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Commonwealth of Kentucky

Court of Appeals

NOS. 2006-CA-001452-MR
&
2006-CA-001897-MR
&
2006-CA-002328-MR

STANLEO PATTON; EARL JEROME HENDERSON; AND MEASKYLA CARTER — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 96-CI-002892

JOHN AUBREY, SHERIFF OF JEFFERSON COUNTY, KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KELLER, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: Stanleo[1] Patton, Earl Jerome Patterson, and Measkyla Carter have appealed from summary judgments entered by the Jefferson Circuit

[1] Although the record includes several variations in the spelling of Patton's first name, he signed the amended complaint as "Stanleo Patton."

Court dismissing their racial discrimination and hostile work environment claims against the Sheriff of Jefferson County (Sheriff). For the reasons stated, we affirm.

Appellants are African-Americans who were employed by Sheriff James Vaughn in the Jefferson County Sheriff's Office (JCSO). According to appellants, the Sheriff and the JCSO are responsible for duties which include court security, general law enforcement, and the service of criminal process papers and warrants.

In 1996, Carter and three other plaintiffs filed an action against then-Sheriff Vaughn.[2] Twelve other plaintiffs subsequently joined the action, including Patton and Henderson in October 1998. Although all sixteen plaintiffs alleged racial discrimination, the facts of the individual claims varied greatly and the court bifurcated the claims for separate trials and adjudication. Twelve of the claims were dismissed in whole by summary judgment, and no appeals followed. Portions of the claims of Carter, Henderson, and another plaintiff, Steve Yancey, also were disposed of by summary judgment at that time. Yancey's remaining claims went to trial. A jury returned a verdict in favor of Yancey, but the trial court entered a judgment notwithstanding the verdict, which was affirmed by a panel of this court on appeal.[3] The Kentucky Supreme Court denied discretionary review. Subsequently, the trial court entered summary judgment dismissing

[2] Sheriff John Aubrey was substituted as a party after he took office in January 1999.

[3] *Yancey v. Sheriff of Jefferson County,* Nos. 2002-CA-000229-MR and 2002-CA-000293-MR (Ky.App., Feb. 20, 2004).

Patton's claims, as well as Carter's and Henderson's remaining claims. These three appeals followed.

Summary judgment is to be granted only "'to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant.'" *Steelvest, Inc. v. Scansteel Serv. Ctr.,* 807 S.W.2d 476, 483 (Ky. 1991) (quoting *Paintsville Hospital Co. v. Rose,* 683 S.W.2d 255, 256 (Ky. 1985)). One who opposes "a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Steelvest, id.* at 482 (citing *Gullett v. McCormick,* 421 S.W.2d 352 (Ky. 1967)). *See also Continental Cas. Co. v. Belknap Hardware & Mfg. Co.,* 281 S.W.2d 914 (Ky. 1955). Summary judgment is deemed appropriate "[p]rovided litigants are given an opportunity to present evidence which reveals the existence of disputed material facts," and the trial court determines "that there are no such disputed facts[.]" *Hoke v. Cullinan,* 914 S.W.2d 335, 337 (Ky. 1995).

KRS[4] 344.040(2), as part of the Kentucky Civil Rights Act, prohibits an employer from "limit[ing], segregat[ing], or classify[ing] employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect status as an employee, because of the individual's

[4] Kentucky Revised Statutes.

race[.]" *See also* Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et. seq*. (Title VII). It is well established that a claim of employment discrimination

> unfolds in three stages. First, the plaintiff must make a *prima facie* case of discrimination by offering proof that, 1) she is a member of a protected class, 2) she is qualified for and applied for an available position, 3) she did not receive the job, and 4) the position remained open and the employer sought other applicants. *McDonnell-Douglas Corporation v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Second, the employer must then articulate a "legitimate nondiscriminatory" reason for its action. *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Third, once such a reason is given, it is incumbent on the employee to demonstrate that the stated reason is merely a pretext to cover the actual discrimination. *Id.* at 256, 101 S.Ct. at 1095.

