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N.J. appeals court reinstates discrimination claims by former Rutgers-Newark basketball players

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By Keith Sargeant | NJ Advance Media for NJ.com

A group of former Rutgers-Newark women's basketball players experienced discrimination related to their race, gender and sexual orientation and their claims of retaliation will be reinstated as part of an existing lawsuit against the university, a state Superior Court appellate panel has ruled.

Appellate judges Clarkson Fisher, Patrick DeAlmeida and Morris Smith reversed a decision that said four of the six players hadn't experienced materially adverse conduct from Rutgers-Newark officials. The June 2 decision reinstated the retaliation claims made by former players Jasmine Daniels, Jade Howard, Sarah Schwartz and Arianna Williams to the suit involving Sharee Gordon and Adayshia McKinnon.

The decision is a victory for the plaintiffs in an explosive lawsuit against the university. They allege long-time athletics director Mark Griffin and former interim women's basketball head coach William Zasowski made discriminatory comments that went unpunished by the administration in 2014 and 2015.
The players also claim Zasowski retaliated after they complained to university officials by being hostile, threatening to cancel the season and limiting Gordon's playing time.

"The appellate decision leaves us in a better position for trial because all plaintiffs' claims of discrimination and retaliation will be decided by a jury," said Kevin Barber, the Morristown-based attorney representing the former players.

Rutgers has denied the allegations, saying an internal investigation found no violations of its policies prohibiting discrimination and harassment.

Barber said the appellate ruling was a "precedential decision." He added that it is "a real expansion on hostile-work environment law."

"The fact that you need to look at these things cumulatively, that's the first time it's been argued and adopted. That's huge," Barber said. "I will say that's the first court in the country to decide that issue. I don't think I've read an opinion like this in my entire legal career."

In 2017, former women's basketball coach Kevin Morris sued Rutgers-Newark, claiming he was fired after complaining about racist and homophobic comments by Griffin. Seven of his former players joined the lawsuit, claiming Zasowski — the interim head coach selected to replace Morris when he went on medical leave — also made derogatory comments. The seventh player was dismissed from the case on unrelated issues, Barber said.

Griffin routinely made homophobic and racist comments during staff meetings, the suit alleges. In one instance, Morris claimed Griffin tried to assure employees the new mascot "wouldn't be gay." In another instance, Griffin used a racial slur in describing the owner of a Newark laundromat as a "Chinaman," according to the suit.

Griffin didn't return an email requesting comment. NJ Advance Media obtained an August 2014 letter by Griffin to Rutgers-Newark officials in which he denied the accusations. In the letter, Griffin admitted to using the term "gay" in referring to the mascot, but meant "happy and

friendly" and not a homosexual slur, he said. He also called it "fact that we have a Chinese laundry here in Newark near the campus and the proprietor is a man who is Chinese."

Griffin has been the Rutgers-Newark athletics director, which has 14 teams playing at the NCAA Division III level, since 2004. His base salary is $147,107, university payroll records obtained by NJ Advance Media show.

Zasowski is accused of referring to Gordon and Howard "as dykes." He said another pair of Black players looked like "nappy-headed sisters" and one of the players "combed her hair with a pack of firecrackers," according to the suit. Zasowski's contract as interim coach wasn't renewed by Rutgers following the 2014-15 season. He is now the boys basketball coach at Lincoln High School in Jersey City.

Zasowski didn't respond to an email request seeking comment and hung up when a reporter contacted him Monday by phone. James O'Hara, the attorney representing him, didn't respond to an email request for comment.

NJ Advance Media obtained a May 2015 investigative report by Rutgers in which Zasowski denied the accusations when pressed by university investigators. The investigation was conducted by Nina Vij, an investigative and resolution specialist at Rutgers.

According to the state appellate decision, Vij "ultimately reported that Zasowski 'more likely than not' made the 'nappy-headed sisters,' 'firecracker,' and 'dyke' comments, but Zasowski and Rutgers had not thereby created a hostile educational environment."

Morris, the former Rutgers-Newark coach, was dropped from the lawsuit two years ago because he is not part of a protected class, he says. But the case involving the former players is proceeding. The lawsuit seeks unspecified compensation for "emotional distress, loss of enjoyment of life, pain and suffering, and diminished capacity." The case has been in settlement mediation for more than a year, court records show. Barber declined to comment when asked how much the players are seeking.

Morris said Monday that Rutgers made a $550,000 settlement offer, which was rejected in April 2018.

"Rutgers would not have offered us more than a half-million dollars if they didn't know they had a major problem," he said.

Barber, who played football at Army, expressed outrage over the alleged abuse of college athletes.

"It's unacceptable. It's demeaning. It's degrading. It's sexist. It's homophobic," he said. "It's everything that you wouldn't want your child to experience."

Rutgers University officials didn't say whether they planned to file an appeal to the state Supreme Court. Jane Rigby, the attorney representing Rutgers, did not respond to an email seeking comment.

"We are analyzing the decision and considering whether to seek further review," Peter Englot, senior vice chancellor for public affairs and the chief of staff for Rutgers-Newark chancellor Nancy Cantor, said in a statement to NJ Advance Media.

Barber said the lawsuit is unique because his clients fall under three protected categories — African American, lesbian and female.

"Rutgers argued the court is supposed to look at each protected category and view whether or not there's a gender-discrimination claim, put that in a waterproof basket, and if no, then see if there's any sexual discrimination claim, put that in its own basket, and then see if there's any race discrimination claim, and put that in its own basket," he said.

"We argued that those are three separated protected characteristics under the law. When you look at the nature of Zasowski's conduct, and others' conduct, they were at different times attacking all three areas."

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