

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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November 14, 2013

MEMO TO COUNSEL RE: Cimenga Tshibaka, M.D. v. Carroll Hospital Center
Civil No. JFM-13-2760

Dear Counsel:

I have reviewed the memoranda submitted in connection with the motion to dismiss filed by Jaime Elliott. The motion is granted.

The fact, relied upon by plaintiff, that there is no dispositive Fourth Circuit decision on the related issues of whether a non-supervisory employee or an employee not involved in the decision to terminate a plaintiff's employment can be liable for an action arising from the termination of employment filed under 42 U.S.C. §1981, is not controlling. I am fully satisfied by the reasoning of other courts that have considered the issue. In my judgment a non-supervisor employee, certainly one who was not involved in the decision to terminate a plaintiff's employment, cannot be liable under Section 1983.

As to the defamation claim, I am fully persuaded that statements made by Ms. Elliott during the course of prosecuting a charge against plaintiff for having allegedly sexually assaulted her are entitled to absolute immunity. The question of whether questions she might have made to co-employees before filing the charge presents a somewhat closer question. However, in my judgment it is entirely reasonable for an employee who allegedly has been the subject of sexual harassment to speak with co-workers before deciding whether to pursue the matter. Therefore, any statements made before the charge is actually filed are likewise entitled to absolute immunity.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge