

18-8859

IN THE SUPREME COURT OF THE UNITED STATES

LASHUNDA R BORDEN-PETITIONER

VS

CHEAHA REGIONAL MENTAL HEALTH CENTER

REQUEST FOR REHEARING

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT

LASHUNDA R BORDEN

238 OGLETREE STREET

SYLACAUGA AL. 35150

256-249-3893



I The petitioner Lashunda R Borden Respectfully moves this Courts for an order. 1. To vacate its denial of the petition for Writ of Certiorari entered on June 17,2019 and 2. Granting the Petition. On December 24,2013 Petition for Certiorari was granted in the Following Case *Maetta Vance V Ball State University*. Presenting the Question If a supervisor's harassment of an employee culminates in a tangible employment action The Employer is strictly liable under Title VII Civil Rights Act of 1964§ 2000e et seq.

Under Title VII an employer's liability for workplace harassment depends on the status of the harasser. If the harasser is a supervisor and the harassment culminate in a tangible employment action, then employer is strictly liable. The matters in this case bear a striking resemblance to the case at hand. In fact, the closeness of the issues in the Case of Maetta Vance I pray justifies a reconsideration of the denial of Certiorari.

In the case of *Maetta Vance V Ball State University* an African American State University Employee who brought action against the University asserting Title VII Claim for Hostile work Environment and Retaliation. For Employee Complaints About Racial Harassment. A part -time Catering Assistant who was promoted to a full time Catering assistant. Who over the Course of the Employment lodge numerous complaints of Racial Discrimination, one of which is with a fellow BSC Employer Sandra Davis, who held a supervisory title but did not posses the authority to make tangible action.

In Vance's Internal complaints she stated Sandra Davis gave her a hard time at work intimidated her and created a racially hostile work environment. Vance filed a lawsuit in the

United States District Court for the Southern District of Indiana claiming among other things, of racially hostile work environment, in violation of the Title VII.

Both Parties moved for Summary Judgement, the courts ruled in Favor of the defendant Ball State University. The courts stated Davis was not a supervisor because she could not make a tangible action, she did not have the Power to hire, fire, demote, promote, transfer or discipline an employee. so, the university could not be held vicariously liable for Davis alleged racial harassment. The Supreme Court Justice Alito held that an Employee is a supervisor for purposes of vicarious liability under Title VII if he or she is empowered by the employer to take Tangible employment actions against a victim.

In the leading case of Roger's v EEOC 44 F 2d 234(1971) the fifth Circuit recognized a cause of action based on this theory See Meritor Savings Bank, FSB v Vinson 477 U.S. 57,65-66, 106 S. CT 2399, 91 L Ed.2d 49(1986) Describing development of Hostile environment claims based on race) the Rogers Court reasoned that the phrase terms, conditions, or privileges of employment in Title VII is an expansive concept which sweeps within its protective ambit the practice of creating a working environment charged with ethnic or racial discrimination.454 F2d at 238 The Court observed that one can readily envision working environments so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers.

Following the decision, the lower courts generally held that an employer was liable for a racially hostile work environment if the employer was liable for a racially hostile work environment if the employer was negligent. If the employer knew or reasonably should have Known about the Harassment but failed to take remedial action.

In my Case Unlike Vance, My Supervisor Mrs. Karen McKinney was my Supervisor who did have the authority to make Tangible Actions. she promoted me to Position Consumer Clerk on July 1,2013, Demoted me without My Knowledge on November 24,2014, suspension on December 3,2014 and my termination on December 17,2014. And I reported every incident of harassment, and wrongdoing to Human Resources Kathleen Robinson and Executive Director Cindy Atkinson. But my complaints were ignored, and nothing was done.

I have been fighting and defending my case Now for 5 years. All that I have is the truth to Give. In this process I have been called Self-righteous, unlearned and have been accused of an enormous number of false allegations by the defendants Cheaha Regional Mental Health. All that I have to give is the facts and the Truth, I am a sharp and fast learner, but the one thing that I am not is a liar. I am a daughter, and loyal co-worker, and friend and an extremely hard worker
(Exhibit A two co-workers Letters)

In 2006 I began working for the company Cheaha Regional Mental Health Center as, the Part- time receptionist of the Talladega Office working the hours of eight to five p.m. Monday thru Friday. After starting I immediately was told by The Executive Director Cindy Atkinson That I had to train to learn the Consumer Clerk Position, under the direction of Mrs. Debbie Watts who then held the position. as well as work my Job as the receptionist. On October 23,2007 I was hired as the full time Receptionist for the Talladega office, Yet Still training for Consumer Clerk Position. In 2009 Mrs. Watts Became ill and had to retire. After three years of training for Consumer Clerk and 1 full year of working both Jobs, In October 2010 the position of Consumer clerk Became available. I had been recommended by Mrs. Debbie Watts, interviewed by Supervisor Mrs. Karen McKinney, of the Sylacauga Office, But I did not receive the Job.

