Young v. United Parcel Service, Inc., No. 12-1226

The Pregnancy Discrimination Act (PDA) provides that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. § 2000e(k). The Supreme Court granted certiorari in *Young v. United Parcel Service*, No. 12-1226, to resolve a disagreement among the federal courts of appeal and to decide whether, and in what circumstances, the PDA requires an employer that provides work accommodations to certain non-pregnant employees with work limitations to provide work accommodations to pregnant employees with similar limitations.

Peggy Young, a driver for UPS whose job involved loading and delivering packages, claimed that UPS violated the PDA when it denied her request for a temporary alternate work assignment when her doctor imposed a lifting restriction during her pregnancy. UPS denied her request based on the company's collectively bargained accommodations policy. The policy provided that temporary alternative work assignments were available only to: (1) employees who were unable to perform their regular jobs because of on-the-job injuries; (2) employees who had a condition or impairment that restricts performance and otherwise qualifies as a disability under the Americans with Disabilities Act; or (3) drivers who had lost their Department of Transportation certifications. Young filed suit, alleging that UPS violated the PDA when it failed to provide her with the same accommodations that it provided to employees in the categories described above. The district court granted UPS's motion for summary judgment, holding that Young had not shown direct evidence of discrimination and could not show that the UPS policy was a pretext for discrimination. The Fourth Circuit affirmed, concluding that UPS's accommodations policy was "pregnancy-blind." *Young v. United Parcel Service*, 707 F.3d 437, 446, 450 (4th Cir. 2013).

In an opinion written by Justice Breyer, the Supreme Court vacated the Fourth Circuit's decision. The majority rejected Young's argument that the PDA requires an employer to provide accommodations for pregnancy-related work limitations whenever it provides accommodations to even a subset of workers with similar work limitations unrelated to pregnancy. As the Court explained: "We doubt that Congress intended to grant pregnant workers an unconditional most-favored-nation status." But it also rejected the view that courts should merely "compare the accommodations an employer provides to pregnant women *within* a facially neutral category (such as those with off-the-job injuries)." Instead, the Court held, a pregnant worker may establish disparate treatment by employing the traditional *McDonnell Douglas* burden-shifting framework. Under that framework, the employee can establish a *prima facie* case by showing that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others "similarly situated in their ability or inability to work." If that showing is made, the employer may defend its actions by demonstrating that it had "legitimate, non-discriminatory" reasons for denying the accommodation, and the plaintiff may in turn seek to prove that "the employer's reasons are in fact pretextual." The Court stated that the employer's rationale for differentiating between pregnant employees and other employees "normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those … whom the employer accommodates." It also opined that the plaintiff "may reach a jury on this issue by providing sufficient evidence that the employer's policies impose a significant burden on pregnant women" and that the employer's "reasons are not sufficiently strong to justify the burden."

Applying that rule to Young's case, the majority concluded that there was "a genuine dispute as to whether UPS provided more favorable treatment to at least some employees whose situation cannot reasonably be distinguished from Young's." It also concluded that Young had introduced sufficient evidence that UPS's policies "significantly burdened pregnant women." The Court did not decide whether Young had created a genuine issue of material fact as to whether UPS's reasons for having treated Young less favorably than non-pregnant employees were pretextual, leaving that determination to the Fourth Circuit.

Justice Alito concurred in the judgment. In his view, the PDA does not authorize courts "to evaluate the justification for a truly neutral rule" under which the employer provides accommodation. He noted, however, that at least some UPS drivers who were unable to perform their jobs because of medical conditions other than pregnancy had been assigned to jobs "that did not require them to perform tasks that they were incapable of performing" and that UPS "ha[d] not explained why pregnant drivers could not have been given similar consideration." Thus, he concluded, "it is not at all clear that respondent had any neutral business ground for treating pregnant drivers less favorably than" those employees.

Justice Scalia dissented, joined by Justice Kennedy and Justice Thomas. In the dissent's view, "the right reading of the same treatment clause prohibits practices that discriminate against pregnant women relative to workers of similar ability or inability." However, "it does not prohibit denying pregnant women accommodations, or any other benefit for that matter, on the basis of an evenhanded policy."

Any questions about the case should be directed to Miriam Nemetz (+1 202 263 3253) in our Washington, D.C. office.