

IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

KIMBERLY LEE and SHARON MCGUYER,

Plaintiffs,

v.

WILLIAMSON COUNTY, TEXAS

Defendant

CA No. 1:10-CV-905

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

1. PRELIMINARY STATEMENT

- 1.1. Plaintiffs demand a jury for any and all issues triable to a jury. This action seeks declaratory, injunctive, and equitable relief; compensatory and liquidated damages; and costs and attorney's fees for discrimination suffered by Plaintiffs, KIMBERLY LEE and SHARON MCGUYER, due to WILLIAMSON COUNTY, TEXAS (hereinafter "Defendant or Williamson County") taking adverse employment actions against them.
- 1.2. Plaintiffs seek declaratory, injunctive, and equitable relief; compensatory and liquidated damages; and costs and attorneys fees for the discrimination suffered by Plaintiffs due to Defendant's actions.
- 1.3. This action arises under the Title VII of the Civil Rights Act, as amended.

2. JURISDICTION

- 2.1. Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(4), and Title VII of the Civil Rights Act, as amended, 28 U.S.C. § 1331.
- 2.2. Jurisdiction is appropriate because on Plaintiffs filed a formal complaint with the Equal Employment Opportunity Commission alleging discrimination and retaliation.
- 2.3. Jurisdiction is also appropriate since the Equal Employment Opportunity Commission issued a decision allowing the Plaintiffs the right to sue.
- 2.4. Declaratory and injunctive relief is sought pursuant to 28 U.S.C. § 2201 and 2202 and Title VII of the Civil Rights Act, as amended.

- 2.5. Liquidated and injunctive relief is sought pursuant to Title VII of the Civil Rights Act, as amended.
- 2.6. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. § 12205 and Rule 54, FRCP and Title VII of the Civil Rights Act, as amended.
- 2.7. Compensatory damages may be awarded pursuant to 42 U.S.C. § 1981a(a)(1) and 42 U.S.C. § 1981a(a)(2)(b)(1) and Title VII of the Civil Rights Act, as amended.
- 2.8. Punitive damages may be awarded pursuant to 42 U.S.C. § 1981a(a)(1) and 42 U.S.C. § 1981a(a)(2)(b)(1) and Title VII of the Civil Rights Act, as amended.

3. VENUE

- 3.1. Venue of this action is proper in this court, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and Plaintiffs, at all times while employees of Defendant resided in this judicial district.

4. PARTIES

- 4.1. Plaintiff Kimberly Lee is a former employee of Defendant and resides in Bastrop County, Texas. Plaintiff worked for Defendant in Williamson County.
- 4.2. Plaintiff Sharon McGuyer is a former employee of Defendant and resides in Burnet County, Texas. Plaintiff worked for Defendant in Williamson County.
- 4.3. Defendant Williamson County, Texas is an employer qualified to do business in Texas and employs more than 20 regular employees. Defendant can be served by serving the county judge, Dan Gattis, 710 Main Street, Suite 101, Georgetown, TX 78626.

5. STATEMENT OF THE CLAIMS

5.1. FACTS

- 5.1.1 Plaintiff Kimberly Lee is a 42-year-old Caucasian female. Plaintiff Lee began working for Williamson County on January 1, 2000. Plaintiff Lee was the Court Reporter for County Court at Law No. 3. Plaintiff Sharon McGuyer is a 59-year-old Caucasian female. Plaintiff McGuyer began working for Williamson County on September 19, 1994. Plaintiff McGuyer was the Court Secretary for County Court at Law No. 4. While Plaintiffs Lee and McGuyer were county employees they reported to Judge Don Higginbotham. It was the Plaintiffs' understanding that Judge

Higginbotham could make ultimate decisions about their employment.

