
**IN THE UNITED STATES COURT OF APPEALS
THIRTEENTH CIRCUIT
March Term, 2011
No. 11-0001**

**HECTOR HILLDALE
APPELLANT**

v.

**A BIG CORPORATION, INC.
APPELLEE**

**On appeal from the
United States District Court for the
Central District of OZ**

BRIEF FOR THE APPELLEE

**By: Raymond Chow
Section #4
April 4, 2011**

QUESTION PRESENTED FOR REVIEW

1. Whether the district court properly held that an employee's beliefs are not a bona fide religion where they do not address fundamental questions but rather are political, personal, and social satire or parody.
2. Whether the district court properly held that an employee's belief is not sincerely held when he demonstrates inconsistency in his actions and attends events only when convenient to him.
3. Whether the district court properly held that an employee did not have a temporal mandate where there is evidence that the attendance of the event would be a secular, personal preference.
4. Whether the district court properly grants a defendant's motion for summary judgment where there remain no genuine issues of material fact.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW..... i

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES..... iii

OPINION BELOW..... 1

JURISDICTION..... 1

STANDARD OF REVIEW..... 1

STATEMENT OF THE CASE..... 1

SUMMARY OF THE ARGUMENT..... 2

ARGUMENT..... 4

 I. ABC IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW BECAUSE
 HE DEMONSTRATES A LACK OF GENUINE ISSUE AS TO MATERIAL FACTS 4

 II. HILLDALE FAILS TO ESTABLISH A PRIMA FACIE CASE OF TITLE VII
 RELIGIOUS DISCRIMINATION THAT ALLOWS FOR RECOVERY UNDER 42 U.S.C. §
 2000e-2(a)(i) 5

 A. Hilldale does not sincerely hold a bona fide religious belief 6

 1. The CSG is not a bona fide religion nor are Hilldale’s
 belief religious in his own scheme of things..... 6

 2. Hilldale’s belief is not sincerely held..... 10

 B. The practice of Hilldale’s religious belief did not conflict
 with an employment duty. 12

TABLE OF AUTHORITIES

Cases

Africa v. Pennsylvania, 662 F.2d 1025, 1032 (3d Cir. Pa. 1981). 7, 8, 9
EEOC v. Univ. of Detroit, 904 F.2d 331, 334 (6th Cir. Mich. 1990).... 1
Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. Or. 1993)..... 5
Int'l Soc'y for Krishna Consciousness v. Barber, 650 F.2d 430, 441 (2d Cir. 1981) 10, 11, 12
Malnak v. Yogi, 592 F.2d 197, 207 (3d Cir. 1979)..... 7, 9
Patrick v. Le Fevre, 745 F.2d 153, 159 (2d Cir. N.Y. 1984)..... 10, 11
Redmond v. GAF Corp., 574 F.2d 897, 901 (7th Cir. Ill. 1978)..... 6
Tiano v. Dillard Dep't Stores, 139 F.3d 679, 682 (9th Cir. Ariz. 1998) 12, 13
United States v. Seeger, 380 U.S. 163, 184 (U.S. 1965)..... 7

Statutes

29 C.F.R. § 1605.1 (2011) 7
42 U.S.C. § 2000e-2(a) (i) 5, 6

OPINION BELOW

The opinion of the United States District Court for the Central District of Oz granting ABC's motion for summary judgment is available in a separately printed slip opinion at Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001).

JURISDICTION

This Court has appellate jurisdiction over the district court's final order pursuant to 28 U.S.C. § 1291 (1982).

STANDARD OF REVIEW

Because the district court found no genuine issue of material fact and granted summary judgment, this Court applies a de novo standard of review. EEOC v. Univ. of Detroit, 904 F.2d 331, 334 (6th Cir. Mich. 1990). All reasonable inferences are drawn in favor to the non-moving party when determining if a genuine issue of material fact exists. Id.

