

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 04 2009

RONALD DOYLE; et al.,

Plaintiffs - Appellants,

v.

CITY OF MEDFORD, an Oregon
municipal corporation; et al.,

Defendants - Appellees.

No. 07-35753

D.C. No. CV-06-03058-PA

MEMORANDUM*

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, District Judge, Presiding

Argued and Submitted March 3, 2009
Portland, Oregon

Before: GRABER, FISHER, and M. SMITH, Circuit Judges.

Plaintiffs, who are former employees of Defendant City of Medford, argue that the City's policy of denying health insurance coverage to retirees violates due process¹ and the Age Discrimination in Employment Act of 1967 ("ADEA").

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

¹ The due process claim is addressed in a separate published order certifying a question to the Oregon Supreme Court.

Plaintiffs assert that the district court abused its discretion in denying Plaintiffs' Federal Rule of Civil Procedure 56(f) motion to defer ruling on Defendant's summary judgment motion until Plaintiffs were able to conduct more discovery on the age discrimination claim. We agree.

We review for abuse of discretion the district court's decision on a Rule 56(f) motion. Burlington N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes, 323 F.3d 767, 773 (9th Cir. 2003). When a summary judgment motion "is filed so early in the litigation, before a party has had any realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any Rule 56(f) motion fairly freely." Id. In order to prevail on a Rule 56(f) motion, the "requesting party must show: (1) it has set forth in affidavit form the specific facts it hopes to elicit from further discovery; (2) the facts sought exist; and (3) the sought-after facts are essential to oppose summary judgment." Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir. 2008).

Plaintiffs' lawyer submitted an affidavit listing six topic areas in which discovery was necessary in order to defend properly against the summary judgment motion. That affidavit met all three of the Family Home criteria. First, it set forth in sufficient detail the facts that Plaintiffs hoped to elicit from further discovery.

Second, it is likely that the requested information exists, as Defendants were able to produce several documents relating to the decision-making process in support of their own summary judgment motion. Third, the information sought was essential to Plaintiffs' opposition to the summary judgment motion on the ADEA claim. Therefore, the district court abused its discretion in denying Plaintiffs' Rule 56(f) motion.

REVERSED and REMANDED with respect to the ADEA claim.