

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

JUDY G. MORRIS

PLAINTIFF

v.

CIVIL ACTION NO. 3:96CV-128-S

FISCAL COURT OF OLDHAM COUNTY,  
KENTUCKY; JOHN W. BLACK; and  
BRENT LIKINS

DEFENDANTS

**MEMORANDUM OPINION**

This matter is before the court on the motion of the plaintiff, Judy G. Morris, to reconsider this court's summary judgment order of November 13, 1997. This case arises from the alleged sexual harassment of the plaintiff, Judy Morris, by her employer, Fiscal Court of Oldham County ("Fiscal Court") and by her supervisors, John W. Black and Brent Likins. For the reasons set forth below, the plaintiff's motion will be denied.

**FACTS**

Morris has been employed by the Oldham County Road Department for twelve years, working as chief clerk since 1993. In 1994, Likins was named as Oldham County Engineer and became Morris' supervisor. Likins' first evaluation of Morris in November 1994, made within three weeks of beginning his new job, gave her a rating of "excellent." In an evaluation made in March 1995, Likins rated her performance as "very good," stating that she was a "very efficient and courteous employee." When asked by Morris about the lowered rating in the evaluation, Likins allegedly proposed to improve it if Morris would grant sexual favors to him. Morris also claims that Likins created a hostile work environment by repeatedly making offensive sexual jokes and innuendos.

Morris reported these incidents to Black, the County Judge/Executive. In May 1995, Black instructed Likins to reduce contact with Morris and to communicate to her only through Jim Lentz, a county road supervisor. In June, Black transferred Likins from the Road Department office to the courthouse building and gave him a different secretary. Then, in August, the county initiated an investigation of Likins' conduct, reiterating that he was to have no contact with the plaintiff. The county terminated Likins' employment in August 1996.

Morris claims that since reporting his behavior to Black, Likins has retaliated, maintaining a hostile work environment by threatening and harassing her. She also claims that Black and the Fiscal Court failed to take appropriate remedial action. In September 1995, plaintiff began experiencing anxiety attacks and went on sick leave. She returned to work for a few months, but has been on medical leave since May 1996. The county is holding her job open.

The plaintiff brought claims against the defendants in their individual and representative capacities for *quid pro quo* sexual harassment, retaliation and a hostile work environment under Title VII and the Kentucky Civil Rights Act. Morris also claims intentional infliction of emotional distress and outrageous conduct on the part of each defendant. This court granted the defendants' summary judgment motions on all Title VII and Kentucky Civil Rights Act claims, as well as the claim for outrageous conduct. The plaintiff now asks the court to reconsider the ruling.

#### **A. KENTUCKY CIVIL RIGHTS ACT: INDIVIDUAL CAPACITY CLAIMS**

The plaintiff asserts an error by the court in dismissing the individual capacity claims made against John Black and Brent Likins. The Sixth Circuit addressed the issue of such claims in *Wathen v. General Elec. Co.*, 115 F.3d 400 (6th Cir. 1997). In that case, an employee complained

of sexual harassment by the employer and by its management employees. The court dismissed the claims brought against the defendants in their individual capacities. “We now hold that an individual employee/supervisor, who does not otherwise qualify as an ‘employer,’ may not be held personally liable under Title VII. Because KRS Chapter 344 mirrors Title VII, we find our holding equally applicable to KRS Chapter 344.” *Id.* at 405. The court found that “the statute as a whole, the legislative history and the case law support the conclusion that Congress did not intend individuals to face liability under the definition of ‘employer’ it selected for Title VII.” *Id.* at 406.

The plaintiff asserts that notwithstanding the *Wathen* decision, the Kentucky Civil Rights Act allows claims against persons in their individual capacities. She claims that under Kentucky case law, suit may be brought against persons in their individual capacities under KRS 344.280. This section makes it unlawful for a person or persons to conspire to retaliate against another person “because he has opposed a practice declared unlawful by this chapter.” The plaintiff cites *Palmer v. International Ass’n of Machinists and Aerospace Workers, AFL-CIO*, 882 S.W.2d 117 (Ky. 1994). In that case, the Kentucky Supreme Court did not specifically address the question of whether the Kentucky Civil Rights Act allows individual capacity claims to be brought in retaliation cases. Further, the statute cited by the plaintiff deals with conspiracy claims. There has been no such claim made in this case, either against Black or Likins. The plaintiff brought claims for hostile work environment, *quid pro quo* harassment and retaliation. These are precisely the types of claims that are cognizable under both Title VII and the Kentucky Civil Rights Act and both acts are interpreted in the same manner. For these reasons, the court will deny the plaintiff’s motion to reconsider its order granting summary judgment on the individual capacity claims.

## **B. HOSTILE WORK ENVIRONMENT**

As grounds for the motion to reconsider, Morris alleges that her psychological and emotional injuries also form the basis for her hostile work environment claim and that the court erred in failing to take this fact into account. In her complaint, Morris claims that Likins created a hostile work environment at the Road Department by “repeatedly telling off-color jokes, using obscenity and language that contained sexual innuendos intended to embarrass” her and other women. As the court stated in his memorandum opinion, in order to establish a cause of action for hostile work environment, a plaintiff must prove:

(1) she is a member of a protected class; (2) she was subject to unwelcomed sexual harassment; (3) the harassment was based on her sex; [and] (4) the harassment unreasonably interfered with her work performance and created a hostile work environment....

*Blankenship v. Parke Care Centers, Inc.*, 123 F.3d 868, 872 (6th Cir. 1997). All of these elements must be considered by viewing the totality of the circumstances. *Id.* at 650.

Morris met the first three prongs of the prima facie case. In looking at the fourth element, the court considered the following:

[t]he frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s performance. The effect on the employee’s psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required.

*Black v. Zaring Homes*, 104 F.3d 822, 826 (6th Cir. 1997), *cert. denied*, 118 S. Ct. 172 (1997). The court stated that though Morris may have suffered emotional distress as a result of the work environment at the Road Department, this fact must be put into the context of the surrounding circumstances.

Likins' crude comments and jokes form the basis for Morris' hostile work environment claim. A male employee in the Road Department stated that he was personally offended by Likins' behavior and had received complaints from other men, as well. Some of Likins' remarks concerned Morris; he referred to her at times as "hot lips" and commented that she looked sexy. Many of the jokes and comments Likins made, however, were not directed at the plaintiff. "While we emphasize that sex-based comments need not be directed at a plaintiff in order to constitute conduct violating Title VII, we note that in this case most of the comments were not directed at plaintiff; this fact contributes to our conclusion that the conduct here was not severe enough to create an objectively hostile environment." *Black*, 104 F.3d at 826. Thus, while it seems that Likins' behavior was offensive and unprofessional, it did not create a hostile work environment oppressive of women. "Title VII was 'not designed to purge the workplace of vulgarity.'" *Id.* at 826 (quoting *Baskerville v. Culligan International Co.*, 50 F.3d 428, 430 (7th Cir. 1995)).

Accordingly, the court will deny the plaintiff's motion to reconsider on the hostile work environment claim.

### **C. RETALIATION**

Morris argues that the court should reinstate her retaliation claim under Title VII because the defendant Black did not ask for summary judgment on that claim. The plaintiff concedes that it is permissible for a district court to enter summary judgment *sua sponte*. However, she claims that the court could not do so in this instance because she was not afforded advance notice or an adequate opportunity to show why summary judgment is not proper on the issue.

The court did not grant summary judgment on the retaliation claim *sua sponte*. The defendants did not address retaliation as a separate cause of action because of the confusion created by the wording of the plaintiff's complaint. The complaint states that "Likins has retaliated or otherwise discriminated against Plaintiff by continuing to maintain and subject Plaintiff to a hostile and abusive work environment...." In their motions for summary judgment, the defendants addressed retaliation in the context of the hostile work environment claim. In fact, in her response to the summary judgment motions, the plaintiff discussed her retaliation claims under both Title VII and the Kentucky Civil Rights Act, arguing that she had established a prima facie case of retaliation. The court assumed that the plaintiff meant to assert a separate cause of action for retaliation and looked at the arguments made by both sides in issuing the ruling.

Even if the court had granted the defendant summary judgment *sua sponte*, this is a proper procedure "provided that the requirements of Rule 56 are met and the party against whom summary judgment is to be entered has sufficient notice and an adequate opportunity to show why summary judgment should not be granted." *Piley v. Sullivan*, 892 F.2d 35, 37 (6th Cir. 1989). As stated above, the plaintiff argued the retaliation claim in her response to the summary judgment motions. The plaintiff has again made arguments supporting her retaliation claims in the motion to reconsider. After looking at the arguments made by the plaintiff in her motion and the defendants' responses, the court finds that the plaintiff still has not established a prima facie case of retaliation.

The plaintiff claims that after notifying Black of Likins' harassment, Likins retaliated against her. She claims that even though he was ordered to have no contact, Likins would call her and also threatened her job. She also states that he put nails in her driveway and destroyed a television set

at the office which she used in her job. Even assuming the facts in plaintiff's favor, this does not rise to the level of retaliation.

In order to state a claim for retaliation under Title VII, "[a] prima facie case is made by an employee who shows that she engaged in a protected activity, she was subsequently subjected *by her employer to adverse employment action*, and that a causal link existed between the two events." *Yates v. Avco Corp.*, 819 F.2d 630, 638 (6th Cir. 1987) (emphasis added). Morris has not even alleged that Fiscal Court took an adverse employment action against her. Morris has never been terminated, demoted or given reduced compensation. Although she has left work on medical leave, the county has left her position open for her. Because Morris has failed to show that she was subjected to adverse employment action by her employer, she has not presented a claim for retaliation. The court will deny the plaintiff's motion to reconsider the order granting summary judgment on the retaliation claims.

For the reasons stated hereinabove, the plaintiff's motion to reconsider will be denied. A separate order will be entered herein this date in accordance with this opinion.

This \_\_\_\_ day of \_\_\_\_\_, 1998.

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CHARLES R. SIMPSON III, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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**ORDER**

Motion having been made by the plaintiff, Judy G. Morris, and for the reasons set forth in the memorandum opinion entered herein this date, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the plaintiff's motion to reconsider is **DENIED**.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 1998.

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CHARLES R. SIMPSON III, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

cc: Counsel of Record