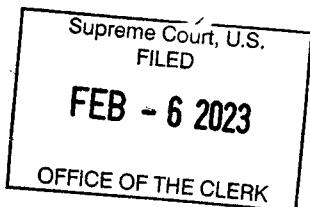


22-6740 **ORIGINAL**
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



LISA ANTOINE -- PETITIONER

VS.

DELANCY C. LLC D/B/A/ VITAL MEDICAL STAFFING -- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT FROM THE 4TH CIRCUIT COURT OF APPEALS

LISA ANTOINE
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The Petitioner in this matter for Writ of Certiorari applies in good faith and prays that this Court grants the Petitioner this Writ and asks the Court to review the matter based on the questions presented to the Court and all the evidence.

QUESTION(S) PRESENTED TO THIS COURT

1. The standard of review for error #1 - Dosen't the EEOC has Federal Investigators who do investigations when a complaint comes in their office and has the right to request any forms of documents relating to any investigation and make inquires relating to case loads and receive them out of good faith?

QUESTION: Why when the EEOC office investigator asked for documents, the Respondent withheld these documents, isn't it a violation of 18 U.S.C. 1505 during an

investigation which lasted 2 years, and isn't withholding discovery material a violation of 18 U.S.C. 1509??

2. The standard of review for error #2 - This court has already ruled on cases relating to sexual harassment, wrongful termination, retaliation, and age discrimination and has landmark cases and from them created rules and laws which has been implemented to prevent these acts in the future.

QUESTION: Did the District court and the Court of Appeal erred in denying the Petitioner her legal rights within her legal capacity from the facts in her case and prevented her from whistleblowing which was ruled on and based on the U.S. Constitution which prohibits this kind of behavior?

3. The standard of review for error #3 - Isn't it the "Rights and Responsibility" of any person within the U.S. and its territories, under the 1st Amendment for freedom of speech to make a complaint and be protected, and under the 14th Amendment for due process when their rights were violated under the law of the U.S. Constitution?

LIST OF PARTIES

All parties are listed in the caption on the cover page. The Petitioner has included the names and parties as to rules of the court.

RELATED CASES

The Petitioner refers to landmark cases ruled on by this court. They are as follows:

Bostock v. Clayton County, 590 U.S. 1618 (2020) Sexual Orientation

Babb v. Wilkie, 140S.Ct. 1168 (2020) Age Discrimination

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998) Sexual Harassment

Faragher v. City of Boca Raton, 524 U.S. 775 (1998) Sexual Harassment

Kasten v. Saint Gobain Performance Plastics Corp., 563 U.S. 1 (2011) Wrongful Termination

Pennsylvania State Police v. Saunders, 325 F.3d 432 (2004) Wrongful Termination (False Report)

University of Texas Soutwestern Medical Center v.Nassar, 570 U.S. 338, 346-347, 133 S. Ct.2517 186 L. Ed. 2d 503 (2013) Unlawful Employment Termination

Burlington Northern & Santa Fe Railroad Co. v. White, 548 U.S. 53 (2006) Sexual Harassment & Retaliation

Mount Lemmon Fire Dist., v. Guido, 139 S.Ct. 22 (2018) Age Discrimination

Meritor Savings Bank FSB, v. Vinson, 477 U.S. 57 (1986) Sexual Harassment

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APPENDIX B - Copy of Age Discrimination proof from discovery material as Ordered by the Judge, showing Petitioner older than the other employees hired by Respondent.

APPENDIX C- Copy of Wrongful Termination EEOC charge Rebuttal Statement. Petitioner provided truthful statement during the interrogatories from the EEOC, on file.

APPENDIX D- EEOC request for information which Respondent withheld for 2 years during their investigation and still withheld after the Petitioner requested during discovery. The information had to be compelled to be produced by the residing Judge.

APPENDIX E- Respondent own policies concerning sexual harassment which was (Breached on their own Contract by the Respondent).

