

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 10a0706n.06

Case No. 08-2272

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
**Nov 15, 2010**  
LEONARD GREEN, Clerk

In re: JOSE ANTONIO RODRIGUEZ, )  
 )  
 Debtor, )  
 )  
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 STUART GOLD, TRUSTEE FOR, THE )  
 ESTATE OF JOSE ANTONIO )  
 RODRIGUEZ, )  
 )  
 Plaintiff-Appellant, )  
 )  
 v. )  
 )  
 FEDEX FREIGHT EAST, INC., )  
 )  
 Defendant-Appellee. )  
 \_\_\_\_\_ )

ON APPEAL FROM THE  
UNITED STATES DISTRICT  
COURT FOR THE EASTERN  
DISTRICT OF MICHIGAN

Before: **BATCHELDER, Chief Circuit Judge; SUTTON and KETHLEDGE, Circuit Judges.**

**ALICE M. BATCHELDER, Chief Judge.** Jose Rodriguez sued his former employer, FedEx Freight East, Inc., alleging various claims of discrimination and retaliation on the basis of his race, in violation of Michigan’s Elliott-Larsen Civil Rights Act (“ELCRA”), Mich. Comp. Laws §§ 37.2101 *et seq.* FedEx obtained summary judgment on all claims and, on appeal, we affirmed that judgment except as to Rodriguez’s claim that FedEx had refused to promote him because of his Hispanic accent. That claim we remanded for trial. *In re Rodriguez*, 487 F.3d 1001 (6th Cir. 2007).

On remand, the case was tried to a jury and the jury returned a verdict for FedEx. Rodriguez moved for JNOV, mistrial, a new trial, and an order striking certain testimony. He alleged errors based on juror misconduct, evidentiary rulings, jury instructions, defense counsel misconduct,

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insufficiency of the evidence, and the court reporter's misconduct. The district court considered the motion and authored a thorough and meticulous 19-page opinion denying it. *See Rodriguez v. FedEx Freight East, Inc.*, 2008 WL 4155677, at \*13 (E.D. Mich. Sept. 5, 2008) (unpublished). Rodriguez moved for reconsideration and the district court denied that motion as well. *See Rodriguez v. FedEx Freight East, Inc.*, 2008 WL 4290180, at \*2 (E.D. Mich. Sept. 17, 2008) (unpublished).

After carefully reviewing the record, the law, and the briefs and arguments on appeal, we find that the district court's opinion correctly sets out the applicable law and correctly applies that law to the facts in the record. But we think it wise to address very briefly Rodriguez's claim that the district court erred in refusing to give the "mixed motive" jury instruction Rodriguez requested. The district court properly instructed the jury using the Michigan Model Civil Jury Instructions, including the instructions explaining Michigan's definition of employment discrimination and the burden of proof for Michigan employment discrimination cases. Those instructions explicitly explained to the jury that Rodriguez's national origin "does not have to be the only reason, or even the main reason" that FedEx did not promote him, but it did have to be "one of the reasons which made a difference in determining whether or not to promote [him.]" Further, the instruction required the jury to find in favor of Rodriguez if it found that FedEx failed to promote him and that his national origin was one of the reasons for that failure. Rodriguez now claims that these instructions are contrary to our opinion reversing the summary judgment for FedEx on this claim and remanding it for trial. Rodriguez is mistaken. Our earlier opinion simply held that sufficient evidence had been presented to raise a jury question as to whether FedEx had acted with a discriminatory motive, and that FedEx had failed to demonstrate *at the summary judgment stage* that even if it had acted with

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discriminatory motive, it would nonetheless have taken the same action for legitimate reasons. The court's jury instructions comport with this legal framework even if they are not as specific as the ones Rodriguez proposed. After reviewing the trial record, we find no error in the district court's providing the jury with the instructions that we have repeatedly found to be correct as a matter of Michigan law.

We conclude that the issuance of a full written opinion by this court would serve no useful purpose. Accordingly, for the reasons stated in the district court's opinions, we **AFFIRM**.<sup>1</sup>

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<sup>1</sup>The National Lawyers Guild and the Michigan Association for Justice have each moved for permission to file amicus briefs in this appeal. The National Lawyers Guild urges us to create a model jury instruction for civil cases forbidding jurors from accessing the internet and the Michigan Association for Justice urges us to make an investigatory hearing mandatory any time a juror does access the internet. Because we, as a three-judge panel, are not empowered to make these proclamations and because our disposition of this appeal pretermits these arguments, we DENY the motions.