

Summary Judgment Review

Case Name: *Fulton v. Keith Lawson Company, Inc.*

Nature of the Order: Magistrate's Report & Recommendation

Magistrate Judge: Russell G. Vineyard

District Judge: Eleanor L. Ross

Claims & Outcomes:

1. **Claim:** Retaliation (Title VII)
 - a. **Outcome:** Recommend Summary Judgment Granted
2. **Claim:** *Quid Pro Quo*/Tangible Employment Action Sexual Harassment (Title VII)
 - a. **Outcome:** Recommend Summary Judgment Granted

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: Female

Summary

Plaintiff Deanna Fulton (“Fulton” or “Plaintiff”) did a job interview with the Corporate Safety Director of Defendant Keith Lawson Company, Inc. (“KLC” or “Defendant”). Fulton claims the Safety Director offered her a position of Safety Coordinator, but he claims he just told her that if she did her job well, he would consider her for a safety position in the future. Later, Fulton submitted a job application listing the job she was applying for as “Helper”, although she said the Safety Director told her to put “Helper” instead of “Safety Coordinator” because she would temporarily be doing Helper work until the Safety Coordination position “came down.” Afterwards, all of KLC’s paperwork identified Fulton as a “Helper.” Some of her coworkers testified that management initially told them Fulton would be a Safety Coordinator, but when she began working, she only performed Helper duties. Once Fulton started work, her foreman, Bernard Phelps, engaged in inappropriate sexual conduct toward her – including constantly adjusting his crotch while staring at her and masturbating against the wall after sending for her to meet him at a certain location. Fulton asserted that, when she rejected Phelps’s advances, he made her perform Helper duties. She also asserts that, when she complained to management about Phelps’s advances, she was demoted from Safety Coordinator to Helper. Her pay rate never changed throughout her employment and, according to KLC, neither did her job duties.

Fulton filed suit against KLC, alleging *quid pro quo* sexual harassment and retaliation in violation of Title VII. Defendant moved for summary judgment on both claims.

Magistrate Judge Russell G. Vineyard recommended **granting** summary judgment as to the retaliation claim. Fulton alleged she was demoted from Safety Coordinator to Helper in retaliation for complaining of sexual harassment. But Judge Vineyard held that the undisputed record evidence showed she had been a Helper all along, such that there was no “materially adverse employment action.” Judge Vineyard held that most of Fulton’s evidence that she was hired as Safety Coordinator – her testimony as to job offers from officials who denied making such offers and her coworkers’ testimony as to what they were told about her position – was inadmissible hearsay. Judge Vineyard credited evidence that KLC had never gone through the process of creating a “Safety Coordinator” position. He also noted that the documentary evidence unanimously identified Fulton as a “Helper.” Moreover, in her testimony about being told to call herself a “Helper” in her job application, Fulton admitted that she was hired as a Helper – even if she was told it would be temporary. And she admitted that she was performing the same duties – Helper duties plus reporting safety violations, before and after her complaint about sexual harassment.

Because he concluded Fulton had been a Helper even before she complained of harassment, Judge Vineyard further concluded there was no causal connection between her complaint and her becoming a Helper. For the same reason, Fulton failed to show that KLC’s legitimate, non-retaliatory reason for the demotion (essentially, that there was no demotion) was pretext.

Judge Vineyard also recommended **granting** summary judgment as to the Title VII sexual harassment claim. Fulton alleged *quid pro quo* sexual harassment – that is, that she was given a *de facto* demotion by Phelps (forced to do Helper duties) because she rejected his sexual advances. However, because Judge Vineyard concluded that Fulton was already a Helper, he found that assigning her such duties did not constitute a “tangible employment action.” Therefore, there was no *quid pro quo* and the sexual harassment claim failed.

Judge Vineyard, therefore, recommended GRANTING summary judgment on all claims.