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ROOT CANAL OF THE PROBLEM: THE IOWA SUPREME COURT’S PROTECTION OF MALE IMPULSES OVER FEMALE TRAITS

Catherine E. Mendola*

Abstract: In 2010, Dr. James H. Knight DDS fired his employee, Melissa Nelson, explaining that his wife had become jealous of their consensual but nonsexual relationship. Nelson, in turn, filed a sex discrimination claim, alleging that her termination would not have occurred, but-for her sex. The Iowa Supreme Court sided with Knight, ruling that Nelson’s termination was due to Knight’s wife’s jealousy, irrespective of Nelson’s sex. This Comment argues that: (1) in the absence of sexual conduct, the court’s reliance on precedent involving consensual sexual relationships was misplaced; (2) in relying on the wrong precedent, the court set an unnecessarily high standard for plaintiffs to meet in a sex discrimination case; and (3) Nelson v. James H. Knight DDS, P.C. is instead a mixed-motives case and should have succeeded as a sex discrimination claim.

INTRODUCTION

In 2012, the Iowa District Court in Webster County granted summary judgment to defendant Dr. James H. Knight DDS in a claim of sex discrimination under Iowa Code § 216.6.¹ The plaintiff, Knight’s former dental assistant, Melissa Nelson, filed the initial claim after Dr. Knight terminated her employment.² Dr. Knight stated that the reason for her termination was his wife’s jealousy over their professional and personal relationship, and his worry that he


1 IOWA CODE § 216.6 (2009); Nelson v. James H. Knight DDS, P.C., 834 N.W.2d 64, 73 (Iowa 2013). The code reads, in pertinent part,

It shall be an unfair or discriminatory practice for any [p]erson to . . . discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such applicant or employee, unless based upon the nature of the occupation.

§ 216.6.

2 Nelson, 834 N.W.2d at 67. Nelson claimed that her termination was a violation of Iowa law under IOWA CODE § 216.6, which was modeled after Title VII, passed by Congress in 1964. See 42 U.S.C. § 2000e-2(a) (2006); Nelson, 834 N.W.2d at 67. Title VII states, in pertinent part, that it is illegal “to discharge any individual . . . because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a).
may try to have an affair with Nelson.\(^3\) Nelson argued that her termination would not have occurred, but-for her sex.\(^4\)

During the course of Nelson’s employment, Dr. Knight made numerous sexually-charged statements to her, coloring their relationship and demonstrating his physical attraction to her.\(^5\) After Mrs. Knight discovered text messages between her husband and Nelson, which included sexually suggestive comments by Dr. Knight, Mrs. Knight demanded that he fire Nelson.\(^6\) Mrs. Knight had complained in the past about Nelson’s clothing, her coldness to Mrs. Knight, and her habit of staying after work with Dr. Knight, and the text messages finally caused her to request Nelson’s firing.\(^7\) While the threat that Nelson posed to Dr. and Mrs. Knight may not have been fueled by Nelson’s sex alone, it was inspired in a critical way by Nelson’s physical appearance, which cannot be detached from her sex.\(^8\)

On appeal, the Iowa Supreme Court upheld the district court’s grant of summary judgment in favor of Dr. Knight, citing the plaintiff’s inability to support the assertion that her termination was based on her sex.\(^9\) The court emphasized Dr. Knight and Nelson’s consensual personal relationship, which was the basis for Mrs. Knight’s jealousy.\(^10\) Despite an absence of sexual contact, the court cited case law dealing with consensual sexual workplace relationships.\(^11\)

Part I of this Comment discusses the factual and procedural history of *Nelson v. James H. Knight DDS, P.C.* Part II discusses the court’s analysis of the case and its qualifications regarding the decision, namely the admission that when an employer takes an adverse employment action against an employee based on a “gender-specific characteristic,” it may constitute sex dis-

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\(^3\) *Nelson*, 834 N.W.2d at 66.

\(^4\) Id.

\(^5\) See id. at 66–67.

\(^6\) Id. at 67.

\(^7\) Id. at 66. As Mrs. Knight explained in her affidavit and deposition, “I thought it was strange that after being at work all day and away from her kids and husband that she would not be anxious to get home like the other [women] in the office.” Id. (alteration in original).

\(^8\) See Barry Gillen & Richard C. Sherman, *Physical Attractiveness and Sex As Determinants of Trait Attributions*, 15 MULTIVARIATE BEHAV. RES. 423, 436–37 (1980) (psychology study examining physical attractiveness and gender, which concluded that physical attractiveness is a gender-specific trait).

\(^9\) *Nelson*, 834 N.W.2d at 70, 73.

\(^10\) Id. at 67 n.5.

