

In This Issue:

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Texas Supreme Court Holds Certain Tort Claims Related to Sexual Harassment Are Preempted By the TCHRA

By Kelley Edwards

The Texas Supreme Court recently held, in *Waffle House, Inc. v. Williams*, that the Texas Commission on Human Rights Act (TCHRA) preempts certain common-law tort claims related to sexual harassment. In this issue of first impression, the court considered whether a plaintiff can recover negligence damages for harassing conduct covered by the TCHRA. Finding that the recovery under a negligence cause of action for conduct that also constitutes a TCHRA violation would “eclipse the Legislature’s prescribed scheme,” the court held 7-2 that a plaintiff’s sole recovery for sexual harassment and any related conduct is that provided by statute.

Specifically, the court considered whether a plaintiff may recover against an employer for the tort of negligent supervision and retention while also asserting a claim against the employer for sexual harassment under the TCHRA. The court held that where the complained-of negligence is entwined with the complained-of harassment, the TCHRA preempts any common-law recovery, and the aggrieved employee cannot proceed on both a statutory and common-law theory.

In its decision, the court was careful to note that the TCHRA does not foreclose assault-based negligence claims arising from facts independent of any alleged sexual harassment, nor does it bar individual tort claims against an alleged harasser or assailant. But where an alleged assault arises from conduct that is also allegedly harassing in nature, no common-law tort claim against the employer is available.

Background

Cathie Williams worked at Waffle House as a waitress from July 2001 to February 2002. Beginning the first week of her employment, Eddie Davis, a cook, subjected her to unwanted and offensive sexual comments, gestures, and jokes. On several occasions, Davis pushed Williams into counters and into the grill, and he cornered her on several other occasions. Williams complained to her store manager several times, and when the harassment did not stop, she complained to the district manager and later to a new district manager. Although this manager reported

Williams' claims to the division manager, no one within corporate management responded to Williams.

Williams later resigned her employment, alleging constructive discharge. After filing complaints with the Equal Employment Opportunity Commission (EEOC) and the Texas Commission on Human Rights (TCHR), she sued both Davis and Waffle House in state court, alleging sexual harassment under the TCHRA and common-law battery by Davis. She also asserted a common-law claim against Waffle House for negligent supervision and retention of Davis. Williams nonsuited¹ Davis, and the case proceeded to trial. The jury found that Davis sexually harassed Williams, that Davis assaulted Williams, and that Waffle House's negligence in supervising Davis, retaining him, or both, proximately caused damage to Williams. The jury also found that Waffle House constructively discharged Williams by official action.

The jury awarded Williams \$425,000 in past and future compensatory damages and \$3.46 million in punitive damages. Williams elected to recover under her common-law claim,² and the trial court entered a judgment of \$425,000 in compensatory damages and \$425,000 in punitive damages,³ interest, and costs. Waffle House appealed to the Court of Appeals for the Second District, which affirmed the judgment, and the company then appealed to the Texas Supreme Court.

The Texas Supreme Court's Analysis

The Texas Supreme Court reversed, agreeing with Waffle House that, in Williams' case, the TCHRA provides the exclusive remedy for workplace sexual harassment. Noting that both Williams and Waffle House agreed that the negligence claim and the TCHRA claim were predicated on the same conduct, the court found that allowing Williams to recover under a common-law theory for behavior covered by a statute would circumvent the elaborate administrative scheme and special rules applicable to TCHRA claims. The court concluded that permitting this alternative avenue of recovery would controvert the legislature's intent in providing recourse for employment disputes through the TCHRA.

The court also found an implied exclusivity provision in section 21.211 of the TCHRA, which provides that a person who has initiated an action in court or before an administrative agency based on an act that would be an unlawful employment practice under the statute cannot also file a complaint with the TCHRA for the same grievance. Recognizing that this clause primarily prohibits a claimant from pursuing a remedy for discrimination under federal law or local grievance-redress systems and then later initiating a complaint with the TCHR, the court held that section 21.211 does not authorize all common-law causes of action covering the same conduct addressed by the TCHRA.