Ky. Ctr. for the Arts v. Handley, 827 S.W.2d 697, 699 (Ky.App. 1991) (footnotes omitted). *See also Turner v. Pendennis Club,* 19 S.W.3d 117 (Ky.App. 2000). A *prima facie* showing of discriminatory treatment may also be established by evidence that the plaintiff was afforded less favorable treatment than similarly situated employees of another race, or that the manager responsible for the alleged discrimination engaged in such conduct while voicing numerous derogatory comments about the plaintiff's race in general and about the plaintiff in particular. *Kirkwood v. Courier-Journal,* 858 S.W.2d 194, 198 (Ky.App. 1993). Racial insensitivity, the utterance of a racial epithet, simple teasing, offhand remarks, or isolated events, unless extremely serious, do not alone constitute actionable discrimination. *Faragher v. City of Boca Raton,* 524 U.S. 775, 787-88, 118 S.Ct. 2275, 2283-84, 141 L.Ed.2d 662 (1998). The plaintiff at all times bears the

ultimate burden of showing that the defendant intentionally discriminated against him or her. *White v. Rainbow Baking Co.,* 765 S.W.2d 26, 29 (Ky.App. 1983).

Further, allegations regarding the existence of a racially hostile work environment, in violation of Title VII, require a plaintiff to show that the offensive conduct was so "severe or pervasive [as] to alter the conditions of the victim's employment and create an abusive working environment[.]" *Harris v. Forklift Systems, Inc.,* 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993) (quoting *Meritor Sav. Bank, FSB v. Vinson,* 477 U.S. 57, 67, 106 S.Ct. 2399, 2405, 91 L.Ed.2d 49, 59 (1986)). *See also Oncale v. Sundowner Offshore Svcs., Inc.,* 523 U.S. 75, 78, 118 S.Ct. 998, 1001, 140 L.Ed.2d 201(1998); *Clark v. United Parcel Svc., Inc.,* 400 F.3d 341, 351 (6th Cir. 2005); *Smith v. Leggett Wire Co.*, 220 F.3d 752, 760 (6th Cir. 2000); *Ammerman v. Bd. of Educ.,* 30 S.W.3d 793, 798 (Ky. 2000). Additionally, the plaintiff must show that his or her employer condoned or tolerated the hostile or abusive behavior, or knew or should have known of the hostile or abusive behavior, but did nothing to correct the situation. *Smith*, 220 F.3d at 760. The determination of whether an environment was so hostile or abusive as to support the claim requires the court to consider "'all the circumstances,' including 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.'" *Faragher,* 524 U.S. at 787-88, 118 S.Ct. at 2283 (quoting *Harris,* 510 U.S. at 23, 114 S.Ct. at 371.) *See also Lumpkins v. City of Louisville,* 157

S.W.3d 601, 605 (Ky. 2005). Moreover, "'the issue is not whether each incident of harassment standing alone is sufficient to sustain the cause of action in a hostile environment case, but whether – taken together – the reported incidents make out such a case.'" *Jackson v. Quanex Corp.,* 191 F.3d 647, 659 (6th Cir. 1999) (quoting *Williams v. General Motors Corp.,* 187 F.3d 553, 562 (6th Cir. 1999)). *See also Kirkwood,* 858 S.W.2d at 198.

Nevertheless, the harassment must be such that it "constituted an unreasonably abusive or offensive work-related environment or adversely affected the employee's ability to do his or her job." *Moore v. KUKA Welding Sys. & Robot Corp.,* 171 F.3d 1073, 1079 (6th Cir. 1999) (citation omitted). When properly applied, therefore, the standards for judging hostility "will filter out complaints attacking 'the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender- [or race-] related jokes, and occasional teasing.'" *Faragher,* 524 U.S. at 788, 118 S.Ct. at 2284 (internal citations omitted).

As noted, each appellant alleges that the trial court erred by granting summary judgment for the Sheriff after finding that the evidence was insufficient either to establish a *prima facie* case of employment discrimination based on race, or to show the existence of a genuine issue of material fact as to whether a hostile workplace existed. Having carefully reviewed the record, we disagree with each contention.

Patton adduced evidence to show that he attended Eastern Kentucky University (EKU), taught in EKU's Department of Criminal Justice, worked as a police officer in Lexington and Winchester, and received numerous academy and law enforcement training certificates. He sought and obtained a job with the JCSO so as to be nearer his fiancé in Louisville. Although Patton was hired at the rank of major, expecting that he would be in charge of training, he in fact was assigned first to supervise vehicle inspections after he chose to delay his starting date. At six-month intervals he was reassigned to two other positions. A year later, he accepted the training position for which he originally was interviewed, and he remained in that position for several months before retiring and accepting a local position with his former employer. According to Patton, his decision to retire was partially influenced by his own concerns about whether Vaughn disliked him, and by the number of JCSO transfers to which he had been subjected.

Patton's allegations of employment discrimination were based largely on the statements or depositional testimony of several other JCSO employees. Wayne Marcus Lovan, Sr., a former JCSO officer who was fired by Vaughn for sexual harassment, testified by deposition that Vaughn told him Patton would not last long in a new assignment. Patton also alleges that the following portion of Lovan's depositional testimony established that Vaughn directed Lovan to conduct a pre-employment investigation into Patton's alleged interracial relationships:

> A. Well, my recollection, I believe Colonel Bob Milton said that Major Patton allegedly, he had heard that he had – I believe it was he or Cook, but I believe it was Bob

> Milton – said that he had had a reputation for having a strong interest in Caucasian females. I do remember because I thought it was rather humorous, and you ladies, I don't know how you are going to close your ears, but do you want a direct quote.
>
> Q. Whatever happened there I would like to know about it?
>
> A. Richard Lynch's comment was I don't care if he fucks a goat. Okay. Quote, unquote. Now the Sheriff instructed me to – I had informed the Sheriff that I had an agent that I put complete trust in his judgment, integrity, in Youngstown that was working for me that had been a police officer at Eastern and also – or at Richmond, and he went through the criminal justice program in Eastern. We [sic] probably be familiar and would give me an objective opinion of Major Patton. He instructed me to contact that agent, which I did, and the agent gave me a good report, which I, in turn, he did not give me the report of the gossip or rumors about Major Patton. And so I returned to Vaughn with that information and said that he seemed to be an okay person.

Patton asserted that he heard several rumors regarding Vaughn's alleged disdain for him, including that Vaughn described him as a "nigger [who] was dumber than a box of rocks." Further, Patton testified by deposition that in their only face-to-face meeting during his JCSO employment, Vaughn grew irritated and terminated the conversation when Patton attempted to discuss racial segregation within JCSO and the low number of minority employees serving on the streets. Patton asserted that he was questioned about the number of minorities going through his office while he was recruiting potential employees, that he was chastised regarding a visit made to his office by a local African American advocate even though he never met with the advocate, and that he resigned in order to avoid

any blemishes on his record. Patton alleged that Vaughn similarly treated other African Americans in the JCSO.

However, Patton also testified by deposition that he was the first African American major in the JCSO, and that his salary was commensurate with those of his peers. Although his initial assignment was different from that for which he initially interviewed, at the time he did not believe the change was unfair or discriminatory since the position needed to be filled and he chose to delay his own starting date. He initially testified by deposition that his different assignments were positive experiences which allowed him to improve several JCSO departments, although in a later deposition he questioned the purpose of the numerous transfers.

Patton admitted that despite rumors, he never heard Vaughn use racial epithets, and his belief that he was "not very well-received" by Vaughn was based on second-hand information from other employees. Although Patton initially could not recall who told him that Vaughn had described him as a "nigger [who] was dumber than a box of rocks," he later identified two JCSO deputies as the source of the information. However, both deputies testified by deposition that they had never heard Vaughn or any JCSO employee make such a statement. Further, the claim that Vaughn directed Lovan to investigate Patton's social life is foreclosed by a review of Lovan's deposition, in which Lovan testified only that rumors about Patton's possible dating habits were rejected as irrelevant, and that Vaughn directed him to conduct a pre-employment background inquiry about

