

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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NICOLE HOWELL and	)	
JOSEPH HOWELL,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 03-2098 M1/V
	)	
FEDERAL EXPRESS CORPORATION,	)	
et al.,	)	
	)	
Defendants.	)	

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**ORDER DENYING DEFENDANT CIVERA'S MOTION TO DISMISS**

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This case is currently before the Court on the Motion to Dismiss by Frank Civera, filed February 20, 2003. Plaintiffs responded to Defendant Civera's motion on April 25, 2003.

Plaintiff Nicole Howell brought this lawsuit against Frank Civera, Federal Express Corporation ("FedEx"), and Adecco-TAD Technical Services ("Adecco"). Plaintiff claims that while employed at FedEx from early 1999 through January 2, 2002, she was subjected to severe and pervasive harassment by Mr. Civera. Mr. Civera's actions allegedly included inappropriate comments, cornering Plaintiff in different areas of the FedEx facility, slapping her on her bottom, and grabbing her breasts.

Plaintiff asserts claims of sexual harassment and retaliatory discharge under Title VII and the Tennessee Human

Rights Act, negligent infliction of emotional distress, and failure to provide a safe workplace against FedEx and Adecco. She asserts an additional claim of negligent hiring and retention against FedEx. She also asserts claims for assault, battery, malicious harassment, and outrageous conduct against Mr. Civera. Plaintiff's husband, Joseph Howell, brings a claim for loss of consortium against all three defendants. Mr. Civera has moved to dismiss the claims against him on the grounds that they are barred by the applicable statute of limitations.

The parties agree that Plaintiff's claims for assault, battery, malicious harassment, and outrageous conduct are governed by the one year statute of limitations for personal injuries provided in Tenn. Code Ann. § 28-3-104(a)(1). Plaintiff filed her Complaint on January 2, 2003. Accordingly, Plaintiff's claims are barred if they accrued prior to January 2, 2002.

Plaintiff's Amended Complaint alleges that Defendant Civera continued to harass Plaintiff after her termination from employment on January 2, 2002. (Am. Compl. ¶ 36.) Plaintiff also submitted an affidavit along with her response to the motion to dismiss raising allegations of wrongdoing by Defendant Civera that allegedly occurred on or after January 2, 2002. These actions occurred within the one-year limitations period. Therefore, the Court DENIES Defendant Civera's motion to dismiss based on the statute of limitations.

SO ORDERED this \_\_\_\_ day of September, 2003.

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JON P. McCALLA  
UNITED STATES DISTRICT JUDGE