

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

RUSTY HARROD

PLAINTIFF

v.

CIVIL ACTION NO. 3:97CV-165-S

PHILIP MORRIS, Inc. and
ANDY FRAIN SERVICES, Inc.

DEFENDANTS

MEMORANDUM OPINION

This matter is before the court on a motion by the plaintiff, Rusty Harrod, to set aside or vacate the orders of this court entered on November 13, 1998 and February 3, 1999 which granted summary judgment in favor of defendant Philip Morris, Inc. (“Philip Morris”) and defendant Andy Frain Services, Inc. (“Andy Frain”). For the following reasons, we will deny Harrod’s motion to set aside or vacate those orders by separate order.

FACTS

The plaintiff, Rusty Harrod, began working at Philip Morris through Marie Humphreys Consultants, Inc. (“Humphreys”), a nursing registry which supplied Philip Morris with contract nurses to staff its medical department in the Louisville manufacturing facility during the third shift. Harrod was an employee of Humphreys, but was subject to the control and direction of Philip Morris. Andy Frain provided security services to Philip Morris as an independent contractor.

In July 1996, Harrod and Joe Bell, a production line Philip Morris employee, were alone in Philip Morris’s medical department with the door locked. A cafeteria worker lacerated her finger and needed medical attention. Dan Higdon, a security guard was unable to contact Harrod by telephone or by pager.

Higdon and James McGrath, supervising security guard, prepared incident reports. These stated that, *inter alia*: (1) approximately thirty seconds after Harrod exited the medical department, a black male exited the medical department, tucking in his shirt, and (2) this was an “every Wednesday night occurrence.” McGrath’s report stated that Harrod looked as though she had been sleeping when she came to the door.

In January 1997, Philip Morris began contracting with Healthcare Associates, rather than Humphreys, for its nurses. Harrod did not retain her position at Philip Morris after Healthcare Associates took over. Harrod brought this action against both Philip Morris and Andy Frain, alleging defamation as a result of the incident reports prepared by Andy Frain security guards. Harrod asserts that McGrath falsely stated that Bell was tucking in his shirt as he exited the medical department which falsely implied that they were having a sexual encounter. This court previously granted summary judgment in favor of both defendants. Harrod has now brought a motion to vacate those orders.

DISCUSSION

The plaintiff reiterates her argument that she believes the incident reports were defamatory *per se*. Again, we disagree. Under Kentucky law, defamation *per se* must be clear from the four corners of the document. The reports do not contain a clear accusation that the plaintiff was engaged in sexual activity on the job or was otherwise an unsatisfactory employee. Any suggestion of sexual activity or poor job performance could only be inferred by innuendo. *See CMI, Inc. v. Intoximeters, Inc.*, 918 F.Supp. 1068, 1084 (W.D. Ky. 1995); *Sweeney & Co. v. Brown*, 60 S.W.2d 381 (Ky. Ct. App. 1933).

The plaintiff also argues that Philip Morris should be held liable for the intentional torts of Andy Frain employees. The plaintiff ignores the general rule that corporations cannot be held liable for torts committed by independent contractors. This rule is supported by both Sixth

Circuit and Kentucky case law. *See Price v. Taasaas*, 774 F.2d 1163, 1985 WL 13694 (6th Cir. 1985); *Courtney v. Allen Creek Co.*, 474 F.2d 468 (6th Cir. 1973); *Miles Farm Supply v. Ellis*, 878 S.W.2d 803 (Ky. Ct. App. 1994).

Accordingly, Harrod's motion to vacate the orders of this court entered on November 13, 1998 and February 3, 1999 which granted summary judgment in favor of both defendants is denied.

This _____ day of _____, 1998.

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

cc: Counsel of Record

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ORDER

Motion having been made and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the motion of the plaintiff, Rusty Harrod, to set aside or vacate the orders of this court entered on November 13, 1998 and February 3, 1999 which granted summary judgment in favor of defendant Philip Morris, Inc. and defendant Andy Frain Services, Inc. is **DENIED**.

IT IS SO ORDERED this _____ day of _____, 1998.

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

cc: Counsel of Record