\(^11\) See id. at 68, 70; see also Benders v. Bellows & Bellows, 515 F.3d 757, 768 (7th Cir. 2008) (employee’s sex discrimination claim was inactionable under Title VII when she was terminated because of her employer’s desire to hide a past consensual relationship from his wife); Kahn v. Objective Solutions, Int’l, 86 F. Supp. 2d 377, 382 (S.D.N.Y. 2000) (finding consensual office affair precluded employee from having an actionable sex discrimination termination claim); Campbell v. Masten, 955 F. Supp. 526, 528 (D. Md. 1997) (denying sex discrimination when discharged employee was involved in an office affair that inspired jealousy).
cramination. Part III of this Comment criticizes the court’s failure to address the existence of sex discrimination within the case: because Nelson’s attractiveness inspired Mrs. Knight’s jealousy, Nelson’s gender-specific characteristic impacted her termination. This Comment then asserts that the case is a mixed-motives case, and thus satisfies the sex discrimination standards set out by the Supreme Court in *Price Waterhouse v. Hopkins*.

I. THE IOWA SUPREME COURT IGNORES NELSON’S SEX AND MISCHARACTERIZES HER TERMINATION

Dr. James H. Knight DDS hired Melissa Nelson, then twenty years old, as a dental assistant in his office in 1999.\textsuperscript{12} She worked for Dr. Knight for ten-and-one-half years, alongside several other dental assistants, all of whom were female.\textsuperscript{13} Dr. Knight’s wife, Jeanne Knight, was also employed at the dental office.\textsuperscript{14} Dr. Knight believed Nelson to be a skilled dental assistant, and Nelson, in turn, felt that Dr. Knight was a person of high integrity who treated her with respect.\textsuperscript{15} Nelson viewed Dr. Knight as a “friend and father figure,” and denied that she ever flirted with him or sought an intimate relationship with him.\textsuperscript{16} Nelson did admit, however, that another coworker was jealous that Nelson got along with the dentist.\textsuperscript{17}

Beginning in late 2008, Dr. Knight complained to Nelson that her clothing was too tight and revealing and that it distracted him.\textsuperscript{18} Occasionally, he asked Nelson to wear a lab coat.\textsuperscript{19} In at least one other instance, he sent a text message to Nelson requesting that she wear less revealing clothing.\textsuperscript{20} Dr. Knight later testified that he made these requests to Nelson because he did not “think it’s good . . . to see her wearing things that accentuate her body.”\textsuperscript{21} Nelson did not feel that her clothing was inappropriate or tight.\textsuperscript{22}

During the last six months of Nelson’s employment, Dr. Knight and Nelson began sending text messages to each other outside of the workplace.\textsuperscript{23} The content of these messages was both work-related and personal.\textsuperscript{24}

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\textsuperscript{12} Nelson v. James H. Knight DDS, P.C., 834 N.W.2d 64, 65 (Iowa 2013).
\textsuperscript{13} Id. at 66, 73.
\textsuperscript{14} Id. at 66.
\textsuperscript{15} Id. at 65.
\textsuperscript{16} Id.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} Id. at 66.
\textsuperscript{21} Id. at 65.
\textsuperscript{22} Id. While Nelson did not feel as though her clothing was inappropriate, it was also one of the complaints that Mrs. Knight made about Nelson. See id. at 66.
\textsuperscript{23} Id. at 65.
\textsuperscript{24} Id.
was initiated by both parties and neither objected to the messages.\textsuperscript{25} Several of the text messages sent by Dr. Knight were inappropriate in nature.\textsuperscript{26} One message from Dr. Knight stated that if Nelson ever saw his “pants bulging,” she would know that her clothing was too revealing.\textsuperscript{27} Another message from Dr. Knight complained of a tight shirt that Nelson wore, and then stated that it was good that she did not wear tight pants as well because then he “would get it coming and going.”\textsuperscript{28} Dr. Knight also once texted Nelson to ask how often she experienced an orgasm.\textsuperscript{29} Nelson did not reply.\textsuperscript{30} In response to a statement from Nelson regarding infrequency in her sex life, Dr. Knight replied, “[t]hat’s like having a Lamborghini in the garage and never driving it.”\textsuperscript{31}

In late 2009, Mrs. Knight discovered that Dr. Knight and Nelson had been sending each other text messages.\textsuperscript{32} Mrs. Knight confronted Dr. Knight and demanded that he fire Nelson because she “was a big threat to [their] marriage.”\textsuperscript{33} The Knights consulted with the senior pastor of their church, who agreed with the decision to end Nelson’s employment.\textsuperscript{34} On January 4, 2010, Dr. Knight fired Nelson by reading from a prepared statement, which stated that their relationship had become detrimental to his family and that it was in the best interest of each of their families that they no longer work together.\textsuperscript{35} Soon after, Nelson’s husband met with Dr. Knight and the pastor to discuss the termination.\textsuperscript{36} Dr. Knight explained that Nelson did nothing inappropriate, but that he felt he was getting too personally attached to her and feared that he would try to have an affair with her someday if she continued working there.\textsuperscript{37}

