

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED
November 21, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

EVELYN McCONNELL,)	C/ A NO. 03A01-9605-CH-00176
)	
Plaintiff - Appellant,)	SULLIVAN CHANCERY
)	
v.)	HON. JOHN S. McLELLAN, III,
)	JUDGE
MOUNTAIN EMPIRE OIL COMPANY)	
and CHARLES MORRIS,)	AFFIRMED
)	AND
Defendants - Appellees.)	REMANDED

DAVID W BLANKENSHIP, Kingsport, for Plaintiff - Appellant.

VINCENT A SIKORA, RICHARD W PECTOL & ASSOCIATES, P. C.,
Johnson City, for Defendants - Appellees.

O P I N I O N

Franks. J.

In this action for damages alleging sexual discrimination in violation of the Tennessee Human Rights Act, T. C. A. §4-21-101, *et seq.*, the Trial Judge determined that the statute of limitations had run, and dismissed the action. Plaintiff has appealed.

Plaintiff was employed as a manager of an Empire Oil store from 1982 to 1991. Her last day of employment was January 18, 1991. On April 8, 1991, she filed charges with

the Tennessee Human Rights Commission (THRC) alleging sexual harassment and discrimination in violation of the Tennessee Human Rights Act (THRA). On August 21, 1992, she requested a Right to Sue letter from the Commission, and received such letter on October 2, 1992. She filed this action on December 30, 1992.

The Trial Court found that inappropriate sexual advances were made towards plaintiff and that the advances inferred or expressed that she could benefit economically if she cooperated. The Court concluded plaintiff terminated her employment because she was offered fewer hours and not offered a management position that was available. However, the Court did not award damages because he determined the action was not filed within the requisite statute of limitations.

The Act was amended in 1992 to provide a statute of limitations period, running one year from the time the discriminatory practice ceased. T. C. A. §4-21-311¹. The amended limitations period became effective on May 22, 1992, and it is argued that it does apply retroactively to her case on the authority of *Shell v. State of Tennessee*, 893 S.W2d 416 (Tenn. 1995). Assuming the statute was applicable by its terms, the statute began running at the time the alleged discriminatory practices ceased, and further assuming, without deciding, plaintiff's action did not accrue until her hours were cut and she was passed over for a position in January of

¹ 4-21-311 Additional remedies preserved . . . (d) A civil cause of action under this section shall be filed in chancery court or circuit court within one (1) year after the alleged discriminatory practice ceases, and any such action shall supersede any complaint or hearing before the commission concerning the same alleged violations, and any such administrative action shall be closed upon such filing.

1991, her action was not timely filed. She urges, however, that the limitations period should be equitably tolled because she timely filed with the THRC, and the Commission itself did not comply with the time constraints set forth in the Act, through no fault of her own. She argues that since the claim was out of her control for more than eighteen months, the limitations period should be suspended, relying on *Brown v. Crowe*, 963 F.2d 895 (6th Cir. 1992).

Plaintiff's argument fails, because her claim was not beyond her control.² The THRA provides for her situation, stating:

If the commission has failed to schedule a hearing in accordance with §4-21-304 or has failed to issue an order within one hundred eighty (180) days after the complaint is filed, the complainant, respondent or an intervenor may petition the chancery court in a county in which the alleged discriminatory practice set forth in the complaint occurs or in which the petitioner resides or has the petitioner's principal place of business for an order directing the commission to take such action

T. C. A. §4-21-307(c).

Accordingly, as the Act makes provisions for the circumstances surrounding plaintiff's claim, equitable tolling is not appropriate.

We affirm the judgment of the Trial Court in finding that the action was barred by T. C. A. §28-1-104.³

The costs of the appeal are assessed to appellant, and the cause remanded.

²The equitable maxim, "Equity Aids the Vigilant" is applicable. *Gibson's Suits in Chancery*, 4Ed. §49.

³28-3-104 Personal tort actions. -- (a) The following actions shall be commenced within one (1) year after the cause of action accrued (3) Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes. . . .

Herschel P. Franks, J.

CONCUR:

Houston M Goddard, P. J.

Don T. Murray, J.