination.[26] Circuit City argued that its promotion decisions are decentralized and that therefore Dr. Harless' aggregated statistics were not legally significant.[27]

Circuit City again cited *Stastny* in support of its position. The Stastny court declared that "locus of autonomy" was a "critical factor" in the inquiry into the commonality of the employment decision making.[28] In light of evidence indicating that the Southern Bell Telephone & Telegraph Company's multiple facilities retained substantial autonomy and unique labor pools, the Fourth Circuit rejected statewide statistical evidence which was not broken down by individual facility.[29] The Fourth Circuit determined that evidence of discrimination found in statewide data could incorrectly implicate innocent facilities. Relying on *Stastny,* Circuit City argued that its promotion decisions at the various branches were not centralized, rendering Dr. Harless' analyses legally insignificant.[30]

The District Court found that the plaintiff's situation in *McKnight* differed from the *Stastny* situation. The challenge by the plaintiffs concerned the promotion record of Circuit City headquarters, not at its multiple facilities.[31] According to evidence presented at trial, the Circuit City headquarters functions as a single unit with one Human Resources department.[32] The District Court cited the testimony of Kate Powis in its December 3, 1996 Memorandum Opinion. Powis stated that all entry-level employees, white and black, are hired into a common pool and are equally qualified.[33] Thus they represent a labor pool appropriate for statistical research on the promotion rate of minorities.[34] The Circuit City policy of training and promoting from within should thus lend to comparable promotion rates for the equally qualified white and black employees.[35] Harless concluded that they had not done so.[36]

Circuit City disputed the legal sufficiency of Dr. Harless' results and cited its own expert, Dr. Haworth, to prove that no pattern or practice of discrimination existed at Circuit City. Dr. Haworth's analysis was conducted on the actual promotion process, department by department, and then aggregated the final figures.[37] Circuit City labeled the three instances of discrimination found by the jury "isolated" in light of the 34 promotions accepted by 17 black employees over the same time period. Circuit City argued that these "isolated" cases were not a legally sufficient basis for the jury's finding of a pattern or practice of discrimination.[38]

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[18] *Stastny v. Southern Bell Tel. & Tel. Co.,* 628 F.2d 267, 278 (4th Cir. 1980).

[19] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 2 (E.D.Va.).

[20] 1997 WL 328634, at 2.

[21] *Id* at 3.

[22] *Id* at 3.

[23] *Id* at 3.

[24] *International Bhd. of Teamsters v. United States,* 431 U.S. 324, 336, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977).

[25] *International Bhd. of Teamsters v. United States,* 431 U.S. at 336.

[26] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 2 (E.D.Va.).

[27] *McKnight,* 1997 WL 328634, at 2.

[28] *Stastny v. Southern Bell Tel. & Tel. Co.,* 628 F.2d 267, 279 (4th Cir. 1980).

[29] *Stastny,* 628 F.2d at 279-80.

[30] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 2 (E.D.Va.).

[31] *McKnight,* 1997 WL 328634, at 2.

[32] 1997 WL 328634, at 2.

[33] December 3rd Memorandum Opinion.

[34] December 3rd Memorandum Opinion.

[35] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 4 (E.D.Va.).

[36] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 2 (E.D.Va.).

[37] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 4 (E.D.Va.).

[38] *McKnight,* 1997 WL 328634, at 4.

The District Court rejected Circuit City's analysis of the evidence. The evidence presented by both Dr. Harless and Dr. Haworth, as well as the rebuttal evidence of the plaintiffs, were all evidentiary.[39] The weight to be given to the evidence was a question for the jury, and their decision could not be faulted.[40] The District Court gave particular attention to the plaintiff's rebuttal testimony. On rebuttal, Dr. Harless illustrated that Haworth's own statistical analysis could be the basis for a finding of a pattern or practice of discrimination. The promotion rates in Dr. Haworth's aggregated analysis differed by 4.5 standard deviations between white and black employees.[41] Such a variance could be found to be sufficient evidence of a pattern or practice of discrimination.[42] *E.E.O.C. v. Federal Reserve Bank of Richmond* proclaimed that, while courts "should be extremely cautious in drawing any conclusions from standard deviations in the range of one to three ... standard deviations of more than three" could be indicative of a "disparity."[43]