- 5.1.2 October 2009, Plaintiff Lee was sitting in County Court at Law No. 4 talking with Sharroin Threadgill when Judge Don Higginbotham walked into the room and told Plaintiff Lee to “Fu**ing shut up.” Plaintiff Lee promptly got up out of her seat and left the room very upset and humiliated.
- 5.1.3 October 2009, Judge Higginbotham had purchased a new vehicle and in front of the staff of County Court #4, Sharrion Threadgill and Judge McMaster, they asked Judge Higginbotham if Plaintiffs McGuyer and Lee had ridden in his car yet. Judge Higginbotham responded, “They would break the springs of his car.” This made Plaintiffs McGuyer and Lee feel humiliated and sick.
- 5.1.4 On another occasion in October 2009, Jackie Borcharding, a prosecutor for County Court at Law No. 2 was wearing a black dress suit that consisted of a short skirt and jacket, and George Schumann came into the office and made the comment about her skirt being short, and Judge Higginbotham said, “Well, I can’t cut the mustard anymore, But I could sure lick the jar!”
- 5.1.5 On one occasion, Judge Higginbotham told Plaintiff to “come here,” that he needed help going to the bathroom because it was too heavy for him to hold it up (clearly referring to his penis) because he has a bad back. He had told numerous dirty jokes and stories about his sexual experiences.
- 5.1.6 Judge Higginbotham had a pattern and practice of discriminatory, hostile and harassing actions, comments and behaviors, which escalated in October 2009.
- 5.1.7 November 2009, Plaintiff Lee was walking in the hallway when Judge Higginbotham turned to her and said, “ I hate to tell you this, but in those pants you are wearing you have the ass of a Ni**er.” Judge Higginbotham, at that time, starting laughing as they both entered the courtroom. The same day, Plaintiff Sharon McGuyer was showing Plaintiff Lee something on her desk, so Plaintiff Lee was leaned over looking at the papers, and Judge Higginbotham said “Good Lord, can’t you move out of the view of my eyes, I can’t even see around your butt.” Plaintiff McGuyer responded, “Well, then don’t look.” Judge Higginbotham said, “Well, it’s hard not to when your butt is that big.” Plaintiff McGuyer told the judge to be quiet. Again, on the same day, Plaintiffs McGuyer and Lee were leaving for lunch when they heard Judge Higginbotham say, “Well, look at you two. Y’all take up the whole hallway. Can’t y’all move to one side, so I can get around y’all? I can’t stand the view from here.”

- 5.1.8 Also, in November 2009, when Plaintiff Lee asked for a peppermint, the Judge said he had something for Plaintiff Lee to suck on.
- 5.1.9 November 25, 2009, Plaintiff McGuyer asked Amanda Vega, Court #3's Coordinator, why she had parked in the Judge's Parking space since he was coming in this morning. Ms. Vega told Plaintiff McGuyer she had forgotten that he was coming in and Ms. Vega proceeded to call the Judge's home to see if he had left yet and then she would go move her car if he wanted her to. As she was hanging up the phone, Judge Higginbotham went into County Court #4, screaming, "Whose go**mn white Expedition is parking in my fu**ing parking space?' Is it Mandy's?" Plaintiff McGuyer and Ms. Vega walked to the door of County Court #4's office and the Judge said, "You are nothing but a bunch of fu**ing pukes, nothing but a bunch of go**amn fu**ing pukes!" "Get out of here and move your car, move it, move it, move it!" Not only was this extremely humiliating it was also very frightening. His veins were bulging in his neck and his hands were made into fists. Judge Higginbotham's posture was someone who wanted to terrify and intimidate his victims.
- 5.1.10 Once Mandy left, he turned to Plaintiff Lee and said "Why in the fu*k are you down here?" Plaintiff Lee stated she was just telling them Happy Thanksgiving. Judge Higginbotham looked at Plaintiff Lee and said, "Get your go**amn ass to your office now." I mean NOW! When you are not in fu**ing court, then you better have your go**amn ass in your office. Do you got it? Do you got it? GO! GO! GO!"
- 5.1.11 On December 2, 2009, Plaintiff had just finished up a jury trial in court and was standing in the hallway outside of the office talking to the prosecutor, Jo Poenitzch, Heather Trice and Tammy Walton (who is a bailiff). They were all talking when Judge Higginbotham walked out of the office and looked at Plaintiff Lee and said, "Shut up bitch!" He then just turned and walked off to go to lunch and asked Jo if she would let him walk through their office to get to his car. Later in the day, Tammy Walton come up and hugged Plaintiff Lee and said, "I'm sorry."
- 5.1.12 December 14, 2009, Judge Higginbotham had just returned from vacation in Las Vegas and Amanda Vega bent over to get some paper for out printer out of the box and Judge Higginbotham was sitting on the other side of the room Judge Higginbotham stated, "If I had known I was gonna hit the jackpot I wouldn't have needed to go to Vegas!"
- 5.1.13 On December 22, 2009 Plaintiffs McGuyer and Lee and met with Lisa Zirkle, the head of Human Resources, and told her about the abuse, discrimination, and hostility from Judge Higginbotham. Ms. Zirkle told the Plaintiffs that due to the fact that the County Attorney, Jana Duty, had written a letter last year in September threatening Judge Higginbotham

