

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

CATHERINE YVETTE STOCKINGER, R.N.:	JUDGES:
	: John W. Wise, P.J.
Plaintiff-Appellant	: Julie A. Edwards, J.
	: John F. Boggins, J.
-VS-	:
	: Case No. 2003-CA-0116
OHIO CIVIL RIGHTS COMMISSION, et al.	:
	:
Defendants-Appellees	: <u>OPINION</u>

CHARACTER OF PROCEEDING: Civil Appeal From Richland County Court of  
Common Pleas Case 03-CV-0606

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: 12/9/2004

APPEARANCES:

For Plaintiff-Appellant

DAVID D. CARTO  
28 Park Avenue West  
Mansfield, OH 44902

For Defendant-Appellee

TERRA L. COLVIN  
30 E. Broad St., 15th Fl.  
Columbus, OH 43215  
Counsel for Ohio Civil Rights Comm.

DANIEL W. SRSIC  
21 E. State St., 16<sup>th</sup> Flr.  
Columbus, OH 43215  
Counsel for SCCI Hospital of Mansfield

*Edwards, J.*

{¶1} Plaintiff-appellant Catherine Stockinger appeals from the November 19, 2003, Judgment Entry of the Richland County Court of Common Pleas affirming the

decision of defendant-appellee Ohio Civil Rights Commission not to issue a disability discrimination complaint on plaintiff-appellant's behalf.

### STATEMENT OF THE FACTS AND CASE

{¶2} In February of 2000, appellant Catherine Stockinger, who is a registered nurse, became employed by SCCI Hospital of Mansfield as a clinical liaison. As a clinical liaison, appellant was responsible for conducting field evaluations of patient referrals, developing medical community awareness of hospital services, and establishing new accounts. Appellant's duties as a clinical liaison did not include bedside or floor nursing.

{¶3} Appellant has retinitis pigmentosa. Retinitis pigmentosa is the name given to a group of disorders of the retina which lead to a progressive reduction in vision. Symptoms of retinitis pigmentosa can include tunnel vision, night blindness, and a gradual reduction in the field of vision.

{¶4} In early June of 2002, the job duties of the clinical liaison changed and appellant was informed that she would have to take call for the nursing department every sixth weekend due to the nursing shortage. When she was initially approached on June 3, 2002, about being on call on weekends due to the shortage, appellant indicated that she would be willing to be on call to answer questions, but that she did not want to have direct care of a patient since she had been away from bedside nursing for six years. However, on or about June 25, 2002, when she was asked at a meeting whether there were any weekends in July that she could not take call, appellant indicated that she could not and would not perform bedside nursing due to her eye disease. Thereafter, on July 10, 2003, appellant was terminated.

{¶5} On November 13, 2003, appellant filed a complaint with appellee Ohio Civil Rights Commission, alleging that she was terminated because of her disability, retinitis pigmentosa. In a letter to appellant dated April 24, 2003, Delores Wilkerson, a Field Representative with appellee Ohio Civil Rights Commission, stated, in relevant part, as follows:

{¶6} “Based on your medical records and your description of your limitations, unfortunately, you are not considered as a “qualified” disabled person as outlined in the Americans with Disabilities Act and Ohio Revised Code because your physical impairment does not substantially limit your daily life activities. Therefore, the Respondent is under no obligation to accommodate you.”

{¶7} Subsequently, as memorialized in a decision dated May 22, 2003, appellee Ohio Civil Rights Commission ordered appellant’s case dismissed, holding that it was not probable that SCCI Hospital had engaged in “practices unlawful under Section 4122, Ohio Revised Code,…” Appellee, in its decision, stated, in relevant part, as follows:

{¶8} “...The Charging Party is in the early stage of the disease. Currently, she drives, walks, can use a treadmill, cares for herself, thinks, hears and breaths [sic] with no problems. Her vision is impaired to a degree however, she can see. Her peripheral vision and depth of vision is currently affected by this disease but not to the point that she has been restricted from any day activity. Her physician states that as long as she can work in a bright area, she can function very well in any job function. She is prohibited from night driving only. Based on this information, Charging Party is not substantially limited in her daily life activities and is therefore not considered to be a

“qualified” disabled person as described in the Americans with Disabilities Act or Ohio Revised Code 4112.”

