

## Summary Judgment Review

**Case Name:** *Franks v. Whitfield County, GA*

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

**Magistrate Judge:** Walter E. Johnson

**District Judge:** Harold Lloyd Murphy

**Claims & Outcomes:**

1. **Claim:** Title VII constructive discharge against Whitfield County Sheriff Scott Chitwood in his official capacity
  - a. **Outcome:** Defendant's MSJ should be granted
2. **Claim:** Title VII sexually hostile work environment against Chitwood
  - a. **Outcome:** Defendant's MSJ should be denied
3. **Claim:** Title VII disparate treatment against Chitwood
  - a. **Outcome:** Defendant's MSJ should be granted
4. **Claim:** Title VII retaliation against Chitwood
  - a. **Outcome:** Defendant's MSJ should be denied
5. **Claim:** 42 U.S.C. § 1983 against Captain Paul Woods of the Whitfield County Sheriff's Office in his individual capacity
  - a. **Outcome:** Defendant's MSJ should be denied **and** Plaintiff's MSJ should be denied

**Whether R&R Followed:** N/A

**For Race/Gender Discrimination Cases:**

**Race of Plaintiff:** N/A

**Gender of Plaintiff:** Female

**Long Summary:**

Plaintiff began working for Sheriff Chitwood and was eventually transferred to the CID in 2015, where she worked as an evidence tech on an 8 a.m.-4 p.m. shift. Paul Woods started working for Sheriff Chitwood in 1995 and joined the CID in January 2017. The CID held mandatory morning meetings, and Woods made sexual comments on a near-daily basis at these meetings. Plaintiff felt uncomfortable, disrespected, invisible, and inferior in the workplace. She also lost sleep, dreaded work, avoided Woods when possible, and felt like his conduct signaled to others that they did not need to respect her. Under Chitwood's anti-harassment policy, employees experiencing discrimination should raise complaints with a supervisor of their choosing. Plaintiff complained to a supervisor on multiple occasions. On one occasion, Woods made a vulgar comment about female genitalia, and Plaintiff told him the comment was not okay. On another occasion, Plaintiff informed Woods that her husband was being deployed, to which Woods

remarked that she was free to do as she wanted. Plaintiff perceived this as Woods asking her to have an affair.

Eventually, Plaintiff was assigned to patrol duties, and Woods had various complaints about her performance on patrol. In early 2018, Woods became Captain over the CID. Around this time, Plaintiff alleged that he said women should not work in law enforcement. Shortly after he became Captain, Woods also changed Plaintiff's shift to noon-8 p.m. This shift would not work for Plaintiff because of childcare needs, and Plaintiff eventually resigned because of this hardship. Plaintiff brought four claims against Chitwood in his official capacity under Title VII – constructive discharge, sexually hostile work environment, disparate treatment, and retaliation. She also brought a § 1983 Equal Protection claim against Woods individually based on the same allegations.

As to Plaintiff's sexually hostile work environment claim, Defendants argued that Plaintiff could not recover on this claim because the harassment was not based on her sex; Woods's conduct was not sufficiently severe or pervasive to alter the conditions of her employment, or Plaintiff did not subjectively perceive his conduct as severe or pervasive; and Plaintiff could not establish a basis for employer liability. The magistrate judge found that Plaintiff created a triable issue on the harassment based on her sex because she showed that Woods was motivated to make constant sex-based comments by general hostility toward women in the workplace. This created a disputed issue of fact as to whether Woods exposed Plaintiff to disadvantageous terms and conditions of employment. Plaintiff also showed that she subjectively perceived Woods's conduct as offensive because she reported it to a supervisor. Additionally, a jury could find that her perception was reasonable because of the frequency and pervasiveness of hearing his comments near-daily over 13 months in a mandatory meeting. Finally, Plaintiff did provide a basis for employer liability because, whether Woods was her supervisor or not, she complained to a supervisor, imputing actual knowledge to Chitwood. There was no evidence that Chitwood took prompt remedial action. Therefore, the magistrate judge recommended that the Defendants' motion for summary judgment on this claim be denied.