Patton. Although Patton asserts on appeal that he was "the focus of an internal affairs investigation based upon Sheriff Vaughn's displeasure that a high number of minorities had been going through Patton's office[,]" Patton's own testimony indicates only that an officer inquired about the steady stream of traffic into Patton's office, and that the matter was resolved when it was learned that Patton had been assigned to recruit minorities. Patton's allegation that racial discrimination was demonstrated when he was directed not to meet with a local civil rights advocate, and to advise his supervisors if the advocate attempted again to contact him, was weakened when Patton testified that he neither knew the advocate nor was present at the office on the single occasion when the advocate attempted to visit him, and that cooperation with the directive "was not a problem" since the advocate "would possibly shed some negative light on" the JCSO. Finally, although Patton testified by deposition that he sensed he was not favored by Vaughn, that some of his assignments could have been handled by deputies, that he disagreed with Vaughn's management style, and that he believed Vaughn was harsh to employees regardless of race, he also testified that he was treated fairly and was not a victim of racism while employed by the JCSO.

Contrary to Patton's claim, he did not establish a *prima facie* case of employment discrimination. Although he is a member of a protected class, he never applied for an available position which he did not receive, *McDonnell-Douglas Corp. v. Green,* 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973); *Ky. Ctr. for the Arts,* 827 S.W.2d at 699, and he has not established that he

was subjected to any adverse employment action. Further, even if we accept as true Patton's allegations of harsh treatment by Vaughn, Patton testified that Vaughn afforded harsh treatment to employees regardless of race, and that he was not a victim of racial discrimination. In the absence of any genuine issues of material fact, the trial court did not err by granting summary for the Sheriff as to Patton's discrimination claim.

Patton also alleges that the trial court erred by failing to consider evidence of discrimination towards other African American employees when granting summary judgment and dismissing his hostile workplace claim. We disagree.

As noted above, Patton testified by deposition that he questioned Vaughn's management style and harsh treatment of employees regardless of race, but that he was not a victim of racism during his employment with the JCSO. Although Patton now asserts that the trial court should have considered his hostile workplace claim in light of racial discrimination directed toward other JCSO employees, he provided no evidence that any such racial discrimination created a hostile work environment which was so "severe or pervasive" as to "alter conditions" of his employment and "create an abusive working environment." *Harris,* 510 U.S. at 21, 114 S.Ct. at 370. *See also Oncale,* 523 U.S. at 78, 118 S.Ct. at 1001. More important, Patton never alleged that his ability to perform his job was unreasonably affected by any hostile or abusive conditions in the workplace. *See Faragher,* 524 U.S. at 787-88, 118 S.Ct. at 2283. Absent such

allegations, no genuine issue of material fact existed as to Patton's hostile workplace claim, and the trial court did not err by entering a summary judgment for the Sheriff.

EARL JEROME HENDERSON

Henderson earned Bachelor's and Master's degrees in physical and urban education, respectively, and he taught until his 1991 retirement. He worked part time with the JCSO for a short time before his retirement, and he worked full time with the JCSO from 1991 to 2000. Henderson initially was assigned to court security but he subsequently was reassigned to other divisions, where he was given increased supervisory and other responsibilities. He was promoted from deputy to sergeant, and then to lieutenant, after Vaughn took office. He stated that he enjoyed his assignments, including his assignment in the court division.

Henderson noted that the JCSO command staff included no African Americans, and that "there was no process for determining how Vaughn chose his staff." He alleged that a recently-promoted major told him at one point that he "was the wrong color" for filling the major's vacated position as a captain, and that the budget contained no money for promoting Henderson to captain. However, the record indicates that the major retained his former duties as captain even after his promotion, that the JCSO did not seek or accept applications for the vacated position, and that the captain's position was not filled. Moreover, Henderson did not ask the major to clarify his statements, and no allegations were made that

Vaughn either voiced such sentiments himself, or knew or agreed with the major's statement of opinion.

Henderson also alleges that only white employees were promoted to the higher ranks of the JCSO, even though he was as well qualified as they. However, he in fact admitted that two of those promoted employees were retired police officers, one had a college background in criminal justice, and one had been with the JCSO for twenty years. One already held the rank of captain and was promoted to major. Henderson, by contrast, had no law enforcement education or experience beyond that obtained while employed by the JCSO. Although Henderson stated that another employee was promoted despite having only a high school education and minimal experience, he produced no evidence of that employee's actual qualifications or promotion record to support his bare claim. More important, nothing in the record shows that Henderson actively sought and was denied any positions other than the vacant captain's position.