{¶9} Appellant then filed a request for reconsideration with appellee Ohio Civil Rights Commission on June 10, 2003. Appellant, with her request, submitted a supplemental June 9, 2003, report from her doctor, Dr. Schumer, stating that appellant suffered from “significant loss of peripheral vision in both eyes” and “very poor vision in dark setting,” and that appellant “has trouble accommodating moving from a light area to a dark area.”<sup>1</sup> However, On June 11, 2003, such request was summarily dismissed due to having been filed outside the ten (10) days permitted by O.A.C. Section 4112-3-04(A).<sup>2</sup>

{¶10} On June 20, 2003, appellant filed a Complaint and Petition for Judicial Review in the Richland County Court of Common Pleas. Both parties filed briefs. Pursuant to a Judgment Entry filed on November 19, 2003, the trial court sustained the decision of appellee Ohio Civil Rights Commission not to issue a disability discrimination complaint against SCCI Hospital in appellant’s case. The trial court, in so ruling, stated, in relevant part, as follows:

{¶11} “...In Dr. Schumer’s report, dated September 29, 1998, he describes Ms. Stockinger’s medical condition as ‘a condition in both eyes that causes poor night vision.’ The medical report goes on to say that she has ‘poor vision in the dark’ and that

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<sup>1</sup> Appellant’s doctor, in such report, indicated that appellant had been examined by him in November of 2002 and had a visual field test conducted on her in December of 2002.

<sup>2</sup> O.A.C. Section 4112-3-04 provides, in relevant part, as follows: “(A) Procedure for applying for reconsideration. Any party may apply to the commission for reconsideration of a determination of probable cause or any final commission determination. Such application must be in writing, state specifically the grounds on which it is based, and be filed, along with all supporting materials, with the commission at its central office compliance department in Columbus within ten days from the date of service of the notice of determination.” (Emphasis added).

‘[i]n moderate to normal to bright lights, Katherine will function very well in any job situation.’ Dr. Schumer’s report does not indicate any other physical limitations or restrictions caused by her condition. It is possible that the condition might progress to substantially limit her vision at some time in the future. However, based on the medical evidence provided to the Commission, the only limitation caused by her eye condition is poor night vision. Based on this evidence, the Commission’s decision that Ms. Stockinger’s condition did not substantially limit any major life activity is not ‘unlawful, irrational and/or arbitrary and capricious,’ and should be upheld.”

{¶12} It is from the trial court’s November 19, 2003, Judgment Entry that appellant now appeals, raising the following assignments of error:

{¶13} “I. THE REVIEWING COURT BELOW ERRED BY FAILING TO DETERMINE THAT THE FINDING AND DECISION OF DEFENDANT-APPELLEE, OHIO CIVIL RIGHTS COMMISSION, NOT TO ISSUE A COMPLAINT CHARGING DISABILITY DISCRIMINATION ON THE GROUNDS THAT PLAINTIFF-APPELLANT WAS NOT A ‘QUALIFIED’ DISABLED PERSON, WAS UNLAWFUL AND CONTRARY TO THE STANDARD MANDATED BY LAW TO DETERMINE IF A PHYSICAL IMPAIRMENT CONSTITUTES A DISABILITY TRIGGERING THE PROTECTIONS AFFORDED UNDER CHAPTER 4112 OF THE OHIO REVISED CODE.

{¶14} “II. THE REVIEWING COURT BELOW ERRED BY REFUSING TO DETERMINE THAT THE FAILURE OF DEFENDANT-APPELLEE, OHIO CIVIL RIGHTS COMMISSION, TO CONSIDER ADDITIONAL EVIDENCE SUBMITTED WITH PLAINTIFF-APPELLANT’S REQUEST WAS UNTIMELY MADE, WAS ARBITRARY

AND CAPRICIOUS, THEREBY DENYING PLAINTIFF-APPELLANT DUE PROCESS OF LAW.”

#### STANDARD OF REVIEW

{¶15} "Upon review of a determination that no probable cause exists [to issue a complaint], the common pleas court must determine whether [the] OCRC's [Ohio Civil Rights Commission's] decision is unlawful, irrational, and/or arbitrary and capricious." *Coleman v. Warner* (1992), 82 Ohio App.3d 263, 265, 611 N.E.2d 878. Absent an abuse of discretion, an appellate court will not disturb the trial court's determination. *Yeager v. Ohio Civil Rights Comm.*, 148 Ohio App.3d 459, 462, 2002-Ohio-3383, 773 N.E.2d 1097. An abuse of discretion connotes more than an error of law or judgment; rather, it implies the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

I

{¶16} Appellant, in her first assignment of error, argues that the trial court erred in affirming the decision of appellee Ohio Civil Rights Commission not to issue a complaint charging disability discrimination on the grounds that appellant was not a “qualified disabled person.” We disagree.