After being granted the right to sue by the Iowa Civil Rights Commission, Melissa Nelson sued Dr. Knight for a violation of Iowa Code § 216.6(1)(a), alleging that he discriminated against her on the basis of sex, but notably not alleging sexual harassment.\textsuperscript{38} Nelson asserted that Dr. Knight terminated her

\textsuperscript{25} Id.
\textsuperscript{26} Id. at 65–66.
\textsuperscript{27} Id. at 65.
\textsuperscript{28} Id.
\textsuperscript{29} Id. at 66.
\textsuperscript{30} Id.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} Id.
\textsuperscript{36} Id. Dr. Knight’s pastor was present for the termination discussion with Melissa Nelson as well.
\textsuperscript{37} Id.
\textsuperscript{38} See IOWA CODE § 216.6(1)(a) (2009); Nelson, 834 N.W.2d at 67. In order to bring a sex discrimination claim in Iowa, a petitioner first timely petitions the Iowa Civil Rights Commission. Id. After the Commission’s approval, a petitioner may bring a sex discrimination claim against a defendant. See id. If the Commission denies a petitioner’s initial claim, an appeals process is available, through which the petitioner must show that there is a lack of substantial evidence that a reasonable
employment because of her sex and that this would not have occurred had she been male. Following briefing and oral arguments, the Iowa District Court in Webster County granted summary judgment to Dr. Knight, reasoning that Nelson was fired “not because of her gender but because she was a threat to the marriage of Dr. Knight.” On appeal, the Iowa Supreme Court upheld the summary judgment ruling, reasoning that the basis for Nelson’s termination was the existence of a personal relationship. The court explained that in the case of a decision based on personal relations, such as this, it is the emotions and feelings felt by an individual that explain the reason for termination, rather than the employee’s sex. The court further explained that Nelson’s termination was not sex discrimination under Title VII because its origin in a consensual relationship made it inactionable according to federal case law.

The court used related but distinct case law from circuit courts to determine whether termination based on jealousy may constitute unlawful sex discrimination. With the exception of one case, the Iowa Supreme Court primarily discussed cases involving consensual physical or sexual relationships. The U.S. Court of Appeals for the Eighth Circuit previously held that unlawful sex discrimination under Title VII did not occur when an employer terminated an employee who had engaged in a consensual physical relationship that generated jealousy. Other circuits came to similar holdings based on fact patterns involving consensual physical relationships, reasoning that “personal animus . . . cannot be the basis of a discrimination claim” under federal law.


39 Nelson, 834 N.W.2d at 67.
40 Id. at 70.
41 See id. at 67, 70.
42 See id. at 70.
43 See 42 U.S.C. § 2000e-2(a) (2006); Nelson, 834 N.W.2d at 70; see also Benders v. Bellows & Bellows, 515 F.3d 757, 768 (7th Cir. 2008) (finding employee’s sex discrimination claim inactionable under Title VII when employer terminated employment because of desire to hide a past consensual relationship from his wife); Tenge v. Phillips Modern Ag Co., 446 F.3d 903, 905–06 (8th Cir. 2006) (finding no sex discrimination when wife’s jealousy of sexually aggressive employee prompted employee’s firing).
44 Nelson, 834 N.W.2d at 67.
45 See id. at 67–68; see also Benders, 515 F.3d at 768 (involving a past consensual extramarital sexual affair); Tenge, 446 F.3d at 906 (involving a consensual sexual affair). The only case cited by the Iowa Supreme Court in Nelson that did not involve a consensual sexual affair involved nepotism amongst family members, which resulted in the termination of a female employee. See Nelson, 834 N.W.2d at 67–68; Platner v. Cash & Thomas Contractors, 908 F.2d 902, 903–04 (11th Cir. 1990).
46 Nelson, 834 N.W.2d at 67; Tenge, 446 F.3d at 905–06. The Court of Appeals for the Eighth Circuit is the circuit court for Iowa. 28 U.S.C. § 41 (2012).
47 Nelson, 834 N.W.2d at 70 (citing Blackshear v. Interstate Brands Corp., 495 Fed. Appx. 613, 617 (6th Cir. 2012)). These other cases had a variety of fact patterns, but most involved a consensual, sexual relationship. See Nelson, 834 N.W.2d at 70; Benders, 515 F.3d at 768 (involving a past consensual sexual affair); Tenge, 446 F.3d at 906 (involving a consensual sexual affair).
II. THE *NELSON* COURT’S LEGAL JUSTIFICATIONS

Title VII of the United States Civil Rights Act of 1964 affords individuals the right to a workplace environment free from discrimination “with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” The corresponding section of the Iowa Code similarly makes it illegal to terminate employment or otherwise discriminate against an employee based on the employee’s sex. When evaluating an employee discrimination claim under the Iowa Code, the court uses standards set out in Title VII to guide its assessment of the claim’s validity. In the present case, after conducting a joint analysis of the two acts, which highlighted each act’s general statutory language and congressional intent, the Iowa Supreme Court decided that the facts of the case did not place the plaintiff within the defined class that the acts intended to protect.

Because § 216.6(1)(a) of the Iowa Code was modeled after Title VII of the Civil Rights Act of 1964, the Iowa Supreme Court used cases decided under that law to guide its analysis of corresponding sex discrimination cases. Despite this connection, the Iowa Supreme Court was not bound by these decisions; they were merely persuasive.

The *Nelson* court began its opinion by qualifying its decision. First, the court explained, Nelson did not bring a sexual harassment claim against Dr. Knight and therefore the court was not required to analyze his actions within that framework. Secondly, and most pertinent for this Comment, the court

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49 See IOWA CODE § 216.6(1)(a) (2009).
50 See Nelson v. James H. Knight DDS, P.C., 834 N.W.2d 64, 67 (Iowa 2013); Deboom v. Rain- ing Rose, Inc., 772 N.W.2d 1, 7 (Iowa 2009).
51 Nelson, 834 N.W.2d at 76 (Cady, C.J., concurring); see id. at 70 (majority opinion).
52 See IOWA CODE § 216.6(1)(a); Nelson, 834 N.W.2d at 67; Deboom, 772 N.W.2d at 7; Vivian v. Madison, 601 N.W.2d 872, 873 (Iowa 1999).
53 Staley v. Jones, 239 F.3d 769, 774 (6th Cir. 2001) (explaining that courts are not bound by the decisions of other circuit courts).
54 See Nelson, 834 N.W.2d at 65.
55 Id. Sexual harassment occurs when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working envi- ronment.

29 C.F.R. § 1604.11 (2013); see Meritor Sav. Bank v. Vinson, 477 U.S. 57, 66 (1986) (explaining that the plaintiff must show that what she was subjected to was “sufficiently severe or pervasive ‘to alter the conditions of [her] employment and create an abusive working environment.’” (citing Henson v. City of Dundee, 682 F.2d 897, 902 (11th Cir. 1982))). Because Nelson did not file such a claim, Dr. Knight’s actions were not analyzed under a hostile work environment rubric, and Nelson was not entitled to damages stemming from a hostile work environment. See Nelson, 834 N.W.2d at 65.
explained that when an employer takes an adverse employment action against an individual because of a gender-specific characteristic, this may constitute sex discrimination.56 In light of these qualifications, however, the court maintained that Dr. Knight’s decision to terminate Nelson did not constitute sex discrimination.57 Accordingly, the Iowa Supreme Court did not disturb the district court’s summary judgment ruling.58

The Iowa Supreme Court justified its denial of Nelson’s sex discrimination claim by discussing several cases in which a consensual sexual relationship contributed to an employee’s termination.59 The court explained that these cases established that an employer does not discriminate based on sex if he discharges a female employee who is involved in a consensual relationship that “has triggered personal jealousy.”60 The court primarily focused on an Eighth Circuit case, Tenge v. Phillips Modern Ag Co., where an employer’s wife became jealous of an admitted sexual relationship between her spouse and his employee.61 In Tenge, the employee pinched her supervisor’s backside and wrote him notes of a sexual and intimate nature, inspiring jealousy in the employer’s wife.62 The Nelson court acknowledged that in its case, the existing consensual relationship lacked sexual intimacy.63 Nevertheless, the Iowa Supreme Court included the case’s narrative to introduce the novelty of Nelson’s claim.64 Indeed, the Tenge court seemed to anticipate the fact pattern presented in Nelson, as it stated, “[t]he question is not before us of whether it would be sex discrimination if Tenge had been terminated because [the employer’s wife] perceived her as a threat to her marriage but there was no evidence that she has engaged in any sexually suggestive conduct.”65 Nelson’s claim was just that; as she put it, she “did not do anything to get herself fired except exist as a female.”66

After establishing that this was a case of first impression, the Iowa Supreme Court stated that it seemed odd to judge an employer’s discriminatory acts based on an employee’s conduct, as the court’s usual focus in a sex discrimination claim is on the employer’s motivation for his actions.67 By high-

