

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Tristana Hunt v. Wal-Mart Stores, Inc.

No. 18-3403, United States Court of Appeals for the Seventh Circuit (July 26, 2019)

SUMMARY

Seventh Circuit affirmed summary judgment for Wal-Mart on Title VII hostile work environment claim, holding that Wal-Mart established the Faragher-Ellerth affirmative defense by showing it exercised reasonable care to prevent and correct sexual harassment through its anti-harassment policy and prompt investigation, and that the plaintiff unreasonably delayed reporting for four months. The court also found no constructive discharge because the plaintiff continued working for years without alleging further harassment. Key topics: Faragher-Ellerth defense, unreasonable delay in reporting, employer liability for supervisor harassment, and constructive discharge.

CASE DETAILS

|                       |                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Seventh Circuit                                                                                           |
| WRITING FOR THE COURT | BAUER; MANION; BRENNAN                                                                                                                           |
| JURISDICTION          | Federal                                                                                                                                          |
| DECIDED               | July 26, 2019                                                                                                                                    |
| DOCKET                | 18-3403                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                         |
| PROCEDURAL POSTURE    | Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 16 C 05924 — Charles R. Norgle, Judge. |
| STANDARD OF REVIEW    | We review a grant of summary judgment de novo.                                                                                                   |
| PRECEDENTIAL VALUE    | Published                                                                                                                                        |
| PARTIES               | Tristana Hunt v. Wal-Mart Stores, Inc.                                                                                                           |

TOPICS

- employment law
- employment discrimination
- title vii
- hostile work environment
- summary judgment
- appellate procedure
- standard of review
- affirmative defenses
- waiver

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the district court correctly granted summary judgment in favor of Wal-Mart on Hunt's hostile work environment claim based on the Faragher-Ellerth affirmative defense.
2. Whether Hunt was constructively discharged.

## HOLDINGS

1. Hunt was not constructively discharged because she failed to show that her working conditions were so intolerable that she was forced into involuntary resignation. She continued to work for years and did not allege physical touching, threats, or safety concerns.
2. Wal-Mart established both elements of the defense: it exercised reasonable care to prevent and correct harassment, and Hunt unreasonably failed to take advantage of preventive opportunities.

## KEY QUOTATIONS

*“If you experience conduct that may violate this policy or if you observe or become aware of any conduct that may violate this policy by being discriminatory, harassing or retaliatory, you should immediately report the violation to any salaried member of management or confidentially and/or anonymously to the Global Ethics Office []. If you believe a salaried member of management may be violating this policy, you do not have to report the violation to that person. You may report the possible violation to another salaried member of management or call the Global Ethics Office.” (10-11)*

*“If ... the employer has an adequate policy and complaint procedure and properly responded to an employee's complaint of harassment, but management ignored previous complaints by other employees by the same harasser, then the employer has not exercised reasonable care in preventing harassment.” (10)*

## FACTUAL BACKGROUND

Hunt worked the overnight shift in the electronics department of a Wal-Mart store. Her supervisor, Daniel Watson, made several sexually suggestive comments to her over a four-month period, including comments about her breasts and asking to see them. Hunt did not report the harassment until September 27, 2013, when she complained to store manager Mark Turner. Wal-Mart promptly investigated, but could not substantiate the claims due to lack of witnesses. Watson was required to retake ethics training. No further incidents occurred. Hunt continued working at the same store for several years until she was let go after a medical leave.

## PROCEDURAL HISTORY

Hunt filed a complaint in federal court alleging Watson sexually harassed her by creating a hostile work environment in violation of Title VII. At summary judgment, the district court held that Wal-Mart established the Faragher-Ellerth affirmative defense. Hunt appealed.

## DISPOSITION

affirmed

#### CASES CITED

- Burlington Indus. v. Ellerth, 524 U.S. 742 (1998)
- Faragher v. City of Boca Raton, 524 U.S. 775 (1998)
- Parker v. Four Seasons Hotels, Ltd., 845 F.3d 807 (7th Cir. 2017)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- Scruggs v. Garst Seed Co., 587 F.3d 832 (7th Cir. 2009)
- Roby v. CWI, Inc., 579 F.3d 779 (7th Cir. 2009)
- Boumehdi v. Plastag Holdings, LLC, 489 F.3d 781 (7th Cir. 2007)
- Adusumilli v. City of Chicago, 164 F.3d 353 (7th Cir. 1998)
- Brooms v. Regal Tube Co., 881 F.2d 412 (7th Cir. 1989)
- Saxton v. Am. Tel. & Tel. Co., 10 F.3d 526 (7th Cir. 1993)
- Koelsch v. Beltone Elecs. Corp., 46 F.3d 705 (7th Cir. 1995)
- Gleason v. Mesirow Fin., 118 F.3d 1134 (7th Cir. 1997)
- Moser v. Ind. Dep't of Corr., 406 F.3d 895 (7th Cir. 2004)
- Baskerville v. Culligan Int'l Co., 50 F.3d 428 (7th Cir. 1995)
- Gentry v. Exp. Packagin Co., 238 F.3d 842 (7th Cir. 2001)
- Erickson v. Wisconsin Dep't of Corrections, 469 F.3d 600 (7th Cir. 2006)
- Cerros v. Steel Techs., 398 F.3d 944 (7th Cir. 2005)
- McGinest v. GTE Serv. Corp., 360 F.3d 1103 (9th Cir. 2004)
- Wheeler v. Hronopoulos, 891 F.3d 1072 (7th Cir. 2018)
- Smith v. First Union Nat. Bank, 202 F.3d 234 (7th Cir. 2000)
- Porter v. Erie Foods Intern., Inc., 576 F.3d 629 (7th Cir. 2009)
- Lapka v. Chertoff, 517 F.3d 974 (7th Cir. 2008)
- Hill v. Am. Gen. Fin. Inc., 218 F.3d 639 (7th Cir. 2000)
- McPherson v. City of Waukegan, 379 F.3d 430 (7th Cir. 2004)
- Jackson v. Cty. of Racine, 474 F.3d 493 (7th Cir. 2007)