STATEMENT OF THE CASE

Plaintiff-Appellant, Hector Hilldale, filed this Title VII religious discrimination case against Defendant-Appellee, A Big Corporation, Inc. (hereafter "ABC") on December 1, 2010. (Record 1-3) The district court granted ABC's Motion for Summary Judgment on February 21, 2011. Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001). Hilldale filed his notice of appeal thereafter.

ABC is a television broadcasting corporation based in Sunny, OZ. (R. 1) ABC is "an 'employer' within the meaning of Title VII of the Civil Rights Act of 1964." (R. 1, 4) In May of 1999, ABC hired Hilldale as a web interactive producer, employed at-will. (R. 2) Hilldale claims membership in The Church of the SubGenius since 1991. (R. 2, 7) To demonstrate the CSG's important in

his life, Hilldale became an ordained minister in October of 2001, formed a "Clench" (a group of local members living in the same geographic area), and participated in the production of publications (among which are Exhibit A, which he solely authored). (R. 2, 7) July 5 is a holiday known as X-Day to the CSG, although the CSG also claims that every day is a holiday. (R. 16-17) From 1996 until 2010, X-Day was celebrated at the Brushwood Folklore Center in Sherman, New York. (R. 12, 16) Beginning with the 2011 X-Day, it will be celebrated at Wisteria in Pomeroy, Ohio. (R. 16)

Hilldale requested a leave of absence on May 15, 2010 for the week of July 5, 2010 to attend the 2010 X-Day event. (R. 2) Hilldale told his direct supervisor at ABC that he would be traveling to Ohio. (R. 9) ABC denied the request on May 16, 2010 because ABC has a "no-leave" policy in place during the month of July to handle increased work load. (R. 2) Hilldale was informed if he took a leave of absence he would lose his job. (Id.) Hilldale took an unauthorized leave, and upon his return on July 12, 2010, he was informed he had "voluntarily resigned his position as interactive web producer." (R. 3)

The district court found that the Church of the Subgenius is not a bona fide religion pursuant to Title VII of the Civil Rights Act of 1964, that Hilldale does not sincerely hold those beliefs, and that Hilldale did not have a temporal mandate to attend the X-Day event. Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001). The District Court granted ABC's motion for summary judgment on those grounds. Id.

SUMMARY OF THE ARGUMENT

This Court should uphold the District Court's grant of summary judgment. Hilldale cannot survive summary judgment because there are no issues of material fact remaining under 42 U.S.C. § 2000e-2(a)(i), which

requires Hilldale to prove, among other things, that he had a bona fide religious belief, the practice of which conflicted with an employment duty. To show the first prong, that a religious belief is bona fide, the courts apply the definition of religion set out under 1st Amendment free expression and military conscientious objection cases. It requires that the belief be religious in one's own scheme of things, and that it be sincerely held.

To determine the former, the courts apply a parallel-brief approach that requires those beliefs to occupy the same position that an orthodox religion would in another person. The courts consider three useful indicia. The first indicium asks whether the beliefs address many fundamental and ultimate questions; the CSG fails it by not addressing personal morality, nor human mortality. Further, the CSG resembles secular philosophy rather than religious contemplation. The second indicium requires the beliefs to be more than a single-faceted ideology, that they consist of something more than isolated, unconnected ideas. The CSG's pursuit of Slack, the CSG's central tenet, is unconnected to any of its other icons, traditions, and holidays. The third indicium looks for signs of a formal structure that is comparable to orthodox religions. While the CSG does have structure, it exists only as a satire of other religions, and such parody should not be considered a good faith example of religious structure.

To determine if one's beliefs are sincerely held, the court will analyze two factors: the consistency in his actions, and whether he materially gains from them. Hilldale demonstrates inconsistency when he bragged of his income (something scorned in a pursuit of Slack), by only attending four of the fifteen previous X-Day events, and by telling his supervisor his pilgrimage will occur in Ohio when the official pilgrimage

site for the 2010 X-Day event was in New York. The second factor looks to see if Hilldale benefited materially, and it is inferable he received at least some material benefit in traveling to Ohio.

