

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 5, 2022

Christopher M. Wolpert
Clerk of Court

JEFFREY BOOTH,
Plaintiff - Appellant,

v.

HOME DEPOT, U.S.A., INC.,
Defendant - Appellee.

No. 20-6074
(D.C. No. 5:20-CV-00216-J)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON, PHILLIPS, and CARSON**, Circuit Judges.

On October 14, 2021, we stayed this appeal and certified a question of state law to the Oklahoma Supreme Court. See Booth v. Home Depot, U.S.A., Inc., No. 20-6074, 2021 U.S. App. LEXIS 31223 (10th Cir. Oct. 14, 2021). That court has since resolved our question, and its answer requires us to affirm the district court’s judgment dismissing Plaintiff’s claim. See Booth v. Home Depot, U.S.A., Inc., — P.3d —, 2022 OK 16 ¶ 3 (Okla. 2022).

As explained more fully in our certification order, Defendant employed Plaintiff as an installation service manager. Defendant fired Plaintiff shortly after

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Plaintiff reported to his supervisor his belief that Defendant fraudulently overcharged customers in violation of Oklahoma’s Home Repair Fraud Act (“HRFA”), Okla. Stat. tit. 15, § 765.3, and Consumer Protection Act (“OCPA”), Okla. Stat. tit. 15, § 753(15), (20). Plaintiff sued Defendant for wrongful termination under Burk v. K-Mart Corporation, 770 P.2d 24 (Okla. 1989), a court-created cause of action for a termination that violates “a clear mandate of public policy as articulated by constitutional, statutory or decisional law.” Id. at 28.

The district court dismissed Plaintiff’s amended complaint for failure to state a claim after determining that neither the HRFA nor the OCPA articulates a clear mandate of Oklahoma public policy sufficient to sustain a Burk claim. On appeal, Plaintiff asked us to certify that question to the Oklahoma Supreme Court. We agreed that the question warranted certification because it raised a novel issue of state law, could be outcome determinative, and implicated Oklahoma policy considerations. So we certified the following question to the Oklahoma Supreme Court:

Does the Oklahoma Home Repair Fraud Act, Okla. Stat. tit. 15, § 765.3, or the Oklahoma Consumer Protection Act, Okla. Stat. tit. 15, § 753(15), (20) articulate a clear mandate of Oklahoma public policy such that an employer who terminates an employee for internally reporting the employer’s violations of the statute is liable for wrongful termination under Burk v. K-Mart Corporation, 770 P.2d 24 (Okla. 1989)?¹

Booth, 2021 U.S. App. LEXIS 31223, at *8.

¹ The Oklahoma Supreme Court slightly reformulated our question to address whether an employer is liable for wrongful termination after firing an employee for reporting violations of the HRFA or OCPA in any manner—internally or otherwise. See Booth, 2022 OK 16 ¶ 2.

The Oklahoma Supreme Court answered our question in the negative. Booth, 2022 OK 16 ¶ 3. The court explained that the HRFA and OCPA protect individual consumers from individual harms caused by unlawful business practices—not the health, safety, or welfare of the public at large. Id. ¶ 16. And the HRFA and OCPA adequately protect the policy they advance by providing civil and criminal remedies for consumers harmed by violations—no Burk tort is necessary. See id. ¶ 17–18. Thus, an employee fired for internally reporting his employer’s violations of the HRFA and OCPA has no cause of action under Burk. See id. ¶ 19.

That answer resolves this appeal. The only cause of action in Plaintiff’s amended complaint was his wrongful-termination claim under Burk alleging that Defendant fired him for reporting violations of the HRFA and OCPA. The district court dismissed Plaintiff’s amended complaint after holding that Burk provides no cause of action based on those allegations. Because the Oklahoma Supreme Court has now held the same, we exercise jurisdiction under 28 U.S.C. § 1291 and affirm the district court’s dismissal of Plaintiff’s amended complaint.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge