

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
ALABAMA, NORTHERN DIVISION

Jeanette Kelley v. Clayton Worley, Big/Little, Inc., and Certified  
Systems, Inc.

29 F. Supp. 2d 1304 (M.D. Ala. 1998) · No. No. Civ.A. 97-A-1255-N · Decided December 14, 1998

SUMMARY

The United States District Court for the Middle District of Alabama addressed defendants' motion for summary judgment in an employment case involving alleged sexual harassment under Title VII and related Alabama tort claims. The court denied summary judgment on the Title VII claim and the individual defendant's invasion-of-privacy claim, but granted summary judgment on the corporate defendants' ratification liability and on claims for intentional infliction of emotional distress and negligent hiring, supervision, and retention. The provided text begins the court's analysis of the negligent-failure-to-provide-a-safe-workplace claim.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Middle District of Alabama, Northern Division                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Chief Judge Albritton                                                                                                                                                                                                                                                                                                                     |
| JURISDICTION          | Alabama                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | December 14, 1998                                                                                                                                                                                                                                                                                                                         |
| DOCKET                | No. Civ.A. 97-A-1255-N                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Defendants moved for summary judgment on the plaintiff's Title VII and state-law claims.                                                                                                                                                                                                                                                  |
| STANDARD OF REVIEW    | Under Federal Rule of Civil Procedure 56, summary judgment is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court views the evidence in the light most favorable to the nonmoving party and draws all justifiable inferences in that party's favor. |
| PRECEDENTIAL VALUE    | Published federal district court memorandum opinion                                                                                                                                                                                                                                                                                       |
| PARTIES               | Jeanette Kelley v. Clayton Worley, Big/Little, Inc., Certified Systems, Inc.                                                                                                                                                                                                                                                              |

## TOPICS

sexual harassment

title vii

summary judgment

employment law

civil procedure

## PRACTICE AREAS

employment law

civil rights

torts

civil procedure

## QUESTIONS PRESENTED

1. Whether a genuine issue of material fact existed as to whether Worley's alleged conduct constituted actionable hostile-environment or quid-pro-quo sexual harassment under Title VII.
2. Whether the corporate defendants could invoke the Faragher-Ellerth affirmative defense where the alleged supervisor harassment culminated in Kelley's discharge.
3. Whether the alleged conduct could support Kelley's Alabama invasion-of-privacy claim against Worley.
4. Whether the corporate defendants could be liable for invasion of privacy under ratification or respondeat superior theories.
5. Whether Kelley presented substantial evidence of intentional infliction of emotional distress under Alabama law.
6. Whether Kelley presented substantial evidence supporting negligent hiring, retention, or supervision claims against the corporate defendants.
7. Whether an employer's anti-harassment policy satisfied its duty of reasonable care on Kelley's negligent-failure-to-provide-a-safe-workplace claim.

## HOLDINGS

1. Kelley's deposition testimony created a genuine issue of material fact as to whether Worley subjected her to unwelcome, actionable sexual harassment under Title VII; summary judgment on Count I was therefore denied.
2. The corporate defendants could not rely on the Faragher-Ellerth affirmative defense at summary judgment because Kelley alleged that Worley's harassment culminated in her discharge, a tangible employment action.
3. Kelley's allegations of repeated sexual harassment, including physical contact under her dress, could permit a reasonable jury to find an actionable invasion of privacy under Alabama law; summary judgment on Worley's individual liability was denied.
4. Summary judgment was granted to the corporate defendants because Kelley presented no evidence that they had actual knowledge of Worley's alleged conduct or ratified it.
5. Kelley failed to present substantial evidence of the extreme emotional distress required for an Alabama outrageous-conduct claim, so summary judgment was granted on Count III as to all defendants.
6. Kelley failed to present substantial evidence that the corporate defendants had actual or constructive notice of Worley's alleged incompetence, so summary judgment was granted on Count V.

7. Assuming sexual harassment could constitute a breach of the duty to provide a safe workplace, the corporate defendants satisfied their duty of reasonable care by providing an anti-harassment policy, definition, and reporting hotline; summary judgment was granted on Count VI.

#### KEY QUOTATIONS

*“No affirmative defense is available, however, when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment.”* (at 1310)

*“While Plaintiff has alleged that Worley made only one lewd comment, Plaintiff has also alleged that Worley committed acts which were more extreme than looking up Plaintiffs skirt.”* (at 1311)

#### FACTUAL BACKGROUND

Jeanette Kelley worked as a cashier at a Big/Little convenience store in River Falls, Alabama, from May 10, 1996, until July 1, 1996. Clayton Worley was the store manager and Kelley's immediate supervisor; although she worked at a Big/Little store, she was technically employed by Certified Systems, Inc., a staff-leasing company. Kelley alleged that Worley made sexually suggestive comments, repeatedly touched her under her dress and on her legs, breasts, and buttocks, and terminated her after she refused his sexual advances. The employers had distributed an anti-harassment policy and reporting hotline, but Kelley never reported Worley's conduct to management or called the hotline.

#### PROCEDURAL HISTORY

Kelley filed a first amended complaint asserting a federal Title VII sexual-harassment claim and five supplemental Alabama-law claims. Defendants moved for summary judgment. The court granted the motion in part and denied it in part, denying summary judgment on the Title VII claim and Worley's individual invasion-of-privacy claim while granting summary judgment on the remaining challenged state-law claims and the corporate defendants' ratification-based invasion-of-privacy liability.

#### DISPOSITION

other

#### CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993)
- Faragher v. City of Boca Raton, 524 U.S. 775 (1998)
- Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986)
- Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)
- Henson v. City of Dundee, 682 F.2d 897, 909 (11th Cir. 1982)
- Busby v. City of Orlando, 931 F.2d 764, 772 (11th Cir. 1991)

- Ex parte Atmore Community Hospital, 719 So. 2d 1190 (Ala. 1998)
- Busby v. Truswal Systems Corp., 551 So. 2d 322 (Ala. 1989)
- McIsaac v. WZEW-FM Corp., 495 So. 2d 649 (Ala. 1986)
- Phillips v. Smalley Maintenance Services, 435 So. 2d 705 (Ala. 1983)
- Potts v. BE & K, 604 So. 2d 398, 400 (Ala. 1992)
- Jackson v. Alabama Power Co., 630 So. 2d 439, 440 (Ala. 1993)
- American Road Service Co. v. Inmon, 394 So. 2d 361 (Ala. 1980)
- Thomas v. BSE Industries Contractors, Inc., 624 So. 2d 1041, 1044 (Ala. 1993)
- Portera v. Winn Dixie of Montgomery, Inc., 996 F. Supp. 1418, 1434 (M.D. Ala. 1998)
- Ex parte Mutual Savings Life Insurance Co., 698 So. 2d 772, 774 (Ala. 1997)
- Mardis v. Robbins Tire & Rubber Co., 669 So. 2d 885, 889 (Ala. 1995)
- Doe v. Western Restaurants Corp., 674 So. 2d 561, 563 (Ala. Civ. App. 1995)
- Hill v. Metal Reclamation, Inc., 348 So. 2d 493 (Ala. 1977)