

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Brief July 14, 2003

DEBBIE BYRD, LOIS STAFFORD AND TABITHA STEWART
v.
STATE OF TENNESSEE

Appeal from the Tennessee Claims Commission
No. 20-200-294 Randy Camp, Commissioner

No. W2003-00302-COA-R3-CV - Filed December 30, 2003

This is a sexual harassment case. The three plaintiffs filed a suit in the Claims Commission against the University of Tennessee, asserting numerous legal theories. The defendant filed a motion to dismiss. The Claims Commission granted the motion to dismiss except as to the claim of one of the plaintiffs for breach of contract. The plaintiffs appeal. We dismiss the appeal, finding that the plaintiffs did not appeal from a final order.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed.

HOLLY M. KIRBY, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Larry H. Montgomery, Memphis, Tennessee, and Venita Marie Martin, Memphis, Tennessee, for the appellants Debbie Byrd, Lois Stafford, and Tabitha Stewart.

Nancy M. Maddox, Memphis, Tennessee, for the appellee State of Tennessee.

OPINION

Byrd Janitorial was a business owned and operated by Complainant/Appellant Debbie Byrd (“Byrd”). Byrd, d/b/a Byrd Janitorial, entered into a four-year contract with Defendant/Appellee University of Tennessee College of Medicine (“University”) to provide cleaning and janitorial services to the Tipton Family Practice Clinic (“Clinic”) in Covington, Tennessee. Complainants/Appellants Lois Stafford (“Stafford”) and Tabitha Stewart (“Stewart”) were employed by Byrd Janitorial and also provided services at the Clinic pursuant to the agreement between Byrd Janitorial and the University.

Byrd, Stafford and Stewart (collectively “Byrd employees”) allege that, during the course of performance of the cleaning contract, Dr. Kenneth Berry (“Berry”), a physician employed by the University to work at the Clinic, sexually harassed and assaulted each of them on numerous occasions. The Byrd employees allege that they reported Berry’s misconduct to several employees of the University who worked at the Clinic, as well as the Chair of the Family Practice Clinics and a University administrator.

The Byrd employees alleged that their complaints only resulted in acts of retaliation. Stafford was fired, ordered to leave the building, and told that she would be jailed if she returned. Byrd was told she could clean the Clinic after working hours only. Byrd alleged that, on one occasion, she arrived at the Clinic for work and Berry called a security guard and the sheriff’s department. On that occasion, Berry told the security guard and the law enforcement officer that Byrd had been fired and that she was now breaking in and vandalizing the Clinic. Based on Berry’s statements, the law enforcement official detained Byrd for questioning and threatened to arrest her. A few days later, the University’s contract with Byrd Janitorial was terminated. Byrd was forced to leave the Clinic immediately and was not permitted to collect Byrd Janitorial’s equipment.

The Byrd employees filed a complaint with the Claims Commission against the University, alleging negligent supervision leading to sexual harassment and battery, negligent failure to supervise Berry regarding the laws against sexual harassment, negligent retention of an employee, negligent creation or maintenance of a dangerous condition, defamation, employment that constitutes a nuisance, negligent failure to prevent sexual assault and battery, negligent failure to maintain a workplace free of inappropriate sexual conduct, negligent deprivation of several statutory rights, outrageous conduct, unconstitutional taking of private property, and breach of contract. The University filed a motion to dismiss under Rule 12.02 of the Tennessee Rules of Civil Procedure, arguing for dismissal of each claim, some for lack of subject matter jurisdiction and others for failure to state a claim. The Claims Commission granted the motion to dismiss as to each allegation except for the breach of contract claim asserted by Debbie Byrd. From that order, the Byrd employees filed this appeal, pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure.

The order of the Claims Commission granting the University’s motion to dismiss did not contain language making it a final order, pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure, which provides:

When more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the Court, whether at law or in equity, may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that

adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

Tenn. R. Civ. P. 54. Therefore, the order of the Claims Commission did not adjudicate the breach of contract claim of Debbie Byrd, which remained pending before the Claims Commission, and did not direct the entry of a final judgment as to all of the claims of plaintiff Stafford and Stewart and the claims of Debbie Byrd which were dismissed, pursuant to Rule 54.02.

The parties waived oral argument, and submitted the appeal on brief. While the appeal was pending, this Court entered an order, noting that the order from which the Byrd employees sought to appeal was not final and appealable under Rule 54.02, because the breach of contract claim by Byrd remained pending. The Order noted that under Rule 3(a) of the Tennessee Rules of Appellate Procedure, such an order is not appealable as of right. The order held the appeal in abeyance for thirty days and remanded the cause to the Claims Commission for the Commission to consider whether to make the order from which the Byrd employees sought to appeal final and appealable under Rule 54.02 as to all claims except Byrd's breach of contract claim. The order stated that, if the parties were unable to obtain such an order within thirty days, the appeal would be dismissed.

Over thirty days elapsed since entry of this Court's order, and no such order from the Claims Commission was received. Therefore, the order from which the Byrd employees seek to appeal is not a final order, and under Rule 3(a) of the Tennessee Rules of Appellate Procedure, the appeal must be dismissed without prejudice.

Accordingly, the appeal in this cause is dismissed without prejudice, and the cause is remanded to the Claims Commission. Costs are assessed against the Appellants, Debbie Byrd, Lois Stafford and Tabitha Stewart, for which execution may issue if necessary.

HOLLY M. KIRBY, JUDGE