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## General Docket US Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 97-1698

Filed: 6/27/97

Nsuit: 1442 Civil Rights: Jobs

EEOC v. Frank's Nursery

Appeal from: Eastern District of Michigan at Detroit

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Case type information:

- 1) Civil
- 2) United States as party
- 3) Civil Rights--Title VII

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Lower court information:

District: 0645-2 : 96-75021

Trial Judge: Lawrence P. Zatkoff, Chief District Judge

Date Filed: 10/30/96

Date order/judgment: 4/23/97

Date NOA filed: 6/20/97

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Fee status: waived-----  
Prior cases:

None

## Current cases:

None

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EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Plaintiff - Appellant

Barbara L. Sloan

FTS 663-7090

202-663-4736

[COR LD NTC gvt]

Equal Employment Opportunity

Commission

Office of General Counsel

1801 L Street, N.W.

Suite 7014

Washington, DC 20507

v.

FRANK'S NURSERY & CRAFTS, INC.  
Defendant - Appellee

Charles C. DeWitt, Jr.

FTS 446-6405

313-446-6405

[COR LD NTC ret]

Brian B. Smith

FTS 446-6405

313-446-6411

[COR ret]

DeWitt, Balke &amp; Vincent

400 E. Jefferson Street

Suite 2655 200 Renaissance

Center

Detroit, MI 48243

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 EQUAL EMPLOYMENT ADVISORY  
 COUNCIL  
 Amicus Curiae

Erin Quinn Gery  
 202-789-8600  
 [COR LD NTC ret]  
 McGuinness & Williams  
 1015 Fifteen Street, N.W.  
 Suite 1200  
 Washington, DC 20005

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Plaintiff - Appellant

v.

FRANK'S NURSERY & CRAFTS, INC.

Defendant - Appellee

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6/27/97 Civil Case Docketed. Notice filed by Appellant EEOC.  
 Transcript needed: n (blc)

6/27/97 BRIEFING LETTER SENT setting briefing schedule: appellant  
 brief due 8/6/97 ; appellee brief due 9/5/97 ; appendix due  
 9/26/97 ; final appellant brief due 10/17/97 . [97-1698]  
 final appellee brief due 10/17/97 ; . (blc)

7/1/97 CERTIFIED RECORD filed. Volumes include 1 Pl. [97-1698]  
 (hrm)

7/7/97 APPEARANCE filed by Attorney Barbara L. Sloan for Appellant  
 EEOC [97-1698] (blc)

7/7/97 PRE-ARGUMENT STATEMENT filed by Barbara L. Sloan for  
 Appellant EEOC [97-1698] (blc)

7/9/97 APPEARANCE filed by Attorney Charles C. DeWitt for Appellee  
 Frank's Nursery [97-1698] (blc)

7/11/97 Appellant MOTION filed to extend time to file brief .  
 Motion filed by Barbara L. Sloan for Appellant EEOC.  
 Certificate of service date 7/7/97 [97-1698] (blc)

7/14/97 Briefing Letter Sent by CONFERENCE ATTORNEY'S OFFICE  
 resetting briefing schedule: appellant brief due now  
 8/18/97 ; appellee brief now due 9/17/97 ; reply now due  
 10/1/97; appendix now due 10/8/97 ; appellant final brief  
 due now 10/29/97 ; appellee final brief now due 10/29/97  
 [97-1698] . (trm)

7/16/97 RULING declaring as moot the motion to extend briefing  
 [1559365-1] filed by Barbara L. Sloan [97-1698] Conf. Atty.  
 letter of 7/14/97 extends briefing. . (blc)

7/31/97 Briefing Letter Sent by CONFERENCE ATTORNEY'S OFFICE

resetting briefing schedule: appellant brief due now 9/8/97 ; appellee brief now due 10/8/97 ; reply now due 10/22/97; appendix now due 10/29/97 ; appellant final brief due now 11/19/97 ; appellee final brief now due 11/19/97 [97-1698] . (trm)

9/5/97 Briefing Letter Sent by CONFERENCE ATTORNEY'S OFFICE resetting briefing schedule: appellant brief due now 10/6/97 ; appellee brief now due 11/5/97 ; reply now due 11/19/97; appendix now due 11/26/97 ; appellant final brief due now 12/17/97 ; appellee final brief now due 12/17/97 [97-1698] . (trm)

9/18/97 LETTER SENT by Conference Attorney Office notifying that a brief or stipulation to dismiss is due 10/20/97 for Barbara L. Sloan [97-1698] (trm)

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10/20/97 Briefing Letter Sent by CONFERENCE ATTORNEY'S OFFICE resetting briefing schedule: appellant brief due now 12/1/97 ; appellee brief now due 12/31/97 ; reply now due 1/14/98; appendix now due 1/21/98 ; appellant final brief due now 2/11/98 ; appellee final brief now due 2/11/98 [97-1698] . (trm)

