

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AMANDA J. HOEFFER,

Plaintiff,

v.

MEMORANDUM AND ORDER

UNITED STATES CELLULAR CORPORATION,
TELEPHONE AND DATA SYSTEMS, INC.
and JEFFREY ALLEN,

06-C-725-S

Defendants.

Plaintiff Amanda J. Hoeffler commenced this action under the Family Medical Leave Act against defendants United States Cellular Corporation, Telephone and Data Systems, Inc. and Jeffrey Allen. In her first amended complaint she alleges that Jeffrey Allen fired her in violation of the Act.

On January 29, 2007 defendant Telephone and Data Systems, Inc. moved to dismiss plaintiff's complaint. This motion has been fully briefed and is ready for decision.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that plaintiffs can prove no set of facts in support of the claim which would entitle them to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must

contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

FACTS

For the purposes of deciding defendant's motion to dismiss the following facts alleged in the complaint are taken as true.

Plaintiff Amanda Hoeffler is an adult resident of Wisconsin. Defendant United States Cellular Corporation (U.S. Cellular) is a Delaware Corporation and does business in Wisconsin. Defendant Telephone and Data Systems, Inc. (TDS) is a Delaware corporation with its corporate headquarters in Chicago.

U.S. Cellular provided 77 per cent of TDS's consolidated revenues and 60 percent of its consolidated operating income in 2005. TDS' wireless operations are conducted through U.S. Cellular and its' subsidiaries. As of December 31, 2005 TDS owned over 80 percent of the combined total of both classes of common stock of U.S. Cellular. U.S. Cellular's management and operations are effectively controlled by TDS.

TDS has the power to elect all the directors of U.S. Cellular and controls approximately 95.7% of U.S. Cellular's Board of Directors voting power with respect to matters other than the choice of directors. Six of the ten members of the U.S. Cellular

Board are employees or executive officers of TDS or U.S. Cellular. Four directors of U.S. Cellular are also directors of TDS.

MEMORANDUM

TDS contends that it should be dismissed from the above entitled matter because it was not plaintiff's employer and cannot be held liable as the parent company of U.S. Cellular. In her first amended complaint plaintiff does not allege that TDS employed her but rather that TDS was U.S. Cellular's parent company.

In Papa v. Katy Industries, Inc., 166 F.3d 937, 941 (7th Cir. 1999), the Court held that in employment discrimination cases it respects basic principles of affiliate liability and will only find affiliate liability when a corporation acts to forfeit its limited liability. The Court states:

The basic principle of affiliate liability is that an affiliate forfeits its limited liability only if it acts to forfeit it-as by failing to comply with statutory conditions of corporate status, or misleading creditors of its affiliate, or configuring the corporate group to defeat statutory jurisdiction, or commanding the affiliate to violate the rights of one of its affiliate's employee.

In her first amended complaint plaintiff does not allege that TDS failed to comply with statutory conditions of corporate status, misled creditors of its affiliate or configured the corporate group to defeat statutory jurisdiction. She also does not allege that TDS commanded U.S. Cellular to violate plaintiff's rights. The only allegation plaintiff makes is "U.S. Cellular's management and

operations are effectively controlled by TDS." This allegation is insufficient to support an inference that TDS directed plaintiff's termination. Plaintiff has not alleged facts that support the affiliate liability of TDS. Accordingly, TDS' motion to dismiss will be granted.

ORDER

IT IS ORDERED that the motion of defendant Telephone and Data Systems, Inc. to dismiss plaintiff's complaint against it is GRANTED.

Entered this 22nd day of February, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge