

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER PORTA, et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	No. 98-2721
	:	
SGT. RONALD DUKES, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

AUGUST 11, 1998

The Plaintiffs, Christopher and Patricia Porta, brought this action against the City of Philadelphia ("City"), the Philadelphia Prison System, Commissioner Thomas Costello, and Sergeant Ronald Dukes (collectively "Defendants").¹ The case arose out of comments made by Dukes to Patricia Porta, who was then a correctional officer. Before this Court is the Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons that follow, the Defendants' Motion will be granted.

Background

Patricia Porta was hired as a correctional officer by the City of Philadelphia on October 15, 1991. She claims in this action that on March 25, 1994, she was assigned to K-Unit at the

¹In the Complaint, Dukes is listed as "Robert Dukes" in the caption but referred to as "Ronald Dukes" in the body of the pleading. The parties now list him as "Ronald Dukes" in the captions of this Motion.

Philadelphia Industrial Correction Center. The Plaintiff and another correctional officer had just completed an inspection of the cells and were standing by the console of the control room waiting to be dismissed when Defendant Sergeant Ronald Dukes stated to the Plaintiff, "The last time I saw you, you were quiet, a virgin, and unmarried." Dukes then said to the Plaintiff, "The way to a man's heart is through his stomach, so I hope you're a good cook, cause when the cat's away the mice will play." Finally, Dukes told the Plaintiff, "You must be eating a lot of meatballs and spaghetti . . . [because you are] filling out nicely and have good child bearing hips." The Plaintiff gave her account to the Philadelphia Prison System Equal Employment Opportunity Coordinator, but claims she was never notified of the disposition of her complaint.

The Plaintiffs brought this action, alleging claims for (1) defamation, (2) Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., (3) 42 U.S.C. § 1983 ("§ 1983"), (4) the Pennsylvania Human Relations Act ("PHRA"), 43 Pa.C.S. § 951 et seq., (5) intentional infliction of emotional distress, and (6) loss of consortium.

Standard

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A

court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party. See Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). Dismissal is appropriate only when it clearly appears that the plaintiff has alleged no set of facts which, if proved, would entitle him or her to relief.² Conley, 355 U.S. at 45-46; Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990).

Discussion

At the outset, the Plaintiffs have conceded nearly all of their claims. The Plaintiffs withdraw Count I (defamation), Count III (§ 1983), Count IV (PHRA), Count V (emotional

²In this case, it is also important to note that in deciding a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint, and matters of public record. Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993), cert. denied, 510 U.S. 1042 (1994). The Plaintiffs have filed two previous actions that are currently pending before this Court. The facts alleged in those actions are different from those alleged in this case, and are not taken into consideration by the Court.

distress), and Count VI (loss of consortium) in their entirety. Further, the Plaintiffs withdraw the Title VII claims against Dukes and Costello in their individual capacities, claims against Dukes and Costello in their official capacities, and claims against the Philadelphia Prison System.³ The only remaining claim is Patricia Porta's Title VII claim.⁴

Porta claims that the comments made by Dukes on March 25, 1994, created a hostile environment in violation of Title VII. In order to be actionable under this theory, sexual harassment must be sufficiently severe and pervasive to alter the conditions of employment and create an abusive working environment. Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 67 (1986). A hostile environment claim requires five elements: (1) the employee suffered intentional discrimination because of her sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the existence of

³Plaintiffs' readiness to concede these claims leaves the Court somewhat puzzled as to why they were part of the Complaint at all.

⁴In their Memorandum of Law, the Plaintiffs address a claim against Costello based on his alleged failure to train and failure to properly implement existing policies. See Pls.' Mem. of Law at pp. 10-11. But this claim is a part of Plaintiffs' § 1983 claim, which is clearly withdrawn in its entirety elsewhere in the Memorandum.

respondeat superior liability. Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990). The existence of a hostile environment is determined by examining the totality of the circumstances. Id. These circumstances may include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993). "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment -- an environment that a reasonable person would find hostile or abusive -- is beyond Title VI's purview." Id. at 21.

This Court has previously noted that "a single act of harassment because of sex may be sufficient to sustain a hostile work environment claim if it is of such a nature and occurs in such circumstances that it may reasonably be said to characterize the atmosphere in which a plaintiff must work." Bedford v. Southeastern Pa. Transp. Auth., 867 F. Supp. 288, 297 (E.D. Pa. 1994). But the Court went on to note that in virtually all reported cases in which courts have sustained hostile environment claims, "the plaintiff was subject to repeated if not persistent acts of harassment in the environs in which she performed her duties." Id. (citations omitted). The Third Circuit has indicated, when comparing the hostile environment theory with

continuing violations, that "isolated or single incidents of harassment are insufficient to constitute a hostile environment." Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 482 (3d Cir. 1997) (citations omitted).

Porta's claim in this case is based upon a single incident as alleged in the Complaint. This incident clearly is not pervasive and regular as required by Andrews. Indeed, courts have found that a hostile environment did not exist based upon conduct far more egregious than that alleged here. See, e.g., Koelsch v. Beltone Electronics Corp., 46 F.3d 705, 708 (7th Cir. 1995) (finding no hostile environment existed where the company president rubbed the plaintiff's leg, grabbed her buttocks, and asked her for dates); Saxton v. American Tel. & Tel. Co., 10 F.3d 526, 534-35 (7th Cir. 1993) (finding that there was no hostile environment where the plaintiff's supervisor put his hand on the plaintiff's leg and kissed her until she pushed him away, and on another occasion the supervisor lurched at the plaintiff and tried to grab her); Weiss v. Coca-Cola Bottling Co. of Chicago, 990 F.2d 333, 337 (7th Cir. 1993) (holding that there was no hostile work environment where supervisor asked the plaintiff for dates, called her a "dumb blond," put his hand on her shoulder several times, placed "I love you" signs in her work area, and attempted to kiss her); Cooper-Nicholas v. City of Chester, No. 95-6493, 1997 WL 799443 (E.D. Pa. Dec. 30, 1997) (supervisor's

sexual comments over nineteen months were not frequent or sufficiently severe to create a hostile work environment). Evaluating the totality of the circumstances, this conduct is not frequent because it occurred on only one occasion. It is neither severe nor pervasive, and is therefore insufficient to create a hostile work environment.

In summary, the Plaintiffs do not oppose the dismissal of all of their claims with the exception of Patricia Porta's Title VII hostile environment claim. Further, based upon the facts alleged in the Complaint, the conduct here is not sufficiently severe and pervasive to alter the conditions of employment and create a hostile working environment. Because the facts alleged in the complaint, even if true, fail to support the claim, this action must be dismissed.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER PORTA, et al.,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	No. 98-2721
	:	
SGT. RONALD DUKES, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 11th day of August, 1998, upon consideration of Defendants' Motion to Dismiss, and all responses thereto, it is hereby ORDERED that:

1. Defendants' Motion is GRANTED;
2. the Clerk of Court is directed to mark this case CLOSED.

BY THE COURT:

Robert F. Kelly, J.