that if his inappropriate language and sexual harassment of her prosecutors did not stop, that she would be forced to do something about it, but yet nothing was ever done or followed up with. Lisa Zirkle felt Plaintiffs Lee and McGuyer were a conflict of interest for the county attorney to handle it, so she hired an outside attorney from Austin, named Steve Mierl to talk about how to handle the situation.

- 5.1.14 On December 30, 2009, Plaintiffs Lee and McGuyer went to the human resources department to meet with Lisa Zirkle and Steve Mierl. Ms. Zirkle started off the conversation that even though she had said they be allowed to write their written statement, they decided not to write their statements and the purpose of the meeting was just to tell Steve Mierl about the sexual harassment and verbal abuse from Judge Higginbotham. Steve Mierl said “Yes, I am going to take notes of your complaints, but we are not going to allow you to write a statement because your statements would be subject to the Open Records Act, so if someone was to get an attorney, then your statement would be available to the public and press.” He said his notes would be for a timeline of events and “ his notes were for his eyes and his eyes only, and that they would have to pry them from his cold dead hands.”
- 5.1.15 At the conclusion of the meeting, Steve Mierl said he was going to meet with Judge Higginbotham and tell him, “The buck stops here”, that there had been some complaints about his behavior toward others and that human resources would be monitoring the situation to make sure his behavior did not continue. Plaintiffs Lee and McGuyer asked Ms. Zirkle and Mr. Mierl if they would have to take this before the Commissioner’s Court and they replied “no.” Plaintiffs also asked them if Judge Higginbotham would know that who made a complaint. Mr. Mierl assured Plaintiffs Lee and McGuyer that Judge Higginbotham would not know who made the complaint, just that a complaint had been made.
- 5.1.16 On January 5, 2010, Plaintiff Lee received a phone call from Lisa Zirkle stating that they had gone ahead and taken their complaint to a closed session of the Commissioner’s Court to discuss the matter. Ms. Zirkle explained that Judge Dan Gattis (the County Judge) had decided that since he was a long-time friend of Judge Higginbotham, that Judge Gattis and a local attorney, Mike Davis, who was also a long-time friend and Marine buddy were going to do an intervention with Judge Higginbotham to tell him that a complaint had been made, but that no names would be mentioned and that Judge Gattis and Mr. Davis would tell Judge Higginbotham that he could no longer behave in the manner that had been reported.
- 5.1.17 On January 6, 2010 Mike Davis came into Plaintiffs’ office wearing a leather jacket that said “Marines United We Stand” and went to Amanda

Vega's office and told her that some horrible allegations had been made about Judge Higginbotham and he needed her to come to his office at 11:00am to discuss. Amanda came back that afternoon and told Plaintiff's Lee and McGuyer that Mike Davis had Steve Mierl's letterhead with all of the complaints that Plaintiffs Lee and McGuyer had given him written on his letterhead and told Amanda that Plaintiffs Lee and McGuyer had made these complaints about Judge Higginbotham and asked her if she could substantiate any of them. She informed Plaintiffs that she substantiated the ones that she was present for. Mike Davis came back to the office later that afternoon and began questioning individuals and showing them the letterhead from Steve Mierl.