Henderson further claims that he was falsely accused of sexual harassment and was reprimanded to discourage his pursuit of promotions. He asserts that his position subjected him to much stress, including that caused on one occasion when his supervisor stood over and threatened him, using very loud and abusive language, while incorrectly blaming him for a particular incident. Nevertheless, Henderson stated that he enjoyed the challenging nature of his job in the criminal division, which he perceived to be the most prestigious or desirable division of the JCSO, and he produced no evidence of disparities in the award of

assignments. Indeed, Henderson noted that he was "bestowed" with many responsibilities, and that he had been asked to help recruit minorities.

Contrary to Henderson's claim, he did not establish a *prima facie* case of employment discrimination. Although he is a member of a protected class, he never applied for but did not receive an available position for which applicants were being sought. *McDonnell-Douglas,* 411 U.S. at 802, 93 S.Ct. at 1824; *Ky. Ctr. for the Arts*, 827 S.W.2d at 699. Instead, the record shows that Henderson expressed interest in being promoted to the vacated captain's position, but the promoted officer continued performing the duties of that position and the vacancy was not advertised or filled. Further, regardless of whether Henderson was or was not in fact qualified for several positions awarded to other employees, the evidence shows that he never applied for those positions. Thus, no genuine issue of material fact existed as to whether discrimination occurred, and the trial court did not err by entering summary judgment for the Sheriff.

Further, we are not persuaded by Henderson's assertion that the trial court erred by failing to consider evidence of discrimination toward other African American employees when granting summary judgment and dismissing his hostile workplace claim.

The record contained no evidence that the allegedly hostile or abusive behavior by Vaughn or JCSO supervisors was racial in nature, rather than inflicted on multiple employees regardless of race. Further, there was no evidence of disparate treatment in the issuance of a written reprimand to Henderson regarding

the sexual harassment which he denied committing. Indeed, the record showed that Lovan, a white officer, was fired after allegations of sexual harassment were made against him even though, like Henderson, he denied the allegations.

Like Patton, Henderson provided no evidence that racial discrimination toward either his coworkers or him created a hostile work environment which was so "severe or pervasive" as to "alter conditions" of his employment and "create an abusive working environment." *Harris,* 510 U.S. at 21, 114 S.Ct. at 370. *See also Oncale,* 523 U.S. at 78, 118 S.Ct. at 1001. More important, Henderson never alleged that his ability to perform his job was unreasonably affected by any hostile or abusive conditions in the workplace. *Faragher,* 524 U.S. at 787-88, 118 S.Ct. at 2283. Absent such allegations, no genuine issue of material fact existed as to Henderson's hostile workplace claim, and the trial court did not err by entering a summary judgment for the Sheriff.

Carter testified by deposition that she had a GED and some business college credits, but no relevant work experience when she was hired as a deputy sheriff by Vaughn's predecessor. Subsequently, she twice attended a training course at EKU. She initially failed the course due to inadequate firearm skills, but she passed when she was required to retake it after Vaughn took office.

Carter's JCSO assignments included operating the courts' magnetometer security machines, and working with gangs in the community. Carter contends that because of her race, she was excluded from working in the criminal and process divisions of the JCSO, which she describes as being more desirable than working in the magnetometer area of the courts division, which sometimes was used as a final assignment prior to an employee's dismissal. However, Carter testified that she in fact enjoyed operating the magnetometers.

Carter alleged in her deposition that she was verbally demeaned, abused or cursed in public by supervisors. She testified that on one occasion her immediate supervisor followed her to a restroom and stood outside the door yelling at her. Carter produced no evidence as to whether white employees were treated in the same way, but she asserts that both she and a nonwhite coworker complained after suffering this type of abuse at the hands of their supervisor. Although the supervisor was not disciplined when Carter complained, he was suspended when the coworker complained. Carter also alleged that the same supervisor made several racially demeaning remarks in her presence and the presence of others.

Although Carter does not allege that she heard any racist or derogatory comments firsthand from Vaughn or other high officers, she asserts that "African American employees knew second hand about such comments and it lowered their morale."