{¶17} R. C. 4112.02 provides in pertinent part: "It shall be an unlawful discriminatory practice: (A) For any employer, because of the race, color, religion, sex, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment." R.C. 4112.01(A)(13) defines a disability as meaning

“a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.” (Emphasis added.)

{¶18} In determining whether a condition constitutes a disability, courts have looked to federal law and cases interpreting the federal Americans with Disabilities Act (ADA) for guidance since ADA is similar to the Ohio handicap discrimination law. *Columbus Civ. Serv. Comm. v. McGlone*, 82 Ohio St.3d 569, 573, 1998-Ohio-410, 697 N.E.2d 204. The Supreme Court of the United States has defined the phrase 'substantially limits' as 'an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long-term.' *Toyota Motor Mfg., Kentucky, Inc. v. Williams* (2002), 534 U.S. 184, 198, 122 S.Ct. 681.

{¶19} In accordance with R.C. 4112.05(B)(1), any person may file a charge in writing and under oath with the Ohio Civil Rights Commission alleging that within the past six months another person has engaged in an unlawful discriminatory practice. When the charge is received by the Commission, a preliminary investigation may be initiated "to determine whether it is probable that an unlawful discriminatory practice has been or is being engaged in." R.C. 4112.05(B)(2). If, upon such investigation, the Ohio Civil Rights Commission finds that probable cause does not exist to support a finding of discrimination, it shall inform the parties that due to this finding, a complaint will not be issued in the matter. R.C. 4112.05(B)(3)(a)(i).

{¶20} Appellant, in the case sub judice argues that appellee Ohio Civil Rights Commission erred in finding no probable cause to issue a disability discrimination complaint. Appellant notes that “seeing” is a major life activity and argues, therefore, that she is disabled.

{¶21} In support of her complaint to appellee Ohio Civil Rights Commission, appellant submitted a September 29, 1998, letter from her doctor to appellant’s former employer stating, in relevant part, as follows:

{¶22} “Katherine has a condition in both eyes that causes poor night vision. She has just undergone surgical procedures in both eyes, which has improved her visual functioning; however, her poor vision in the dark will be a long-term issue for her. In moderate to normal to bright lights, Katherine will function very well in any job situation. When the lights are very low are [sic] dark, Katherine has the potential to not see as well as a normal individual.”

{¶23} As noted by appellant in her brief, while the doctor does not specifically mention retinitis pigmentosa in his letter, appellant’s medical records from such doctor diagnosis appellant with the same. In addition, also contained in the Commission’s file is an untitled document concerning which major life activities appellant indicated were affected by her condition. With respect to seeing, appellant indicated that she had “limited lower vision and peripheral and night vision”. Appellant, in her responses, also indicated that, with respect to walking, she could trip in unfamiliar surroundings and that her ability to run was “limited.” Finally, appellant also provided the Commission with a five page document titled “A Guide to Retinitis Pigmentosa” that discusses living with the disorder and the medical aspects of the same.



{¶24} Based on our review of the file of appellee Ohio Civil Rights Commission, we cannot say that the trial court abused its discretion in upholding the decision of appellee Ohio Civil Rights Commission not to issue a disability discrimination complaint. As noted by the trial court, based on the medical evidence presented to appellee Ohio Civil Rights Commission, “the only limitation caused by her eye condition is poor night vision.” In addition, appellant’s doctor, in his letter, stated that appellant would function well in any job situation “in moderate to normal to bright lights.” Dr. Schumer’s report did not indicate that appellant, due to her condition, had any other physical limitation or restrictions.

{¶25} Appellant, in her brief, argues that the Ohio Civil Rights Commission applied the wrong standard in defining a disability. Appellant notes that, in its May 22, 2003, decision, the commission found that appellant was not “substantially limited in her daily life activities” and, therefore, was not disabled. Appellant contends that, pursuant to R.C. 4112.02(A) cited above, the Commission should have considered whether appellant was substantially limited in a major life activity.

