Pennsylvania State Police v. Suders

Supreme Court of the United States. 2004.
542 U.S. 129,
124 S.Ct. 2342,
159 L.Ed.2d 204.
http://www.findlaw.com/casecode/supreme.html[a]

BACKGROUND AND FACTS *In March 1998, the Pennsylvania State Police (PSP) hired Nancy Suders to work as a communications operator. Suders's supervisors—Sergeant Eric Easton, Corporal William Baker, and Corporal Eric Prendergast—subjected her to a continuous barrage of sexual harassment. In June, Suders told Officer Virginia Smith-Elliott, whom PSP had designated as its equal employment opportunity officer, that Suders might need help. Two months later, again to Smith-Elliott, Suders reported that she was being harassed and was afraid. Smith-Elliott told Suders to file a complaint, but did not tell her how to obtain the necessary form. Two days later, Suders's supervisors arrested her for the theft of her own computer-skills exam paper, which she had removed after they reported falsely that she had failed the exam. Suders resigned and filed a suit in a federal district court against PSP, alleging, in part, sexual harassment. The court issued a summary judgment in PSP's favor. Suders appealed to the U.S. Court of Appeals for the Third Circuit, which reversed the judgment and remanded the case for trial, holding that the* Ellerth/Faragher *affirmative defense is never available in constructive discharge cases. PSP appealed to the United States Supreme Court.*

IN THE LANGUAGE OF THE COURT

Justice *GINSBURG* delivered the opinion of the Court.

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This case concerns an employer's liability for * * * constructive discharge resulting from sexual harassment, or hostile work environment, attributable to a supervisor. Our starting point is the framework [the] *Ellerth* and *Faragher* [decisions, discussed previously in this chapter] established to govern employer liability for sexual harassment by supervisors. * * * [T]hose decisions delineate two categories of hostile work environment claims: (1) harassment that culminates in a tangible employment action, for which employers are strictly liable, and (2) harassment that takes place in the absence of a tangible employment action, to which employers may assert an affirmative defense * * * .

* * * *

Suders' claim is of the same genre as the hostile work environment claims the Court analyzed in [the] *Ellerth* and *Faragher* [decisions]. Essentially, Suders presents a "worse case" harassment scenario, harassment ratcheted up to the breaking point. Like the harassment considered in our pathmarking decisions, harassment so intolerable as to cause a resignation may be effected through co-worker conduct, unofficial supervisory conduct, or official company acts. Unlike an actual termination, which is *always* effected through an official act of the company, a constructive discharge need not be. *A constructive discharge involves both an employee's decision to leave and precipitating conduct: The former involves no official action; the latter, like a harassment claim without any constructive discharge assertion, may or may not involve official action.* [Emphasis added.]

To be sure, a constructive discharge is functionally the same as an actual termination in [some] respects. * * * [B]oth end the employer-employee relationship, and both inflict * * * direct economic harm. But when an official act does not underlie the constructive discharge, the *Ellerth* and *Faragher* analysis, we here hold, calls for extension of the affirmative defense to the employer. As those leading decisions indicate, official directions and declarations are the acts most likely to be brought home to the employer, the measures over which the employer can exercise greatest control. Absent an official act of the enterprise as the last straw, the employer ordinarily would have no particular reason to suspect that a resignation is not the typical kind daily occurring in the work force. And as [the] *Ellerth* and *Faragher* [decisions] further point out, an official act reflected in company records—a demotion or a reduction in compensation, for example—shows beyond question that the supervisor has used his managerial or controlling position to the employee's disadvantage. *Absent such an official act, the extent to which the supervisor's misconduct has been aided by the [employment] relation is less*

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*certain. That uncertainty * * * justifies affording the employer the chance to establish, through the* Ellerth/Faragher *affirmative defense, that it should not be held vicariously liable.* [Emphasis added.]

* * * *

We agree with the Third Circuit that the case, in its current posture, presents genuine issues of material fact concerning Suders' hostile work environment and constructive discharge claims. We hold, however, that the Court of Appeals erred in declaring the affirmative defense described in [the] *Ellerth* and *Faragher* [decisions] never available in constructive discharge cases. Accordingly, we vacate the Third Circuit's judgment and remand the case for further proceedings consistent with this opinion.

DECISION AND REMEDY *The United States Supreme Court vacated the lower court's judgment and remanded the case for further proceedings. To establish constructive discharge, a plaintiff alleging sexual harassment must show that the work environment became so intolerable that resignation was a fitting response. An employer may then assert the* Ellerth/Faragher *affirmative defense unless the plaintiff quit in reasonable response to a tangible employment action.*

WHAT IF THE FACTS WERE DIFFERENT? *If the plaintiff had filed a complaint with the employer's equal employment opportunity officer, how might the result have been different?*