

**Affirmed in Part, Reversed and Rendered in Part, and Memorandum Majority and Concurring and Dissenting Opinions filed June 30, 2022.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-20-00588-CV**

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**LI "LILY" CAI, Appellant**

**V.**

**JASPER CHEN, Appellee**

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**On Appeal from the 295th District Court  
Harris County, Texas  
Trial Court Cause No. 2019-82179**

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**MEMORANDUM CONCURRING AND DISSENTING OPINION**

I agree with the majority's rendition of judgment to dismiss Chen's claims against Cai based on her reports of alleged sexual harassment by Chen.

But, I disagree with the majority's holding that an employee's disparaging comments to a coworker about another coworker, made at the place of employment in the employment setting, are not "within the general scope of that employee's employment." *See* Tex. Civ. Prac. & Rem. Code § 101.106(f). The majority holds

that because the statements were not about specific instances of sexual harassment nor made to a proper party outlined in the employer’s written sexual harassment policy, there was no “connection between the employee’s job duties and the alleged tortious conduct.” *Cf. Univ. of Tex. Health Sci. Ctr. at Houston v. Rios*, 542 S.W.3d 530, 535 (Tex. 2017) (faculty physician’s statement that resident’s performance was “substandard and antagonistic” was made within general scope of employment) (quoting *Laverie v. Wetherbe*, 517 S.W.3d 748, 753 (Tex. 2017) (employee’s statement that coworker was using “some kind of listening device or other to eavesdrop on people’s conversation” was made within general scope of employment)).

Whether an employee strictly follows a sexual harassment reporting policy is a red herring. There need not be any policy specifically authorizing the employee’s statements for her to be acting within the general scope of employment. The employee’s statements to coworkers at the workplace about the negative qualities of another coworker “arose from [her] employment” at the lab “in connection with” the operation of the lab. *See Rios*, 542 S.W.3d at 536. There was a connection between Cai’s employment and her statements, regardless of whether she made the statements wrongly or was motivated by personal animus. *See Laverie*, 517 S.W.3d at 753.

I would reverse the trial court’s order and render judgment dismissing Chen’s lawsuit in its entirety. Because the majority does not, I respectfully dissent.

/s/ Ken Wise  
Justice

Panel consists of Justices Wise, Spain, and Hassan. (Spain, J., majority).