The court noted that its holding was consistent with two of its recent opinions – *City of Waco v. Lopez*⁴ and *Hoffman-La Roche, Inc. v. Zeltwanger*.⁵ In *Lopez*, the court held that an employee who alleged retaliation for complaining of age and race discrimination could not also bring a claim under the Whistleblower Act⁶ because the TCHRA provided a more "specific and tailored" remedy.⁷ As in *Lopez*, the court reasoned, allowing Williams' common-law claim would circumvent the administrative process and frustrate clear legislative intent. *Zeltwanger* held that a common-law claim for intentional infliction of emotion distress is not available to a plaintiff who complains of sexual harassment by a supervisor unless there are additional facts, unrelated to the alleged sexual harassment, to support an independent tort claim.⁸ The *Williams* court found *Zeltwanger* to be consistent with its holding that Williams' common-law claim was not independent of her statutory claim, but was based on the same course of conduct.

All justices agreed on the legal holding of the case, but Justices O'Neill and Medina dissented based on the application of the particular facts. Although the dissent agreed with the majority that the TCHRA preempts negligent supervision claims based on harassment, it argued that certain aspects of Davis' conduct were assaultive but not sexual. Because the dissent believed Williams' assault-based negligence claim was supported by independent facts unrelated to the sexual harassment, it would have found that Williams' negligence claim was not preempted.⁹ The majority found, instead, that every act of unwanted touching by Davis was also an act of sexual harassment. In short, although all justices agreed that the TCHRA preempts negligence claims related to behavior that constitutes sexual harassment, they disagreed on whether independent assaultive behavior occurred in this case.

Notably, the court did not address whether Texas' workers' compensation scheme provided the exclusive remedy for Williams' negligence claim. The court mentioned that Davis' actions did not cause damage "to the physical structure of the body" that would fall within the workers' compensation definition of injury, and also noted that coverage under the Workers' Compensation Act does not extend to "injuries resulting from a dispute that has been transported into the place of employment from the injured employee's private or domestic life."¹⁰ But the court expressed no opinion on whether the Workers' Compensation Act would apply to Williams' case because that particular issue was not presented.

Impact of the Opinion

Although a strict interpretation of *Waffle House v. Williams* holds only that the TCHRA preempts claims of negligent supervision and retention based on facts constituting alleged sexual harassment, the decision potentially has very broad application to other employment-related torts. Employers may rely on this decision to argue, for example, that the TCHRA also preempts other common-law claims, such as assault, defamation, and invasion of privacy, where those claims stem from the same facts as discrimination or harassment claims covered by the TCHRA. The potential also exists for lower courts to expand the *Williams* rationale to other statutory areas, such as covenants not to compete. But regardless of the breadth of its holding, *Waffle House v. Williams* represents an important victory for all Texas employers.

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¹ When a plaintiff voluntarily "nonsuits" a defendant, it means that the plaintiff has dismissed his or her case against that defendant.

² Presumably, Williams chose common-law recovery because damages under the TCHRA are capped at \$300,000.

³ The punitive damages were capped at the amount of compensatory damages pursuant to the applicable statute. See TEX. CIV. PRAC & REM. CODE § 41.008(b).

⁴ 259 S.W.3d 147 (Tex. 2008).

⁵ 144 S.W. 3d 438, 441 (Tex. 2004).

⁶ TEX. GOV'T CODE § 554.001-.010.

⁷ *Lopez*, 259 S.W.3d at 156.

⁸ 144 S.W.3d 438, 441 (Tex. 2004).

⁹ The dissent also took issue with the majority's position that the text of the TCHRA suggests an exclusive remedy or that it preempts the common law.

¹⁰ TEX. LAB. CODE §§ 401.011(26), 406.032(1)(C); *Nasser v. Sec. Ins. Co.*, 724 S.W.2d 17, 19 (Tex. 1987).