

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon

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Employment

A police detective with a bad knee who worked with a “no contact with suspects” restriction, filed an action against the Department alleging that she had been denied promotion to a lieutenant’s position because of her disability, her race and her sex. Plaintiff claimed that after the promotion decisions were made, the police chief and another supervisor told her that there was “no place” for a disabled lieutenant. Defendants moved for summary judgment against all claims.

Judge Jelderks granted summary judgment against all state discrimination claims finding that plaintiff failed to meet the timeliness requirements of the Oregon Tort Claims Act. Plaintiffs federal discrimination claims survived summary judgment based upon direct evidence of discriminatory animus attributable to the comments the Police Chief allegedly made regarding plaintiff’s disability. The court also accepted plaintiff’s allegations that others were given training and coaching for the exam while she was denied similar treatment. The court also denied the defendant’s argument that plaintiff was not “disabled.” While noting that it was a close question, the court found that whether the restrictions on plaintiff’s ability to

walk constituted moderate or substantial limitations presented a genuine issue of fact for the jury.

The court rejected plaintiff’s alternative theories of disability discrimination, noting that no one perceived her as disabled from all law enforcement work and she had no record of a disability. The court also denied summary judgment as to the 42 U.S.C. § 1983 claim finding evidence that the police chief was a “policy maker” for Bureau promotion decisions.

The case settled approximately one month after the issuance of Judge Jelderks’ decision. Eckhardt v. Moose, CV 97-496-JE (Opinion, Dec. 30, 1998 - 28 pages).

Plaintiff’s Counsel: Bernard Jolles
Defense Counsel: Jennifer Johnston

Procedure

Judge Haggerty dismissed claims against Phillip Morris, Inc., because the plaintiff filing an action against them failed to timely and properly serve process on them, rendering plaintiff’s claims against these defendants barred by the applicable statute of limitations.

Plaintiff alleged that she suffered serious injuries after a cigarette lighter associated with the Phillip Morris defendants, and others, exploded in her hands on 3 June

1996. Plaintiff’s Complaint was filed on 1 June 1998. The undisputed facts pertaining to plaintiff’s attempted service of the Phillip Morris defendants establish that plaintiff mailed a Summons and Complaint to the Oregon Secretary of State on 13 July 1998, and to defendants’ agent and principal place of business on 31 July 1998. These defendants did not receive actual notice of the suit until 4 August 1998.

Because Phillip Morris transacts business in interstate commerce, plaintiff could not complete effective service by simply serving the Oregon Secretary of State. That service was a nullity. The first appropriate service was attempted by plaintiff’s mailing of the Summons and Complaint to defendants’ agent and principal place of business on 31 July 1998. Under ORCP 7D(2)(d)(ii), this service was not complete until the date that defendants’ representatives signed the certified mailings reflecting receipt of the Summons and Complaint.

Defendants first received and signed for these mailings on 4 August 1998, more than 60 days after plaintiff’s Complaint was filed, and more than two years after plaintiff’s claims accrued. Adequate service of summons is required to prevent the running of the applicable

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statute of limitations. Under the mandates of ORS 12.020, plaintiff's service of defendants' fails to "relate back" to the filing of the Complaint, and the claims against the Philip Morris defendants were considered barred by the applicable statute of limitations. Cook v. Djeep, CV 98-669-HA (Order, January 11, 1999 - 6 pages).

Plaintiff's Attorney:

Thomas Martin, Jr.

Defendants' Attorneys:

David A. Ernst; John T. Kaempf

Habeas

Diane Downs' petition for habeas relief under 28 USC 2254 was denied by Judge Haggerty this week. Downs was convicted in 1984 for murdering one of her children and attempting to murder and assaulting her two other children. She exhausted her direct state appeal rights in 1987, and her claims for state post-conviction relief in 1994.

The petition for federal habeas relief before Judge Haggerty was filed in June, 1996, and amended in January, 1997. As such, the amendments to the provisions for federal relief codified in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") apply to Downs' claims.

After the state moved to deny habeas relief in 1997, Downs was permitted to conduct extensive discovery for almost one year. In her final briefing following this discovery, Downs asserted nine grounds for relief. Among these were arguments that the state improperly withheld exculpatory

material from the pretrial discovery it provided to Downs, that Downs' trial attorney failed to provide effective assistance of counsel, that the state improperly coerced testimony from Down's surviving daughter, Christie, and that Downs was also deprived of effective assistance of appellate counsel.

A number of Downs' claims were procedurally defaulted because they were not presented in any of her state proceedings. Judge Haggerty noted, for example, that Downs may well have had a meritorious Sixth Amendment claim that she was deprived of her counsel of choice when the trial judge refused to postpone her trial for four weeks to allow Downs to hire Melvin Belli as her representative. This claim was never raised in her state proceedings, however, and was therefore procedurally defaulted. Judge Haggerty rejected Downs' argument that any of the defaults should be excused to prevent a fundamental miscarriage of justice. He was unpersuaded that Downs presented sufficient evidence of her actual innocence.

Downs' claims that were not defaulted were reviewed under the standards established by the AEDPA. These standards establish that state adjudications on the merits are subject to deference by federal courts. Downs' non-defaulted claims were unsuccessful in light of this deference. Downs v. Hoyt, CV 96-900-HA (Opinion, Feb. 8, 1999).

Petitioner's Counsel: Wendy Willis;

Respondent's Counsel: Jan

Londahl, Lynn Larsen

Immigration

Judge Panter held that a statute requiring detention of criminal aliens without bail pending deportation did not apply to an alien released from prison before the statute's effective date. Judge Panter also held that he had jurisdiction to hear the alien's petition under 28 U.S.C. § 2241.

The detention statute, 8 U.S.C. § 1226(c)(1), requires that the Attorney General "take into custody any alien who [has been convicted of certain crimes] when the alien is released" The statute was enacted in 1996 but did not take effect until October 1998.

In November 1998, respondent detained petitioner under § 236(c) because of a 1990 assault conviction, for which petitioner received a one-year suspended sentence. Judge Panter reasoned that if Congress had intended for § 236(c) to apply retroactively to aliens released from prison before the statute's effective date, Congress could have written the statute to require custody "regardless of when the alien is released" or "at any time after the alien is released." Judge Panter also noted that in setting the statute's effective date, Congress stated that "the provisions of such section 236(c) shall apply to individuals released after [October 9, 1998]." Judge Panter granted the petition in part, ordering that the respondent hold a hearing within thirty days to determine petitioner's eligibility for release on bond. Alwaday v. Beebe, CV 98-1581-PA (Opinion, Jan. 29, 1999 -11 pages).

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