

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05-13956

| |
|--|
| FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 14, 2006 THOMAS K. KAHN CLERK |
|--|

D. C. Docket No. 03-00789 CV-ORL-18-KRS

ZSOLT LAGLER,

Plaintiff-Appellant,

versus

HEALTH FIRST, INC., HOLMES
REGIONAL MEDICAL CENTER, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(June 14, 2006)

Before ANDERSON, HULL and CUDAHY*, Circuit Judges.

PER CURIAM:

*Honorable Richard D. Cudahy, United States Circuit Judge for the Seventh Circuit, sitting by designation.

After oral argument and careful consideration, and for the reasons explored at oral argument, we readily conclude that the judgment of the district court is due to be affirmed. Especially in light of the plaintiff's own personal notes (which are merely the strongest of extensive evidence supporting the reasonableness of the perception of all five of defendants' decision makers), plaintiff has altogether failed to create genuine issues of material fact. In this regard, we note that plaintiff's personal notes were apparently recorded contemporaneously with or shortly after the relevant events. On this record, we cannot conclude that a reasonable jury could find that retaliation against plaintiff was a motivating factor for the employment decision.¹

Accordingly, the judgment of the district court is

AFFIRMED.

¹ In light of our holding, we need not decide whether Desert Palace v. Costner, 539 U.S. 90, 123 S.Ct. 2148 (2003), applies in the mixed motive retaliation context. Moreover, we note that plaintiff failed to present the case to the district court as a mixed motive case, but, in light of our disposition, we need not address whether or not the issue should be considered preserved.