

FATAL ATTRACTION?

In a decision getting a lot of ink, the Iowa Supreme Court held, in Nelson v. James H. Knight DDS, P.C., et al., that a former employee failed to establish a claim of sex discrimination where her claims included, among other things, that she was too attractive to her employer and might cause him to have difficulty in his marriage. The Court framed the issue as “[c]an a male employer terminate a female employee because the employer’s wife, due to no fault of the employee, is concerned about the nature of the relationship between the employer and the employee?” The Court ultimately found no discrimination although there were no work deficiencies and Mrs. Nelson worked for the dentist for more than ten years as a dental assistant. The relationship appeared to become flirtatious with inappropriate comments made by Dr. Knight including that Mrs. Nelson’s clothing was too tight, revealing, and distracting. Mrs. Nelson denied these claims and said that she put a lab coat on whenever she was asked to do so.

Probably of more consequence was the heavy texting that occurred during the last six months of the employment relationship regarding work and personal matters. Nelson considered Dr. Knight to be a friend and father figure, although he apparently fantasized more. He made comments regarding having his pants bulging and asked questions about frequency in her sex life and responding “[T]hat’s like having a Lamborghini in the garage and never driving it.” The record also stated that Dr. Knight also texted her to ask how often she experienced an orgasm. The record does not state that an answer was provided nor does it state that Nelson was clear that she told Dr. Knight to stop texting her or that she was offended.

At some point in 2009 Dr. Knight’s wife, who also worked in the practice, found her husband texting and demanded that Nelson be terminated. They consulted the senior pastor of their church who agreed. Mrs. Knight felt that Nelson was a big threat to her marriage and, among other things, objected to Nelson’s “alleged coldness at work toward her (Mrs. Knight) and Nelson’s ongoing criticism of another dental assistant.”

As a consequence Dr. Knight terminated Nelson with the pastor present as an observer. Dr. Knight read from a prepared text and told her that she was a detriment to his family and it was best if they not work together. After more than ten years of employment he gave her one month of severance.

Nelson’s husband Steve called and came in to see Dr. Knight. They spoke in the presence of the pastor. Dr. Knight admitted that there was no wrongdoing and that Nelson was the best dental assistant he ever had but that he was concerned he was getting too personally attached to her.

The only count of Nelson’s complaint was sex-based termination. The lower Court concluded that she was not fired due to her gender but because she was a threat to Dr. Knight’s marriage.

COMMENT: Interestingly, Dr. Knight only employed women. No finding was made regarding his wife’s obvious hostility and insecurity regarding Nelson.

The Court characterized the question it dealt with not as sexual favoritism but whether an employee who had not engaged in flirtatious conduct could be lawfully termi-

nated because the boss “views the employee as an irresistible attraction.” In Nelson, the Court rejected plaintiff’s argument that her termination was sex-based and said her termination was driven “entirely by individual feelings and emotions regarding a specific person” and was “not gender-based” nor was it based on “factors that might be a proxy for gender.”

COMMENT: Curiously, that distinction seems to lack merit since the entire relationship and Knight’s comments about tight pants had only to do with Nelson’s gender since he only hired women and seems to have had a specific reaction to Mrs. Nelson. The Court got past this concern by stating that Knight hired a female replacement for Nelson so obviously he did not discriminate against women. Again, the fact that an individual does not discriminate against all women does not suggest that he could not have discriminated against an individual female.

The Court also seemed concerned that pursuing Nelson’s argument would allow any termination related to a consensual relationship to be challenged as discriminatory. The comments by Dr. Knight appear to clearly have been inappropriate and solely based upon Mrs. Nelson’s gender. On the other hand, the Court only suggested there might be a legitimate concern about discrimination if Dr. Knight had fired several female employees or that his wife demanded that he fire several females.

COMMENT: The Court seemed to miss the point - the only reason for this decision was plaintiff’s sex.

The Court suggested that it was not gender but really the threat to marriage that was a justification for the termination. Since there was no suggestion of any homophobic behavior, this “threat” could only have existed because of plaintiff’s sex and Dr. Knight’s specific reaction and interaction with Mrs. Nelson. The Court was also dismissive of a sexual harassment claim. Instead, it characterized this incident as an “isolated decision to terminate an employee before such an environment arises.”

COMMENT: Firing an employee after more than ten years of service where there is a long-standing period of banter and at least six months of texting can hardly be considered isolated.

Footnote 6, if anything, buttressed plaintiff’s claim because it stated that Dr. Knight allegedly told Nelson’s husband that he feared he would try to have an affair with Mrs. Nelson down the road if he did not fire her. The explanation for such a comment is likely to only have been her sex and not the fact that she was a disruption to his marriage. Even assuming, arguendo, that she was a disruption to his marriage, is it possible that the Iowa Supreme Court is now suggesting that a lawful defense to a sex harassment or sex discrimination claim is potential disruption to one’s marriage regardless of work performance?

COMMENT: This case bears watching since the facts do not seem to have been fully and adequately developed. The thesis behind the decision seems to leave out much and open the door for abuse in permitting terminations where sex was the only reason.