Accordingly, Hilldale fails to demonstrate he holds a bona fide religious belief, but even if that belief were bona fide, it would not conflict with an employment duty. Conflict with an employment duty requires a temporal mandate. To show a temporal mandate, a court considers three. First, one must provide evidence beyond one's unilateral statement; Hilldale himself authored the materials supporting his contention. Second, one should not have a financial stake in attendance; this factor is not relevant because the record is silent on travel and finances. Lastly, attendance must be more than a personal preference. It is inferable that his attendance is solely a personal preference because Hilldale previously allowed secular considerations to control past attendances.

The District Court properly granted ABC's motion for summary judgment, which is appropriate because Hilldale failed to establish a genuine issue as to any material fact. The District Court's judgment should stand.

ARGUMENT

The district court properly granted ABC's motion for summary judgment because Hilldale failed to bring a claim upon which relief can be granted under 42 U.S.C. § 2000e-2(a)(i). Hilldale cannot establish that the CSG is a bona fide religion, nor that his belief in it is sincerely held, nor that he had a temporal mandate to attend the X-Day event on July 5, 2010.

I. ABC IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW BECAUSE THERE IS NO GENUINE ISSUE AS TO MATERIAL FACTS

Summary judgment is only "appropriate when the moving party demonstrates that there is no genuine issue as to any material fact and that

the moving party is entitled to judgment as a matter of law.” EEOC v. Red Robin Gourmet Burgers, Inc., No. C04-1291JLR, 2005 U.S. Dist. LEXIS 36219, at *5 (W.D. Wash. Aug. 29, 2005) (citing Fed. R. Civ. P. 56(c)). The moving party begins by “identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” Id. (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323 (U.S. 1986)). Once identified, “the burden shifts to the non-moving party to establish that a genuine issue as to any material fact exists.” Red Robin at *5 (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (U.S. 1986)). The District Court properly found that Hilldale is unable to demonstrate that he sincerely holds his belief in the CSG, that CSG is not a bona fide religion, and that there was no temporal mandate to attend the July 5, 2010 event. Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001). With no material facts remaining, the District Court properly granted ABC’s motion for summary judgment. See id.

II. HILLDALE FAILS TO ESTABLISH A PRIMA FACIE CASE OF TITLE VII RELIGIOUS DISCRIMINATION THAT ALLOWS FOR RECOVERY UNDER 42 U.S.C. § 2000e-2(a) (i)

To recover for religious discrimination under 42 U.S.C. § 2000e-2(a) (i), Hilldale bears the burden of proof in establishing a prima facie case of religious discrimination. He must meet this burden by proving that:

- (1) he had a bona fide religious belief, the practice of which conflicted with an employment duty;
- (2) he informed his employer of the belief and conflict;
- and (3) the employer threatened him with or subjected him to discriminatory treatment, including discharge, because of his inability to fulfill the job requirements.

Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. Or. 1993). Hilldale fails to establish the first prong: that Hilldale had a bona fide religious belief,

and even if he did, it fails to conflict with an employment duty requirement.

(R. 6) The district court properly held that Hilldale failed to establish either component. Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001).

A. Hilldale does not sincerely hold a bona fide religious belief
Hilldale's beliefs are not religious, but rather are political, personal, and social. Religion includes "all aspects of religious observance and practice, as well as belief." 42 U.S.C.A. § 2000e (West 2010). In hearing other Title VII cases, the courts have relied upon the definition of religion as set out under 1st Amendment free expression cases and military conscientious objection cases:

The proper test to be applied to the determination of what is "religious" under § 2000e(j) can be derived from the Supreme Court decisions in Welsh v. United States and United States v. Seeger, i.e., (1) is the "belief" for which protection is sought "religious" in person's own scheme of things, and (2) is it "sincerely held."

Redmond v. GAF Corp., 574 F.2d 897, 901 (7th Cir. Ill. 1978) (citations omitted). Hilldale fails to demonstrate either part of the two-part test.

