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Court rejects gender stereotyping claim of bank employee terminated for posing for a magazine in a bikini.

The landmark 1989 Supreme Court decision in *Price Waterhouse v. Hopkins* established that employment decisions based upon sex stereotyping constitute unlawful discrimination under Title VII of the Civil Rights Act. Unlawful sex stereotyping includes, among other things, an employer who acts upon beliefs such as a female should not be aggressive or should dress or behave in conformity with the traditional notion of what is appropriate for one's gender. In a recent decision, a federal court in Tennessee held that the termination of a bank employee who posed in a bikini for a motorcycle and car magazine did not constitute unlawful sex stereotyping.

In the summer of 2008, Rhonda Willingham, a female banker who was responsible for cultivating relationships with the bank's affluent clientele, appeared on the cover of *Cruzin' South* magazine, a publication for "people who enjoy bikes, custom cars, and hot rods." The issue also contained photos of Willingham, one of which portrayed her in a bikini sitting on a motorcycle. Another photo of Willingham appears with the caption, "I have been Primped." Willingham brought copies of the magazine into work and distributed them to her coworkers. When the bank management learned about the photos in the magazine, it terminated Willingham's employment. Among the reasons given by the bank for the termination were violation of the bank's code of business conduct which requires employees to be sensitive to activities which might conflict with the employee's ability to act in the best interest of the bank; potentially damaging the reputation of Willingham and the bank; and demonstrating "extremely poor judgment."

Willingham filed a lawsuit in which she alleged that, contrary to the reasons asserted by the bank for her termination, the bank terminated her employment because she did not conform with the bank's preferred feminine stereotype of females dressing conservatively at all times. This, she claimed, constituted sex

stereotyping in the workplace and, thus, a violation of Title VII. In support of her claim, Willingham introduced evidence of a male counterpart who was pictured on a website for a 5K race, shirtless and in shorts while running the race. The court discounted all of Willingham's theories and dismissed her case, granting summary judgment in favor of the bank.

First, the court disagreed with Willingham's reliance upon *Price Waterhouse*. In that case, the employer's stereotyping focused on a female employee's appearance in the workplace such as clothing and hairstyle as well as the way she walked and talked. In Ms. Willingham's case, the employer's actions were based upon her appearance in a non-work-related activity. Therefore, the court held that Willingham could not proceed with her claim because she failed to show that she was fired for not conforming with her employer's sex stereotypes in the workplace. Next, the court held that Willingham's attempts to show pretext by submitting the pictures of her male counterpart failed as well. The court found that the male named by Willingham was employed by a subsidiary of the bank, governed by other work rules and different management and, therefore, was not a proper comparator. Moreover, the court distinguished between the conduct of Willingham and the male employee because, unlike Willingham, the male employee did not distribute the photo of himself in the workplace.

While this case illustrates the distinction made by courts between stereotypes in the workplace and those outside of the workplace; it also highlights the fact that employers need to be vigilant about monitoring their workplace to ensure that sex stereotyping and other forms of discrimination and harassment are not occurring. Moreover, employers need to conduct careful and thorough analyses before making any adverse employment decisions.

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