56 See Nelson, 834 N.W.2d at 65.
57 See id.
58 See id.
59 See id. at 67–68.
60 Id. at 67.
61 Tenge v. Phillips Modern Ag Co., 446 F.3d 903, 910 (8th Cir. 2006) (holding the basis for employee’s dismissal was not her sex, but her employer’s desire to allay his wife’s concerns over their admitted consensual sexual behavior).
62 Id. at 906.
63 See Nelson 834 N.W.2d at 68–69; id. at 79 (Cady, C.J., concurring).
64 See id. at 68 (majority opinion).
65 Tenge, 446 F.3d at 910 n.5.
66 Nelson, 834 N.W.2d at 69.
67 Id.
lighting its discomfort with analyzing Nelson’s claim based on her conduct instead of Dr. Knight’s motives, the court shifted its focus to public policy. The court emphasized that Title VII and the Iowa Civil Rights Act are not general fairness laws, and for a plaintiff to successfully allege sex discrimination, the employer must discriminate against the employee based upon her protected status, regardless of whether a discharge is unfair overall. The court explained that “an isolated employment decision based on personal relations” stems entirely from one’s feelings and emotions about a specific person. These types of employment decisions are not gender-based, even if the personal relations would not have occurred if the employee were of a different gender. The Iowa Supreme Court classified Nelson’s claim as such, contrasting it with a decision centered on gender itself. The court did not offer any additional clarification as to why Nelson’s claim fell into this category. Instead, it stated that the civil rights laws aim to ensure equal treatment of employees regardless of sex or other protected status, and that Dr. Knight’s termination of Melissa Nelson did not run counter to that goal, despite any apparent unfairness.

To distinguish her claim from Tenge, Nelson submitted three main arguments. First, she claimed that any termination stemming from an employer’s interest in his employee is sex discrimination because the employee’s sex “is implicated by the very nature of the reason for termination.” Second, she stated that Dr. Knight’s justification for her termination would enable an employer to justify an adverse employment action against a specific gender by using pretexts. Lastly, Nelson argued that if Dr. Knight would have been liable to Nelson for sexual harassment, then he should be liable for firing her out of fear that he was going to harass her.

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68 See id.
69 Id.
70 Id. at 70.
71 See id.
72 Id. at 70.
73 See id.
74 Id. The Iowa Supreme Court emphasized that Iowa Code § 216.6 and Title VII are not general fairness laws. See id. at 69. An ABA Journal article on the case poked fun at the lack of fairness: “So, apparently, despite the fact that you meet all of your job requirements and perform your duties responsibly, you can be out on your keister because your boss can’t help making googly eyes at you.” Brian Sullivan, Attractive Nuisance? Lovely Lass Learns That Looks Are Litigable, A.B.A.J. 71 (Apr. 2013).
75 See Nelson, 834 N.W.2d at 70.
76 Id.
77 Id.
78 Id. Had Nelson added a sexual harassment claim to her sex discrimination claim, she may have been more successful in this argument. See id. However, because of the absence of a sexual harassment claim, the Iowa Supreme Court was able to avoid any analysis of Dr. Knight’s sexually-charged behavior, and instead focused on the difference between a decision based on personal relations and one based on gender alone. See id.
In response to her first point, the Iowa Supreme Court stated that Nelson’s argument was too broad and implied that it would lead to excessive litigation because any plaintiff whose employment was terminated following a consensual relationship could argue that her plight would not have developed if she were of the opposite sex.79 The court reasoned that because federal case law holds that an adverse employment action based on a consensual workplace relationship cannot sustain a Title VII claim, Nelson’s claim was inactionable.80 The court responded to Nelson’s pretext argument by stating that although a pretext may not prevail in a sex discrimination case, there was no pretext here because it was not disputed that Mrs. Knight actually objected to Nelson’s relationship with Dr. Knight.81 Lastly, the court addressed Nelson’s sexual harassment argument by explaining that a successful sexual harassment claim must establish that the harassment created a hostile work environment.82 Because there was no hostile work environment in Nelson’s situation, as evidenced by the lack of sexual harassment claim, the purpose of Title VII was not triggered, and Dr. Knight should thus not be exposed to the same liability as he would have been had sexual harassment actually occurred.83

III. Nelson Is a Mixed-Motives Case

The key to analyzing Nelson v. James H. Knight DDS, P.C. lies in the opinion’s opening lines: “Can a male employer terminate a long-time female employee because the employer’s wife, due to no fault of the employee, is concerned about the nature of the relationship between the employer and the employee?”84 The court explicitly stated that Nelson’s termination was “due to no fault of the employee,” yet left no guidance as to how the law protects an employee when a decision is made about her based on her attractiveness.85 Attractiveness is inherently tied to one’s physicality, and is a gender-specific

79 Id.
80 See id. at 70–71. It should be noted that to support this statement, the court cited Benders v. Bellows & Bellows, 515 F.3d 757, 768 (7th Cir. 2008), Blackshear v. Interstate Brands Corp., 495 Fed. Appx. 613, 617 (6th Cir. 2012), and West v. MCI Worldcom, Inc., 205 F. Supp. 2d 531, 544–45 (E.D. Va. 2002), each of which denied a sex discrimination claim to an employee who either had a consensual romantic relationship with her supervisor or had a consensual romantic relationship with another coworker. See Nelson, 834 N.W.2d at 70–71. The court did not discuss any case in which a sex discrimination claim occurred absent a consensual relationship with a romantic element. See id.
81 Nelson, 834 N.W.2d at 71.
82 Id. at 72; see also Faragher v. City of Boca Raton, 524 U.S. 775, 787 (1998); Meritor, 477 U.S. at 66.
83 Nelson, 834 N.W.2d at 72.
84 See Nelson v. James H. Knight DDS, P.C., 834 N.W.2d 64, 65 (Iowa 2013).
85 See id.
trait. In deciding as it did, the court set an impossibly high threshold for a plaintiff to prove sex discrimination. Instead, a plaintiff may be terminated if an employer finds the employee too attractive, resulting in discrimination that stems from the employer’s inability to separate the employee’s gender from his treatment of her.

The problem with relying upon the federal case law that the Nelson court cited is that almost all of the cases exclusively involved consensual sexual relationships. Nelson’s situation, however, involved a consensual nonsexual relationship that one party believed could become sexual. Of the six cases that the court discussed regarding relationships, five involved consensual sexual relationships. The one that did not involve a sexual relationship is vastly different from Nelson, because it involved nepotism and family relations. The court thus used sexual conduct cases to justify its decision in a case that lacked sexual conduct. Nelson was merely the victim of termination by an employer who panicked when his wife discovered his conduct. But because Nelson had a personal and professional relationship with her boss of ten years, as one may expect her to, she had no recourse when her termination occurred.

In Price Waterhouse v. Hopkins, the Supreme Court found that mixed motives may support a sex discrimination case, and that in order to defeat a claim, an employer must show that the non-sex discrimination motive would have

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86 Gillen & Sherman, supra note 8, at 436–37 (finding in a psychology study that physical attractiveness is a gender-specific trait and articulating the difference between male and female attractiveness, thus showing gender’s impact on the traits).

87 See Nelson, 834 N.W.2d at 70–71.

88 See id. at 67.

89 See id. at 68, 70. The court cited Tenge v. Phillips Modern Ag Co., Kahn v. Objective Solutions, Int’l, and Campbell v. Masten, all of which involved consensual sexual relationships. See id. at 70–71; Tenge v. Phillips Modern Ag Co., 446 F.3d 903, 905–06 (8th Cir. 2006); Kahn v. Objective Solutions, Int’l, 86 F. Supp. 2d 377, 382 (S.D.N.Y. 2000); Campbell v. Masten, 955 F. Supp. 526, 528 (D. Md. 1997). In Tenge, the Eight Circuit held that no sex discrimination had occurred when an employer’s wife was jealous of an admitted sexual relationship between her husband and the terminated employee. 446 F.3d at 905–06. In Kahn, the District Court for the Southern District of New York held that participation in a consensual office affair does not lead to an actionable sex discrimination claim if the employee’s termination occurs as a result. 86 F. Supp. 2d at 382. Lastly, in Campbell, the District Court for the District of Maryland denied a sex discrimination claim when a discharged employee was involved in an office affair that inspired jealousy. 955 F. Supp. at 528.

90 See Nelson, 834 N.W.2d at 70.

91 See id. at 68, 69, 70–71.

92 See id. at 69; see also Platner v. Cash & Thomas Contractors, 908 F.2d 902, 903–04 (11th Cir. 1990) (finding nepotism inspired an employee’s termination rather than sex discrimination when an employer discharged his employee because his son’s wife was threatened by her).

93 Nelson, 834 N.W.2d at 67.

94 See id. at 65, 66.

95 See id. at 72 n.5.
sufficiently supported termination on its own.\footnote{96}{Price Waterhouse v. Hopkins, 490 U.S. 228, 252–53 (1989), superseded by statute, Civil Rights Act of 1991, Tit. I, § 107(a), 105 Stat. 1075 (1991) (codified as 42 U.S.C. § 2000e-2(m) (2012)), as recognized in Burrell v. U.S., 134 S. Ct. 881, 889 n.4 (2014); see also Channon v. United Parcel Serv., Inc., 629 N.W.2d 835, 861 (Iowa 2001) (finding that, in general, an employer engages in unlawful sex discrimination when he takes an adverse employment action against an employee and sex is a motivating factor in his decision to take that action).} Plainly, this means that Nelson would have to show that her sex was a motivating reason for her termination.\footnote{97}{See Price Waterhouse, 490 U.S. at 252–53.}

To meet this standard, Nelson may merely point to Dr. Knight’s fear of his own actions in conjunction with his appearance-based comments: when he implied that her clothing would cause him an erection, the statement about him getting it “coming and going” because of her tight pants, the instance in which he compared her to a Lamborghini, and multiple remarks calling her revealing clothing distracting.\footnote{98}{See Nelson, 834 N.W.2d at 65–66.} Each of these comments related to Nelson’s body and physical appearance.\footnote{99}{See id.} The jealousy that they inspired within Mrs. Knight is predicated on one of Nelson’s gender-specific characteristic: her physical appearance.\footnote{100}{See id.; Gillen & Sherman, supra note 8, at 436–37.} Even if one accepts Dr. Knight’s claim that Melissa Nelson’s termination was based on his wife’s jealousy, these statements directly link the jealousy to her physical appearance.\footnote{101}{See Nelson, 834 N.W.2d at 65–66; Gillen & Sherman, supra note 8, at 436–37.} This connection provides adequate evidence, tending to show that Nelson’s status as a woman was also a “motivating factor,” thus supporting a mixed-motives case in accordance with \textit{Price Waterhouse}.\footnote{102}{Price Waterhouse, 490 U.S. at 252–53 (quoting Mt. Healthy City Bd. of Edu. v. Doyle, 429 U.S. 274, 287 (1977)). The concurring opinion in \textit{Nelson} claimed that there was insufficient evidence to show that Nelson’s status as a woman was “also a motivating reason.” 834 N.W.2d at 79 (Cady, C.J., concurring). The concurrence, like the majority opinion, instead focused on the consensual relationship between the two as evidence of conduct supporting the termination. \textit{Id.} at 73, 76. Yet a mixed-motives decision would take into account Nelson’s professional relationship with Dr. Knight and her gender, which undoubtedly caused Mrs. Knight’s jealousy, in that Dr. Knight’s improper text messages and behavior stemmed from her physical attractiveness. \textit{See id.} at 65–66 (majority opinion); \textit{Price Waterhouse}, 490 U.S. at 252–53.}

Instead of relying upon cases involving consensual sexual relationships, the \textit{Nelson} court should have looked to cases with similar fact patterns.\footnote{103}{See, e.g., Fulop v. Malev Hungarian Airlines, 175 F. Supp. 2d 651, 655 (S.D.N.Y. 2001) (using a similar fact pattern as another case as basis for similar judgment); Glass v. IDS Fin. Serv., 778 F. Supp. 1029, 1055 (D. Minn. 1991) (emphasizing its case’s similarity to another’s as basis for similar judgment).} In \textit{Holland v. Zarif}, the plaintiff was fired because her supervisor’s wife was jealous that the two traveled on a business trip together.\footnote{104}{Holland v. Zarif, 794 A.2d 1254, 1273 (Del. Ch. 2002) (involving termination of a plaintiff because defendant wanted to “keep the peace at home and appease his angry wife,” even though the plaintiff’s work performance was adequate).} While the Delaware
Court of Chancery in _Holland_ recommended that the Department of Labor act on the case instead of the court, it did make some suggestions on how to view the case.\(^\text{105}\) The _Holland_ court stated that it was very unlikely that the supervisor’s wife would have been jealous if the plaintiff had been male instead of female.\(^\text{106}\) “Thus,” the court explained, the plaintiff’s “firing was inspired in a critical way by her sex.”\(^\text{107}\) The facts in _Holland_ are more similar to the facts in _Nelson_ than to the facts in the cases that the Iowa Supreme Court cited, and, accordingly, the case provides meaningful insight.\(^\text{108}\) The _Holland_ court did not state that gender was the sole reason for plaintiff’s termination, but that it was “inspired in a critical way by her sex.”\(^\text{109}\) _Holland_ thus satisfies the _Price Waterhouse_ mixed-motives analysis, just as _Nelson_ should.\(^\text{110}\)

The decision in _Nelson_ was met with extensive criticism and media coverage.\(^\text{111}\) The backlash centered around sexism, focusing in particular on the all-male composition of the bench.\(^\text{112}\) It is unclear whether the public outcry affected its decision to do so, but the court granted Nelson’s motion for a re-hearing, coming to the same conclusion a second time.\(^\text{113}\)

