21 of 33 DOCUMENTS

BRANDON HOSEY, Plaintiff, v. McDONALD'S CORPORATION, Defendant.

Civil No. AW–95–196

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

1996 U.S. Dist. LEXIS 8855; 71 Fair Empl. Prac. Cas. (BNA) 201

May 17, 1996, Decided

May 20, 1996, FILED

DISPOSITION:
[*1] Defendant's Motion for Summary Judgment IS GRANTED.

COUNSEL:
For BRANDON HOSEY, plaintiff: Richard Hugh Semsker, Lippman & Associates, Washington, DC. Solaman G. Lippman, Lippman & Associates, Washington, Dc.

For MCDONALD'S CORPORATION, defendant: Bruce S. Harrison, Shawe & Rosenthal, Baltimore, Md., Eric Hemmendinger, Shawe & Rosenthal, Baltimore, Md.

JUDGES:
Alexander Williams, Jr., United States District Court Judge

OPINIONBY:
Alexander Williams, Jr.

OPINION:

The Plaintiff commenced this action against his former employer, McDonald's Corporation ("McDonald's"). He raises claims of sexual harassment, disparate treatment, and constructive discharge in violation of *42 U.S.C. § 2000e* et seq. ("Title VII"). Presently before the Court is the Defendant's motion for summary judgment. No hearing is deemed necessary. Local Rule 105.6 (D. Md.). For the reasons that follow, the Court will grant this motion.

Factual Background

Mr. Hosey began his employment with McDonald's in February, 1993, as a part–time "crew person." He was eighteen years old at the time and a member of his high school football team. Hosey Dep. at 125. As a crew person, his duties included cooking french fries, washing dishes, **[*2]** and sweeping floors. Hosey Dep. at 163. He worked approximately twelve hours per week. Hosey Dep. at 162–63.

Laria Cornell, who was also eighteen, served as his "crew trainer." Cornell Dep. at 3–4. She was responsible for training new employees and earned $4.50 per hour. Cornell Dep. at 34. In the winter of 1993, McDonald's promoted her to "floor supervisor." Cornell Dep. at 31–32. She helped the store function efficiently (e.g., she switched crew persons to different tasks as needed), but she still had no direct supervisory authority in this role. Taylor Dep. at 84; Cornell Dep. at 39–40.

The Plaintiff alleges that in November of 1993, Ms. Cornell began making unwanted sexual advances towards him. She asked him out on numerous occasions. Hosey Dep. at 210. She also made a few offensive comments to him saying "she would like to know what it felt like to have me inside her." Hosey Dep. at 224–25. The Plaintiff responded to these advances by saying that he did not date co–workers. Hosey Dep. at 210, 225, 231.

Moreover, Mr. Hosey claims there were several incidents of offensive touching. First, in February, 1994, Ms. Cornell allegedly grabbed his seat. Hosey Dep. at 230–231. Second, **[*3]** in March, 1994, when he was sitting with some co–workers, she again pinched his seat. Hosey Dep. at 234. Finally, he testified that this type of offensive touching continued after February, 1994, and that there were approximately ten such incidents in total. Hosey Dep. at 311; 318–319.

Mr. Hosey reported the perceived harassment to other individual's at McDonald's. After the first touching incident, he spoke with certified swing manager, Katedra Taylor. n1 Her response was "Oh, I know. Why don't you just date her." Hosey Dep. at 232. Additionally, approximately two weeks later, he spoke to assistant manager Terry Richards in the parking lot. He told her that, "Laria was asking me out and stuff." She replied, "I know" and then left. Hosey Dep. at 242–43.

n1 Ms. Taylor could make recommendations re-

garding disciplining employees, but she could not make such decisions on her own. Richards Dep. at 15–18.

The Plaintiff felt compelled to resign under these circumstances. He sent a resignation letter to the store **[*4]** manager on March 31, 1994. Def's Ex. 9. Shortly after leaving McDonald's, he began to see a psychologist. Hosey Dep. at 14–15. He was diagnosed as suffering from a post–traumatic stress disorder. Plf's. Ex. I. He then filed his complaint for compensatory and punitive damages.

Summary Judgment Principles

Summary judgment will be granted when no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).* The movant must demonstrate that there is no genuine dispute of material fact. *Celotex Corp. v. Catrett, 477 U.S. 317, 323–25, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).* While the Court views the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing summary judgment, *Matsushita Electrical Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986),* the mere existence of a "scintilla of evidence" is not enough to frustrate the motion. To defeat it, the party opposing summary judgment must present evidence of specific facts from which the finder **[*5]** of fact could reasonably find for him. *Anderson, 477 U.S. at 252; Celotex, 477 U.S. at 322–23.*

Discussion

I. Sexual Harassment

Hosey's primary claim is that Cornell's actions constitute sexual harassment by creating a hostile work environment and that McDonald's is liable for her actions. To prevail on this claim, Hosey must show:

(1) that the conduct was unwelcome;
(2) that the harassment was based on sex;
(3) that the harassment was sufficiently pervasive or severe to create an abusive work environment; and
(4) that some basis exists for imputing liability to the employer.

Swentek v. USAIR, Inc., 830 F.2d 552, 557 (4th Cir. 1987) (citations omitted). Viewing the facts in the light most favorable to Plaintiff, he cannot satisfy the third and fourth elements of this test.

A. Severe or Pervasive Harassment

To determine whether there is an abusive working environment, a court must consider the totality of the circumstances. *Harris v Forklift Systems, Inc., 510 U.S. 17, 126 L. Ed. 2d 295, 114 S. Ct. 367, 370–71 (1993).* A court must examine the claim from both a subjective and objective perspective. Id. The court should consider various **[*6]** factors, such as, the frequency and nature of the conduct, and its effect on the employee's work performance. Id. A plaintiff must show that a reasonable person in his position would find the defendant's conduct created a hostile environment. Id.

Mr. Hosey maintains that he has shown evidence from which a reasonable jury could find an abusive work environment. For example, Ms. Cornell's advances were unwelcome and included remarks he found offensive. In addition, as noted above, he has reported several incidents of inappropriate touching. Finally, he now suffers from a post–traumatic stress disorder. Thus, he contends he has shown an abusive and hostile environment.

The Court finds this argument unpersuasive. A court must be consider a plaintiff's work environment. *Gross v. Burggraf Const. Co., 53 F.3d 1531, 1538 (10th Cir. 1995)* (recognizing that vulgar and profane language is often a part of construction work environment). Here, it is common for teenagers to ask each other for dates and, unfortunately, to use unprofessional language. The Plaintiff concedes as much. Hosey Dep. 164. In addition, there is no evidence that this type of behavior interfered with Mr. Hosey's **[*7]** work performance. Also, Ms. Cornell was not his supervisor either as "crew trainer" or "floor supervisor." See *Swentek, 830 F.2d at 558* (considering whether alleged harasser was plaintiff's supervisor). While Mr. Hosey may have thought such conduct improper, Title VII does not prohibit teenagers from asking each other for dates. Id. See also *Ulrich v. K–Mart, Corp., 858 F. Supp. 1087, 1092 (D. Kan. 1994),* aff'd, *70 F.3d 1282 (10th Cir. 1995)* (Title VII does not prohibit consensual relationships between employees).

In addition, the offensive touching incidents did not create a hostile environment. Mr. Hosey identified two specific instances when Ms. Cornell grabbed his seat and asserts that she touched him this way almost every time she saw him in March, 1994. Hosey Dep. at 230–31; 234; 311; 318–19. However, although he may have had occasional contact with her, they only worked on the same shift once that month (on March 3rd). Def's. Ex. 3. Consequently, Ms. Cornell apparently touched him this way once in February, 1994, and several times over one or two days in March, 1994. Therefore, considering the totality of the circumstances, the Plaintiff has not shown evidence **[*8]** of a hostile environment. See *Weiss V. Coca–Cola Bottling Co., 990 F.2d 333, 337 (7th Cir. 1993)* (no abusive environment although supervisor twice tried to kiss plaintiff, repeatedly put his hand on her shoulder,

and repeatedly asked plaintiff for dates); *Saxton v. A.T. & T, 10 F.3d 526, 533–35 (7th Cir. 1993)* (two incidents of sexual misconduct fail to show hostile environment); *Williams v. Runyon, 881 F. Supp. 359 (N.D. Ill. 1995)* (accepting allegations that female supervisor asked male plaintiff for dates and inappropriately touched him several times as true and finding no hostile environment); *Raley v. Board of St. Mary's County Comm'rs., 752 F. Supp. 1272 (D. Md. 1990)* (summary judgment for defendant when supervisor offensively touched the plaintiff twice and made sexual remarks to the plaintiff). n2

n2 Although a fact finder may not believe his allegations of repeated touching, the Court accepts Mr. Hosey's contradictory deposition testimony for this motion. *Weiss, 990 F.2d at 335–37.*

[*9]

B. Remedial Action

Assuming arguendo that Cornell's behavior created a hostile environment, McDonald's is still excused from liability. It can only be held liable if it had actual or constructive knowledge of the harassment and took inadequate remedial action. *Swentek, 830 F.2d at 557* (citations omitted). The remedial action necessary depends upon the gravity of the harassment. *Ammerman v. Sween, 54 F.3d 423, 425 (7th Cir. 1995).*

Here, Mr. Hosey maintains that his actions gave McDonald's notice. He told a few co–workers about the problem. Smith Dep. at 15; Gharfeh Dep. at 49–50. He also points out that he reported the first pinching incident to certified swing manager, Ms. Taylor. Hosey Dep. at 232. He also told an assistant manager that "Laria has been asking me out." Hosey Dep. at 242. He contends based on these actions that McDonald's had a duty to take remedial action under Title VII.

The Court finds this argument unpersuasive as well. First, Mr. Hosey's discussions with co–workers that did not have supervisory duties nor a duty to report alleged harassment are insufficient to impute knowledge of the offensive behavior to McDonald's. *Juarez v. Ameritech* **[*10]** *Mobile Communications. Inc., 957 F.2d 317, 320–21 (7th Cir. 1992)* (citations omitted). Second, he only told the assistant manager (Ms. Richards) that Ms. Cornell had asked him for dates. Hosey Dep. at 242. He did not inform her of his sensitivity to Ms. Cornell's advances, her offensive comments, or any of her pinching. Third, he only told Ms. Taylor that Ms. Cornell had pinched his seat once and asked him out often, and he made no further complaints to her after their talk. Hosey Dep. at 233. McDonald's was not required to take further action under these circumstances because it had no knowledge of an abusive environment. See *Ammerman, 54 F.3d at 425; Raley, 752 F. Supp. at 1280; Weiss, 990 F.2d at 336; Ulrich, 858 F. Supp. at 1092, n. 5.* Therefore, the Court will grant summary judgment for McDonald's on this claim. n3

n3 The Court notes that, although he knew of McDonald's policy against sexual harassment, Mr. Hosey did not contact the store manager until he chose to resign. Hosey Dep. at 201, 223; Def's. Ex. 4; Van Sickle Aff. at P 3.

[*11]

II. Constructive Discharge

The Court must also grant summary judgment for the Defendant as to his constructive discharge claim. To prove a claim of constructive discharge, a plaintiff must establish (1) that McDonald's actions were deliberate; and (2) that his working conditions were intolerable. *Amirmokri v. Baltimore Gas and Electric Co., 60 F.3d 1126, 1132 (4th Cir. 1995)* (citations omitted). Here, as noted above, the Plaintiff cannot show that McDonald's deliberately exposed him to intolerable conditions. Thus, the Court will enter summary judgment for the Defendant on this claim as well.

III. Disparate Treatment

"Disparate treatment occurs when an employer treats an employee less favorably than others on the basis of a protected classification." *Carter v. Ball, 33 F.3d 450, 456 (4th Cir. 1994)* (citations omitted). The Plaintiff submits no evidence to indicating that McDonald's treated sexual harassment complaints by women more seriously than those by men. Indeed, it conducted an investigation after receiving his resignation letter. Van Sickle Aff. P P 3–6. Therefore, summary judgment will be entered for the Defendant on this claim, too.

A separate **[*12]** Order consistent with this opinion will issue.

5–17–96
Date

Alexander Williams, Jr.

United States District Court Judge

ORDER

In accordance with the Memorandum Opinion, it is this 17th day of May, 1996 ORDERED:

1. That the Defendant's Motion for Summary Judgment BE, and the same hereby IS, GRANTED; and

2. That judgment is ENTERED for the Defendant; and

3. That the Clerk of the Court CLOSE this case and mail copies of this Order and the Memorandum Opinion to all counsel of record.

Alexander Williams, Jr.

United States District Court Judge