

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

FILED
U.S. DISTRICT COURT
MIDDLE GEORGIA

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EQUAL EMPLOYMENT	:	
OPPORTUNITY COMMISSION,	:	
	:	
Plaintiff	:	
	:	
APRIL LEPERA,	:	5:03-CV-219 (WDO)
	:	
Plaintiff-Intervenor	:	
	:	
v.	:	
	:	
CAGLE’S, INC.,	:	
	:	
Defendant	:	

ORDER

Plaintiff Equal Employment Opportunity Commission (hereinafter “EEOC”) filed this case against Defendant Cagle’s alleging discrimination regarding Ms. Lepera’s termination. Ms. Lepera thereafter joined as the Plaintiff-Intervenor and the plaintiffs alleged claims of sexual harassment and retaliation. After a thorough review of the record, the Court determined that a hearing was unnecessary and granted summary judgment for the defendant on all claims. The EEOC thereafter filed a Motion to Reconsider and a Motion to File a Memorandum In Support in Excess of the Five Page Limitation.

The Motion to Exceed Page Limitation is GRANTED.

In the Motion to Reconsider, the EEOC contends there are genuine issues of material fact regarding whether the plaintiffs established that Moore’s

harassment was sufficiently severe and pervasive so as to alter Lepera's work environment and whether Cagle's should be held liable for Moore's misconduct.

Taking each argument in turn, the Court did not choose to discredit Lepera's testimony regarding Moore's alleged misconduct in favor of the evidence that Habegger's investigation did not uncover any evidence to substantiate the specific claims made by Lepera. As is required in every summary judgment opinion, the Court construed all facts in the plaintiffs' favor, as the non-movants, and made the findings therein based on the *undisputed, material* facts in the record.

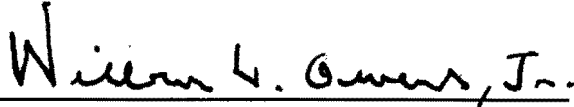
Regarding the "severe and pervasive" element, the facts in this case simply did not show any conduct on Moore's part that altered Lepera's work environment. The alleged harassment continued for 5 or 6 months without a complaint by Lepera to any of Moore's supervisors. Lepera conceded that she knew she could make appointments to see Moore's supervisors and in fact did on several occasions regarding other issues. The plaintiffs did not show that Lepera's work environment was affected in any discriminatory way by Moore's conduct.

Finally, Cagle's is entitled to the Ellerth-Faragher defense and therefore may not be held liable for Moore's alleged harassment based on the following three factors. First, the plaintiffs failed to show that there was any harassment which culminated in a tangible employment action, such as discharge, demotion or undesirable reassignment. There was no evidence that Lepera was terminated *based on her sex or gender* or that Cagle's, in any way, took Lepera's gender into account when the decision was made to terminate her. Second, the plaintiffs

failed to establish harassment in which no adverse 'tangible employment action' was taken but which was sufficient to constructively alter Lepera's working conditions. Third, Cagle's established that it (1) had exercised reasonable care to prevent and promptly correct any sexually harassing behavior by Moore and (2) that Lepera had unreasonably failed to take advantage of the preventive and corrective opportunities provided by Cagle's. Cagle's has a comprehensive, easy to understand policy in place that prohibits sexual harassment and provides detailed instructions on how an employee may go about filing a sexual harassment complaint. After Lepera finally filed a complaint, Habegger, and others, conducted an investigation which resulted in Moore being terminated within a few days. Further, Lepera failed to provide evidence that she was prevented in any way from filing a complaint about Moore in the 5 or 6 months that the alleged harassment was occurring.

Based on the foregoing, the Motion to Reconsider is DENIED.

SO ORDERED this 15th day of February, 2005.


WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE