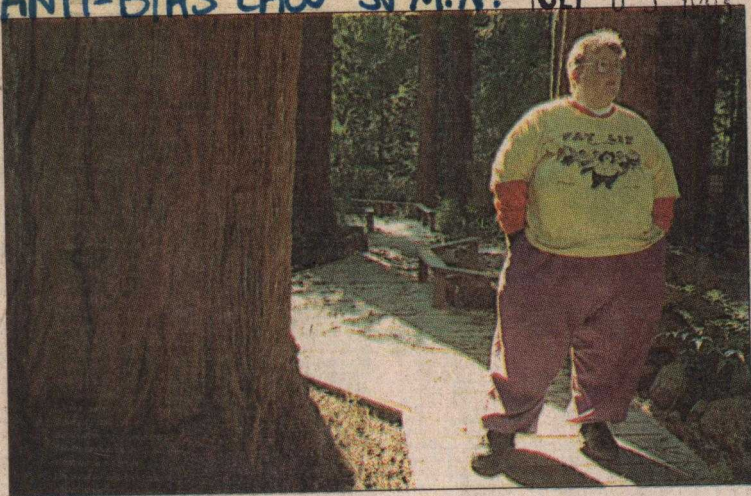


The state Supreme Court rejects a Santa

Cruz woman's size-discrimination claim.

ANTI-BIAS LAW S.F.M.N. | SEP 03 1993



KAREN T. BORCHERS — MERCURY NEWS

Toni Cassista is disappointed but not surprised by the ruling.

Appetite-fed obesity not a disability, court rules

BY MICHAEL DORGAN
Mercury News San Francisco Bureau

SAN FRANCISCO — Obesity is a valid disability only when it results from a medical condition rather than a ravenous appetite, the California Supreme Court ruled Thursday.

The unanimous ruling came in the case of a 5-foot-4-inch, 305-pound Santa Cruz woman who said that a health food store discriminated against her by not hiring her because of her weight.

Attorneys for Toni Linda Cassista, 43, had argued that obesity was a protected disability under the state's Fair Employment and Housing Act. But the high court, noting that Cassista had failed to show that her size was the result of an underlying medical condition, reversed the judgment of an appeals court that had ordered a new trial after a jury rejected Cassista's claim of discrimination.

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Medical condition, not appetite, makes obesity a disability, court says

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The court affirmed that obesity may qualify as a disability. But it qualifies, the court said, only when "it results from a physiological condition affecting one or more of the basic bodily systems and limits a major life activity."

"Because (Cassista) here adduced no evidence of this kind," wrote Justice Armand Arabian, "we conclude that she failed to establish a prima facie case of employment discrimination."

Cassista's case dates to 1987, when she applied for one of three openings for a cashier and shelf stocker at Community Foods, a Santa Cruz health food store.

After being denied a job, she filed a complaint with the Department of Fair Employment and Housing, alleging discrimination on the basis of her weight.

Community Foods then offered her a job, but she declined it because, according to court records, she did not believe the collective

had adequately "educated" itself about the concerns of overweight people.

When the Department of Fair Employment and Housing chose not to file a complaint on her behalf, Cassista filed a civil suit against Community Foods alleging that she was unlawfully discriminated against.

Her case went to trial in April 1991 in Santa Cruz County Superior Court. A safety expert testified that the food store would be hazardous to Cassista because of narrow aisles and the danger that footstools and ladders would collapse under her weight.

Jury's decision supported

The jury unanimously rejected her claim of discrimination, but its verdict was set aside by an appeals court. That court ordered a new trial, saying the evidence established that Community Foods considered Cassista's weight to be a physical disability as that term is defined under the state Fair Employment and Housing

Act.

The high court disagreed, however. It cited the state Legislature's definition of "physical handicap" — "impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services" — and concluded that Cassista's condition did not meet the standard.

Cassista, who now works for a software company, said she was not surprised by the ruling but "very disappointed." She lashed out at the Supreme Court justices, accusing them of the same "stereotypical attitude" that caused her to file suit.

"The Supreme Court is doing the very same thing that Community Foods was doing," she said.

Her attorney, Stefanie Brown, also was not surprised by the ruling. "I think their indications at oral argument were consistent with what they did," she said.

During oral arguments before the court in June, Justice Stanley Mosk questioned whether overweight people should aspire to be Playboy bunnies. And Arabian said anti-discrimination laws do not protect people who can blame their fat only on their appetites.

"If you want to eat 24 hours a day and become 305 pounds, the law doesn't give you any protection," Arabian said. "But if you have a glandular, systemic or metabolic problem, you have a shot at your lawsuit."

Attorney Paul Grossman, arguing on behalf of the California Employment Law Council at the June session, told the court that Brown's legal analysis would mean that if an old woman with a cane applied to be quarterback with the Los Angeles Raiders and was turned down, "She sues and wins."

Brown called that argument ridiculous.

"Not everybody who walks through the door is qualified to be a quarterback with the Raid-

ers," she responded. "Toni Cassista was qualified as a grocery clerk."

Brown told the justices that Cassista was denied a job because the employer wrongly perceived her as handicapped by her weight. She argued that the company never raised image — a permissible basis for discrimination — but instead said she was not qualified because she might run out of energy and be unable to stock shelves.

But in its ruling Thursday, the court said it found Brown's argument "unavailing."

Store owners break silence

"It is not enough to show that an employer's decision is based on the perception that an applicant is disqualified by his or her weight," Arabian wrote. "The applicant must (have) . . . a physiological disease or disorder affecting one or more of the bodily systems."

Speaking publicly about the case for the first time, one of

Community Foods' owners said Thursday that the protracted legal battle was based on a false premise — that Cassista was denied a job because of her weight.

"She had no cashier or stocking experience," said Tish Jainz. "It was never that we didn't hire her because she was fat."

Jainz said the court case evolved not out of actual facts but out of Cassista's eagerness to champion the cause of overweight people.

"She has an issue with that — she's very angry about the way the world perceives large women," Jainz said. "But she took on the wrong people. We here give to all sorts of causes and don't discriminate against anybody. She's fighting against her own kind of people."

Jainz said it was painful for her and her colleagues at the store to remain silent, as demanded by their attorney, while Cassista conducted a five-year publicity campaign in the local and national media.