The position for Consumer Clerk was Given to a Caucasian female employee who had no training and no experience of the Consumer Clerk Position. I was told by Mrs. Karen McKinney that If I did not train her the Consumer Clerk position. That I would lose my job. My Co-workers over hearing, her conversation stated that I needed to file an EEOC Complaint, I had no idea what EEOC was, so my co-workers explained the process to me, looked up the website for me, and even called with me.

My EEOC Complaint was filed and Cheaha Mental Health Center was alerted to the Charge, Because I have terrible experiences with Lawyers. My case did not follow through, I gave my Lawyer all my evidence and testimony and he lost all of it, and I could not find him I called several times, and he would not return my Phone Calls and even traveled to his office and could not get to see him. By the time I did hear from him it was fours day before the deadline expired for my complaint (**Exhibit B Copy of EEOC discharge**). Through all this I held my head high came to work every day. From 2010 until 2013 Year After year, I continued to work both positions when needed, each time Consumer Clerk position would come available, I could not apply because the job switched from a full-time position to a part time position. (**Exhibit C 2012 consumer clerk**).

June 2013 the position for Consumer Clerk became available and it was back to a full-time position. To be honest I did not apply for the Job, because I did not know it became available until coworkers from other centers began to call me and send emails telling me to apply for the Job, Also Human Resource's Mrs. Kathleen Robinson also called me and told me I should apply for the job. On July 1, 2013. I was interviewed by Mrs. Kathleen Robinson and Mrs. Karen McKinney; I received the Job and Because I was Currently working both Positions, I did not have the mandatory six mouth Probation.

On February 21, 2014, I was given my yearly evaluation by My then Supervisor Bobby McCain and Mrs. Karen McKinney who came from the Sylacauga Office to assist him in my evaluation I received perfect scores and Mr. McCain, and Mrs. McKinney Both signed my evaluation. the company hired a part-time receptionist, A Caucasian woman named Mrs. Regina Lovern. I was told by my then supervisor Mr. McCain and Mrs. McKinney that she was hired to help me, we were to work as a team. The defendants cheaha will deny and hide the fact but there were problems in the beginning with Mrs. Lovern, My then supervisor Mr. Bobby McCain constantly had problems with her refusal to work, tried to talk to her, but she refused to listen, so he assigned me the task, I first tried talking, I even type up a 16 Page instruction booklet of all the daily things she and I had to do. Which was read and approved by both my supervisors Mr. McCain and Mrs. Karen McKinney. (**Exhibit D copy co-workers of Instructions**), nothing helped she still refuse to do her Job.

In July My Then supervisor Mr. McCain was involved car accident several weeks later he passed away on August 9,2014, so Mrs. Karen McKinney transferred from Sylacauga office to the Talladega office as acting supervisor along with my In- training supervisor Mrs. Ellye Bernardi. The defendants cheaha will deny it but my two supervisors Mrs. McKinney and Mrs. Bernardi they were having the same problems with the part receptionist refusal to work as my past supervisor. but nothing was done. On September 4,2014 I meet with both supervisors initially because of my co-worker, I alerted them to the problems I was experiencing with my her, along with questions concerning pay , my current and weekly doctors' appointments, and that I was constantly having to work both positions when she was there.

The meeting I felt was productive Mrs. Karen stated that she would check on my pay, with Human Resources, she and Mrs. Bernardi would have a meeting with my co-worker and my doctors' appointments was ok because they had been approved months ago with my past supervisor and Mrs. Karen. She also gave me praise for being a hard worker telling me the clients love me and that they were going to do everything they could to help me. We all worked the rest day and at the end of the day everyone went Home. The meeting with my coworker never happened.

Immediately, the next day Friday September 5,2014 I brought into meetings falsely accused, of me not fulfilling my job duties and things that I did not say, everything that I had accused my co-worker of. Now I was being accused of. My Co-worker was never brought into any meeting concerning her refusal to work, she was never written up, never involved in any meeting with human Resource of Executive Director and was never threatened with Progressive Discipline or Job Termination Like I was. In fact, she maintained her job for months. Job Duties that I had held for years were being taken away from me and given to my co-worker, and she was refusing to do own her Job.

These meetings and treatment continued for months, I was in disciplinary meetings every week, two times a week. I was accused of everything from Breaking into My Supervisors Mrs. Karen's office, to trying to harm My in-training Supervisors Mrs. Bernardi's unborn Baby. Accused of not pulling charts for each workday, so I had to take a picture of my desk daily to prove and show that I was. (**Exhibit E picture of My desk**). After Having three meetings concerning my doctors Appointments, what day they were scheduled and the time Permitted to leave work to attend them, Mrs. McKinney tried to not to let me attend them, My doctor had to send notice that I needed to attend (**Exhibit F my Doctors Note**) then she reported me to

stating she Knew nothing of My Appointments, that I just left work without permission. Next, they began to hide client's charts from me, I would spend hours looking for Clients charts. And when I could not find them, they would report me to Executive Director, and after I would get in trouble, they would pull them out from where they hide them. On Days the Part Receptionist was off and I worked alone Mrs. McKinney would Pile my desk with closed charts preventing me from doing my daily work. then report me to human resource and stating that I was not fulfilling my job duties. I reported my co-worker to my supervisors, human resources and Executive director. And Now I was having to report my supervisor to Human Resources and Executive Director, these meetings occurred on September 15,2014, September 18,2014. I was told That they did not believe me, and nothing was done.

