

Rumors at Work: Court Rules Stereotyped Gossip Constitutes Sex-Based Harassment

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The Fourth Circuit issued an important decision in February, holding that spreading rumors that a female subordinate slept with a male superior to obtain promotions could constitute sexual harassment under Title VII, and that complaining about such harassment could constitute protected conduct for a retaliation claim. In *Parker v. Reema Consulting Servs., Inc.*, No. 18-1206, --- F.3d ---, 2019 WL 490652 (4th Cir. Feb. 8, 2019), the Fourth Circuit reversed a district court decision dismissing a claim brought by a warehouse employee who was promoted to a managerial position, only to be maligned and accused of using sex to achieve success.

Background on the Sexual Harassment Case

Evangeline Parker worked for Reema Consulting Services, Inc. (“RCS”), at its warehouse facility in Sterling, Virginia, from 2014 to 2016. RCS promoted Parker several times during this period, eventually making her Assistant Operations Manager in March 2016. Following this last promotion, she learned that other RCS employees were spreading rumors that she had ascended so quickly in the company because she was involved in a sexual relationship with a high-ranking RCS manager, Demarcus Pickett. This rumor was started by Donte Jennings, one of her subordinates who was jealous of her success, and it was spread further by Larry Moppins, the highest-ranking manager at the Sterling warehouse. Parker alleged that the rumors caused her to be treated with “open resentment and disrespect” by her coworkers and subordinates. In April 2016, Moppins informed her that because of the rumor, “he could no longer recommend her for promotions or higher-level tasks” and “would not allow her to advance any further within the company.” Parker filed an internal complaint against Moppins and Jennings because of their ongoing [sexual harassment](#). In mid-May 2016, Jennings filed an internal complaint alleging that Parker had created a hostile work environment for him. Days after Jennings’ complaint, Moppins terminated Parker.

Parker filed a complaint in the U.S. District Court for the District of Maryland alleging that she had been sexually harassed, that RCS had subjected her to a [hostile work environment because of her sex](#), and that RCS had terminated her in retaliation for her complaint about the harassment. The district court dismissed her complaint in a bench ruling, holding that her complaint failed as a matter of law because the rumor was “not based upon her gender, but rather based upon her alleged conduct.” The court further held that the harassment was not sufficiently severe or pervasive to have created a hostile work environment. Finally, the district court found that because the conduct about which she complained was not sex-based, she had not engaged in protected activity and therefore her retaliation claim must also fail. Parker appealed the ruling to the U.S. Court of Appeals for the Fourth Circuit.

Fourth Circuit Reverses Lower Court Rulings

The Fourth Circuit reversed the district court’s harassment and retaliation rulings. The court held that the district court was wrong in its ruling that the rumor was not based on Parker’s gender. As the Fourth Circuit explained, Parker “plausibly invoke[d] a deeply rooted perception — one that

unfortunately still persists — that generally women, not men, use sex to achieve success.” The Fourth Circuit continued, “with this double standard, women, but not men, are susceptible to being labelled as ‘sluts’ or worse, prostitutes selling their bodies for gain.” Based on these stereotypes, which are disproportionately applied to women in the workplace, the Fourth Circuit concluded that Parker had plausibly alleged that she suffered harassment because she was a woman. The Fourth Circuit noted that Parker did not rely exclusively on the sex stereotype underlying the harassment, because she also pointed to evidence that men started and circulated the rumor, and that she was treated differently than the men in her workplace, including Pickett, her alleged sexual partner, and Jennings, her accuser. Because the court of appeals ruled that Parker had raised concerns about sexual harassment, it further reversed the district court’s holding that she had not engaged in [protected activity under Title VII](#), and reversed the lower court’s dismissal of her retaliation claim.

The Fourth Circuit also reversed the district court’s ruling that the sex-based harassment Parker experienced was not sufficiently severe or pervasive to alter the conditions of her employment – the standard for establishing a [hostile work environment claim](#). The court noted that for two months, Parker was subjected to continuous harassment from all levels – from her own subordinates to the highest-ranking manager in the facility. The court highlighted Moppins telling Parker that she would never receive another promotion and her subordinate filing a false harassment complaint against her. The court also noted that the premise of the harassing rumors was personally humiliating, as it went “right to the core of somebody’s merit as a human being to suggest they were promoted not on worth but for sexual favors.” Based on these and other factors, the Fourth Circuit reversed the district court’s dismissal of Parker’s hostile work environment claim.

Legal Protections Evolving for Employees Facing Sex-Based Harassment at Work

In finding that rumors that a woman was “sleeping her way to the top” could constitute sex-based harassment in violation of Title VII, the Fourth Circuit aligned with decisions from the Seventh Circuit and Third Circuit Courts of Appeals that reached similar conclusions. *See McDonnell v. Cisneros*, 84 F.3d 256, 259–60 (7th Cir. 1996); *Spain v. Gallegos*, 26 F.3d 439, 448 (3d Cir. 1994). It further relied on *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250–51 (1989), for its reasoning and holding that when employer actions are based on gender stereotypes, a plaintiff can prove unlawful sex-based discrimination in violation of Title VII. The Fourth Circuit’s holding is important because it provides clarity about the gender basis of attacks rooted in stereotypic views about women’s sexual behavior, and assures employees in Maryland, North Carolina, South Carolina, Virginia, and West Virginia that if they are victims of this ancient trope and their employer does not respond to their complaint, they will be protected by Title VII’s discrimination and retaliation provisions and can hold their employer accountable.