

United States Court of Appeals,

Eleventh Circuit.

No. 96-7034.

Patricia DAVID, Plaintiff-Appellant,

v.

SMITHKLINE BEECHAM CLINICAL LABORATORIES, INC., William Thomas, National Assistance Bureau, Inc., a.k.a. Gardendale Nursing Home, Defendants-Appellees.

Aug. 29, 1997.

Appeal from the United States District Court for the Northern District of Alabama (No. CV-95-B-6-S), Sharon Lovelace Blackburn, Judge.

Before ANDERSON and COX, Circuit Judges, and ALARCON\*, Senior Circuit Judge.

PER CURIAM:

With respect to the summary judgment in favor of SmithKline, we assume *arguendo*, but need not decide, that an employer may be liable under some circumstances in a case involving harassment of an employee, not by the employer or its employees, but by a third person. However, we conclude on this record that SmithKline's response to plaintiff's reports of harassment was reasonable in light of the options available to SmithKline.<sup>1</sup>

The judgment of the district court is affirmed.

AFFIRMED.

ANDERSON, Circuit Judge, concurring in part and dissenting in part:

I concur in the judgment affirming the grant of summary judgment in favor of all defendants except SmithKline. Although I recognize that SmithKline's options were limited because the harasser was a customer and not an employee, and although I acknowledge this is a close question, I would conclude that the record discloses a genuine issue of fact as to whether SmithKline's response to the harassment was reasonable.

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\*Honorable Arthur L. Alarcon, Senior U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

<sup>1</sup>Plaintiff's other arguments on appeal are without merit and warrant no discussion.

