

COLLIER V. HARLAND CLARKE CORP.: REINFORCING A HIGH BAR: ELEVENTH
CIRCUIT RULES IN FAVOR OF EMPLOYER ON DISABILITY, AGE
DISCRIMINATION, AND PRIVACY CLAIMS

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In *Collier v. Harland Clarke Corp.*,¹ the U.S. Court of Appeals for the Eleventh Circuit addressed a claim brought by a sixty-one-year-old terminated employee against his employer alleging violations of the Americans with Disabilities Act (the “ADA”),² the Age Discrimination in Employment Act (the “ADEA”),³ and Alabama privacy law. The United States District Court for the Northern District of Alabama granted summary judgment in favor of the employer on all claims.⁴ On appeal, the Eleventh Circuit affirmed the district court’s decision, holding that (1) the employee failed to show that his perceived disability was the but-for cause of his termination under the ADA;⁵ (2) the employee failed to show the employer’s reasons for the termination were merely pretext for discrimination under the ADEA;⁶ (3) the employee failed to properly plead his retaliation claim in his complaint;⁷ and (4) the employer’s actions did not violate the employee’s right to privacy under Alabama law.⁸

The appellant, Robert Collier, worked at Harland Clarke Corporation as a director in their Forms division, which supplied paper products to financial institutions.⁹ Collier’s duties included managing employees, but he did not directly handle customer accounts himself.¹⁰ In 2014, Harland Clarke sought to shift their focus to commercial print and reduce their workforce, believing that changes in bank practices would reduce the demand for paper products.¹¹ This reduction only impacted Collier’s position, who

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¹ *Collier v. Harland Clarke Corp.*, 820 F. App’x 874, 876 (11th Cir. 2020).

² See 42 U.S.C. § 12112(a). The ADA prohibits covered employers from “discriminat[ing] against a qualified individual on the basis of disability in regard to . . . [the] discharge of employees . . .” *Id.*

³ See 29 U.S.C. § 623(a)(1). The ADEA prohibits employers from terminating an employee because of his age.

⁴ *Collier*, 820 F. App’x at 876.

⁵ *Id.* at 879.

⁶ *Id.* at 881.

⁷ *Id.*

⁸ *Id.* at 882.

⁹ *Id.* at 876. The term “forms” refers to paper products such as checks, ledgers, and bank receipts. *Collier*, 820 F. App’x at 876.

¹⁰ *Id.*

¹¹ *Id.* at 876–77.

was sixty-one years old at the time of his termination.¹² Steve Moyer, Senior Vice President of the Community Markets Division, partially attributed his decision to eliminate Collier's position due to a "decline in Forms' revenue," although evidence in the record indicates the financial situation may not have been as dire as Moyer stated.¹³ In paperwork prepared by Moyer and Sonia Ellison, an HR representative, Moyer claimed Collier lacked both skills and expertise in commercial print and "direct business relationships with large community bank accounts/clients."¹⁴

Contrary to Moyer's cited reasons for Collier's termination, Collier argued Moyer's decision was motivated by the health conditions he experienced at the time resulting from back surgery.¹⁵ Collier testified that Moyer occasionally would ask about how he was handling his surgery recovery, and other employees made various comments about his lack of mobility.¹⁶ Specifically, one employee allegedly stated that the company needed to "get rid of" Collier, although neither Collier nor his source of this information heard this comment firsthand.¹⁷

On January 9, 2015, Moyer and Ellison informed Collier his Forms Director position was being eliminated as a result of this workforce reduction.¹⁸ Collier asked Moyer if he could shift to a sales position selling forms and commercial print, but Moyer told him no such position was available.¹⁹ Ellison told Collier he would be considered for any position within Harland Clarke he applied for; however, neither Ellison nor Moyer informed Collier about an available director position in a different department.²⁰ That position was later filled by a person two years younger than Collier.²¹

After his termination, Collier applied for and received short-term disability benefits with Harland Clarke.²² Ellison sent Collier a Benefits Summary Sheet that summarized his separation benefits and indicated his severance package was not conditioned on him signing the separation

¹² *Id.* at 876.

