

Summary Judgment Review

Case Name: *Banks et al. v. City of Atlanta, GA et al.*

Nature of the Order: Order Granting Summary Judgment

District Judge: William M. Ray II

Claims & Outcomes:

1. **Claim:** 42 U.S.C. § 1983
 - a. **Outcome:** Summary Judgment Granted
2. **Claim:** Title VII
 - a. **Outcome:** Summary Judgment Granted

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiffs: N/A

Gender of Plaintiffs: Female

Long Summary

The four Plaintiffs worked in the Department of Aviation (DOA) for the City of Atlanta. Charles Ewing also worked in this department from 1996 until 2010 and again from 2015 until May 2019. From 2010 to 2018, the City had a policy prohibiting sexual harassment that also detailed the procedure for employees to report sexual harassment. The City put an updated sexual harassment policy in place toward the end of 2018. Plaintiff Erica Banks began reporting directly to Ewing in 2016, and during that time, he made sexual comments to her and grabbed her buttocks during a hug. Ms. Banks told the DOA's general manager, Roosevelt Council, in 2017 that Ewing had said inappropriate things to her, but she considered him harmless. She later reported his conduct in 2019 after hearing that another employee had complained about Ewing.

Plaintiff Demetria Wideman began working in the DOA in 2008, alongside Ewing. During his first term of employment, Ewing made sexual comments to Ms. Wideman. She did not complain about his behavior at that time. During his second term, Ms. Wideman began reporting directly to Ewing in 2016, and shortly after, he began making sexual comments. In 2019, Ms. Wideman reported all of Ewing's conduct to Paul Brown, the City's Assistant General Manager for the DOA, after Ewing forcibly kissed her during a hug. Plaintiff Jessica Washington was reassigned to the DOA in 2016. Though she did not report to Ewing, she did interact with him at work, and he made sexual comments to her. She reported his conduct in 2019 to Brown after Ewing rubbed her buttocks.

Plaintiff Andrea Toney was reassigned to the DOA in early 2019 and reported directly to Ewing. He made sexual comments to her and lingered for too long while rubbing her back during a hug. After learning of another employee's complaint, Ms. Toney reported Ewing's conduct. These reports were all made in May 2019, and the City investigated the complaints, eventually forcing Ewing to retire. The Plaintiffs filed suit against the City and Ewing, bringing in relevant part claims under 42 U.S.C. § 1983 and Title VII against the City.

Regarding Plaintiffs § 1983 claim, they asserted that the City essentially had a custom or widespread practice of ignoring Ewing's conduct. The court found that Plaintiffs did not present

evidence to show that management was aware of Ewing's conduct before their complaints in May of 2019. Plaintiffs asserted four instances to show management knowledge – Brown testified to hearing rumors that Ewing engaged in consensual sexual activity at work; Ms. Wideman made a vague statement about Ewing's comments to Brown but did not elaborate; Council was informed of Ewing sexually harassing two non-employees, during the investigation of which was when Ms. Banks told Council that Ewing was harmless; and Ms. Banks testified that she had seen a text from the former Human Resources Director stating that Ewing had harassed her as well, but Plaintiffs were unable to support this contention with additional evidence. As the City maintained a sexual harassment policy, the court held that Plaintiffs did not create an issue of fact as to whether the City had a custom of ignoring sexual harassment complaints. The court therefore granted summary judgment on this claim in favor of the City.

Regarding the Plaintiffs' Title VII claim, the court held that the City maintained a Faragher/Ellerth defense. The City's promulgation of and commitment to its sexual harassment policy and its prompt investigation and effective termination of Ewing showed that it exercised reasonable care to prevent and promptly correct the sexual harassment. The court held that none of the instances before May 2019 that Plaintiffs referred to were sufficient to cause the City to take any earlier action. Further, the court held that the Plaintiffs unreasonably failed to take advantage of preventative or corrective opportunities provided by the employer by failing to report Ewing for, depending on the plaintiff, five months to several years. Additionally, Ms. Washington could not prove as a coworker of Ewing that the City had constructive knowledge because of the delay in reporting. The Plaintiffs could not explain their delay in reporting and therefore lost the ability to impose vicarious liability on the City. Thus, the court granted summary judgment on the Title VII claim in favor of the City.