TABLE OF AUTHORITIES CITED

<u>Ransel v. CRST Lincoln Sales, Inc.</u> , 2:10-cv-466 JD (N.D. Ind. Mar. 24, 2014)	10
<u>Garcia v. Draw Enters, Iii LLC.</u> , 17C 4477 (N.D. Iii Nov. 19 2018)	10
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<u>Fuller v. Idaho Dep't of Corrections</u> , 1:13-cv-035-JLQ (D. Idaho Dec. 21, 2014)	10
<u>Smith v. Norwest Financial Acceptance, Inc.</u> , 129 F.3d 1408 (10th Cir.1997)	6
<u>Lee v. Potter</u> , 560 U.S. 954 (2010)	6
<u>Sutton v. Clayton Hospitality GRP. Inc.</u> , 6:14-cv-571-Orl-40TBS (M.D. Fla. Jun. 9, 2015)	7
<u>Greathouse v. JHS Sec. Inc.</u> , 784 F.3d 105 (2d Cir. 2015)	7
<u>Sullivan v. Lake Region Yacht Country Club, Inc.</u> , 996 F.Supp. 1463 (M.D. Fla. 1998)	7
<u>Harville v. City of Houston</u> , 935 F.3d 404 (5th Cir. 2019)	11
<u>Thomas v. Berry Plastics Corp.</u> , 803 F.3d 510 (10th Cir. 2015)	8
<u>Acosta v. Brain</u> , 910 F.3d 502 (9th Cir. 2018)	8
<u>Johnson v. Railway Express Agency Inc.</u> , 421 U.S. 454 (1975)	10
<u>Dornhecker v. Malibu Grand Prix Corp.</u> , 828 F.2d 307, 309 n. 3 (5th Cir. 1987)	9
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<u>Moylan v. Maries County</u> , 792 F.2d 746, 749 (8th Cir. 1986)	9
<u>Henson v. City of Dundee</u> , 682 F.2d 897, 903-05 (11th Cir. 1982)	9
<u>EEOC v. White & Sons Enterprises</u> , 881 F.2d 1006, 1011-1012 (C.A. 11 1989)	7

Moore v. Freeman, 355 F.3d 558, 562-563 (C.A. 6 2004) ----- 7

Scott v. Harris, 550 U.S. 372, 380, 127 S. Ct. 1769 L. Ed. 2d 686 (2007) ----- X

STATUTES AND RULES

42 U.S.C. 1983

42 U.S.C. 1981

42 U.S.C. 2000(e) - 2(a)(1)

18 U.S.C. 1505

18 U.S.C. 1509

OTHER:

AGE DISCRIMINATION EMPLOYMENT ACT OF 1967

CIVIL RIGHTS ACT OF 1964 (TITLE VII)

ADEA 1974 - SECTION 630(b)

29 U.S.C. 633a (a)

29 U.S.C. 215 (a)(5)

OPINIONS BELOW

The opinion of the United States court of Appeals in the 4th. Circuit is marked in the Appendix A and is an unpublished opinion and the Summary Judgment from the lower District Court is also attached hereto.

JURISDICTION

This court has jurisdiction to review the following matter in respect thereof under 28 U.S.C. 1254(1) in circumstances where the U.S. Constitution may be in question from acts done to the Petitioner. The Court of Appeals decided the case on 12/19/2022, before Chief Judge Gregory, and Circuit Judges Wilkinson and Diaz.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner from the case before this court asserts these U.S. Constitutional Amendments and Clauses may be in violation, and this Court with it's authority can note of the construct of the violations and rule accordingly.

1. 1st. Amendment - Freedom of SPEECH for the Petitioner reporting a Sexual Harassment occurrence on the job by a co-worker and be fired for whistleblowing

and speaking up for her rights.

2. 14th Amendment Clause for due process - The Respondent in the matter admitted to have not fully done a thorough investigation at the Summary Judgment hearing and wrongfully terminated the Petitioner using someone else's infraction.

STATEMENT OF THE CASE

The Petitioner provides these allegations and occurrences related to the case.

The Petitioner an at-will employee hired by the Respondent was working at a facility Journey of Statesville between 03/05/19 - 03/28/2019 as a Certified Nursing Assistant. During the time of the work assignment, the Petitioner was scheduled to work alongside a co-worker Eric Marshall hired by the same Respondent who was also Certified Nursing Assistant.