{¶26} However, pursuant to *Toyota*, supra., individuals asserting a claim for disability discrimination must “provide sufficient evidence that they suffer a permanent or long-term disability that restricts them, not only from a wide range of jobs, but also from doing normal daily activities.” *Yamamoto v. Midwest Screw Products*, Lake App. No. 2000-L-200, 2002-Ohio-3362 at paragraph 24. (Emphasis added).

{¶27} Furthermore, we find that, even assuming the Commission applied the wrong standard, appellant suffered no prejudice. First, whether a condition substantially limits daily life activities is clearly a less restrictive standard than whether a

condition substantially limits major life activities. In addition, from a reading of the entire decision issued by the OCRC, it is clear that it considered whether the major life activity of seeing was substantially limited. OCRC stated: “....Her vision is impaired to a degree however, she can see. Her peripheral vision and depth of vision is currently affected by this disease but not to the point that she has been restricted from any day activity. Her physician states that as long as she can work in a bright area, she can function very well in any job function. She is prohibited from night driving only....”

{¶28} Appellant's first assignment of error is, therefore, overruled.

## II

{¶29} Appellant, in her second assignment of error, contends that the trial court erred by failing to hold that the refusal of appellee Ohio Civil Rights Commission to consider the evidence appellant submitted with her request for reconsideration was unlawful, irrational, arbitrary and/or capricious.

{¶30} As is stated above, Delores Wilkerson, a Field Representative with appellee Ohio Civil Rights Commission, in an April 24, 2003, letter to appellant, stated that “[b]ased on your medical records and your description of your limitations, unfortunately, you are not considered a “qualified disabled person...because your physical impairment does not substantially limit your daily life activities.” Appellant, in an affidavit filed with the trial court, stated, in relevant part, as follows:

{¶31} “3. That upon receipt of Exhibit A [the letter of April 24, 2003], I telephoned Delores Wilkerson and discussed my desire to appeal the decision set forth in her letter dated April 24, 2003. Ms. Wilkerson advised me that I could only appeal after I had received a formal letter from the Civil Rights Commission and that, in the

meantime, I should collect additional information, including an updated report from my treating ophthalmologist, to submit to the Commission after receipt of their formal letter. Ms. Wilkerson also suggested that I obtain and submit a current job description for the job of Clinical Liaison which I had held at SCCI prior to my discharge from employment.

{¶32} “4. “That on or about May 20, 2003, pursuant to the suggestions made to me by Delores Wilkerson as outlined above, I faxed to Ms. Wilkerson a copy of the job description for Clinical Liaison at SCCI which I found on the internet and which contains no mention of floor or bedside nursing as a job requirement or duty. A true copy of the job description sent to Delores Wilkerson and my cover letter to her are attached hereto as ‘Exhibit B.’

{¶33} “5. That on or about May 20, 2003, pursuant to the suggestion made to me by Delores Wilkerson as outlined above, I followed up in writing my previous verbal request that my treating ophthalmologist prepare an updated report as to my eye condition, retinitis pigmentosa.

{¶34} “6. That due to the fact that I was out of the state on vacation from May 21, 2003, through June 2, 2003, I did not receive the Commission’s formal letter and decision dated May 22, 2003 until June 3, 2003. Having still not received a report from my ophthalmologist, I made several telephone calls to his office and finally received his report dated June 9, 2003, which I sent to fax transmission along with my Request for Reconsideration to Carol Swartzmiller on June 10, 2003. “

{¶35} Clearly, while appellant was advised of the need for additional medical documentation of her condition on or about April 24, 2003, she waited until June 10, 2003, to provide such documentation to appellee Ohio Civil Rights Commission,

approximately three weeks after the Commission had issued its decision and after the ten days permitted by O.A.C. 4112-3-04(A) for reconsideration had expired. Based on the foregoing, we cannot say that the trial court erred by failing to hold that appellee's refusal to consider such documentation was unlawful, irrational, arbitrary, or capricious.

{¶36} Appellant's second assignment of error is, therefore, overruled.

{¶37} Accordingly, the judgment of the Richland County Court of Common Pleas is affirmed.

By: Edwards, J.

Wise, P.J. and

Boggins, J. concur

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JUDGES

JAE/0826

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

CATHERINE YVETTE STOCKINGER, R.N.:

Plaintiff-Appellant

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-vs-

OHIO CIVIL RIGHTS COMMISSION, et al.

Defendants-Appellees

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JUDGMENT ENTRY

CASE NO. 2003-CA-0116

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to appellant.

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JUDGES