1. The CSG is not a bona fide religion nor are Hilldale's belief religious in his own scheme of things

Hilldale's set of non-traditional beliefs do not qualify as a bona fide religion because it fails the parallel-belief approach used to compare the questioned beliefs by analogy to traditional beliefs:

[The new definition of religious belief] would appear to be properly described as a definition by analogy. The Seeger court advertently declined to distinguish beliefs holding "parallel positions in the lives of their respective holders." Presumably beliefs holding the same important position for members of one of the new religions as the traditional faith holds for more orthodox believers are entitled to the same treatment as the traditional beliefs.

Malnak v. Yogi, 592 F.2d 197, 207 (3d Cir. 1979). To this end, the court in

Malnak adopted three useful indicia: whether the beliefs address "fundamental and ultimate questions having to do with deep and imponderable matters", the comprehensiveness of the beliefs, and whether the beliefs can be "recognized by the presence of certain formal and external signs". Africa v. Pennsylvania, 662 F.2d 1025, 1032 (3d Cir. Pa. 1981) (citing Malnak, 592 F.2d at 207). Hilldale fails to establish the first two indicia in their entirety, and his demonstration of the third should be rejected.

As to the first indicium, the tenets of the CSG do not address many fundamental and ultimate questions. In Africa, the court noted that belief in a supreme being would qualify as a fundamental concern, but found MOVE to be not theistic. Africa, 662 F.2d at 1033; but cf. United States v. Seeger, 380 U.S. 163, 184 (U.S. 1965) (where the court forecloses upon questioning the existence of one's supreme being). The CSG also does not claim belief in a supreme being. (R. 7) Further, MOVE did not "appear to take a position with respect to matters of personal morality, human mortality, or the meaning and purpose of life." Africa, 662 F.2d at 1033. Nowhere in the record does the CSG attempt to address the concept of morality. As for mortality, the CSG only discusses death as it relates to its ordained ministers. (R. 13) One may believe in the CSG without being a minister, and such a person would not have any guidance on the issue of mortality.

As for the meaning and purpose of life, the court in Africa found that Africa's concerns were primarily personal (MOVE's requirement for a raw-food diet was predicated on the fact that it is "'healthy'") and social rather than spiritual. Africa, 662 F.2d at 1033-34. Africa's mindset therefore reflects a "product of secular philosophy [rather] than of a religious orientation." Africa, 662 F.2d at 1033.

In the instant case, the CSG's central belief is the pursuit of Slack, "which generally stands for the [effects] that comes when you stop worrying about personal goals". (R. 15) Hilldale's pursuit of Slack is grounded in a desire for personal "satisfaction with what you have and who you are", and lacks any spirituality. (Id.) The district court correctly categorized this pursuit as nothing but "social and political cynicism". Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001).

The second indicium requires that the "religion must consist of something more than a number of isolated, unconnected ideas," Africa, 662 F.2d at 1035, and Hilldale cannot demonstrate that the different tenets of the CSG are connected or otherwise are consciously aimed at a singular goal. In Africa, MOVE was compared to The Science of Creative Intelligence, a religion whose teachings were consciously aimed at answering "questions concerning the nature both of world and man, the underlying sustaining force of the universe, and the way to unlimited happiness." Africa, 662 F.2d at 1035 (citing Malnak, 592 F.2d at 213). The former was found to not share a comparable world view. Africa, 662 F.2d at 1035. To the Africa court, MOVE was nothing more than a single-faceted ideology of philosophical naturalism, and lacked the comprehensiveness of other religions. Id. Here, the CSG suffers from a similar deficiency. Even if assuming, arguendo, that the pursuit of Slack is a valid religious aim and not just the manifestation of social/political cynicism, it stands alone as an isolated instance, unsubstantiated by the icons, traditions, and holidays embraced by the CSG. (R. 11-20) The record puts forth no relationship between the "Bob" or Dobbs icons and Slack; neither are the formation of Clenches nor attendance of Devivals or X-Day events intended to further the pursuit of Slack. (Id.)