Circuit City attacked evidence presented by the plaintiffs, claiming that statistical evidence was insufficient to support a pattern or practice finding when disputed by other evidence.[44] Circuit City proposed that each of the plaintiff's witnesses presented at trial failed to establish a prima facie of discrimination under the McDonnell-Douglas test[45] and their testimony was therefore legally insufficient. Circuit City also contended that the evidence presented by these witnesses was insufficient to rebut as pretext Circuit City's evidence of legitimate, non-discriminatory reasons for the challenged promotions.[46]

The District Court rejected each of Circuit City's arguments. First, the Court found that each of the anecdotal witnesses had in fact established a prima facie case of discrimination. Secondly, the Court discovered ample evidence of pretext. Evidence of "subjective decision-making ..., failure to post job openings in a uniform manner, hand-picking the employees for promotions, racially derogatory remarks, and numerous other instances of discrimination" were unearthed at trial.[47] This evidence was supplemented by the plaintiff's evidence of a failure to monitor promotions in order to avoid discrimination, a perceived threat of retaliation for claims of discrimination within the Circuit City hierarchy, and a failure to respond to claims of discrimination.[48] The United States District Court concluded that the jury could reasonably conclude that the non-discriminatory reasons offered by Circuit City for not promoting the plaintiffs were mere pretext for the discrimination found in the plaintiff's evidence.

Circuit City challenged the jury verdict on the plaintiff's individual claims of discrimination. The District Court laid down the analytical framework for the plaintiff's claims of individual discriminatory treatment under Title VII. The applicable framework is the three part McDonnell Douglas test.

Throughout the McDonnell Douglas analysis, the burden of proof lies with the plaintiff. First, the plaintiff must establish a prima facie case, either through the McDonnell Douglas test or the Teamsters test.[49] The Supreme Court indicated that the McDonnell Douglas prima facie elements were not the ultimate test, but that they effectively depicted the general principles of a Title VII plaintiff's burden to present "evidence adequate to create an inference that an employment decision was based on a discriminatory criterion illegal under the Act."[50] This burden can be carried by a showing of a pattern or practice of discriminatory hiring practices.[51]

Should a prima facie case be successfully established, the second part of the McDonnell Douglas test comes into play. A prima facie showing must be rebutted by the defendant "articulating legitimate non-discriminatory business reasons for the challenged actions."[52] Then, the burden shifts back to the plaintiff to prove that the reasons put forth by the defendant in rebutting plaintiffs' prima facie case were merely pretextual. To prove pre-

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[39] 1997 WL 328634, at 4.

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *E.E.O.C. v. Federal Reserve Bank of Richmond,* 698 F.2d 633, 648 (4th Cir.1983), rev'd on other grounds, 467 U.S. 867, 104 S.Ct. 2794, 81 L.Ed.2d 718 (1984) (quoting *E.E.O.C. v. American Nat'l Bank,* 652 F.2d 1176, 1192 (4th Cir.1981), cert. denied, 459 U.S. 923, 103 S.Ct. 235, 74 L.Ed.2d 186 (1982)).

[44] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 5 (E.D.Va.).

[45] *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802-03, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). The McDonnell Douglas test defines the requisite prima facie case as a showing by the plaintiff that he or she: 1. Belongs to a racial minority, 2. Applied and was qualified for a vacant position the employer was trying to fill, 3. Was passed over for the position, and 4. After the rejection, the employer continued to seek applicants for the open position of the plaintiff's qualifications.

[46] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 5 (E.D.Va.).

[47] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634 (E.D.Va.).

[48] *McKnight,* 1997 WL 328634, at 6.

[49] *International Bhd. Of Teamsters v. United States,* 431 U.S. 324, 358, 97 S.Ct. 1843, 1866, 52 L.Ed.2d 396 (1977).

