

unknown to Rich or anyone else, his choices may determine the outcome of the case. As we will see later, Craig Bergson has evidence that is possibly crucial to the lawsuit. If Rich decides not to depose him, neither side will ever learn the evidence and the jury will never hear it. A jury can decide a case only based on the evidence presented to it. *Facts are elusive—and often controlling.*

In each deposition, Rich carefully probes with his questions, sometimes trying to learn what he actually does not know, sometimes trying to pin down the witness to a specific version of facts so that Rich knows how the witness will testify at trial. Neighbors at the beach testify that Tony seemed tense; one testifies about seeing Tony, unhappy, on the beach with his dog. Another testifies he had never before seen Blue tied up on the beach. Karen Caruso admits that Tony had been somewhat tense and unhappy the last couple of months. She reluctantly discusses their marriage, admitting there were problems.

Other Discovery. Rich sends Requests to Produce Documents, seeking medical records about Tony. Once again, the parties fight over which records are relevant, but Rich gets most of what he wants. Janet does less discovery than Rich because most of the witnesses she will call are friendly witnesses. She can interview them privately without giving any information to Coastal. With the help of Beth and Karen, Janet builds her case just as carefully as Rich, choosing the witnesses who will bolster the view that Tony was in good spirits and died accidentally.

She deposes all the officers of Coastal who participated in the decision to deny insurance coverage. She is particularly aggressive in pinning them down as to the limited information they had when they denied Beth's claim.

Summary Judgment

When discovery is completed, both sides may consider seeking summary judgment. **Summary judgment** is a ruling by the court that no trial is necessary on a particular issue because the essential facts are not in dispute. The purpose of a trial is to determine the facts of the case; that is, to decide who did what to whom, why, when, and with what consequences. If there are no relevant facts in dispute, then there is no need for a trial.

In the following case, the defendant won summary judgment, meaning that the case never went to trial. And yet, this was only the beginning of trouble for that defendant, Bill Clinton.

Summary judgment

A ruling by the court that no trial is necessary because there are no essential facts in dispute

JONES V. CLINTON

990 F. Supp. 657

United States District Court for the Eastern District of Arkansas, 1998

Facts: In 1991, Bill Clinton was governor of Arkansas. Paula Jones worked for a state agency, the Arkansas Industrial Development Commission (AIDC). When Clinton became President, Jones sued him, claiming that he had sexually harassed her. She alleged that, in May 1991, the governor arranged for her to meet him in a hotel room in Little Rock, Arkansas. When they were alone, he put his hand on her leg and slid it toward her pelvis. She escaped from his grasp, exclaimed, "What are you doing?" and said she was "not that kind of girl." She was upset and confused, and sat on a sofa near the door. She claimed

that Clinton approached her, "lowered his trousers and underwear, exposed his penis and told her to kiss it."

Jones was horrified, jumped up, and said she had to leave. Clinton responded by saying, "Well, I don't want to make you do anything you don't want to do," and pulled his pants up. He added that if she got in trouble for leaving work, Jones should "have Dave call me immediately and I'll take care of it." He also said, "You are smart. Let's keep this between ourselves." Jones remained at AIDC until February 1993, when she moved to California because of her husband's job transfer.

President Clinton denied all of the allegations. He also filed for summary judgment, claiming that Jones had not alleged facts that justified a trial. Jones opposed the motion for summary judgment.

Issue: *Was Clinton entitled to summary judgment, or was Jones entitled to a trial?*

Excerpts from Judge Wright's Decision: [To establish this type of a sexual harassment case, a plaintiff must show that her refusal to submit to unwelcome sexual advances resulted in a tangible job detriment, meaning that she suffered a specific loss. Jones claims that she was denied promotions, given a job with fewer responsibilities, isolated physically, required to sit at a workstation with no work to do, and singled out as the only female employee not to be given flowers on Secretary's Day.]

There is no record of plaintiff ever applying for another job within AIDC, however, and the record shows that not only was plaintiff never downgraded, her position was reclassified upward from a Grade 9 classification to a Grade 11 classification, thereby increasing her annual salary. Indeed, it is undisputed that plaintiff received every merit increase and cost-of-living allowance for which she was eligible during her nearly two-year tenure with the AIDC and consistently received satisfactory job evaluations.

Although plaintiff states that her job title upon returning from maternity leave was no longer that of purchasing assistant, her job duties prior to taking maternity leave

and her job duties upon returning to work both involved data input. That being so, plaintiff cannot establish a tangible job detriment. A transfer that does not involve a demotion in form or substance and involves only minor changes in working conditions, with no reduction in pay or benefits, will not constitute an adverse employment action, otherwise every trivial personnel action that an irritable employee did not like would form the basis of a discrimination suit.

Finally, the Court rejects plaintiff's claim that she was subjected to hostile treatment having tangible effects when she was isolated physically, made to sit in a location from which she was constantly watched, made to sit at her workstation with no work to do, and singled out as the only female employee not to be given flowers on Secretary's Day. Plaintiff may well have perceived hostility and animus on the part of her supervisors, but these perceptions are merely conclusory in nature and do not, without more, constitute a tangible job detriment. Although it is not clear why plaintiff failed to receive flowers on Secretary's Day in 1992, such an omission does not give rise to a federal cause of action.

In sum, the Court finds that a showing of a tangible job detriment or adverse employment action is an essential element of plaintiff's sexual harassment claim and that plaintiff has not demonstrated any tangible job detriment or adverse employment action for her refusal to submit to the Governor's alleged advances. The President is therefore entitled to summary judgment [on this claim].

In other words, the court acknowledged that there were factual disputes, but concluded that even if Jones proved each of her allegations, she would *still* lose the case, because her allegations fell short of a legitimate case of sexual harassment. Jones appealed the case. Later the same year, as the appeal was pending and the House of Representatives was considering whether to impeach President Clinton, the parties settled the dispute. Clinton, without acknowledging any of the allegations, agreed to pay Jones \$850,000 to drop the suit.

Janet and Rich each consider moving for summary judgment, but both correctly decide that they would lose. There is one major fact in dispute: Did Tony Caruso commit suicide? Only a jury may decide that issue. As long as there is *some evidence* supporting each side of a key factual dispute, the court may not grant summary judgment.

EXAM Strategy

Question: You are a judge. Mel has sued Kevin, claiming that while Kevin was drunk, he negligently drove his car down Mel's street and destroyed rare trees on a lot that Mel owns, next to his house. Mel's complaint stated that three witnesses at a bar saw Kevin take at least eight drinks less than an hour before the damage was done. In Kevin's answer, he denied causing the damage and denied being in the bar that night.