\(^{105}\) _Id._.  
\(^{106}\) _Id._.  
\(^{107}\) _Id._.  
\(^{108}\) _See id._.  
\(^{109}\) _See id._.  
\(^{110}\) _See Price Waterhouse, 490 U.S. at 252–53; Holland, 794 A.2d at 1273._  
\(^{112}\) _See Simply Irresistible, supra note 111._  
\(^{113}\) _See Manatt, Phelps & Phillips LLP, Jealous Wife Defense Wins Again in Iowa Supreme Court, Ass’n of Corp. Counsel (Jul. 30, 2013), http://www.lexology.com/library/detail.aspx?g=f0ecbd4ede14-48f0-9fcf-45ab0a31019f. A convincing illustration of the decision’s error came from an Iowa blogger, who drew a parallel between Nelson’s case and a hypothetical racial discrimination case on the same facts. See Simply Irresistible, supra note 111. The author imagines an employer who has five employees, all of whom are black. _Id._. The employer fires one of the employees because the employer and his wife feel that this particular employee is acting “too black” and the employer feels the employee’s actions may cause him to say something racist, which would negatively impact the employer’s relationship with his wife. _Id._. This example outlines the inherent connection between race, an immutable characteristic, and racial discrimination in a way that provides insight into Nelson’s claim. _Id._. Nelson’s gender, also immutable, was not named as the reason for her termination, but it ultimately cannot be separated from the attractiveness that caused Mrs. Knight’s jealousy. _Id._. The connection between attractiveness, gender, and gender discrimination parallels the connection between Blackness, race, and racial discrimination. _Id._. Attempting to separate them is a weak attempt to justify a discriminatory intent. _See id._.
The ramifications from this decision are detrimental for employees of any gender. Essentially, the *Nelson* court established precedent that allows an employer to fire an employee because the employer cannot control his own attraction, through no fault of the employee. This is possible because the *Nelson* court erroneously overlooked attractiveness as a gender-specific trait. Absent the gender-specific characteristic that created Mrs. Knight’s jealousy, Nelson would not have been perceived as a threat and would not have lost her job. With this much murkiness surrounding the case, the high standard of summary judgment was not met; Nelson’s claims were undoubtedly inspired by sex and should have been judged as such, whether through a trial or through a summary judgment in her favor.

**CONCLUSION**

Six months of text messages, work attire choices, and a wife’s perception of “alleged coldness” and “alleged flirting” were offered as the basis for Dr. Knight’s termination of Melissa Nelson’s ten-year tenure as his dental assistant. Dr. Knight’s wife felt that Nelson threatened their marriage, and, accordingly, requested that her husband fire Nelson. While Mrs. Knight’s complaints may be valid, the threat that Mrs. Knight felt Melissa Nelson posed to her marriage stemmed from Nelson’s physical attractiveness. This trait is a gender-specific one, and, as such, falls within the spectrum of what constitutes a violation of the Iowa Civil Rights Act.

The Iowa Supreme Court’s unanimous decision in *Nelson v. James H. Knight DDS, P.C.* set an impossibly high standard for plaintiffs to meet in sex discrimination cases. It rewards employers who cannot control their own sexual inclinations and who decide to terminate an employee because they fear that they may act on those attractions. Because physical attractiveness is a gender-specific trait, termination decisions based on attractiveness constitute sex discrimination. Ignoring this fact directly counters the congressional intent of *Ti- *

114 See *Nelson*, 834 N.W.2d at 71; see also *Simply Irresistible*, supra note 111 (criticizing the *Nelson* court’s decision to use summary judgment instead of full proceedings, and recommending that the court look at the purpose of the law). In a comment on *Nelson*, one attorney advised against using the logic that Dr. Knight employed in his defense. See Richard Meneghello, *Labor Letter, July 2013: Can You Fire Someone For Being Too Sexy?*, JD SUPRA BUSINESS ADVISOR (Jul. 10, 2013), http://www.jdsupra.com/legalnews/labor-letter-july-2013-can-you-fire-so-74276/. Instead, Dr. Knight’s defense was compared to those once used by employers in pregnancy discrimination cases: they did not discriminate against the employee because of her sex, but because she was pregnant. *Id.* Indeed, “it just so happens” that women are the only individuals to become pregnant. *See id.*

115 See *Nelson*, 834 N.W.2d at 71.
116 See *id.* at 70.
117 See *id.*
118 See *id.* at 80 (Cady, C.J., concurring) (explaining that summary judgment should be used only sparingly in employment discrimination cases).
tle VII: to eliminate disparate treatment based on gender. In ruling that Dr. Knight did not commit sex discrimination through his termination of Melissa Nelson, the Iowa Supreme Court saved Dr. Knight from himself, at the expense of his innocent assistant.