[50] *International Bhd. Of Teamsters v. United States,* 431 U.S. 324, 358, 97 S.Ct. 1843, 1866, 52 L.Ed.2d 396 (1977).

[51] *International Bhd. Of Teamsters v. United States,* 431 U.S. 324, 359, 97 S.Ct. 1843, 1867, 52 L.Ed.2d 396 (1977).

[52] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634 (E.D.Va.).

text, the plaintiff must show that "the reason was false, and that discrimination was the real reason," for the challenged actions.[53]

The District Court applied this analysis to the individual claims of plaintiffs Renee Lowery and Lisa Peterson. Circuit City challenged Ms. Lowery's claim on the grounds that she had failed the prove that the person promoted to the Supervisor of Management Recruiting in her place did not possess skills which she lacked that were essential to the position. The District Court disagreed. The court stated: "[I]nstead of creating specific, objective qualifications for the position before making the hiring decision, Circuit City essentially asserts that the qualifications necessary for the Supervisor position are any qualifications that the successful candidate possesses which Lowery does not possess."[54] The court concluded that a reasonable jury could find this explanation by Circuit City to be pretext.[55]

Lisa Peterson was twice denied promotion to the same position. In each case, the court determined that a reasonable jury could have viewed Circuit City's explanation to be mere pretext for discrimination. In the first case, Circuit City attempted to weigh the facts for the jury, something the District Court declined to do. In the second instance, the evidence clearly illustrated that the person promoted in place of Ms. Peterson, "had no prior [relevant] experience, no knowledge of the operating functions of the bank, no background in contacting customers, and no knowledge of the computer system used...[and]... was failing in her [present] job...."[56] The District Court found that these facts allowed a reasonable jury to conclude that Circuit City's reasons for denying promotion to Ms. Peterson were pretext for discrimination.[57]

IV CONCLUSION

The District Court's decision in *McKnight* may serve as a guide for employer promotion practices in the future. Under the *McKnight* mandate, employers are forced to implement promotion strategies that create the reasonable pretext necessary to thwart claims of discrimination from individual employees. In order to attain this goal, the employer's plan must define the specific credentials indispensable to promotion to each position and apply them in each case. The applicants to each position must be analyzed under this standard, and deviations must not occur.

The use of such a plan would potentially allow an employer to avoid liability for discrimination claims. In order to ensure the practical effect of the new promotion plan, and further the employer's protection from claims of discrimination, a review system should be implemented. This process would scrutinize the promotion process and results in order to guarantee that a statistically reasonable number of minority promotions occur.

McKnight has effects for potential plaintiffs and plaintiffs' attorneys as well. *McKnight* outlines a plan of attack for the plaintiff's attorney when investigating a potential employer defendant. Clearly, the more subjective the promotion process, the more readily a discrimination case can be built. This case construction is greatly benefited by evidence of the promotion process, employee status, and promotion history.

The *McKnight* decision may also close some doors to potential plaintiffs. As described above, employers can have a promotion and hiring process that, if successfully followed, is difficult to challenge. In short, the McKnight decision brings some order to the realm of discrimination litigation and its real world effect should prove beneficial. The alteration of employer promotion processes to the *McKnight* standard should eliminate much of the discrimination faced in the workplace by forcing employers to rigidly follow a pattern which, by its terms, eliminates most of the bias which can enter into the typical hiring and promotion scheme. Employer and employee are each buoyed by a system meant to allow the examination of the hiring and promotion process to ensure fairness.

Summary and Analysis Prepared by:
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[53] *St. Mary's Honor Center v. Hicks,* 509 U.S. 502, 113 S.Ct. 2742, 2752, 125 L.Ed. 2d 407 (1993).

[54] *McKnight v. Circuit City Stores, Incorporated,* 1997 WL 328634, 7 (E.D.Va.).

[55] *McKnight,* 1997 WL 328634 at 7.

[56] 1997 WL 328634 at 9.

[57] *Id.*