

Case Summary

Hollingsworth v. Time Warner

812 N.E.2d 976 (Ohio App. 1. Dist 2004)

Inadvertent Disclosure of Email Waives Attorney-Client Privilege

The plaintiff filed an employment discrimination suit seeking unemployment benefits, because she felt that she was wrongfully discharged. The plaintiff had been granted intermittent leave from her position under the Family Medical Leave Act (FMLA) because of her chronic sinusitis. While the plaintiff was on one of these leaves, her supervisor called her physician to ask about the plaintiff's absences. The plaintiff immediately filed a complaint with the Department of Labor (DOL). A DOL investigator concluded that with the exception of the plaintiff's supervisor contacting the plaintiff's physician that the defendant appeared to be in full compliance with the FMLA with regards to the plaintiff's employment. Following her complaint, the plaintiff's attorney sent a letter to the defendant expressing his concern over how the plaintiff was being treated after her FMLA protected absences, and her complaint to the DOL. Soon after this, the defendant found an error that it was able to attribute to the plaintiff, and discharged her for it.

At trial, the court granted the defendant's motion for summary judgment, and the plaintiff appealed. In her appeal, the plaintiff cited two errors on the part of the trial court. The first was the error in granting summary judgment, the plaintiff showed that there was an issue of material fact as to whether she was discharged based on discriminatory intent, or for poor work performance. The second error that the plaintiff appealed on was the trial court's granting of a motion for a protective order filed by the defendant. At a hearing before the Unemployment Compensation Review Commission, the defendant's had produced an email from the plaintiff's supervisor to the defendant's attorney. During discovery, the plaintiff asked for production of all documents electronic and otherwise concerning her discharge, her FMLA protected absences, and her DOL complaint. After receiving only the email that was produced at the unemployment hearing, the plaintiff made a second request for the production of the documents she had requested.

Decision

At this point, Time Warner sought a protective order to get the email message back, and also to stop the plaintiff from using the message or referring to it. The trial court granted the defendant's motion for a protective order. The appellate court reversed; it reasoned that attorney-client communications are privileged, but where any of these communications are voluntarily divulged to a third party, they are no longer privileged, and the plaintiff should have access to all other documentation related to the same subject.

Privileged Electronic Documents