- 5.1.18 The letterhead contained the same complaints that Mr. Mierl assured the Plaintiffs would be kept confidential.
- 5.1.19 It is Plaintiffs' understanding that County Judge Gattis hired Mr. Davis to represent Judge Higginbotham without a county vote or any kind of hearing or proposal submission. Mr. Davis was holding an open investigation in front of Plaintiffs and their co-workers. Plaintiffs felt very intimidated and called Lisa Zirkle to speak with her right away. She informed Plaintiffs that an attorney, Hank Prejaen, who worked for the county attorney's office, and Jana Duty would be present. Plaintiffs explained to Ms. Zirkle and Mr. Prejean the situation that was going on with Mr. Davis at the office. Hank Prejean informed Plaintiffs that the county had no control over Mr. Davis. Plaintiffs asked him why not since the county is the one who brought Mr. Davis into the situation. Plaintiffs told Mr. Prejean and Lisa Zirkle that Judge Higginbotham's abuse was sexual harassment and that it was worse towards them as women and that he did not treat the men with hostility and that they felt as if they were being victimized all over again. Mr. Prejean informed Plaintiffs that he represented the county and that Mr. Davis represented Judge Higginbotham. Mr. Prejean admitted that he felt Judge Higginbotham's actions were sexual harassment.
- 5.1.20 On January 7, 2010 Plaintiff Lee received a phone call from Lisa Zirkle saying that Judge Gattis had instructed her to call Plaintiffs to ask if it would help if she came over to reprimand Judge Higginbotham. Plaintiffs told her that they could do what they wanted, but the damage had been done with the way they had handled the situation. Judge Higginbotham came in that morning and tried to do damage control and told all of the witness that Mr. Davis had spoken to that he was depressed and is now on medication and was all-better. Judge Higginbotham apologized to everyone else, but did not speak to Plaintiffs.
- 5.1.21 On January 8, 2010 Plaintiff Lee received a call from Lisa Zirkle that Jana Duty, Mr. Mierl, Mr. Prejean and Mr. Davis wanted to meet with Plaintiffs at

2:30pm. Plaintiff Lee informed her that they would be there, but she did not feel comfortable meeting with Mr. Davis due to his behavior the previous days. During lunch, Plaintiffs had decided that since everyone was represented except for them, they would contact an employment lawyer. At the meeting, Jana Duty came in and said, "Let me give y'all a hug. I'm glad y'all finally came forward. I don't know how y'all have put up with this abuse this long." Plaintiffs informed them that they had hired an attorney and that he said to reschedule this meeting for a time that he could be present as well and to give his contact information. Jana said, "Okay, I don't blame y'all. Would it work if we could move y'all to another court?" Plaintiffs told Ms. Duty that she would need to talk to their attorney.

- 5.1.22 On January 11, 2010 Jana Duty came into the courtroom and delivered a letter addressed to the Plaintiffs. The letter stated that if they did not hire an attorney and give her one week to correct the situation that she would have affidavits drawn up by women who she named in the letter stating that they had also been abused by Judge Higginbotham and/or had witnessed his behavior. The letter also stated that the affidavits would be delivered to Judge Higginbotham through his attorney Mr. Davis and Judge Higginbotham would be informed that he had until Friday at 5:00 p.m. to tell her when he would be retiring or she would hand deliver the affidavits to the Judicial Board of Ethics and Conduct and then go to the press with the information. Exhibit 1.
- 5.1.23 After being informed that Plaintiffs no longer had representation, on January 26, 2010, Judge Higginbotham called Amanda Vega and Plaintiffs Lee and McGuyer into his office and apologized for his behavior towards said that he would still be retiring, but that he would like to stay until after the primaries, because it would be a smoother transition. He stated that he would be taking a lot of time off until his retirement date and that he was taking medication now and that he had just been under stress due to some deaths of friends and family.
- 5.1.24 On January 28, 2010 Plaintiff Lee was in the office when two local attorneys came into Judge Higginbotham's office and shut the door to discuss a case that was being held in our court that day. Plaintiff Lee overheard Judge Higginbotham tell Ed Walsh and Brenda Rhea that Plaintiff Lee and McGuyer had made some allegations against him so he would lose his retirement. Judge Higginbotham knew while making these statements that these statements were untrue. Judge Higginbotham has continued to defame Plaintiffs' character by telling this to various attorneys throughout the community to try to gain sympathy and to sabotage us from being able to maintain our employment until retirement.
- 5.1.25 On March 15-19, 2010, Plaintiff Lee was on vacation. During this week

the court had a jury trial scheduled. Plaintiff Lee had a court reporter scheduled for March 15-17, 2010. The visiting court reporter was canceled on March 17, 2010 by the court coordinator due to the fact that the video for the jury trial had some technical difficulties. Even though Judge Higginbotham knew that the jury trial had been canceled due to technical difficulties that the prosecutors were having, Judge Higginbotham told the other judges including district judges, that he had to cancel his jury trial for Wednesday March 17, 2010 due to the fact that Plaintiff Lee did not show up for work.