Carter also alleged that she was denied employment privileges because of her race when her supervisor incorrectly assumed that she would not want to work on the Martin Luther King holiday, and therefore did not schedule her for overtime work. She further complains that she was not given additional compensation for assuming extra responsibilities while performing the job of "acting sergeant." Carter asserted that new, inexperienced deputies received higher pay than she did after five years of experience.

Further, Carter alleged that the EKU training course requirements were inequitably enforced. When she failed to pass the course on her first try, she was advised that she could not retake it for two years. After Vaughn took office and completion of the course became mandatory, Carter was advised that she must retake and complete the course at her own expense, although ultimately the JCSO paid the expenses. Carter's allegations regarding the inequitable application of the training requirement relates to her claim that some supervisors were not required to complete the EKU training. Moreover, she alleged that she was not permitted to work secondary employment until she completed the training, although "[n]ew white employees" were allowed to do so.

The record in fact showed, however, that the named supervisors and other employees, with the exception of some "grandfathered" employees, obtained

the required training at EKU or at other approved facilities. Moreover, there was no evidence that any employees were allowed to work secondary employment without completing the prerequisite training program. Further, although Carter complains that she was not compensated for her increased responsibilities whenever she performed the job of "acting sergeant," she produced no evidence to show that she ever served in that position for the minimum period of time necessary for an increase in compensation. Finally, Carter produced no evidence to support her claim that a particular deputy made more money than she did, or to show what experience, education or length of service was possessed by that deputy.

Contrary to Carter's claim, she did not establish a *prima facie* showing of employment discrimination. Despite Carter's allegations, nothing in the record indicates that she suffered actionable harm as a result of the alleged managerial misconduct. Even if we assume that poor management techniques were utilized, the record contains nothing to suggest that any such mismanagement was related to race rather than applied to employees of all races. Moreover, she produced no evidence to support her claim that other employees in her position worked overtime on the holiday she named, or that the nature of the racially demeaning remarks approached the level of seriousness or pervasiveness necessary to create a cause of action. *Faragher,* 524 U.S. at 787-88, 118 S.Ct. at 2283-84. Further, Carter never demonstrated that she applied and was in the best-qualified group of applicants for any available position for which applicants were sought.

McDonnell-Douglas, 411 U.S. at 802, 93 S.Ct. at 1824; *Ky. Ctr. for the Arts*, 827 S.W.2d at 699. Finally, Carter produced no evidence to overcome the documentary evidence contradicting her claim that certain employees did not complete the required training prior to working secondary employment. We therefore agree with the trial court's finding that no genuine issues of material fact exist as to whether discrimination occurred, and that the trial court did not err by granting summary judgment for the Sheriff as to Carter's discrimination claim.

Finally, we are not persuaded by Carter's assertion that the trial court erred by granting summary judgment and dismissing her hostile workplace claim.

As is the case with regard to Patton and Henderson's claims, the record contains no evidence that the allegedly hostile or abusive behavior by Vaughn or JCSO supervisors was racial in nature, rather than inflicted on multiple employees regardless of race. Further, like Patton and Henderson, Carter provided no evidence that racial discrimination directed toward her or her coworkers created a hostile work environment which was so "severe or pervasive" as to "alter conditions" of her employment and "create an abusive working environment." *Harris,* 510 U.S. at 21, 114 S.Ct. at 370. *See also* 523 U.S. at 78, 118 S.Ct. at 1001. More important, Carter never alleged that her ability to perform her job was unreasonably affected by any hostile or abusive conditions in the workplace. *Faragher,* 524 U.S. at 787-88, 118 S.Ct. at 2283. Absent such allegations, no genuine issue of material fact existed as to Carter's hostile workplace claim, and the trial court did not err by entering a summary judgment for the Sheriff.

The court's summary judgments are affirmed.

TAYLOR, JUDGE, CONCURS WITH RESULT ONLY.

KELLER, JUDGE, DISSENTS.

BRIEF FOR APPELLANTS
STANLEO PATTON; AND
EARL JEROME HENDERSON:

Kenneth L. Sales
Kevin D. Samples
Louisville, Kentucky

BRIEF FOR APPELLANT MEASKYLA
CARTER:

Kenneth L. Sales
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BRIEF FOR APPELLEE:

David Leightty
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