

Summary Judgment Review

Case Name: *Yarbrough v. YKK U.S.A., Inc*

Nature of the Order: Order Adopting as Amended the Magistrate Judge's R&R, and Grants in Part and Denies in Part Defendant's Motion for Summary Judgment

Magistrate Judge: Russell G. Vineyard

District Judge: Amy Totenberg

Claims & Outcomes:

1. **Claim:** Race Discrimination – Title VII
 - a. **Outcome:** Summary Judgment Recommended
2. **Claim:** Race Discrimination – 42 U.S.C. § 1981
 - a. **Outcome:** Summary Judgment Recommended
3. **Claim:** Retaliation – Title VII
 - a. **Outcome:** Summary Judgment Denied
4. **Claim:** Retaliation – 42 U.S.C. § 1981
 - a. **Outcome:** Summary Judgment Denied

Whether R&R Followed: Yes

For Race/Gender Discrimination Cases:

Race of Plaintiff: White

Gender of Plaintiff: Female

Summary

Plaintiff Heather Yarbrough (“Yarbrough”) brought her discrimination action against her employer YKK U.S.A., Inc. (“YKK”), claim claiming race discrimination (hostile work environment) and retaliation under both Title VII and 42 U.S.C. § 1981. Defendant filed its Motion for Summary Judgment. Magistrate Judge Vineyard’s Final Report and Recommendation, YKK’s Objections, and Yarbrough’s Response were before Judge Totenberg.

Judge Vineyard recommended that summary judgment be granted on both race discrimination claims, to which Yarbrough did not object. Judge Totenberg adopted Judge Vineyard’s recommendation as to the race discrimination claims, leaving the retaliation claims for analysis.

Judge Vineyard had recommended that the motion for summary judgment be denied as to the retaliation claims. YKK objected to his findings that (1) there was direct evidence; (2) Yarbrough established a causal connection between her protected activity and her termination, as a part of her *prima facie* case; and (3) Yarbrough presented evidence that YKK's reason for terminating Yarbrough was pretextual, thereby establishing a jury question as to Yarbrough's retaliation claims.

YKK objected to the finding that there was direct evidence based on an alleged conversation between Yarbrough and her HR manager, in which the manager, in response to Yarbrough asking whether she was being terminated for reporting racial discrimination, told Yarbrough that she should have kept her mouth closed. Judge Totenberg agreed with YKK's objection, stating that the HR manager's comment was open to numerous interpretations – Specifically, Judge Totenberg referenced YKK's legitimate non-discriminatory reason for firing Yarbrough: that she had a tendency to engage in gossip and run to supervisors with false stories of other employees. In the Eleventh Circuit, Judge Totenberg stated, evidence that is subject to more than one interpretation does not constitute direct evidence. However, Judge Totenberg agreed with Judge Vineyard that Yarbrough established a triable fact question under the *McDonnell-Douglas* burden-shifting framework.

YKK objected to the finding that Plaintiff established the causation element of her *prima facie* case of retaliation. Yarbrough was terminated one day after allegedly reporting discrimination, which would typically be sufficient circumstantial evidence to create a genuine issue of material fact of a causal connection. However, in cases where there is un rebutted evidence that the decision maker did not have knowledge that the employee engaged in protected conduct, temporal proximity is not sufficient. Judge Totenberg ultimately agreed with Judge Vineyard that other record evidence sufficiently supported Yarbrough's claim that the HR manager knew of her protected activity. The HR manager's comments "you should have kept your mouth shut" and "[w]e don't need any racial – racial tension on the floor," along with the fact that she had reviewed Yarbrough's written comment about being called "white bitch," are all evidence that could indicate that she knew of Yarbrough's complaints before Yarbrough's termination, and thus it is a reasonable inference that the HR manager's responsive statements are indicative of what she knew at the time of making the decision to terminate Yarbrough.

Finally, YKK argued that Yarbrough failed to show pretext. YKK argued that the HR manager's statements cannot constitute pretext because Yarbrough admitted in one of her complaints to be terminated for a non-retaliatory reason (she was too involved in other peoples' business), and a retaliation claim requires that a plaintiff's protected activity be the but-for cause of the adverse action. YKK's

other arguments rehashed the same causation arguments it had made regarding a lack of evidence that the HR manager knew of Yarbrough's complaints before she terminated her. Judge Totenberg agreed with Judge Vineyard that considering the alleged statements by the HR manager that Yarbrough "should have kept [her] mouth shut" and that YKK did not need any "racial tension on the floor," coupled with the lack of evidence that Plaintiff was on a final warning (a basis of the HR manager's termination decision), there were triable issues of fact with respect to whether YKK's reason for terminating Plaintiff was a pretext for retaliation.

Thus, the Court adopted Magistrate Judge Vineyard's R&R, granted summary judgment as to Yarbrough's race discrimination claims, and denied summary judgment as to Yarbrough's retaliation claims.