¹³ *Id.* at 876–77.

¹⁴ *Id.* at 877 (internal quotations omitted).

¹⁵ *Collier*, 820 F. App'x at 877. Prior to his termination, Collier took three months of disability leave after undergoing back surgery. *Id.* Collier also testifies he once attended a division meeting using a wooden cane. *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Collier*, 820 F. App'x at 877.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

agreement.²³ However, the summary was “flatly wrong” when compared to the actual terms of Collier’s severance package, which was in fact conditioned on him signing the separation agreement.²⁴ By this time, Collier had filed discrimination claims under the ADA and ADEA with the Equal Employment Opportunity Commission (the “EEOC”).²⁵ Because the separation agreement also required Collier to release those claims, he did not sign the agreement.²⁶

Collier’s disability benefits claim was ultimately denied after Ellison directly asked the administrator for an expedited decision because of the pending EEOC charge and questioned why more information was needed about Collier’s health.²⁷ The administrator denied Collier’s claim on the grounds that the evidence did not support a grant of disability benefits, and the company did not override the denial.²⁸ Collier did not apply for another position at the company and his previous duties were divided among other directors.²⁹ Harland Clarke informed some of Collier’s customer contacts that he retired, which Collier stated was false and argued the suggestion prevented him from obtaining job leads.³⁰

Collier filed suit in the United States District Court for the Northern District of Alabama, asserting the same discrimination claims under the ADA and ADEA that he filed with the EEOC, as well as a retaliation claim regarding his access to short-term disability benefits and a severance package.³¹ Collier also claimed that Harland Clarke’s communications with the disability benefits administrator and his customer contacts amounted to an “intrusion upon seclusion and false light violation of privacy.”³² The district court granted summary judgment in favor of Harland Clarke on all claims.³³

Reviewing the district court’s decision de novo, the Eleventh Circuit addressed whether the district court erred in granting summary judgment in favor of the employer on each claim.³⁴ On appeal, Collier argued the district court erred in granting summary judgment because the evidence showed that:

²³ *Id.* The Benefits Summary Sheet stated Collier’s separation benefits included twenty-six weeks of severance pay, payment for unused paid time off, and unemployment compensation. *Id.*

²⁴ *Collier*, 820 F. App’x at 877.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 877–78.

²⁸ *Id.* at 878.

²⁹ *Id.*

³⁰ *Collier*, 820 F. App’x at 878.

³¹ *Id.* at 878, 881.

³² *Id.* at 878.

³³ *Id.*

³⁴ *Id.*

(1) Harland Clarke's proffered reasons for eliminating his position and terminating him . . . were pretexts for disability discrimination; (2) there was a "convincing mosaic" of circumstantial evidence of age discrimination; (3) under an "intersectional discrimination" theory, Harland Clarke discriminated against him based on a combination of his disability and age; (4) Harland Clarke retaliated against him for filing a charge of disability and age discrimination with the [EEOC]; and (5) Harland Clarke placed him in a false light and publicly disclosed his private information.³⁵

The Eleventh Circuit assessed the first claim according to the *McDonnell Douglas* framework, which is applicable to claims of discriminatory discharge under both the ADA and ADEA.³⁶ This framework suggests that if a plaintiff establishes a prima facie case for discrimination and the employer "proffers a legitimate, nondiscriminatory reason for its decision," then the plaintiff must prove the employer's reason was pretext for discrimination.³⁷ To establish a prima facie case for disability discrimination under the ADA, the plaintiff must show that at the time of the adverse employment decision, "(1) he was regarded as having a disability; (2) he was a qualified individual for the position in question; and (3) the employer discriminated against him because of his disability."³⁸

