

# Little Protection If You're Fired for Being Too Pretty

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On December 21, 2012, the Supreme Court of Iowa decided that a female employee, viewed by her male boss as an "irresistible attraction," and terminated because the boss's wife perceived the employee as a threat to her marriage, could not state a claim for gender-based discrimination. The case was widely reported by the media, but the decision is not particularly remarkable and, in fact, follows established federal law.

Melissa Nelson worked as dental assistant to Dr. James H. Knight for approximately ten-and-a-half years. Dr. Knight considered her the best dental assistant he ever hired. Dr. Knight's wife, however, viewed the friendly but not intimate relationship between Dr. Knight and Ms. Nelson as a threat to her marriage. At the insistence of his wife Dr. Knight terminated Ms. Nelson. Dr. Knight explained to Ms. Nelson that their relationship was detrimental to both his family and her family. Dr. Knight also admitted, in a phone call with Ms. Nelson's husband, that he feared he would try to have an affair with Ms. Nelson at some time, and that she had done nothing wrong to cause her termination. After the termination, Dr. Knight hired another female to fill Ms. Nelson's position.

Ms. Nelson filed suit for discrimination on the basis of her sex. She did not allege sexual harassment. Her argument was that she would not have been terminated but for the fact that she was female, or put differently, that neither the relationship nor the perceived threat to Dr. Knight's marriage would have existed if she had not been a woman. The Supreme Court of Iowa phrased the legal question as: "[W]hether an employee who has not engaged in flirtatious conduct may be lawfully terminated simply because the boss views the employee as an irresistible attraction"? According to the court, the answer is yes, at least under Title VII and the Iowa Code.

The court concluded that "an isolated employment decision based on personal relations (assuming no coercion or quid pro quo), even if the relations would not have existed if the employee had been of the opposite gender . . . is driven entirely by individual feelings and emotions regarding a specific person . . . and is not gender-based, nor . . . based on factors that might be a proxy for gender."

The court rejected Ms. Nelson's arguments that her sex was implicated by the very nature of the reason for termination and that termination as a prophylactic for avoiding sexual harassment should be actionable the same way sexual harassment would be actionable. The court left open, however, the possibility that an employee could bring suit against an employer who took adverse action against multiple persons of a particular gender because of alleged personal relationship issues, if the inference could be drawn that gender, not the relationships, motivated the terminations.

The court recognized that Dr. Knight's treatment of Ms. Nelson might have been unfair or unjust, but did not amount to unlawful discrimination. This decision tracks previous federal decisions and appears to be in accord with federal law in both Virginia and Maryland. See *West v. MCI Worldcom, Inc.*, 205 F. Supp. 2d 531 (E.D. Va. 2002) (finding termination based on animosity over the end of a consensual relationship and an employee's new relationship with another co-worker could not support a sexual harassment claim); *Campbell v. Masten*, 955 F. Supp. 526 (D. Md. 1997) (dismissing a sex discrimination claim and drawing a distinction between changes in terms and conditions of employment based on gender and consensual workplace romances gone sour resulting in personal incompatibility).

Other federal courts around the country have held similarly. In 1988, the United States District Court for the Northern District of Georgia went so far as to hold that a female employee, terminated because she was pregnant with a child which she claimed to be her boss's and which she planned to keep, could not support a claim for gender discrimination or a violation of Title VII. The court found that the termination was not a result of the employee's gender, but the personal animosity between the employee and her boss, consequential to their consensual sexual relationship and involving differing opinions on having an abortion.

Although this case does not represent a change in the law, it does raise an interesting question for employers in the District of Columbia and Howard County, Maryland. Both of these jurisdictions have laws which protect against discrimination based on "personal appearance." The laws are intended to preclude employment decisions based on the outward appearance of employees (or job applicants) except for reasonable or bona fide business purposes. Whether simple "attractiveness" without any specifically described features would be sufficient to state a claim of discrimination based on personal appearance is unclear. Also unresolved is whether protecting an employer's marriage is a reasonable or bona fide business purpose.