While the Petitioner was providing care to a resident at the facility, co-worker Eric Marshall was supposed to assist with the assignment. The co-worker Eric Marshall approached the Petitioner from behind. The co-worker rested his body with his genitalia in a firm and hard position on the Petitioner buttocks. The co-worker Eric Marshall asked the Petitioner, "Did I want to suck it?" In Smith v. Norwest, 129 F.3d 1408 (10th Cir.1997) the court held "sexual harassment includes "verbal or physical conduct of a sexual nature." The court also held in, Lee v. Potter, 590 U.S. 954 (2010), that "Holding that mere utterances of a racial epithet that engenders offensive feelings in an employee is sufficient to violate Title VII." The Petitioner was done both of these (physical and verbal) when the incident occurred by co-worker Eric Marshall. The Petitioner responded to the co-worker Eric Marshall, "I am a married woman," and tried to avoid assaulting the co-worker in the process by maintaining her composure.

The Petitioner continued to provide care and Eric Marshall left the room. The co-worker left the Petitioner alone and refused to assist to help complete the assignment. After the Petitioner completed the assignment she went to the dining room for breakfast to help out with the residents at the facility. The Petitioner confronted the (SIC) Supervisor-in-Charge Aiyana Byers and told her about the incident. Aiyana Byers told the Petitioner to call her Agency (Vital Medical Staffing - Respondent) and make the complaint about the issue. The Petitioner called her Husband and told him about it and he told the Petitioner to call the agency. The Petitioner called the agency and left a voicemail message on 03/23/19, and sent a text message to the the Owner Lindsey

Delancy. No one at the agency returned the voicemail message or the text message during the entire shift of the Petitioner. In Greathouse v. JHS Sec. Inc., 784 F.3d 105 (2nd Cir. 2015), the court "Concluding internal complaints protected under plain language of 29 U.S.C. 215," Also in, Sutton v. Clayton Hospitality Grp., Inc. 6:14-cv-Orl-40TBS (M.D. Fla. Jun, 9, 2015) "Holding that verbal complaints are protected conduct under FLSA." The Respondent never called the Petitioner or addressed the issue due to this day. See also EEOC v. White & Sons Enterprises, 881 F.2d 1006, 1011-1012 (C.A. 11 1989) and Moore v. Freeman, 355 F.3d 558, 562-563 (C.A. 6 2004), "Assuming without discussion that oral complaints are covered."

The EEOC has stressed that objective criteria should be utilized from "The victim's perspective & not stereotyped notions of acceptance behavior." Quoted from "The Reasonable Woman Standard," - preventing sexual harassment in the workplace, 18 Win. Mitchell L. Rev. 795, 819-28 (1992)

The Petitioner asks the court in affiliation of the the U.S. Constitution, "Isn't the Petitioner protected under the 1st Ammdement for Freedom of Speech when she reported a Sexual Harassment incident and being ignored by the Respondent?"

The Petitioner continued to work until 03/28/2019, and then was called and told that the the facility did not want her there no more (DNR) Do-Not-Return and her employment was terminated immediately. Sullivan v. Lake Region Yacht Country Club, Inc., the court explained, "that the employer could be directly liable where it knew or should have known about the harassment." The reason the Respondent gave for the termination of employment was the Petitioner, "left someone in feces." This was told to the Respondent by the facility Jurney of Stateville, who in turn related this information to the Petitioner. This information was false.

The petitioner decided to file a complaint on 4/1/2019 with the EEOC in Charlotte, NC on West Trade Street. The complaint was about Sexual Harassment, Wrongful Termination, Retaliation, and Age Discrimination. Attachment Appendix C - Rebuttal Statement by Petitioner. The respondent retaliated further by giving wrong or false statements to an investigator concerning another employee of the Respondent, as a reason for employment termination. In Mellinger v. Braithwaite, C18-5838 BHS (W.D. Jul. 31, 2020) The Supreme Court held in a discrimination claim under 29 U.S.C. 633a(a), the "shall be made free from any discrimination based on age." The other two employees Zykisha and Eric were not in a protected class as was the Petitioner over age 40. The law clearly states under 42 U.S.C. 1983 a civil rights action for Deprivation of Rights by filing suit can be instituted to inform the court of these type of actions which

caused harm. Also, 42 U.S.C. 1981 guarantees everyone in the U.S. and its territories equal rights under the law without compromising the very foundation of the law.