Finally, November 24,2014, when my supervisor in training Ellye Bernardi walked into my office with what she stated was my job description labeled Administrative Support and told me to sign it. I asked her if I could read it first, she wouldn't let me at first, she then stated that it was the same job description, and to just sign it, I replied I needed to read it first , she gave it to me and walked out of my office. After lunch she came back to get it and I alerted to her that she had given me the wrong description, she had given me the part time receptionist description, that I needed Consumer Clerk Position, she left my office, I continued to work, 10 minutes later Mrs. McKinney came to me and began to scream demanding that I sign the job description, I stated to her that I needed the Consumer Clerk Job Description, then she proceeded to yell that my Job as consumer clerk no longer existed.

I asked her how that was possible, I was currently doing the job at that moment, and I pointed out to her that On The Job description Administrative Support that Mrs. Bernardi handed to me, it clearly states that I was to report to Consumer Clerk, I immediately realized then she

was trying to demote me without my Knowledge by having me sign the description without reading it. she threatened me to say that she was going reporting me to Executive Director Cindy Atkinson, then stormed to her office, she came back and stated Human Resource Kathleen Robinson wanted to have a meeting with me. I talked to Mrs. Robinson over the Phone, she stated that we would have the meeting after Thanksgiving holiday. This meeting never happened I did not see or hear from Mrs. Robinson until December 3,2014 When she and Mrs. Atkinson Arrived at the Talladega Office where I was sent home on suspension. I had a follow up meeting on December 8,2014 where I again reported harassment and tried to prove my innocence again, but they refuse to listen, they sent me back home and I was terminated on December 17,2014.

After My Termination I filed an EEOC Complaint, the charges were Discrimination based on Race and Religion, Retaliation, Wrongful Discharge, these are the charges for the treatment I received in 2014 prior to my termination. I did feel that some of the treatment I received was associated with my 2010 EEOC Complaint. Because the same supervisor that I Named in my 2010 EEOC Complaint, now in 2014 I am yet again being threatened with termination from the Same supervisor, I did not understand why? .Mrs. Karen had personally given me my yearly Evaluation In February, and I had perfect scores, In the September 4,2014 meeting she stated that I was a hard worker and that the clients love me, and My In -Training supervisor Mrs. Ellye Bernardi even stated an September 10,2014 Email that I was An Excellent worker and the Best Multi-tasker around, so what was there reason for the treatment I received?

I walked around as if I was on eggshells every day, anything said or done it was wrong. Was All of this because my complaint on my co-worker?

Argument

The defendant denies that I was a victim of discrimination, because they hired someone of my same race to replace me. Disperate treatment is defined as different treatment: one race should not be treated different than another. It is unlawful employment practice to discriminate against a person under Title VII (1) by a respondent cognizable under Title VII an employer, an employment agency or labor organization. (2) On a basis Cognizable under Title VII, Race, Color, Religion, Sex, National origin, or reprisal. (3) on an issue cognizable under Title VII hire, discharge, compensation or privileges of employment.

The defendant states that is was important that I petitioner perform my Job responsibilities, it was critical given the nature of the operation, My Co-worker and I both shared the Exact Same responsibilities of maintaining the front office, we worked side by side, did the same paperwork, treated the same Consumers and worked with the same professional staff, was responsible for answering the same phone lines, was it not just as important for her to perform her job responsibilities as well as for me. The same standards set for me, should have been set for my co-worker. The same treatment that I received for being falsely accused of not doing my work, she should have received for refusal to do her Job Responsibilities.

Conclusion

For the reasons set forth above, as well as those contained in the Petition for Writ of Certiorari, Petitioner prays that the Court grant rehearing and vacate of the order of denial.

Respectfully submitted

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Citations- Table of Authorities

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Supreme Court of The United States

Maetta Vance v Ball State University No 11-556

Argued Nov.26,212 Decided June 24,2013

Cases

1.*Maetta Vance v Ball State University*

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2.Title VII Civil Rights Act of 1964§ 701 et seq., 42 USCA§ 2000e et seq

3. *Rogers v EEOC* 44 F29 234(1971)

4. *Meritor Savings Bank, FSB v Vinson* 477 U. S. 57,65-66,106 S. CT 2399,91 L Ed.2d 49(1986)

5.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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SUPREME COURT OF THE UNITED STATES

Lashunda R. Borden- Petitioner

Vs

Cheaha Regional Mental Health Center Inc. - Respondents

Certificate under Rule 44

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT

The Grounds are limited to intervening circumstances of substantial of controlling effect or to Other substantial grounds not previously presented. The petition for rehearing is presented in good faith and not for delay.

Lashunda R. Borden-Pro-Se

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**Additional material
from this filing is
available in the
Clerk's Office.**