

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10864

Summary Calendar

ELLONA D. KIRTLEY,

Plaintiff-Appellant,

versus

DILLARD DEPARTMENT STORES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas
(3:91-CV-423-T)

March 12, 1996

Before HIGGINBOTHAM and PARKER, Circuit Judges, and BROWN*,
District Judge.

PER CURIAM:**

Plaintiff Ellona Kirtley sued her former employer, Dillard Department Stores, Inc., alleging that Dillard discharged her because of her age in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621-34. After the close of the plaintiff's evidence, the district court granted Dillard's motion for judgment as a matter of law. We reverse.

*District Judge of the Eastern District of Texas, sitting by designation.

** Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Kirtley was the only witness to testify in this case. According to her testimony, which we accept as true, Dillard fired her after an incident in which she purchased perfume in order to win a sales contest. When Kirtley told her ultimate manager that she intended to make these purchases, his response was "Go for it." Another Dillard supervisor provided Kirtley with information necessary to make the transactions count for contest purposes. After the incident, Kirtley received two corrective notices; one of these disciplined her for leaving a package of the perfume she had purchased in the store, in spite of the fact that fragrance employees had for a substantial period of time made a practice of leaving purchased items in their department without incident. After Kirtley received the correctives, a supervisor told her that the matter was closed. About one week later, however, Kirtley's ultimate manager discharged her. This manager had previously commented that young women should not dress like old women and that he wished his wife looked like a young woman.

We held this case to await our decision in Rhodes v. Guiberson Oil Tools, No. 92-3770 (en banc). Rhodes teaches that a plaintiff may avoid judgment as a matter of law by introducing evidence sufficient to support a prima facie case and to allow a reasonable jury to infer that the employer's proffered reasons were a pretext for discrimination. The district court held that regardless of the evidence of pretext, plaintiff must yet prove that she was fired because of her age. This reading of St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742 (1993) is not without force. A panel of our

court read St. Mary's that way. However, our court en banc reached a somewhat different conclusion. We held that evidence that an employer's reason for discharge was false is ordinarily enough, given a prima facie case to take the issue of discrimination to the jury. The district court and the parties have presumed that Kirtley proved a prima facie case. Given this assumption, we agree with Kirtley that she has introduced evidence sufficient to reach the jury under Rhodes. A rational jury could accept Kirtley's testimony and thus disbelieve Dillard's articulated reasons. Together with the prima facie case, the age related remarks of the supervisor, and the remaining facts and circumstances of the case, this evidence of pretext was sufficient to allow a rational jury to infer that Dillard discharged Kirtley because of her age.

We REVERSE the district court's judgment as a matter of law and REMAND for proceedings consistent with this opinion.