The employer of the Petitioner Delancy C. LLC D/B/A Vital Medical Staffing practices as a LLC business violated the very foundation of the law under 42 U.S.C. 2000e-2(a)(1) from the actual reason given by the facility Journey of Statesville, "the Petitioner was reading a book on her non-break time." The reason as claimed by the Respondent was the Petitioner left someone (resident) in feces which was untrue in order to terminate employment. In Thomas v. Berry Plastics Corp., 803 F. 3d 510 (10th Cir. 2015), "Holding that TITLE VII retaliation claims like ADEA claims, require proof that the desire to retaliate was a "but-for" cause of the adverse action." The court must examine that if it was not for the sexual harassment complaint made by the Petitioner, the Respondent would not have used Zykisha abandonment of a resident in feces in order to terminate the Petitioner employment wrongfully. The Respondent did have more than 20 employees on file at the time under Section 630(b) of the ADEA act of 1974.

The Petitioner (female) made more than one complaint in different ways and the Respondent employee Eric Marshall who is below age 40 and is a (male) at the time of the sexual harassment incident who was not terminated but left working on staff while the Petitioner was terminated of employment. "Defining "personal action" in the context of age discrimination in employment-related decisions, such as appointments, promotion, work assignments, compensation, and performance reviews," Guillen v. Esper, 1:19-cv-1206 (LMB/IDD)(E.D. Va. Jul. 13, 2020). The adverse action taken by the Respondent by terminating employment of the Petitioner and keeping the co-worker Eric Marshall on staff proves that, the elimination of the problem to address the sexual harassment issue would have been detrimental to the Respondent, and from this avoided taking responsibility of the issue. The by-laws of the Respondent (APPENDIX E) shows the Respondent is in Breach of their own terms of their agreement in the protection of their employees.

The 1st Ammendment based on sex of the Petitioner (female) was in violation because of the protection it guarantees. In Acosta v. Brain, 910 F. 3d 502 (9th Cir. 2018) "Holding that the standard for causation in TITLE VII retaliation claims in but-for causation, because the statute prohibits retaliation against an employee "because" of certain protected activity. The behavior of co-worker Eric Marshall did create a hostile work environment, to the point of not assisting the Petitioner complete the assignment both was assigned to, and the emotions of the Petitioner was aroused to do violence in her defense.

REASONS FOR GRANTING THE PETITION

The petitioner states to the Court that this Writ should be granted for the injustice that was done by the Respondent because, by proof of the following a sexual harassment must be proven. These points below was to be proven mentioned in the case Meritor Savings Bank FSB. v. Vinson, 477 U.S. 57 (1986)

1. **the Petitioner was in a protected class** - the Petitioner at the time of the incident was over 40 years (born 1964). The other two employees Eric Marshall was born in 1992 who sexually harassed the Petitioner and Zykisha who left the resident in feces was born in 1991. The Petitioner was the only one whose employment was terminated. See APPENDIX B
2. **subjected to unwelcome sexual harassment** - the co-worker Eric Marshall walked up behind the Petitioner unannounced and rested his body on the Petitioner without her consent, and made a statement that was unwelcome and created an atmosphere for violence if the Petitioner had responded in the wrong manner. See APPENDIX C This behavior by the co-worker Eric Marshall created and caused a hostile work environment,
3. **harassment based on sex** - the Petitioner is a female by nature and the co-worker is a male by nature and this circumstance is relevant for sexual intercourse or oral sex, which the Petitioner did not want to involve in.
4. **harassment affected a term, condition, or privilege of employment** - in the bylaws of the Respondent, it clearly states sexual harassment is totally unacceptable which is a violation of their own policies agreement. See APPENDIX E
5. **employer knew or should have known of the harassment in question & failed to take proper remedial action** - the Petitioner left a voicemail message and a text message to the Respondent and told an internal staff member at the facility. The Respondent received the EEOC complaint less than a week later after the incident. See APPENDIX D.(Cited from) Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir.1986) (Citing Henson v. City of Dundee, 682F. 2d 897, 903-05 (11th Cir. 1982) See also Dornhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309 n.3 (5th Cir. 1987) Yates v. Avco Corp., 819 F.2d 630, 633 (6th Cir. 1987) all referred to these points in their cases(cited from Meritor v. Vinson).