The magistrate judge recommended that Defendants' motion for summary judgment on Plaintiff's constructive discharge be granted because Plaintiff abandoned the claim. She did not address it as a separate claim in her response to Defendants' motion and only addressed it as an adverse employment action in the context of her disparate treatment claim.

Plaintiff's disparate treatment claim concerns the change to the start time of her shift. The magistrate judge found that Woods's comment that women should not have jobs in law enforcement was not direct evidence of discrimination because it was not related to the change in the start time. Further, Plaintiff could not establish a McDonnell Douglas prima facie case, a convincing mosaic, or mixed-motive because she did not suffer an adverse employment action. The change in the start of her shift time was not an ultimate employment decision. It did not substantially alter the compensation, terms, conditions, or privileges of her employment or deprive her of employment opportunities. Therefore, the magistrate judge recommended that Defendants' motion for summary judgment on Plaintiff's disparate treatment claim be granted.

Regarding Plaintiff's retaliation claim, Plaintiff's claim failed as pled because she could not establish that Chitwood knew about her protected activity of complaining to her supervisor about Woods. However, Plaintiff argued that Woods retaliated against her for rejecting his proposal to have an affair and objecting to a particular vulgar comment he made. The magistrate judge found that Woods did not make a sexual advance toward Plaintiff; therefore, her refusal was not protected activity. But because Woods had been making sexual comments for months, Plaintiff

created a triable issue of fact as to whether her objection to one such comment was protected activity. In the context of retaliation claims, adverse employment actions are defined more broadly as something that might discourage a reasonable employee from making or supporting a charge of discrimination. The magistrate judge found that Plaintiff's shift change could constitute an adverse employment action for purposes of her retaliation claim because it created such a hardship as to being available to care for her stepdaughter that she resigned. Furthermore, because evidence established that Woods would not have been able to change Plaintiff's shift before becoming CID captain, there was a causal connection between her protected activity and the adverse employment action as it was the first opportunity he had to retaliate against her.

Defendant asserted two legitimate, non-discriminatory reasons for changing Plaintiff's shift. First, there was a need for an evidence technician to be present at that time, and Plaintiff was chosen because of her less senior status. Second, Defendant cited her unproductive performance on patrol. Plaintiff established that both proffered reasons were pretextual. Evidence established that seniority was not always a factor in considering who would cover the later shift. As to Plaintiff's performance on patrol, evidence did not show that she performed poorly on patrol. Therefore, the magistrate judge recommended that Defendants' motion for summary judgment on Plaintiff's retaliation claim be denied.

In Plaintiff's § 1983 claim, she asserted that Woods violated her Equal Protection clause rights through constructive discharge, creating a sexually hostile work environment, and discriminating against her based on sex. The magistrate judge made the same recommendations based on the earlier discussion of the claims – granting summary judgment as to the constructive discharge and disparate treatment issues but not as to the creation of a sexually hostile work environment. Both Defendants and Plaintiff moved for summary judgment on the issue of qualified immunity on the sexually hostile work environment claim. The magistrate judge recommended that the Defendants' motion be denied because Woods's alleged actions were potentially outside his discretionary authority. Even assuming that he was acting within his discretionary authority, the motion should still be denied because Woods violated Plaintiff's clearly established right under the Equal Protection clause to be free from intentional sex discrimination in public employment.

However, because Woods denied creating a sexually hostile work environment, a jury must determine whose facts to believe. The magistrate judge found that there were disputed issues of fact over whether Woods created a sexually hostile work environment. Additionally, Qualified immunity is available as a defense through trial if not successfully asserted at summary judgment. Therefore, the magistrate judge recommended that Plaintiff's motion for summary judgment seeking to bar Woods from asserting qualified immunity be denied.