Furthermore, the court in Africa made note that MOVE "contends that, since no one day is any more special than another, for MOVE members every day of the year can be considered a religious 'holiday'." Africa, 662 F.2d at 1027. Africa attempted to establish a pervasiveness of religious belief by asserting they, along with a holiday, are being practiced at every moment of his life, but the court rejected this position:

It is one thing to believe that, because of one's religion, day-to-day living takes on added meaning and importance. It is altogether different, however, to contend that certain ideas should be declared religious . . . merely because an individual alleges that his life is wholly governed by those ideas. We decline to adopt such a self-defining approach to the definition-of-religion problem.

Africa v. Pennsylvania, 662 F.2d 1025, 1035 (3d Cir. Pa. 1981). Comparably, the CSG considers every day cause for celebration because every day is "Bob"'s birthday. (R. 17) Further, every day of the year is assigned either a feast day or holy day. (Id.) As MOVE failed to support the second indicium by showing pervasiveness, neither should the CSG. See Africa, 662 F.2d at 1035.

While Hilldale may be able to facially demonstrate the structural requirements of the third indicium, the legitimacy of his evidence should be questioned. The third indicium looks for the presence of "any formal, external, or surface signs that may be analogized to accepted religions. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with the traditional religions." Malnak, 592 F.2d at 209. However, it seems logically necessary for the court, in discussing the presence of those features, to assume those features exist in good faith and not as satire or parody.

Here, the CSG has many of the structural elements as those delineated

in Malnak: Devivals compare to formal services and ceremonial functions, Clenches compare to clergies, the holy days and X-Day compare to holidays, etc. (R. 13-20) However, Exhibit A contains language that explicitly establishes both the individual parts of the CSG, as well as the CSG as a whole, are entirely satirical (e.g. "These terms, used in a manner that deliberately parodies Scientology," (R. 13); "The organization is widely seen as a satire that mocks organized religion," (R. 13); "It scarcely needs mentioning that x-day is a parody of the popular christian [SIC] notion of the rapture." (R. 16). By his own admission, Hilldale himself authored Exhibit A, provided Exhibit A to his supervisor, and then entered it into evidence. (R. 2) In doing so, he admits many of these features are satirical in nature. A satirical structure should not be permitted to meet the requirements of the third indicium.

Even if the third indicium is accepted, Hilldale fails to demonstrate the first two indicia and so the District court correctly found the CSG to not be a bona fide religion.

2. Hilldale's belief is not sincerely held

While summary judgment is generally inappropriate where "subjective issues regarding a litigant's state of mind, motive, sincerity or conscience are squarely implicated", Patrick v. Le Fevre, 745 F.2d 153, 159 (2d Cir. N.Y. 1984), a court should pass this bar when Hilldale's own evidence and testimony demonstrate insincerity sufficient to warrant summary judgment as a matter of law. "Sincerity analysis seeks to determine an adherent's good faith in the expression of his religious belief." Le Fevre, 745 F.2d at 157 (citing Int'l Soc'y for Krishna Consciousness v. Barber, 650 F.2d 430, 441 (2d Cir. 1981)). Where those beliefs "are animated by motives of deception

and fraud . . . [they] must be subject to governmental invasion." Le Fevre, 745 F.2d at 157. The Barber court analyzes two factors to determine good faith: consistency and material gain. Barber, 650 F.2d at 441.