First, Collier argued that Harland Clarke's proffered reasons for his termination were pretext for discrimination because of his disability.³⁹ The Eleventh Circuit, however, held that Collier failed to establish a prima facie case for disability discrimination.⁴⁰ More specifically, the court determined that the evidence in the record did not support Collier's assertion that his perceived disability was the but-for cause of his termination.⁴¹ The court noted that, when determining causation, comments either unrelated to the employment decision or made by non-decision makers "are of little probative value in showing discriminatory intent."⁴² The court found that the remarks most relative to the court's inquiry—Moyer's questions about Collier's recovery—were neither evidence of discriminatory intent nor indications that

³⁵ *Id.* at 876.

³⁶ *Collier*, 820 F. App'x at 878. *See generally* *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

³⁷ *Collier*, 820 F. App'x at 878 (citing *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1359–61 (11th Cir. 1999)).

³⁸ *Id.*

³⁹ *Id.* at 876.

⁴⁰ *Id.* at 879.

⁴¹ *Id.*

⁴² *Id.*

he was motivated by Collier's use of a cane.⁴³ Furthermore, the court was skeptical of Collier's argument that the company's two offered reasons for the delay in termination were evidence of pretext, reasoning both explanations could have played complementary roles in the delay.⁴⁴ Since Collier did not prove his perceived disability was the but-for cause of his termination, the court affirmed summary judgment on the ADA claim.⁴⁵

Next, regarding his ADEA claim, Collier claimed that the employer's proffered nondiscriminatory reasons for his termination were pretext for age discrimination.⁴⁶ Collier argued this discriminatory intent could be inferred when viewing the record as a "mosaic" of circumstantial evidence.⁴⁷ However, whether analyzed under the *McDonnell Douglas* framework or a mosaic standard, the court held the record lacked any evidence suggesting the company's reasons were pretext and found that age was not a motivating factor in Collier's termination.⁴⁸ Additionally, the court held that Harland Clarke was not liable for failing to create a new position for him.⁴⁹ The court rejected Collier's questioning of the business judgment behind his termination as evidence of pretext, because the court's inquiry was limited to the employer's honest explanation for its decision, not the prudence of that decision.⁵⁰ Thus, the court affirmed the grant of summary judgment on Collier's ADEA claim.⁵¹

Third, the court addressed Collier's claim that Harland Clarke retaliated against him for filing charges under the ADA and ADEA with the EEOC.⁵² The elements for a prima facie case of retaliation are the same under both acts, requiring the plaintiff to show that "(1) he engaged in statutorily protected expression; (2) he suffered an 'adverse employment action'; and (3) there was a causal link between the adverse action and his protected

⁴³ *Collier*, 820 F. App'x at 879. The court did not analyze the comments made by other employees not connected to Moyer's decision because they were of "extremely limited probative value" as to the intent of the decisionmaker. *Id.*

⁴⁴ *Id.* Harland Clarke stated Collier's initial termination was delayed because the winter holidays were approaching and another director was unexpectedly terminated. *Id.* Collier attempted to use this testimony as evidence of the company's discriminatory intent, arguing these reasons were contradictory. *Id.*

⁴⁵ *Id.*

⁴⁶ *Collier*, 820 F. App'x at 880.

⁴⁷ *Id.* at 876.

⁴⁸ *Id.* at 880–81.

⁴⁹ *Id.* at 880. The ADEA "does not mandate that employers establish an interdepartmental transfer program during the course of" a workforce reduction. *Id.*

⁵⁰ *Id.*

⁵¹ *Collier*, 820 F. App'x at 881.

