

Title IX Corner April 2019

Spreading False Rumors Can Be Evidence of Sex-Based Discrimination

It goes without saying that we should not gossip about our colleagues' sex lives in the workplace. Nor should we punish the person who complains about a false rumor. But gossiping about our peers is like speeding. We might know that it's wrong, but most of us are perfectly fine with a little bit of cognitive dissonance during our morning commutes. So, it might surprise you to read about a case that reached the Fourth Circuit Court of Appeals after being dismissed by the district court. In [*Evangeline Parker v. Reema Consulting Services, Inc.*](#), the appeals court found that spreading a false rumor about a female employee may be a form of sexual harassment. And, terminating the employee after she complained about the rumor could constitute retaliation.

What Happened?

The plaintiff, Ms. Parker, had worked in the defendant's (RCSI) warehouse facility from December 2014 until May 2016, when she was terminated. Prior to her termination, Ms. Parker had been promoted six times in less than two years. About two weeks after her last promotion in March 2016, she learned that "certain male employees were circulating ... an unfounded, sexually-explicit rumor about her." The rumor was that Ms. Parker had only been promoted to a managerial role because she had engaged in a sexual relationship with a higher-ranking manager, Demarcus Pickett. The rumor was started by Donte Jennings, a male employee who had started working at RCSI at the same time and rank as Ms. Parker but subsequently reported to her after she was promoted.

The highest-ranking manager at RCSI, Larry Moppins, participated in spreading the rumor. As the rumor continued to circulate, Ms. Parker felt that she was being "treated with open resentment and disrespect" by her coworkers, including employees she supervised. In late April 2016, when Ms. Parker and Mr. Pickett arrived a few minutes late to an all-staff meeting, Mr. Moppins allowed Mr. Pickett to enter the meeting, but reportedly "slammed the door in Ms. Parker's face and locked her out." Ms. Parker learned the next day that the false rumor was discussed at the meeting. When Ms. Parker met with Mr. Moppins to address the rumor, he "blamed" her for "bringing the situation to the workplace" and told her he "would not allow her to advance any further in the company." Several days later, the two met again and Mr. Moppins allegedly "lost his temper and began screaming" that he should have terminated her when she began "huffing and puffing about this BS rumor."

Later that same day, Ms. Parker filed a sexual harassment complaint against Mr. Moppins and Mr. Jennings with RCSI's HR Manager. Several weeks later, Mr. Jennings submitted a complaint to the HR Manager that Ms. Parker was "creating a hostile work environment against him through inappropriate conduct." Based on Mr. Jennings' complaint, Ms. Parker was instructed to have no

contact with him. However, Mr. Jennings was permitted to spend time in Ms. Parker's work area "talking to and distracting" the employees she supervised. As he did this, Mr. Jennings allegedly smirked and laughed at Ms. Parker. Ms. Parker reported this behavior to HR, but it was never addressed.

In mid-May, Ms. Parker was called into a meeting with Mr. Moppins, the HR Manager, and RCSI's in-house counsel. During that meeting, Ms. Parker received two written warnings and was terminated. One warning referenced Mr. Jennings' complaint against Ms. Parker, and the other one asserted that Ms. Parker "had poor management ability and was insubordinate to [Mr.] Moppins." Ms. Parker had received no other warnings prior to this termination. In addition to alleging that the warnings were unfounded, she also argued that RCSI failed to follow its "three strikes" rule for terminating employees.

How Did The District Court Err?

Based on these facts, Ms. Parker alleged that she was subjected to a hostile work environment and terminated because of her sex and her complaint to HR. The district court acknowledged that the rumor was defamatory and injured Ms. Parker's dignity but did not construe the harassment to be based on gender. The judge explained that the rumor was about her alleged conduct rather than her identity as a woman. It was spread by a coworker who was jealous of Ms. Parker's success at the company, which the court saw as distinct from his perceptions about her gender. Nor did the district court consider the rumor to be sufficiently severe or pervasive to have altered the conditions of her employment because it was only in circulation for a short period of time and she experienced few negative repercussions.

The appeals court did not agree with the district court's reasoning or conclusions. It found that a rumor about a female subordinate seducing her male superior to obtain a promotion "plausibly invokes a deeply rooted perception ... that generally women, not men, use sex to achieve success." The appeals court cited multiple cases across the circuits in which similar rumors invoking gender stereotypes about how women advance in the workplace constituted sexual harassment. It concluded that the district court had created a false dichotomy between gender and conduct because the conduct at the heart of the rumor was based on Ms. Parker's identity as a woman.

The appeals court also found that, based on a totality of the circumstances, a factfinder could reasonably conclude that the harassment Ms. Parker experienced was sufficiently severe or pervasive to alter her work environment and create an abusive atmosphere. The rumor persisted from Ms. Parker's last promotion to the day of her termination, and management participated in spreading the rumor and then punished Ms. Parker for its existence and circulation. Based on a Supreme Court precedent, harassment that comes from a supervisor has a "particularly threatening character." *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 763 (1998). As for its impact on her work environment, not only was she humiliated in front of her coworkers, told she had no future at RCSI, and instructed to stay away from the male rumormonger, she was also ultimately

terminated because of the rumor. Once the appeals court established that Ms. Parker satisfied the elements of a discrimination claim, it likewise reversed the dismissal of the retaliatory termination claim, which requires an adverse action in response to a protected activity.

What Can We Learn From This Case?

Sexual harassment in the workplace is a form of discrimination that violates both federal law (Title VII of the Civil Rights Act of 1964) and state law (South Carolina Human Affairs Law). Of course, as an institution of higher education, we know that Title IX of the Education Amendments of 1972 also applies to MUSC. Yet, despite all these legal protections against sexual harassment, many people still experience it in their places of learning and employment. This case serves as a good reminder that sexual harassment is not a cut-and-dry concept. We all have an intuitive understanding that unwelcome sexual advances and requests for sexual favors are inappropriate and illegal, but how often have we pondered the morality of gossiping about our colleagues? After reading this case, it should not be difficult to understand the tangible damage that can result from gossiping. A top-performing woman was humiliated and terminated because of a baseless rumor that called into doubt her achievements. And, if you're in a management position engaging in this kind of gossip is not only illegal but may create liability for your employer. This case is a helpful reminder that sexual harassment is not just something done by "bad" people who intentionally prey on their victims. It's something that some people might unintentionally engage in. On the bright side, it is also entirely within our control. Just like speeding, we can consider the potential impact of our actions, and choose to slow down.