Supreme Court Issues Non-Decision on "Me Too" Evidence

Insights
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Today the Supreme Court delivered its opinion in *Sprint v. Mendelsohn* reinforcing its long standing rule that district courts are afforded wide discretion on evidentiary matters. Practitioners were disappointed that the Court provided little, if any, guidance on the substantive issue before it. Instead the decision focuses more on the deference that appellate courts must give to the decisions of lower federal district courts, and holds only that admission of "me too" evidence is fact based and "depends on many factors...."

Background
Ellen Mendelsohn worked for Sprint/United Management Company from 1989 until 2002. She sued Sprint for disparate treatment based on her age under the Age Discrimination in Employment Act (ADEA) after she was selected for discharge during a company-wide reduction in force. The ADEA prohibits discrimination against employees 40 and over. Mendelsohn was 51 years old at the time of her termination and the oldest member in her group.

Prior to the trial, the federal district court for the District of Kansas granted Sprint's request to exclude evidence from five former employees over the age of 40 who were also terminated by Sprint as part of the company-wide RIF. This is sometimes referred to as "me too" evidence. But these employees did not work in Mendelsohn's group, nor did they work under any of the supervisors in her chain of command.

Sprint argued that any reference to alleged discrimination by any supervisor other than Mendelsohn's supervisors was irrelevant and unduly prejudicial to the issue of whether Sprint's decision to discharge Mendelsohn was motivated by her age. In contrast, Mendelsohn argued that the testimony of these former employees was relevant and admissible because it reflected Sprints' discriminatory intent in selecting her for the RIF.

The district court granted Sprint's motion and precluded Mendelsohn from presenting testimony from any employee who was not "similarly-situated." The court explained that "similarly-situated" meant only those employees who worked under Mendelsohn's direct supervisor, Paul Ruddick. No additional explanation was provided by the court. Following the eight-day trial, the jury returned a verdict in favor of Sprint finding that the company did not discriminate again Mendelsohn because of her age. Mendelsohn appealed.

The U.S. Court of Appeals for the 10th Circuit reversed the district court's ruling and remanded the case for a new trial. It held that the district court abused its discretion by applying a *per se* rule that excluded such "me too" testimony. The Supreme Court granted certiorari on the issue of whether the Federal Rules of Evidence require the admission of "me too" evidence, i.e., evidence from nonparties alleging discrimination by supervisors who played no role in the discrimination alleged by the plaintiff.

Supreme Court Dodges The Issue

A ruling one way or the other on that direct issue would have been highly significant, but the Court, in effect, side-stepped the issue, holding that while the district court did not necessarily apply a *per se* rule excluding such evidence, it was not possible to determine exactly what basis the court did use. Thus the case was remanded back down to the district court for clarification of the basis for its judgment.

What clarification the Court did offer is found in the concluding paragraphs of the unanimous decision. The Court declared that whether evidence of discrimination by other supervisors is relevant in an individual ADEA case "is fact based and depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case."

In other words, the bottom line is that "me too" evidence is neither *per se* admissible nor *per se* inadmissible. That decision is always within the province of the district court in the first instance.

For more information contact any attorney at Fisher Phillips.

This Legal Alert summarizes a particular decision of the Supreme Court. It is not intended to be, nor should it be considered as, legal advice for any particular factual situation.