Hilldale fails the first factor as his actions have material inconsistencies. The Barber court held that "an adherent's belief would not be 'sincere' if he acts in a manner inconsistent with that belief". Barber, 650 F.2d at 441 (citing Dobkin v. District of Columbia, 194 A.2d 657 (D.C. 1963)). The district court noted Hilldale "acts in a wholly inconsistent manner with respect to the teachings of the organization". Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001). The CSG's central belief, the pursuit of Slack, "in essence . . . is about finding satisfaction with what you have and who you are, as opposed for searching for satisfaction in accomplishment." (R. 15) Yet, Gillian Smith testifies that "[Hilldale] even bragged to me that his salary was higher than one of the other interactive web producers." (R. 9) Bragging about a higher wage implies Hilldale derived satisfaction in his accomplishment, an act scorned by the CSG. Further, by Hilldale's own admission, he has only attended four of the fifteen annual X-Day events that occurred during the years he claims to have been an active member of the CSG. (R. 7, 12) The District Court also found Hilldale "takes time off of work to attend events only when it suits him." Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001). Lastly, Hilldale claims to have "felt a 'calling' from Bob Dobbs, the founder of the CSG, to go on a pilgrimage to Ohio with other true SubGeniuses for the July 5 2010 X day event." (R. 7) However, by Hilldale's own Exhibit A, the 2010 X-Day event was held at the Brushwood Folklore Center in Sherman, NY, not in Ohio. (R. 12, 16)

Though not explicitly given, the court can infer a conclusion sufficient enough to at least consider the second factor. The Barber court held one can find insincerity where "there is evidence that the adherent materially gains by fraudulently hiding secular interests behind a veil of religious doctrine." Barber, 650 F.2d at 441. Because the 2010 X-Day event was not held in Ohio, (R. 12, 16), the only remaining reasons for traveling there are necessarily secular interests. While there is no evidence Hilldale expected to be paid during his leave, he still would have material gained in that he would have successfully had time off when all other employees would not have been afforded the same privilege. (R. 2, 9)

As Hilldale failed to show either two Barber factors, the District Court correctly found that Hilldale's beliefs were not sincerely held. Hector Hilldale v. A Big Corporation, Inc., No. 11-0001 (C.D. Oz. Feb. 21, 2001).

B. The practice of Hilldale's religious belief did not conflict with an employment duty.

Hilldale cannot demonstrate a bona fide religious belief, but assuming, arguendo, that the court finds otherwise, that belief would not conflict with an employment duty. To conflict with an employment duty, the belief would need to have a temporal mandate that requires the employee to exercise that belief at a specific date and time, rather than at some general point in time. See, e.g., Tiano v. Dillard Dep't Stores, 139 F.3d 679, 682 (9th Cir. Ariz. 1998). The Tiano court held that:

[W]here an employee maintains that her religious beliefs require her to attend a particular pilgrimage, she must prove that the temporal mandate was part of the bona fide religious belief. Otherwise, the employer is forced to accommodate the personal preferences of the employee - the timing of the trip. Title VII does not protect secular preferences.

Tiano v. Dillard Dep't Stores, 139 F.3d 679, 682 (9th Cir. Ariz. 1998). In

finding Tiano failed to demonstrate a temporal mandate, the court gave weight to three factors: the only evidence of a temporal mandate was Tiano's "lone unilateral statement"; that Tiano's travel costs were already paid and non-refundable; and that Tiano's friend's testimony "never supplied a specific reason for her desire to go on this particular pilgrimage", and further that the timing of the trip was a personal preference because he did not "recall a definite reason, just [that the two of them] had a strong desire to go." Tiano, 139 F.3d at 682.

The instant case cannot be substantially distinguished from Tiano. See id. First, Hilldale fails to put forth evidence that independently substantiates a temporal mandate. Hilldale himself authored Exhibit A, the document that details the X-Day event. (R. 2) Self-authored documents should merge into the author's statement, leaving Hilldale with just his unilateral statement. Secondly, the record is silent on Hilldale's method of transportation, so the issue of refundability and financial stake should not be considered. Lastly, while in Tiano a friend's testimony was used to establish the timing of the trip was just a personal preference, we need not look beyond Hilldale's own actions here. Hilldale has previously let secular considerations such as affordability control his attendance, which suggests his X-Day event attendance is purely personal preference. (R. 7)

CONCLUSION

For the foregoing reasons, the decision of the United States District Court for the Central District of OZ granting ABC's motion for summary judgment should be affirmed.

Respectfully submitted,
Counsel for the Appellee