These 5 points above must be met in order to prove a sexual harassment case. The infraction of Zykisha was used by the Respondent in order to terminate the Petitioner

employment and this information was false when the Respondent related this information to the EEOC investigator. Zykisha was not disciplined by the Respondent neither was Eric Marshall, but continued to work during the EEOC investigation. "Noting that circumstantial evidence of retaliation includes, "Evidence that similarly situated employees were treated differently." Kasten v. Saint Gobain Performance Plastics Corp., 563 U.S. 1 (2011)(Cited)Ransel v. CRST Lincoln Sales, Inc., 2:10-cv-466 JD (N.D. Ind. Mar. 24, 2014) The Petitioner made 3 total complaints about the sexual harassment incident - one to an internal staff at the facility Journey of Statesville and two complaints to the Respondent. The Respondent was informed by the Petitioner and "The limitations period, while guaranteeing the protection of civil rights laws of those who promptly assert their rights, also protect employers from the burden of defending claims arising from employment (257) decisions that are long past," Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 473-464 (1975)

Noting that a complaint is more likely protected, "where an employee alleged that employer was "breaking" some sort of law." Garcia v. Draw, Iii LLC, 17C 4477 (N.D. Iii Nov. 19 2018). The Respondent discriminated against the Petitioner due to the fact that the Petitioner out of the other 2 employees did not have dreads and she is in a protected class by age which is in violation of both 42 U.S.C. 1981 and 42 U.S.C. 2000e-2(a)(1). These laws and rules are in place to set the standards of the rights and privileges guaranteed under the U.S. Constitution. Holding that a hostile work environment violates TITLE VII because the language of TITLE VII is not limited to "economic or tangible discrimination" Fuller v. Idaho Dep't of Corrections, 1:13-cv-035-JLQ (D. Idaho Dec.2, 2014).

In Faragher v. City of Boca Raton, 111 F.3d 1530 (11th Cir.1997)(en banc), cert. granted, 66 U.S.L.W. 3157 (U.S. Nov.14 1997)(No. 97-282), "This court held that "[a]n employer is directly liable for hostile work environment....harassment if the employer knew or should have known of the harassment and failed to take prompt remedial," and that [a] plaintiff....can prove an employer's knowledge by showing that the harassment was pervasive enough to charge the employer with constructive knowledge". The Petitioner complained to the (SIC) internally at the facility Journey of Statesville, left a voicemail message, and texted message to the owner Lindsey Delancy of the sexual harassment incident, which was made known. The Respondent also got a complaint from the EEOC investigation which also informed the Respondent of the incident. The Respondent can be charged due to the circumstances for constructive knowledge of knowing about the incident. Making matters worst the Respondent kept the co-worker Eric Marshall working during the investigation of the EEOC. The Petitioner has noted to this court 4

different means and ways associating that the the Respondent must be held liable.

Holding that District Court's failure to apply "but-for" causation standard to retaliation claim constituted plain error. Harville v. City of Houston, 935 F.3d 404 (5th Cir. 2019).

The Petitioner was wrongfully terminated when the Petitioner filed motions informing the court that the Respondent used Zykisha infraction of leaving a resident in feces and this information was told to the Petitioner by the Respondent. The Respondent also related this information to a 3rd party, the EEOC investigator. The Petitioner from a realistic point of view from the law of the U.S. Constitution, that her 14th Ammendment due process clause rights were violated by the lower court, and her 1st Ammendment rights.

CONCLUSION

The petitioner prays that this court will grant his Writ in order to reverse the error that was made by the Court of Appeals in the 4th Circuit, and requests that this court make a decision towards the questions presented to the court in review of the standards already set for situations as this to reverse the error made bt the lower courts.

THE PETITIONER SAYEST NO MORE.



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