

Summary Judgment Review

Case Name: *Jordan-Philadelphia v. WellStar Atlanta Medical Center, Inc.*

Nature of the Order: Magistrate Judge Final Report & Recommendation

Magistrate Judge: Linda T. Walker

District Judge: Leigh Martin May

Claims & Outcomes:

1. **Claim:** Title VII – National Origin Discrimination – Hostile Work Environment
 - a. **Outcome:** Recommend Denial of Plaintiff’s Summary Judgment Motion and Granting Defendant’s Summary Judgment Motion
2. **Claim:** Title VII – Retaliation – Hostile Work Environment
 - a. **Outcome:** Recommend Denial of Plaintiff’s Summary Judgment Motion and Granting Defendant’s Summary Judgment Motion

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: N/A

Summary

Defendant Wellstar Atlanta Medical Center, Inc. (“Wellstar”) is a medical facility. Plaintiff Desiree Jordan-Philadelphia (“Jordan-Philadelphia”), whose national origin is Guyana, South America, was a Patient Care Assistant (“PCA”) for Wellstar. Her responsibilities included taking patients’ vitals and otherwise assisting patients, along with three to five other PCAs working the same shift.

Jordan-Philadelphia testified that the first act of harassment occurred in June 2016, after the Pulse nightclub shooting. A co-worker told her, “You should go back to your country.” In mid-November 2017, she filed a complaint with Wellstar’s compliance hotline, alleging “everyone” had assigned her additional work and spoken “inappropriately” to her. She claimed the treatment was retaliation for filing a previous complaint. Wellstar’s HR consultant investigated the complaint and interviewed 13 employees, during which it was revealed that a number of other employees shared similar complaints regarding staffing and teamwork. Wellstar determined Jordan-Philadelphia’s complaint to be valid, but not specific to her.

In January or February 2018, an unknown woman who was not an employee of Wellstar, made an offensive comment to Jordan-Philadelphia. Plaintiff testified the woman said, “[Y]ou always complaining, you come from some country, what you come here for cause problem with these people here.”

Jordan-Philadelphia resigned in September 2018 because, in her words, “I couldn’t take the harassment anymore, so I just resigned from the position.” She found a new position before she resigned, but still worked a two-week notice period. She stated that another employee made an offensive comment to her the day before her final day, though she didn’t report it to anyone. Jordan-Philadelphia testified that the co-worker stated, “[S]he didn’t know why I come here so I causing come – I causing problem, was go back – why I come – what country I come from and I come here for cause problem.” This was the third and final incident.

While an employee of Wellstar, Jordan-Philadelphia received a pay raise every year, her pay was never reduced, the number of hours she worked were never reduced, and her responsibilities remained the same from year to year.

In her EEOC charge, Jordan-Philadelphia wrote, “I believe that I have been discriminated against because of my national origin (Guyanese), in violation of Title VII of the Civil Rights Act of 1964, as amended.” In the charge, she claimed to have made several complaints to her supervisor and HR.

During the litigation, both Plaintiff and Defendant moved for summary judgment on all claims. However, Plaintiff did not include a statement of undisputed material facts with her summary judgment motion. Pursuant to Local Rule 56.1, the Court could not consider facts offered only in her summary judgment brief.

To establish a prima facie case of discriminatory hostile work environment, Plaintiff must show that (1) she belongs to a protected group; (2) she was subjected to unwelcome harassment; (3) the harassment was based upon a protected characteristic of the employee; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and to create a discriminatorily abusive working environment; and (5) the defendant is responsible for such environment under either a theory of vicarious or of direct liability. Jordan-Philadelphia established the first three elements of the discriminatory hostile work claim. She is from Guyana and she was subjected to unwanted harassment based upon her national origin.

To prevail on her retaliatory hostile work environment claim, Plaintiff must show that: (1) she engaged in protected activity, (2) after doing so, she was subjected to unwelcome harassment, (3) her protected activity was a ‘but for’ cause of the harassment, and (4) the harassment was sufficiently severe or pervasive to alter the terms of her employment. Jordan-Philadelphia established the first two elements of her retaliatory hostile work environment claim because she engaged in protected activity and was then subjected to unwelcome harassment.

However, the Court (Magistrate Judge Linda T. Walker) determined that Jordan-Philadelphia failed to establish prima facie cases of hostile work environment based on both national origin and retaliation because she did not show that the harassment was sufficiently severe or pervasive to alter the terms or conditions of her employment.

(**Note:** This *Jordan-Philadelphia* R&R was issued on March 25, 2021. Seven days later – on April 1, 2021 – the Eleventh Circuit Court of Appeals held that the standard for retaliatory hostile work environment claims is whether the harassment “might have dissuaded a reasonable worker” from engaging in protected activity, not whether the harassment is “severe or pervasive.” *See Babb v. Sec’y, Dep’t of Veterans Affairs*, 2021 U.S. App. LEXIS 9520, *8 (11th Cir. April 1, 2021).)

The Court explained that either severity or pervasiveness is sufficient to establish a Title VII claim. The ultimate question the Court seeks to answer is whether, under the totality of the circumstances, a reasonable person would find the harassing conduct sufficiently severe or pervasive to amount to an alteration of the terms or conditions of the plaintiff's employment.

In addition to commenting on the incoherence and confusion of Jordan-Philadelphia's response brief, the Court determined that she did not offer evidence of harassment so severe as to rise to the level of a Title VII violation. She made allegations of offensive comments, technicians not cleaning rooms properly, and co-workers being rude. However, she failed to offer in her summary judgment motion any specifics of when, how often, or who made offensive statements or took offensive actions. She only cited to the record a few times, though none were to anything in the record showing harassment beyond "ordinary tribulations of the workplace, such as sporadic use of abusive language."

Jordan-Philadelphia also failed to show that the harassment was pervasive. She pointed to three separate incidents of offensive comments, made between June 2016 and September 2018, and over the course of her three years of employment with Wellstar. The Court contrasted that time frame with other 11th Circuit cases, highlighting the difference between the case at hand and others where offensive conduct occurred on an almost daily basis.

Finally, in response to Jordan-Philadelphia's constructive discharge claim, the Court pointed out that because she couldn't meet the standard of a hostile work environment, she would not be able to meet the even higher standard for constructive discharge to show that "working conditions were so intolerable that a reasonable person in her position would have been compelled to resign."

Thus, Judge Walker recommended that Plaintiff's summary judgment motion be DENIED and Defendant's summary judgment motion be GRANTED.