

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11031
Summary Calendar

RODNEY L. ROLAND,

Plaintiff-Appellant,

Mary Roland,

Appellant,

versus

BALCOR MANAGEMENT SERVICES, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-CV-1054-G)

(June 30, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Rodney L. Roland appeals the grant of summary judgment in favor of Balcor Management Services, Inc. and Joe Bishop in this Title VII sexual harassment case. Finding no error in the district court's judgment, we affirm.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

Roland began his employment with Balcor in 1984 and in January of 1990 assumed the job of maintenance supervisor at Balcor's "Westwood" Irving, Texas apartment complex. In March of 1992, Bishop, who is openly homosexual, became Roland's immediate supervisor as property manager of the Westwood units.

Appellant alleges that Bishop verbally and physically harassed him on several occasions and attempted to destroy Roland's relationship with his wife. Roland admits that none of his co-workers at Westwood were aware of this harassment and Balcor's management only became aware of the situation through Roland's counsel when he initiated this suit. Appellant failed to utilize Balcor's well-documented policy establishing a formal procedure for reporting allegations of sexual harassment.¹

When Balcor's Corporate Human Resources Department became aware of appellant's grievance on November 11, 1992, Bishop was immediately suspended pending an internal investigation. On December 17, 1992 Bishop was terminated. Roland has had no verbal or physical contact with Bishop since the day of his suspension.

On appeal, Roland alleges that the district court erred in granting summary judgment in favor of the defendants/appellees as the result of applying the wrong standard of law; finding that appellant failed to state a claim; dismissing the sexual harassment

¹ Roland signed acknowledgment forms indicating that, prior to his difficulties with Bishop, he had received both versions of Balcor's policy on sexual harassment and proper complaint procedure.

claim against Bishop; and, failing to allow appellant to join his wife in the suit on his state law claims.

DISCUSSION

The law of this circuit is that allegations that a male supervisor sexually harassed a male subordinate does not state a claim under Title VII even though the harassment has sexual overtones. Title VII addresses gender discrimination. Garcia v. Elf Altochem North America, 28 F.3d 446, 451-452 (5th Cir. 1994) (citing Giddens v. Shell Oil Co., No.92-8533 (5th Cir. Dec.6, 1993)(unpublished opinion). Within the 5th Circuit, same-sex sexual harassment is not cognizable under Title VII. Id. Roland's argument to the contrary stems from his reliance upon an error by the district court in citing an 11th Circuit opinion to this court. Joyner v. AAA Cooper Transp., 597 F.Supp. 537, 542 (N.D. Ala. 1983), aff'd, 749 F.2d 732 (11th Cir. 1984)(stating that homosexual harassment has been ruled a violation of Title VII). Accordingly, appellant is simply mistaken about the controlling law in this circuit, and, by law, he can allege no set of facts to support a Title VII sexual harassment appeal before this court.

In addition to failing to meet the definitional requirements of a Title VII claim, Roland has failed to establish a prima facie case of sexual harassment against Balcor under either of the two accepted harassment theories.² The elements of a prima

² Roland's original complaint and responses to the motions for summary judgment do not clearly delineate between the claims alleged against Balcor from those against Bishop. Assuming that Roland is asserting both federal and state claims against Bishop, the Title VII claim fails because Bishop was not Roland's

facie case of hostile environment sexual harassment are: (1) the employee belongs to the protected class; (2) the employee was subject to unwelcome sexual harassment; (3) the harassment complained of was based upon sex; (4) the harassment affected a term, condition, or privilege of employment; and, (5) respondeat superior. Jones v. Flagship Int'l, 793 F.2d 714, 719-20 (5th Cir. 1986), cert denied, 479 U.S. 1065 (1987). Accordingly, the district court was correct in its finding that, even if Roland could establish elements one through four, his hostile environment claim fails as he provided no evidence that Balcor knew or should have known of the harassment in question and failed to take prompt remedial action. Nash v. Electrospace System, Inc., 9 F.3d 401, 404 (5th Cir. 1993).

Roland's claim also fails under the quid pro quo theory of sexual harassment. A prima facie case under the quid pro quo theory is essentially the same as under the hostile environment theory, except that the fourth element involves job benefits conditioned on the acceptance of the harassment. Collins v. Baptist Memorial Geriatric Center, 937 F.2d 190, 196 (5th Cir. 1991), cert denied, 112 S.Ct. 968 (1992). Again, appellant offered no evidence suggesting that any job benefit or detriment was conditioned on his submission to, or rejection of, any alleged sexual harassment by Bishop. In fact, Roland has testified that no

"employer" as defined by 42 U.S.C. § 2000e(b), and liability will therefore not attach. Grant v. Lone Star Co., 21 F.3d 649, 653 (5th Cir. 1994), petition for cert. filed, 63 U.S.L.W. 3161 (August 25, 1994).

job benefit or detriment was involved at all, thus failing the fourth element (and the fifth again).

Appellant's retaliation argument under 42 U.S.C. § 2000e-3(a) also falls short for failure to satisfy the three elements of such a claim: (1) the plaintiff engaged in activity protected under Title VII; (2) an adverse employment action occurred; and, (3) there was a causal connection between the participation in the protected activity and the adverse employment action. Jones v. Flagship Int'l, 793 F.2d at 724. The evidence overwhelmingly suggests that no such retaliatory activity took place. Testimony confirms that Roland's increased workload was the result of Bishop's firing of another maintenance person; appellant failed to complete tasks demanded of him and was not disciplined; and, appellant was not disciplined despite refusing to live "on premises" as the maintenance supervisor's job description required. Additionally, Roland, by failing to cite any facts in the record which contradict the district court's finding on the causal connection prong of the claim, has not asserted any grounds which would support a conclusion that the district court erred in holding that the [appellees] did not violate Title VII. Jones v. School Board of Bossier Parish, No. 94-40452 (5th Cir. Mar. 29, 1995)(unpublished opinion). Appellant's appeal of this issue should therefore be dismissed.

While Roland argues that the district court erred in not allowing him to amend his complaint to add his wife as a plaintiff, he acknowledges in his brief that the issue depends on whether or

not this court decides to affirm or reverse the district court's grant of summary judgment. As the judgment is affirmed, the issue is moot.

Therefore, the judgment of the district court is **AFFIRMED.**