The Supreme Court Broadens the Coverage of Title VII's Anti-Retaliation Provision: Crawford v. Metropolitan Government of Nashville and Davidson County

September 18, 2009

On Jan. 26, 2009, the U.S. Supreme Court issued its opinion in *Crawford v. Metropolitan Government of Nashville and Davidson County* (*Crawford*), expanding the class of individuals who will now be able to state a claim of retaliation pursuant to Title VII of Civil Rights Act of 1964.

Background and Procedural History

Vicky Crawford was terminated after 30 years of employment with the Metropolitan Government of Nashville and Davidson County (Metro) in January 2003. The incidents leading her termination began in May of 2002, when an attorney for Metro approached Ms. Crawford during an investigation of alleged sexual harassment. Metro's attorney was investigating a complaint made by another employee of harassing conduct by the Director of Employee Relations, Gene Hughes. When asked if she had even witnessed Hughes ever committing any sexually harassing behavior, Ms. Crawford told the investigators that Hughes had sexually harassed her and other employees.

Ms. Crawford informed the investigators of Hughes' numerous sexually explicit comments and gestures toward her since 2001. Additionally, three other employees made statements to the investigator that Hughes had engaged in sexually inappropriate conduct. At the close of the investigation, Metro's attorney concluded that Hughes had engaged in inappropriate and unprofessional behavior, although not to the extent of Crawford's allegations. Ultimately, the investigators did recommend training of the Metro staff, however, no disciplinary action was taken against Hughes.

After her involvement in the Hughes investigation, Ms. Crawford was later suspended and ultimately terminated, after she was accused of embezzlement and drug use. In June 2003, Ms. Crawford filed a charge of discrimination with the EEOC alleging retaliation, and after receiving her right to sue, subsequently brought this lawsuit.

Crawford filed her complaint for retaliation in the Middle District of Tennessee, alleging that she was discharged in retaliation for responding to Metro's inquiries during the Hughes sexual harassment investigation and asserting that Hughes had also sexually harassed her. Metro moved for summary

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judgment arguing that Crawford had not participated in a “protected activity” under Title VII and, therefore, cannot establish a retaliation claim.

The Court granted Metro’s motion for summary disposition opining that Crawford’s statements during the Hughes investigation did not deserve protection under the anti-retaliation provision of Title VII. The Sixth Circuit Court of Appeals agreed with the district court and affirmed the dismissal. Crawford then appealed to the U.S. Supreme Court.

Issue Before the Supreme Court

In order for the plaintiff to prove her retaliation claim under Title VII, she was required to prove, that (1) she engaged in a protected activity; (2) Metro knew that she engaged in the protected activity; (3) Metro subsequently took an employment action adverse to the plaintiff; and (4) a causal connection between the protected activity and the adverse employment actions exists.[i]

The Title VII anti-retaliation provision has two separate clauses, making it “an unlawful employment practice for an employer to discriminate against any of its employees…[1] because the employee has opposed any practice made an unlawful employment practice by this sub chapter, or [2] because the employee has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this sub chapter.[ii] The first is known as the “opposition clause,” and the other is known as the “participation clause.”

The district court had summary dismissed Crawford’s claim, finding that her mere answering of questions did not rise to the level of “opposition.” Furthermore, the district court also dismissed Crawford’s claim under the participation clause, relied upon the Sixth Circuit precedent in dismissing,

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[i] *Abbot v. Crown Motor, Co., Inc.*, 348 F.3d 537,542 (6th Cir. 2003).

[ii] 42 U.S.C. §2000e-3(a).

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