11/13/97 Appellant MOTION filed to extend time to file brief . Motion filed by Barbara L. Sloan for Appellant EEOC. Certificate of service date 11/10/97 [97-1698] (blc)

11/17/97 LETTER SENT by blc granting motion to extend briefing [1629416-1] filed by Barbara L. Sloan [97-1698] resetting briefing schedule: [97-1698] appellant brief due now 12/9/97 ; appellee brief now due 1/8/98 ; appendix now due 1/29/98 ; appellant final brief now due 2/19/98 ; appellee final brief now due 2/19/98 . (blc)

12/11/97 PROOF BRIEF filed by Barbara L. Sloan for Appellant EEOC. Certificate of service date 12/9/97 Number of Pages: 24+7. [97-1698] (eim)

12/11/97 Request to require oral argument filed by Barbara L. Sloan for Appellant EEOC [97-1698] (eim)

1/8/98 PETITION for en banc hearing filed by Charles C. DeWitt for Appellee Frank's Nursery. Certificate of service date 1/8/98. [97-1698] (blh)

1/12/98 MOTION filed to allow EEAC to file an amicus brief o/b/o appellee. Motion filed by Erin Quinn Gery for EEAC. Certificate of service date 1/8/98 . [97-1698] (blc)

1/12/98 BRIEF TENDERED. Received from Erin Quinn Gery for EEAC o/b/o appellee. [97-1698] . Certificate of service date 1/8/98 Corrections to be made: awaiting ruling on motion for leave to file amicus brief. (blc)

1/12/98 APPEARANCE filed by Attorney Erin Quinn Gery for EEAC [97-1698] (blc)

1/12/98 PROOF BRIEF filed by Brian B. Smith for Appellee Frank's Nursery. Certificate of service date 1/8/98 . Number of Pages: 30+addendum. [97-1698] (eim)

1/12/98 Request to require oral argument filed by Brian B. Smith for Appellee Frank's Nursery [97-1698] (eim)

1/14/98 LETTER SENT by blh to Barbara L. Sloan for Appellant EEOC notifying that party is directed to respond to a petition for en banc hearing [1655948-1] filed by Charles C. DeWitt Jr. . Response due by 1/28/98. [97-1698] . (blh)

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1/16/98 APPEARANCE filed by Attorney Brian B. Smith for Appellee Frank's Nursery [97-1698] (blc)

1/20/98 Appellant MOTION filed to extend time to file reply brief to 1/29/98. Motion filed by Barbara L. Sloan for Appellant EEOC. Certificate of service date 1/15/98 [97-1698] (blc)

1/21/98 RULING granting motion to extend time to file reply brief [1662822-1] filed by Barbara L. Sloan [97-1698] The reply brief is now due 1/29/98. . (blc)

1/26/98 Appellee LETTER filed correcting brief defect. Corrections made: amended designation form rec'd from Brian Smith along with cover letter and explanation for amendment to form, copy mailed to opposing counsel. Amended form placed into appellee proof brief filed 1/12/98 by briefs deputy [97-1698] . Letter from Brian B. Smith for Appellee Frank's Nursery. Certificate of service date 1/21/98 [97-1698] (eim)

1/28/98 RESPONSE to a petition for en banc hearing [1655948-1] filed by Charles C. DeWitt Jr. . Response filed by Barbara L. Sloan for Appellant EEOC. Certificate of service date 1/27/98. [97-1698] (blh)

2/2/98 APPENDIX filed by Barbara L. Sloan for Appellant EEOC. Copies: 5. Certificate of service date 1/29/98 [97-1698] (eim)

2/2/98 PROOF REPLY BRIEF filed by Barbara L. Sloan for Appellant EEOC. Number of pages: 23. Certificate of service date 1/29/98 [97-1698] (eim)

2/2/98 Appellant LETTER filed (addressed to counsel Smith) regarding joint appendix; agreement has been reached as to items that will be included in the joint appendix. . Letter from Barbara L. Sloan for Appellant EEOC. Certificate of service date 1/28/98 [97-1698] (blc)

2/13/98 ORDER filed denying petition for en banc hearing [1655948-1] filed by Charles C. DeWitt Jr. [97-1698]. Entered by order of the court. (blh)

2/13/98 FINAL BRIEF filed by Brian B. Smith , Charles C. DeWitt for Appellee Frank's Nursery. Copies: 7. Certificate of service date 2/11/98 . Number of Pages: 30+addendum. [97-1698] (eim)

2/13/98 Request to require oral argument filed by Brian B. Smith, Charles C. DeWitt for Appellee Frank's Nursery [97-1698] (eim)

2/13/98 FINAL BRIEF filed by Barbara L. Sloan for Appellant EEOC. Copies: 7. Certificate of service date 2/11/98 Number of Pages: 24+7. [97-1698] (eim)

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2/13/98 Request filed by Barbara L. Sloan for Appellant EEOC [97-1698] (eim)

2/13/98 FINAL REPLY BRIEF filed by Barbara L. Sloan for Appellant EEOC. Copies: 7 Certificate of service date 2/11/98 Number of Pages: 23. [97-1698] (eim)