- 5.1.26 Plaintiffs dually filed a charge with the Texas Workforce Commission- Civil Rights Division and the EEOC on March 30, 2010.
- 5.1.27 Subsequent to filing this protected charge with the TWC-CRD and the EEOC, Judge Higginbotham continued his hostile discrimination and harassing behavior as well as retaliated against Plaintiffs
- 5.1.28 The Judge would hold meetings in the courtroom with his attorney about Plaintiffs' claims.
- 5.1.29 The Judge made a point of taking employees on the witness list out to lunch.
- 5.1.30 Employees who had spoken with the Judge would call and yell and scream and ask Plaintiffs how they could put the Judge through this.
- 5.1.31 Certain employees who had spoken with the Judge gave Plaintiffs the silent treatment.
- 5.1.32 The Judge's attorney, Mr. Davis, has come to the courtroom and stayed when he has no court business.
- 5.1.33 The Judge's attorney, Mr. Davis, told Mandy, the court coordinator, to come in to his office and that these two (Lee and McGuyer) made these horrible complaints.
- 5.1.34 Human Resources wholly failed to follow up with Plaintiffs regarding their complaint.
- 5.1.35 Subsequent to our going to Human Resources, the County issued a sexual harassment policy.
- 5.1.36 Judge Higginbotham's harassing, discriminate, retaliatory and horrible behavior has caused Plaintiffs mental anguish. Plaintiff Lee's doctor forced to put her on medication because of this.
- 5.1.37 Judges Tim Wright, John McMaster and Burt Carnes and County attorney Jana Duty have witnessed and observed Judge Higginbotham's discriminatory and retaliatory behavior.

- 5.1.38 The incoming judge, incoming Doug Arnold, informed Plaintiff that he intended to keep them on staff.
- 5.1.39 Judge Higginbotham's attorney, Mr. Davis, is listed as an endorser of Dan Arnold in this month's election.
- 5.1.40 On November 16, 2010, one day after receiving Plaintiffs' Federal notice of right to sue, Defendant, via incoming Judge Doug Arnold (who has not yet taken office), fired Plaintiffs.
- 5.1.41 Defendant discriminated and retaliated against Plaintiffs in violation of the Age Discrimination in Employment Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended based on Plaintiffs' age and gender.

6. CAUSES OF ACTION

- 6.1. Based on the above facts, Plaintiff alleges Defendant violated Title VII of the Civil Rights Act, as amended based on Plaintiffs' age and gender and protected activity. The above-described actions of Defendant were so outrageous in character and so extreme in degree that they exceeded all possible bounds of decency and can only be regarded as atrocious and utterly intolerable in a civilized community.
- 6.2. As a direct and proximate result of the aforementioned arbitrary and capricious acts, the Plaintiff has suffered grievous harm, including but not limited to, humiliation and embarrassment among co-workers, customers and others; sustained damage to Plaintiffs credibility; sustained damage to Plaintiffs prospects for future employment.

7. ADMINISTRATIVE CONDITIONS PRECEDENT

- 7.1. Plaintiff brought this suit within ninety (90) days from the date of receipt of the EEOC's issuance of the notice of right to sue.
- 7.2. Plaintiff has completed all administrative conditions precedent since Plaintiff filed Plaintiff's charge of discrimination and since 180 days had passed prior to Plaintiffs requesting the right to sue. Exhibit 2.

8. PRAYER

- 8.1. WHEREFORE, Plaintiffs prays the Court order to award such relief including the following:
 - 8.1.1. Declare Defendant's conduct in violation of Plaintiffs' rights;
 - 8.1.2. Enjoin the Defendant from engaging in such conduct;

- 8.1.3. Order Defendant to pay Plaintiffs back pay and front pay and benefits for the period remaining until Plaintiffs' normal retirement age.
- 8.1.4. Order Defendant to pay Plaintiffs' costs and attorneys' fees in this action.
- 8.1.5. Award Plaintiffs compensatory damages for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.
- 8.1.6. Award Plaintiffs punitive damages to be determined by the trier of fact.
- 8.1.7. Grant Plaintiffs pre-judgment and post-judgment interest;
- 8.1.8. Order Defendants to pay Plaintiffs' costs and attorney's fees in this action; and,
- 8.1.9. Order and grant such other relief as is proper and just.

Respectfully Submitted,

/s/ Gregg M. Rosenberg _____

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