

## Summary Judgment Review

**Case Name:** *Bill Pasley and Myra Green v. Relogio, LLC et. al.*

**Nature of the Order:** Final Report and Recommendation

**Magistrate Judge:** Walter E. Johnson

**District Judge:** Harold L. Murphy

### **Claims & Outcomes:**

1. **Claim:** Hostile Work Environment Sexual Harassment – Title VII (Pasley)
  - a. **Outcome:** Plaintiff’s Motion for Partial Summary Judgment as to liability Granted; Defendant’s Motion for Summary Judgment Denied
2. **Claim:** Retaliation – Title VII (Pasley)
  - a. **Outcome:** Plaintiff’s Motion for Partial Summary Judgment as to liability is Granted; Defendant’s Motion for Summary Judgment Denied
3. **Claim:** Retaliation – Title VII (Green)
  - a. **Outcome:** Defendant’s Motion for Summary Judgment Denied
4. **Claim:** Assault (Pasley)
  - a. **Outcome:** Supplemental Jurisdiction Declined
5. **Claim:** Battery (Pasley)
  - a. **Outcome:** Supplemental Jurisdiction Declined
6. **Claim:** Ratification (Pasley)
  - a. **Outcome:** Supplemental Jurisdiction Declined
7. **Claim:** Battery (Pasley)
  - a. **Outcome:** Supplemental Jurisdiction Declined

**Whether R&R Followed:** Yes

### **For Race/Gender Discrimination Cases:**

**Race of Plaintiff:** N/A

**Gender of Plaintiff:** N/A

### Long Summary

Plaintiff Billy Pasley alleges that his supervisor, Defendant Traci Zirkelbach, made inappropriate comments to him and touched him in any inappropriate manner, while both were employed by one or more of the nine “Entity Defendants.” Mr. Pasley complained about these incidents and his termination was subsequently terminated. Mr. Pasley then contacted a co-worker, Myra Green, about his right to file a charge with the EEOC. Ms. Green confirmed that he could file a charge, and he did so. Mr. Pasley contacted Ms. Green again to confirm that his former employer had received the charge, and she confirmed that the charge had been received. Mr. Pasley

and Ms. Green allege that the operator of the Entity Defendant, Kent Popham, accused Ms. Green of assisting Mr. Pasley with filing the charge and terminated her employment.

The Court found that Ms. Zirkelbach, as Mr. Pasley's supervisor, did not cause him any tangible job detriment because he rejected her sexual advances. Rather, Mr. Popham directed Ms. Zirkelbach to fire Mr. Pasley for reasons of his own and threatened to fire Ms. Zirkelbach if she did not comply with his demands. In other words, Ms. Zirkelbach did not make the decision to terminate Mr. Pasley's employment. Further, the Defendants were able to establish the *Faragher/Ellerth* affirmative defense. It was undisputed that the Entity Defendants maintained a policy prohibiting sexual harassment, and Mr. Pasley did not report any allegations of sexual harassment per the policy.

The Court then turned to the plaintiffs' retaliation claims. The Court found that Mr. Pasley's claim failed because could not establish a causal connection between his protected activity (telling Ms. Zirkelbach to stop sexually harassing him) and his termination. Mr. Popham was the decision maker, and it was undisputed that he was unaware of Mr. Pasley's comments to Ms. Zirkelbach. Thus, Mr. Pasley could not establish a prima facie case of retaliation.

As for Ms. Green, the Court found that she could maintain a claim for retaliation. The key fact here was that Mr. Popham believed that Ms. Green assisted Mr. Pasley in filing his EEOC charge, regardless of whether she actually did so. The Court adopted the so-called "perception theory" of retaliation. According to this theory, a defendant violates the anti-retaliation provisions of Title VII if, believing that the plaintiff is engaged in a protected activity, it intentionally retaliates against the plaintiff because of its belief. Thus, Mr. Popham's belief and Ms. Green's subsequent termination were sufficient to establish a prima facie case of retaliation. Defendants did put forth a legitimate nondiscriminatory reason for the termination – that Ms. Green violated Defendant's policy of reporting communications with former employees, which she drafted. However, a reasonable jury could conclude that Mr. Popham's real motivation was to punish Ms. Green for allegedly assisting Mr. Pasley with his charge, not for violating Defendant's policy. Additionally, there is a genuine dispute of material fact as to whether Ms. Green did, in fact, lie to Mr. Popham about her contacts with Mr. Pasley. The Court therefore denied Defendant's Motion on Ms. Green's retaliation claim.

Lastly, the Court considered Mr. Pasley's state law tort claims. The Court declined to exercise supplemental jurisdiction over the state law claims because it recommended dismissing Mr. Pasley's claims under Title VII.