

Hall of Famers: Newsworthy Employment Law Cases in 2014

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There is evidence that the female prison employee was similarly situated to the male major, but treated less favorably and that supervisors failed to remedy the severely sexualized climate.

Orton v. State (7th Cir 07/21/2014)

<http://case.lawmemo.com/7/orton.pdf>

An investigator, who had been looking for security breaches at the maximum security prison, discovered that night-shift employees were having sex on Orton-Bell's desk and informed her. The matter was brought before the superintendent's attention and he agreed that as long as inmates were not involved, he was not concerned. Immediately after, the superintendent discovered that Orton-Bell was having an affair with the major in charge of custody (which, ironically enough, allegedly involved sex on his desk) and both were discharged. Both separately appealed their discharges to the State Employees' Appeals Commission. The prison settled the major's appeal and then called him to testify against Orton-Bell at her appeal. This tactic enabled the major to keep all of his benefits, including his pension, to quickly get unemployment benefits, and to subsequently begin working at the prison as a contractor. Orton-Bell was not afforded similar benefits and opportunities, so she sued alleging Title VII claims of gender discrimination, retaliation, and hostile work environment.

The trial court granted summary judgment to the state, concluding that Orton-Bell was not similarly situated to the major, that she failed to prove retaliation under either the direct or indirect methods and that the sexual tenor of the prison's work environment was not severe or pervasive enough to qualify as hostile. The 7th Circuit reversed with regard to Orton-Bell's discrimination and hostile environment claims because there is evidence that Orton-Bell was similarly situated to the major, but treated less favorably. Additionally, because her supervisors failed to remedy the severely sexualized climate at the prison, it was likewise error to grant summary judgment on her hostile work environment claim.

However, because she failed to show that her complaint about night-shift employees having sex on her desk was rooted in her protected status, it was not a protected complaint, so her retaliation claim failed.

Employer is not required to pay settlement amount of \$80K because former headmaster breached the confidentiality provision, as proven on Facebook.

Gulliver Schools v. Snay (Florida Ct App 02/26/2014)

<http://case.lawmemo.com/fl/gulliver.pdf>

The school appealed the trial court's order granting Snay's motion to compel enforcement of the settlement agreement between himself and the school, his former employer. Snay was the school's former headmaster. The parties executed a general release and settlement agreement for full and final settlement of Snay's claims for \$90,000 (to include backpay) and \$60,000 in attorney's fees. The confidentiality provision provided that the agreement between the parties were to be kept strictly confidential and that should Snay or his wife breach the confidentiality provision, a portion of the settlement proceeds (\$80,000) would be disgorged. The school notified Snay that he breached the agreement based on the Facebook posting of Snay's college-age daughter, where she stated: "Mama and Papa Snay won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer. SUCK IT."

The Florida Court of Appeal reversed based on the clear and unambiguous language of the parties' agreement and Snay's testimony confirming his breach of its terms.

Officers that raided barbershops to discover licensing violations are denied qualified immunity.

Berry v. Leslie (11th Cir 09/16/2014)

<http://case.lawmemo.com/11/berry.pdf>

Teams from the Orange County Sheriff's Office descended on multiple target locations. They blocked the entrances and exits to the parking lots so no one could leave and no one could enter. With some team members dressed in ballistic vests and masks, and with guns drawn, the deputies rushed into their target destinations, handcuffed the occupants—and demanded to see their barbers' licenses.

The sheriff's office was providing muscle for the Florida Department of Business and Professional Regulation's (DBPR) administrative inspection of barbershops

to discover licensing violations. The barbershops were selected because they or barbers within them had on previous occasions failed to cooperate with DBPR inspectors. The barbers sued and the trial court found that the plaintiffs sufficiently established a causal link between the officers' involvement and the alleged constitutional violations and denied qualified immunity for the officers. The 11th Circuit agreed and affirmed.

Commission did not act arbitrarily or capriciously in upholding the City's decision of an eighteen-day suspension for violations of police department's rules on professionalism.

Hurst v. Department of Police (Louisiana Ct App 07/23/2014)

<http://case.lawmemo.com/la/hurst.pdf>

Police Officer Hurst appealed the City of New Orleans Civil Service Commission (the Commission or Civil Service Commission) decision denying his appeal of an eighteen-day suspension for violations of the New Orleans Police Department's rules on Professionalism and Instructions from an Authoritative Source. Officer Hurst attended a fraternity party where he participated in a beer chugging challenge while in full police uniform and carrying his firearm. Later that night he was photographed inside a bar, attired in his uniform pants, holding a plastic cup containing alcohol. The photographs further revealed that Officer Hurst allowed a female companion to wear his uniform shirt. At Officer Hurst's disciplinary hearing, he offered no mitigating information relative to the infractions.

The Louisiana Court of Appeal affirmed, finding, inter alia, that it agreed with the Civil Service Commission that the notice received by Officer Hurst was sufficient to provide meaningful notice that the charges against him had been sustained and that a pre-disciplinary hearing was scheduled in compliance with La. R.S. 40:2531B(7). Thus, the court held that the Commission did not act arbitrarily or capriciously in upholding the City of New Orleans Police Department decision and denying Officer Hurst's appeal.

A jury may easily be able to find tortious behavior on the part of the deputy sheriff who subjected the attorney and former city judge to a search at the courthouse.

West v. Davis (11th Cir 09/08/2014)

<http://case.lawmemo.com/11/davis.pdf>

West, an attorney and former city judge sued Davis, a deputy sheriff, under 42 U.S.C. Section 1983 (Section 1983) for subjecting her to an unreasonable seizure and for using excessive force in the course of the seizure in violation of

the Fourth Amendment. The complaint also contained a supplemental state law claim under the Georgia Constitution.

When West entered the county courthouse, Davis as part of security detail, commanded her to remove her suit jacket. She responded that she would not do so because it would improperly expose her undergarments. Davis continued to insist that she remove her suit jacket and that if she refused to do so, her choices were to allow him to look under her clothes, to leave the courthouse, or to be arrested. After several minutes, he contacted his supervisor, at that point West contacted her client to say that she was being delayed in arriving at the courtroom. While West was on her cell phone, Davis ordered her to get off the phone and forcibly grabbed her hand, causing her severe pain. After the supervisor arrived, Davis wanded her without incident—something he could have done at the outset. Davis was suspended from his job for a short period and was reassigned to work in the local jail.

The trial court granted summary judgment in favor of Davis. The 11th Circuit reversed in part and affirmed in part and remanded. The court reversed on West's Section 1983 claim because the court found that a jury may easily be able to find tortious behavior on the part of Davis. The court affirmed summary judgment in favor of Davis on her the supplemental state law claim.

Dissent:

"Although I concur in the majority's treatment of West's state claim, I respectfully dissent from its analysis of the Section 1983 claim. Accepting West's factual allegations as true, she suffered no seizure that might trigger Fourth Amendment scrutiny. Her claim must therefore be analyzed under the Fourteenth Amendment's substantive due process standard. And, regardless of whether her claim is analyzed under the Fourth or Fourteenth Amendment standard, Davis is entitled to summary judgment."