

No.: 86511-6

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 65364-4-I

COURT OF APPEALS – DIVISION I
OF THE STATE OF WASHINGTON

DEBRA LOEFFELHOLZ,

Respondent,

v.

UNIVERSITY OF WASHINGTON, AND JAMES
LUKEHART AND JANE DOE LUKEHART, AND THE
MARITAL COMMUNITY COMPRISED THEREOF,

Petitioners.

RESPONDENT'S SUPPLEMENTAL
BRIEF

Michael Withey, WSBA #4787
601 Union Street, Suite 4200
Seattle, WA 98102
(206) 405-1800

Counsel for Respondent

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 APR 13 AM 9:54

RECEIVED
SUPERIOR COURT
STATE OF WASHINGTON
12 APR 16 AM 8:10
BY RONALD R. CARPENTER
CLERK

TABLE OF CONTENTS

I. LEGAL ARGUMENT1

II. CONCLUSION3

TABLE OF AUTHORITIES

Cases

Antonius v. King County, 153 Wn.2d 256, 103 P.3d 729 2

Rules

CR 54 2

RCW 49.60.180(3)..... 1

I. LEGAL ARGUMENT

Respondent Debra Loeffelholz files this Supplemental Brief to establish one point only: The record establishes that Mr. Lukehart's comment to Respondent that he would return from Iraq a "very angry man" was made after the June 7, 2006 effective date of the amendment to the Washington Law Against Discrimination, RCW 49.60.180(3). As such, there are genuine issues of material fact whether this comment, coupled with the fact Mr. Lukehart was going to return as Respondent's supervisor after his tour in Iraq, created a hostile work environment from at least that time forward until he was removed as Respondent's supervisor in 2007 after he returned.

The evidence, and all favorable inferences therefrom, create an issue of fact as to whether Debra Loeffelholz's fear of Lukehart, fueled by his "anger management problems" and as documented by the Petitioner in their investigative findings (See EOR 205-208) ("fear mongering", references to "shock and awe" etc.), was present even when Lukehart was in Iraq because he was going to return to the University of Washington as her supervisor. A jury could conclude that this intent was the whole purpose of making the comment about being a "very angry man" **when he got back: so Debra (and others) would be in fear of him in the meantime, i.e., fearing his return.**

The Petitioner's argument appears to rest upon the mistaken assumption that once Lukehart went to Iraq, Ms. Loeffelholz no longer

worked in a hostile environment. In fact, the very words used by Lukehart belie any such assertion. Petitioners in the trial court below and on appeal failed to meet their burden under CR 54 of establishing that there is no genuine dispute that Debra Loeffelholz did not continue to live and work in fear of Lukehart, knowing he was going to come back from Iraq a “very angry man” and resume his job as her supervisor.

Thus, even if this Court were to find, as Petitioners argue, that none of the actions taken by Lukehart or the UW prior to June 7, 2006, are themselves actionable (a ruling which, as Respondent’s have argued, would require the Court to overrule *Antonius v. King County*, 153 Wn.2d 256, 103 P.3d 729) (holding that an unlawful employment practice of hostile work environment cannot be said to occur on any particular day and should not be parsed into component parts), the actions taken by Lukehart and the UW after the effective date of the WLAD support a hostile work environment claim.

Furthermore, all of the actions, comments and behavior by Lukehart that occurred prior to June 7, 2006, as documented in the UW’s investigation, are certainly admissible into evidence as proof of Respondent’s hostile work environment claim. They form the context in which the “very angry man” statement can be understood, i.e., as generating hostility toward Petitioner which was part and parcel of an unlawful employment practice.

Respondent continues to press the argument that all of the actions taken by Lukehart and the UW against Respondent before and after June 7, 2006 constitute such a claim, for the reasons stated in the Respondent's briefing in the Court of Appeals and in Opposition to Petitioner's Petition for Review. But it is worth noting that in either event, Respondent's discrimination claim survives because it is up to a jury, not a court on summary adjudication, to resolve the many factual issues in this case.

II. CONCLUSION

Accordingly, the Court of Appeals decision should be affirmed and the Petition for Review denied as improvidently granted.

RESPECTFULLY SUBMITTED this 12th day of April, 2012.

LAW OFFICES OF MICHAEL WITHEY

By: 
Michael E. Withey, WSBA No. 4787
Two Union Square
601 Union Street, Suite 4200
Seattle, WA 98101
Telephone: 206.405.1800
Facsimile: 866.793-7216

Attorneys for Respondent
Debra Loeffelholz

DECLARATION OF SERVICE

I, Ronnette Peters Megrey, declare as follows: on April 13, 2012, I caused to be served upon Respondents, at the address stated below, via the method of service indicated, a true and correct copy of the following document:

APPELLANT’S SUPPLEMENTAL BRIEF

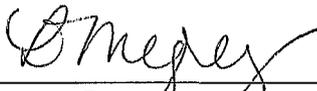
Howard Mark Goodfriend x via WA Legal Messenger
Edwards Sieh Smith & Goodfriend, PS via Facsimile
1109 First Ave., Suite 500 via E-mail
Seattle, WA 98101-2988 via US Mail

Anne Preston via WA Legal Messenger
Jared Van Kirk x via WA Legal Messenger
Garvey Schubert Barer via Facsimile
1191 Second Ave., Suite 1800 via E-mail
Seattle, WA 98101-2939 via US Mail

Robert Melvin Howie x via WA Legal Messenger
Skylar Anne Sherwood via Facsimile
Riddell Williams PS via E-mail
1001 Fourth Ave., Suite 4500 via US Mail
Seattle, WA 98154-1065

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington this 13th day of April, 2012.



Ronnette Peters Megrey