

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30437

LARRY MCINTIRE,

Plaintiff-Appellant,

versus

KIMBERLY CLARK CORP.,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-975-M)

(June 8, 1995)

Before REAVLEY, KING and WIENER, Circuit Judges.

PER CURIAM:*

The district court's Order entered June 28, 1994 correctly disposes of plaintiff-appellant Larry McIntire's claim against defendant-appellee Kimberly Clark Corp. under the Louisiana Civil Rights Act for Handicapped Persons and his claim under Louisiana law for intentional infliction of emotional distress. Turning to McIntire's claim of age discrimination in violation of the Age

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Discrimination in Employment Act, even if we were to assume arguendo that McIntire made out a prima facie case of age discrimination (thereby obviating the need to decide whether the replacement of a person in the protected age group by a person, also in that group, who is only 14 months younger is sufficient to constitute a prima facie case), we do not think that the evidence submitted by McIntire raises a fact issue as to whether Kimberly Clark's stated reasons for the removal of McIntire from his position were a pretext for age discrimination. Accordingly, we affirm the summary judgment granted by the district court in favor of Kimberly Clark.

We note, for whatever benefit it may afford McIntire and his counsel, that McIntire's briefs on appeal are less than candid in dealing with the action that Kimberly Clark took with respect to McIntire. The briefs frequently state that McIntire was fired, when the record reflects that in fact Kimberly Clark offered to reassign McIntire, at no loss of salary or benefits. Alternatively, he was offered a severance package to enable him to complete his treatment program and locate other employment. While McIntire may consider that action to amount to constructive termination, he cannot fairly describe it as a "firing." The briefs also fail to address adequately the deficiencies in McIntire's job performance (some clearly alcohol-related) detailed in Kimberly Clark's summary judgment evidence.

AFFIRMED.