

OCT 29 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AILEEN MARIANO,

Plaintiff - Appellant,

v.

LIBERTY DIALYSIS-HAWAII, LLC,
DBA Liberty Dialysis,

Defendant - Appellee.

No. 13-15452

D.C. No. 1:11-cv-00652-LEK-BMK

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Leslie E. Kobayashi, District Judge, Presiding

Submitted October 8, 2014**
University of Hawaii William S. Richardson School of Law
Honolulu, Hawaii

Before: TASHIMA, RAWLINSON, and CLIFTON, Circuit Judges.

Aileen Mariano appeals the district court's summary judgment in favor of Liberty Dialysis-Hawaii on claims of sexual harassment, negligent and intentional

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

infliction of emotional distress, and punitive damages, all arising under Hawaii law. Mariano has not presented evidence to demonstrate Patient E's actions were severe or pervasive. *See Nelson v. Univ. of Hawaii*, 38 P.3d 95, 106 (Hawaii 2001). LDH can be held liable for its employees' sexual harassment claims only when it was or should have been aware of and failed to take adequate steps to end the harassment. *Arquero v. Hilton Hawaiian Village LLC*, 91 P.3d 505, 514 (Hawaii 2004). Mariano only reported to LDH Patient E's multiple touches of her shoulder and arm, which was not severe or pervasive activity. LDH cannot be held liable for this conduct because it responded promptly and thoroughly to Mariano's complaint.

Mariano's claim for negligent infliction of emotional distress is barred by Hawaii's workers' compensation law, H.R.S. § 386-5, because it is not related to the alleged sexual harassment.

Because the record indicates LDH's conduct was not outrageous or beyond the bounds of decency, we affirm summary judgment on Mariano's claim for intentional infliction of emotional distress. *See Hac v. Univ. of Hawaii*, 73 P.3d 46, 60-61 (Hawaii 2003).

Claims for punitive damages are derivative of other claims. *Ross v. Stouffer Hotel Co. (Hawai'i) Ltd.*, 879 P.2d 1037, 1049 (1994). Mariano has not presented

evidence to avoid summary judgment on any of her other claims. Therefore, her punitive damages claim cannot succeed.

AFFIRMED.