3/12/98 ADDITIONAL CITATION filed by Barbara L. Sloan for Appellant EEOC. Certificate of service date 3/9/98 [97-1698] (blc)

3/23/98 Appellee RESPONSE to 3/12/98 appellant citation. Response from Brian B. Smith for Appellee Frank's Nursery. Certificate of service date 3/19/98 [97-1698] Response is lengthy. (blc)

8/10/98 Oral argument date set for October 28, 1998 in court room 607. Notice of argument sent to counsel. [97-1698] (rld)

8/13/98 ORDER filed granting motion to allow Equal Employment Advisory Council leave to file an amicus brief [1657777-1] filed by Erin Quinn Gery [97-1698] regarding party information changed on docket. [97-1698], regarding caption change entered on docket . Entered by order of the court. (blc)

9/18/98 ADDITIONAL CITATION filed by Charles C. DeWitt for Appellee Frank's Nursery. Certificate of service date 9/16/98 [97-1698] (blc)

9/28/98 ADDITIONAL CITATION filed by Charles C. DeWitt for Appellee Frank's Nursery. Certificate of service date 9/24/98 [97-1698] Counsel requests present appeal to be scheduled on the same day as Case No. 98-1667. (blc)

10/6/98 Date previously set for oral argument is cancelled. [97-1698] (me)

10/6/98 ORDER filed granting motion to consolidate for submission [1811758-1] filed by Max C. Heerman [98-1667, 97-1698] Case No. 97-1698 shall be removed from the argument pool & rescheduled with 98-1667. Entered by order of the court. (blc)

10/6/98 Appellant MOTION filed to reconsider order dated 10/6/98 . Motion filed by Barbara L. Sloan for Appellant EEOC. Certificate of service 10/6/98. [98-1667, 97-1698] (stb)

10/7/98 ADDITIONAL CITATION filed by Charles C. DeWitt for Appellee Frank's Nursery in 97-1698 . Certificate of service date 10/5/98 [97-1698] (blc)

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10/8/98 Appellee RESPONSE in opposition filed regarding appellant's motion to reconsider order. Response from Max C. Heerman for Appellee NW Airlines Inc in 98-1667 . Certificate of service 10/7/98. [98-1667, 97-1698] (stb)

10/13/98 ORDER filed granting motion to reconsider 10/6/98 order [1815934-1] filed by Barbara L. Sloan. [97-1698, 98-1667] Case No. 97-1698 shall be restored to the oral argument calendar. Case Nos. 97-1698 & 98-1667 are bifurcated for submission. Entered by order of the court. (blc)

10/28/98 CAUSE ARGUED on 10/28/98 by Barbara L. Sloan for Appellant EEOC, Charles C. DeWitt for Appellee Frank's Nursery before Judges Nelson, Clay, Gibson. [97-1698] (me)

4/23/99 OPINION filed : We REVERSE the district court's dismissal of the EEOC's suit and reinstate this action to permit the EEOC to pursue monetary and injunctive relief against discrimination on the basis of race at Frank's as alleged in the complaint. Decision for publication pursuant to local rule 206. [97-1698] David A. Nelson, concur/dissent, Eric L. Clay, Authoring Judge, John R. Gibson, Circuit Judge (8th Cir). (stb)

4/23/99 JUDGMENT : REVERSED. (see opinion entry) (stb)

5/10/99 BILL OF COST tendered by Barbara L. Sloan for Appellant EEOC. Total Amount: \$404.50. Appt's Brief; \$126.00, Reply Brief; \$120.50, Appendix; \$158.00. Certificate of service date 5/6/99 [97-1698] Reason tendered: 1) 3 days late, 2) panel must decide whether government may recover costs under FRAP 39(b). Charge of \$127.50 for response to en banc petition not included. (blc)

5/28/99 ORDER filed: The tendered bill of costs for \$404.50 by the appellee shall be accepted for filing. [97-1698] . . David A. Nelson, Eric L. Clay, Circuit Judges, John R. Gibson, Circuit Judge (8th Cir.). (blc)

5/28/99 BILL OF COST filed by Barbara L. Sloan for Appellant EEOC. Amount: \$404.50. Certificate of service date 5/6/99 . [97-1698] Appt's Brief; \$126.00, Reply Brief; \$120.50, Appendix; \$158.00. (blc)

6/17/99 MANDATE ISSUED with costs to be recovered by Appellant EEOC. Amount: \$404.50. [97-1698] return record (blc)

6/24/99 CERTIFIED RECORD RETURNED to lower court at the end of appellate proceedings. [97-1698] . Volumes included: 1 Pl; . (mrs)

7/8/99 Record acknowledgment received from the district court. Acknowledged by: lb. Acknowledgment date: 06/25/99. [97-1698] (mrs)

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| <b>Billable Pages:</b> | 9            | <b>Cost:</b>            | 0.72    |

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