⁵² *Id.*

expression.”⁵³ The plaintiff must plead this claim in the complaint for it to be properly considered by the district court.⁵⁴ Here, the court found that Collier’s complaint made no reference to his entitlement to short-term disability benefits or a severance package.⁵⁵ Instead, Collier only included this argument in his brief opposing summary judgment.⁵⁶ Since Collier did not properly amend his complaint to include his retaliation claim, the court affirmed summary judgment.⁵⁷

Finally, Collier argued Harland Clarke violated his privacy by (1) intruding on his seclusion by discussing his health with the benefits administrator, and (2) placing him in a false light by saying he retired.⁵⁸ To assert an invasion of privacy under Alabama law, a plaintiff must show the intrusion was “‘in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.’”⁵⁹ A false light claim occurs when an individual, either knowingly or recklessly, publicly shares information concerning another that places them in a false light that would be “‘highly offensive to a reasonable person.’”⁶⁰ The court considers both the means used and the purpose for obtaining the information to determine whether one’s actions amount to wrongful intrusion.⁶¹ On this matter, the court found Harland Clarke’s inquiries to the benefits administrator were “reasonable attempts” to resolve Collier’s pending disability request and therefore were not an “offensive or objectionable” intrusion of privacy.⁶² The court also determined the statements made by the company to customers conveying that Collier retired did not paint him in a false light because they were not made to the public and Collier could not show how such statements were highly offensive.⁶³ Thus, the court affirmed

⁵³ *Id.* (quoting *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1287 (11th Cir. 1997)).

⁵⁴ *Id.*

⁵⁵ *Id.* The only claim in his complaint on this matter was that he “was terminated and has been refused transfer, rehire, interview, and all consideration for open and available jobs.” *Id.*

⁵⁶ *Collier*, 820 F. App’x at 881.

⁵⁷ *Id.*

⁵⁸ *Id.* at 878. Under Alabama law, an invasion of privacy claim can include “(1) an intrusion upon the plaintiff’s physical solitude or seclusion, (2) ‘giving publicity to’ private information ‘that violates the ordinary decencies,’ (3) placing the plaintiff in a false position in the public eye, or (4) the appropriation of ‘some element of the plaintiff’s personality for a commercial use.’” *Id.* at 881–82 (quoting *Butler v. Town of Argo*, 871 So. 2d 1, 12 (Ala. 2003)).

⁵⁹ *Id.* at 882 (quoting *Butler*, 871 So. 2d at 12).

⁶⁰ *Id.* (quoting *Ex parte Bole*, 103 So. 3d 40, 51–52 (Ala. 2000)).

⁶¹ *Collier*, 820 F. App’x at 882.

⁶² *Id.*

⁶³ *Id.*

summary judgment against Collier on his state law invasion of privacy claim.⁶⁴

Although the Eleventh Circuit expressed sympathy for Collier in his termination, the court held the district court did not err in granting summary judgment in favor of the employer because there were no genuine issues of material fact for any of Collier's claims.⁶⁵ *Collier* is significant in the employment discrimination context because it reaffirms the notion that in order to survive summary judgment, a plaintiff must provide enough evidence to establish a prima facie case of discrimination and an employer's discriminatory intent beyond mere speculation. Regarding Alabama privacy laws in an employment context, *Collier* distinguishes when an employer's actions are reasonable or insufficient to constitute an invasion of privacy. Notably, the court did not discuss Collier's "intersectional discrimination" theory, but instead briefly resolved the matter in a footnote.⁶⁶ It is unclear how the court would have addressed this intersectional discrimination theory had they found Collier had viable ADA and ADEA claims. Regardless, *Collier* reinforces the high standard and burden of proof required to succeed on age and disability discrimination claims.⁶⁷

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 881 n.3. The court held that even if Collier had properly raised an "intersectional discrimination" theory, here Collier's failure to provide evidence showing age or disability discrimination precluded a reasonable factfinder from inferring that both factored into his termination. *Collier*, 820 F. App'x at 881 n.3.

⁶⁷ The court emphasized that "a mere scintilla of evidence" is not sufficient to establish a genuine issue of material fact, nor that any issue of fact constitutes "a *genuine* issue of fact." *Id.* at 878–79.