

Fla. Pet Store Wins \$53K Atty Fee Award In Explicit Video Suit

By **David Minsky**

Law360 (May 20, 2024, 9:42 PM EDT) -- A Florida state court judge has awarded the operators of a pet store nearly \$53,000 in attorney fees defending against a lawsuit over sexual harassment and gender discrimination after a manager allegedly showed a video of his genitalia to an underage female employee while on the job.

In a judgment issued Thursday in Collier County civil court, Circuit Court Judge Lauren L. Brodie awarded \$52,580 in attorney fees to defendants Pooches of Naples Inc. and Pet Retailers Inc. after a lawsuit filed by Jeev Trika, a parent of "J.T.," who alleged that a Petland manager sent her the explicit video.

In addition to sexual harassment, J.T. alleged intentional infliction of emotional distress and negligent hiring, according to the seven-count complaint, which was initially filed in March 2022. The defendants are listed as co-owners of a Petland franchise in Naples, Florida.

"The party who seeks the fees carries the burden of establishing the 'market rate,' i.e., the rate charged in that community by lawyers of reasonably comparable skill, experience and reputation, for similar services," Judge Brodie said in her judgment. "Evidence of hourly rates may be adduced through direct evidence of charges by lawyers under similar circumstances or by opinion evidence presented at the fee hearing. When setting an appropriate hourly rate, the court should consider rates customarily charged in the community."

The plaintiff, who has turned 18 since the filing of her suit, alleged that Petland general manager Jose Lavalley text messaged her a 5-second video of him fondling his genitalia as she drove to work in March 2021, court records show, adding that the plaintiff was 16 years old and Lavalley was 26 at the time of the incident.

Lavalley allegedly called the plaintiff to look at the video, and she opened the text message while at work. Upon viewing the video at the start of her shift as a sales associate, the plaintiff left the store and quit without providing notice.

In August, the plaintiff voluntarily dismissed six counts of her lawsuit against the defendants, including Lavalley, leaving only the single count of Title VII employment discrimination in violation of the Florida Civil Rights Act against Pooches of Naples and Pet Retailers. Judge Brodie granted summary judgment in favor of the defendants, saying that "the incident was a single, isolated instance of misconduct that does not meet the objective prong of the 'severity' test for actionable sexual harassment under the Act."

Defendants' counsel then filed a motion for attorneys fees, seeking about \$100,000 worth of fees. Following a hearing in April, Judge Brodie issued a final judgment that awarded \$50,540 among three attorneys at Dhillon Law Group, in addition to \$2,040 to pay for an expert witness who provided testimony on the reasonable market rate for services rendered in the case.

Darrin Phillips of Phillips Law Firm, representing the plaintiff, told Law360 on Monday that he disagreed with the court's decision to award fees for the defendants and said he would likely appeal. He cited the 1978 U.S. Supreme Court case of *Christiansburg Garment Co. v. EEOC*, which held that a defendant in a Title VII employment discrimination case can recover attorney fees by showing the plaintiff's lawsuit was "frivolous, unreasonable or without foundation."

In a motion filed in December, Phillips argued that Lavalley sent a "vile, pornographic video" to his client.

"Our position is that the sending of this video to a 16-year-old girl with intent – again, she was advised and warned about the video – it's our position that substantiates the foundation necessary to demonstrate that this case is anything but frivolous," Phillips told Law360 on Monday.

Matthew Sarelson of Dhillon Law Group Inc., representing the defendants, told Law360 on Monday that the award accounts for about 45% of the expense his client incurred defending against the lawsuit and that the amount was discounted because the court could only award fees under the statutory claim and not the common law claims. The court was also obligated to apply Naples, Florida-area rates, which are "considerably below average for Florida and the rest of the nation."

"Bad facts made bad law, and frankly this lawsuit should never have been filed," Sarelson said in a statement issued to Law360 on Monday. "I sent her lawyer a detailed letter explaining why the case was frivolous even before she filed, but they proceeded anyway."

The plaintiff is represented by Darrin Phillips of Phillips Law Firm.

The defendants are represented by Matthew Sarelson, Zachary Stoner and Jacob W. Roth of Dhillon Law Group Inc.

The case is Trika v. Pooches of Naples Inc. et al., case number 11-2022-CA-000456-0001-XX, in the Twentieth Judicial Circuit Court of Florida.

--Editing by Peter Rozovsky.