

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

NOV 16 2001

PATRICK FISHER
Clerk

CARA FREEMAN,

Plaintiff-Appellant,

v.

STATE OF KANSAS,

Defendant-Appellee.

No. 01-3026
(D.C. No. 97-CV-2530-DES)
(D. Kan.)

ORDER AND JUDGMENT *

Before **KELLY** , **BALDOCK** , and **LUCERO** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff Cara Freeman appeals the district court's grant of summary judgment in favor of her former employer, the State of Kansas. The parties are

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

familiar with the facts, so we need not repeat them here. We affirm the judgment of the district court for substantially the reasons given by the court in its opinion dated January 29, 2001.

We note that the district court, in an otherwise thoughtful and well-reasoned opinion, misstated the prima facie elements of a discriminatory discharge claim. Yet reflecting its meticulous work, the court was careful to note that even if Ms. Freeman could establish a prima facie case, she could not rebut the legitimate, non-discriminatory reasons for her discharge. Thus the district court's erroneous reliance on *Elmore v. Capstan, Inc.*, 58 F.3d 525, 529-30 (10th Cir. 1995), had no effect on the ultimate disposition of Ms. Freeman's case.

Ms. Freeman's motion for appointment of counsel is DENIED. Her motion for leave to "file a brief out of time," which is construed as a motion to file a supplement to her reply brief, is GRANTED. The judgment of the United States District Court for the District of Kansas is AFFIRMED.

Entered for the Court

Bobby R. Baldock
Circuit Judge